CHANROBLES PUBLISHING COMPANY

SUPREME COURT
SECOND DIVISION

REYNALDO CANO CHUA, doing business under the name & style PRIME MOVER CONSTRUCTION DEVELOPMENT,
***Petitioner*,**

-versus-

G.R. No. 125837
October 6, 2004

COURT OF APPEALS, SOCIAL SECURITY COMMISSION, SOCIAL SECURITY SYSTEM, ANDRES PAGUIO, PABLO CANALE, RUEL PANGAN, AURELIO PAGUIO, ROLANDO TRINIDAD, ROMEO TAPANG and CARLOS MALIWAT,
***Respondents*.**

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D E C I S I O N

TINGA, *J.*:

This is a Petition for Review of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 38269 dated 06 March 1996, and its Resolution dated 30 July 1996 denying petitioner's Motion for

Reconsideration,[2] affirming the Order of the Social Security Commission (SSC) dated 1 February 1995[3] which held that private respondents were regular employees of the petitioner and ordered petitioner to pay the Social Security System (SSS) for its unpaid contributions, as well as penalty for the delayed remittance thereof.

On 20 August 1985, private respondents Andres Paguio, Pablo Canale, Ruel Pangan, Aurelio Paguio, Rolando Trinidad, Romeo Tapang and Carlos Maliwat (hereinafter referred to as respondents) filed a Petition[4] with the SSC for SSS coverage and contributions against petitioner Reynaldo Chua, owner of Prime Mover Construction Development, claiming that they were all regular employees of the petitioner in his construction business.[5]

Private respondents claimed that they were assigned by petitioner in his various construction projects continuously in the following capacity, since the period indicated, and with the corresponding basic salaries,[6] to wit:

Andres Paguio	Carpenter	1977	P 42/day
Pablo Canale	Mason	1977	42/day
Ruel Pangan	Mason	1979	39/day
Aurelio Paguio	Fine grading	1979	42/day
Romeo Tapang	Fine grading	1979	42/day
Rolando Trinidad	Carpenter	1983 (Jan.)	39/day
Carlos Maliwat	Mason	1977	42/day

Private respondents alleged that petitioner dismissed all of them without justifiable grounds and without notice to them and to the then Ministry of Labor and Employment. They further alleged that petitioner did not report them to the SSS for compulsory coverage in flagrant violation of the Social Security Act.[7]

In his Answer,[8] petitioner claimed that private respondents had no cause of action against him, and assuming there was any, the same was barred by prescription and laches. In addition, he claimed that private respondents were not regular employees, but project employees whose work had been fixed for a specific project or undertaking the completion of which was determined at the time of their engagement. This being the case, he concluded that said

employees were not entitled to coverage under the Social Security Act.[9]

Meanwhile, the SSS filed a Petition in Intervention[10] alleging that it has an interest in the petition filed by private respondents as it is charged with the implementation and enforcement of the provisions of the Social Security Act. The SSS stated that it is the mandatory obligation of every employer to report its employees to the SSS for coverage and to remit the required contribution, including the penalty imposed for late premium remittances.

On 01 February 1995, the SSC issued its Order[11] which ruled in favor of private respondents. The SSC, relying on NLRC Case No. RAB-III-8-2373-85,[12] declared private respondents to be petitioner's regular employees.[13] It ordered petitioner to pay the SSS the unpaid SS/EC and Medicare contributions plus penalty for the delayed remittance thereof, without prejudice to any other penalties which may have accrued.[14] The SSC denied the Motion for Reconsideration[15] of petitioner for lack of merit.[16]

Petitioner elevated the matter to the Court of Appeals via a Petition for Review.[17] He claimed that private respondents were project employees, whose periods of employment were terminated upon completion of the project. Thus, he claimed, no employer-employee relation existed between the parties.[18] There being no employer-employee relationship, private respondents are not entitled to coverage under the Social Security Act.[19] In addition, petitioner claimed that private respondents' length of service did not change their status from project to regular employees.[20]

Moreover, granting that private respondents were entitled to coverage under the Act, petitioner claimed that the SSC erred in imposing penalties since his failure to include private respondents under SSS coverage was neither willful nor deliberate, but due to the honest belief that project employees are not regular employees.[21] Likewise, he claimed that the SSC erred in ordering payment of contributions and penalties even for long periods between projects when private respondents were not working.[22]

Petitioner also questioned the failure to apply the rules on prescription of actions and of laches, claiming that the case, being one for the injury to the rights of the private respondents, should have been filed within four (4) years from the time their cause of action accrued, or from the time they were hired as project employees. He added that private respondents "went into a long swoon, folded their arms and closed their eyes"[23] and filed their claim only in 1985, or six (6) years or eight (8) years after they were taken in by petitioner.[24]

In resolving the petition, the Court of Appeals synthesized the issues in the petition, to wit: (1) whether private respondents were regular employees of petitioner, and whether their causes of action as such are barred by prescription or laches; (2) if so, whether petitioner is now liable to pay the SSS contributions and penalties during the period of employment.[25]

The Court of Appeals, citing Article 280 of the Labor Code,[26] declared that private respondents were all regular employees of the petitioner in relation to certain activities since they all worked either as masons, carpenters and fine graders in petitioner's various construction projects for at least one year, and that their work was necessary and desirable to petitioner's business which involved the construction of roads and bridges.[27] It cited the case of Mehitabel Furniture Company, Inc. vs. NLRC,[28] particularly the ruling therein which states:

> By petitioner's own admission, the private respondents have been hired to work on certain special orders that as a matter of business policy it cannot decline. These projects are necessary or desirable in its usual business or trade, otherwise they would not have accepted. Significantly, such special orders are not really seasonal but more or less regular, requiring the virtually continuous services of the "temporary workers." The NLRC also correctly observed that "if we were to accept respondent's theory, it would have no regular workers because all of its orders would be special undertakings or projects." The petitioner could then hire all its workers on a contract basis only and prevent them from attaining permanent status.

Furthermore, the NLRC has determined that the private respondents have worked for more than one year in the so-called "special projects" of the petitioner and so fall under the second condition specified in the above-quoted provision (Article 280, Labor Code).[29]

The Court of Appeals rejected the claim of prescription, stating that the filing of private respondents' claims was well within the twenty (20)-year period provided by the Social Security Act.[30] It found that the principle of laches could not also apply to the instant case since delay could not be attributed to private respondents, having filed the case within the prescriptive period, and that there was no evidence that petitioner lacked knowledge that private respondents would assert their rights.[31]

Petitioner filed a Motion for Reconsideration,[32] claiming that the Court of Appeals overlooked (1) the doctrine that length of service of a project employee is not the controlling test of employment tenure, and (2) petitioner's failure to place private respondents under SSS coverage was in good faith. The motion was denied for lack of merit.[33]

In the present Petition for Review, petitioner again insists that private respondents were not regular, but project, employees and thus not subject to SSS coverage. In addition, petitioner claims that assuming private respondents were subject to SSS coverage, their petition was barred by prescription and laches. Moreover, petitioner invokes the defense of good faith, or his honest belief that project employees are not regular employees under Article 280 of the Labor Code.

Petitioner's arguments are mere reiterations of his arguments submitted before the SSC and the Court of Appeals. More importantly, petitioner wants this Court to review factual questions already passed upon by the SSC and the Court of Appeals which are not cognizable by a petition for review under Rule 45. Well-entrenched is the rule that the Supreme Court's jurisdiction in a petition for review is limited to reviewing or revising errors of law allegedly committed by the appellate court, the findings of fact being generally conclusive on the Court and it is not for the Court to weigh evidence all over again.[34]

Stripped of the lengthy, if not repetitive, disquisition of the private parties in the case, and also of the public respondents, on the nature of private respondents' employment, the controversy boils down to one issue: the entitlement of private respondents to compulsory SSS coverage.

The Social Security Act was enacted pursuant to the policy of the government "to develop, establish gradually and perfect a social security system which shall be suitable to the needs of the laborers throughout the Philippines, and shall provide protection against the hazards of disability, sickness, old age and death."[35] It provides for compulsory coverage of all employees not over sixty years of age and their employers.[36]

Well-settled is the rule that the mandatory coverage of Republic Act No. 1161, as amended, is premised on the existence of an employer-employee relationship, the essential elements of which are: (a) selection and engagement of the employee; (b) payment of wages; (c) the power of dismissal; and (d) the power of control with regard to the means and methods by which the work is to be accomplished, with the power of control being the most determinative factor.[37]

There is no dispute that private respondents were employees of petitioner. Petitioner himself admitted that they worked in his construction projects,[38] although the period of their employment was allegedly co-terminus with their phase of work.[39] Even without such admission from petitioner, the existence of an employer-employee relationship between the parties can easily be determined by the application of the "control test,"[40] the elements of which are enumerated above. It is clear that private respondents are employees of petitioner, the latter having control over the results of the work done, as well as the means and methods by which the same were accomplished. Suffice it to say that regardless of the nature of their employment, whether it is regular or project, private respondents are subject of the compulsory coverage under the SSS Law, their employment not falling under the exceptions provided by the law.[41] This rule is in accord with the Court's ruling in Luzon Stevedoring Corp. vs. SSS[42] to the effect that all employees, regardless of tenure, would qualify for compulsory membership in the SSS, except those

classes of employees contemplated in Section 8(j) of the Social Security Act.[43]

This Court also finds no reason to deviate from the finding of the Court of Appeals regarding the nature of employment of private respondents. Despite the insistence of petitioner that they were project employees, the facts show that as masons, carpenters and fine graders in petitioner's various construction projects, they performed work which was usually necessary and desirable to petitioner's business which involves construction of roads and bridges. In Violeta vs. NLRC,[44] this Court ruled that to be exempted from the presumption of regularity of employment, the agreement between a project employee and his employer must strictly conform to the requirements and conditions under Article 280 of the Labor Code. It is not enough that an employee is hired for a specific project or phase of work. There must also be a determination of, or a clear agreement on, the completion or termination of the project at the time the employee was engaged if the objectives of Article 280 are to be achieved.[45] This second requirement was not met in this case.

Moreover, while it may be true that private respondents were initially hired for specific projects or undertakings, the repeated re-hiring and continuing need for their services over a long span of time—the shortest being two years and the longest being eight—have undeniably made them regular employees.[46] This Court has held that an employment ceases to be co-terminus with specific projects when the employee is continuously rehired due to the demands of the employer's business and re-engaged for many more projects without interruption.[47] The Court likewise takes note of the fact that, as cited by the SSC, even the National Labor Relations Commission in a labor case involving the same parties, found that private respondents were regular employees of the petitioner.[48]

Another cogent factor militates against the allegations of the petitioner. In the proceedings before the SSC and the Court of Appeals, petitioner was unable to show that private respondents were appraised of the project nature of their employment, the specific projects themselves or any phase thereof undertaken by petitioner and for which private respondents were hired. He failed to show any document such as private respondents' employment contracts and

employment records that would indicate the dates of hiring and termination in relation to the particular construction project or phases in which they were employed.[49] Moreover, it is peculiar that petitioner did not show proof that he submitted reports of termination after the completion of his construction projects, considering that he alleges that private respondents were hired and rehired for various projects or phases of work therein.

Anent the issue of prescription, this Court rules that private respondents' right to file their claim had not yet prescribed at the time of the filing of their petition, considering that a mere eight (8) years had passed from the time delinquency was discovered or the proper assessment was made. Republic Act No. 1161, as amended, prescribes a period of twenty (20) years, from the time the delinquency is known or assessment is made by the SSS, within which to file a claim for non-remittance against employers.[50]

Likewise, this Court is in full accord with the findings of the Court of Appeals that private respondents are not guilty of laches. The principle of laches or "stale demands" ordains that the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier, or the negligence or omission to assert a right within a reasonable time, warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[51] In the instant case, this Court finds no proof that private respondents had failed or neglected to assert their right, considering that they filed their claim within the period prescribed by law.

This Court finds no merit in petitioner's protestations of good faith. In United Christian Missionary Society vs. Social Security Commission,[52] this Court ruled that good faith or bad faith is irrelevant for purposes of assessment and collection of the penalty for delayed remittance of premiums, since the law makes no distinction between an employer who professes good reasons for delaying the remittance of premiums and another who deliberately disregards the legal duty imposed upon him to make such remittance.[53] For the same reasons, petitioner cannot now invoke the defense of good faith.

WHEREFORE, the Petition is **DENIED**. The Decision and Resolution of the Court of Appeals promulgated on 6 March 1996 and 30 July 1996 respectively, are **AFFIRMED**. Costs against petitioner.

SO ORDERED.

PUNO, *J.*, *(Chairman)*, AUSTRIA-MARTINEZ, CALLEJO, SR.,[*] and CHICO-NAZARIO, *JJ.*,[*] concur.

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* On Leave.

[1] Promulgated by the Sixth Division, penned by Associate Justice Antonio M. Martinez, with Associate Justices Pacita Canizares-Nye and Romeo J. Callejo, Sr. (now Supreme Court Associate Justice) concurring; Rollo, pp. 31-38.

[2] Rollo, p. 39.

[3] Id. at 50-71.

[4] Id. at 40-45.

[5] Id. at 40.

[6] Id. at 40.

[7] R.A. No. 1161, as amended; Rollo, p. 41.

[8] Rollo, pp. 44-45.

[9] Id. at 44-45.

[10] Id. at 47-49.

[11] Id. at 50-72.

[12] Andres Paguio, et al. vs. Reynaldo Cano Chua, Decision of the NLRC-Third Division, promulgated on 29 November 1989.

[13] Rollo, pp. 69-70.

[14] Id. at 71. The dispositive portion of the Order reads:
WHEREFORE, RPEMISES CONSIDERED, this Commission finds and so holds that petitioners were regular employees of respondent for the periods above-stated and hereby orders respondent Reynaldo Cano Chua to pay the SSS the amount of FIFTY EIGHT THOUSAND, FOUR HUNDRED TWENTY THREE PESOS AND FIVE CENTAVOS (P58,423.05) for petitioners' unpaid SS/EC and Medicare contributions plus the amount of TWO HUNDRED SIXTY NINE THOUSAND, SIX HUNDRED FORTY PESOS AND SIXTY TWO CENTAVOS (P269,640.62) representing the 3% per month penalty for delayed remittance thereof, computed as of November 30, 1994, without prejudice to the collection of additional penalties that have accrued after said date, pursuant to Section 22 (a) of the SS Law, as amended.

[15] Records, pp. 32-45.

[16] Rollo, p. 75.

[17] Id. at 77-97.

[18] Id. at 91.

[19] Id. at 91.
[20] Id. at 92.
[21] Id. at 94.
[22] Id. at 93.
[23] Id. at 95.
[24] Ibid.
[25] Id. at 34.
[26] Art. 280. Regular and casual employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are necessary or desirable in the usual business or trade of the employer, except when the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph; Provided That, any employee who has rendered at least one year of service, whether such service be continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.
[27] Rollo, pp. 35-36.
[28] G.R. No. 101268, 30 March 1993, 220 SCRA 602.
[29] Id. at 605.
[30] Rollo, p. 37; Sec. 22(b) of the Social Security Act, as amended, provides:

Sec. 22(b). The right to institute the necessary action against the employer (for non-remittance of contributions) may be commenced within 20 years from the time the delinquency is known or the assessment is made by the SSS, as the case may be.
[31] Rollo, p. 37.
[32] Id. at 98-103.
[33] Id. at 39; Resolution promulgated on 30 July 1996.
[34] Omandam vs. Court of Appeals, G.R. No. 128750, January 18, 2001, 349 SCRA 483, 488, citing Bautista vs. Mangaldan Rural Bank, Inc., February 10, 1994, 230 SCRA 16.
[35] Sec. 2, R.A. 1161, as amended.
[36] Section 9(a), RA 1161, as amended.
[37] Social Security System vs. Court of Appeals G.R. No. 100388, 14 December 2000, 348 SCRA 1, 10-11; Section 8(d) of R.A. 1161, as amended, reads:

(d) Employee — Any person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such services, where there is an employer-employee relationship; Provided, That a self-employed professional shall be both employee and employer at the same time. (As amended by Sec. 4, R.A. 2658 and Sec. 2, P.D. No. 1636, S-1979)
[38] Rollo, p.16.

[39] Id. at 17.
[40] Investment Planning Corp. vs. Social Security System, 129 Phil. 143 (1967), citations omitted.
[41] Section 8(j) provides for exceptions to compulsory SSS Law coverage, to wit:
j.) Employment. — Any service performed by an employee for his employer, except

1. Agricultural labor when performed by a share or leasehold tenant or worker who is not paid any regular daily wage or base pay and who does not work for an uninterrupted period of at least six months in a year; (As amended by Sec. 4, R.A. 2658)
2. Domestic service in a private home;
3. Employment purely casual and not for the purposes of occupation or business of the employer;
4. Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one years in the employ of his parents;
5. Service performed on or in connection with an alien vessel by an employee if he is employed when such vessel is outside the Philippines;
6. Service performed in the employ of the Philippine Government or an instrumentality or agency thereof;
7. Service performed in the employ of a foreign government or international organization, or their wholly-owned instrumentality: Provided, however, That his exemption notwithstanding, any foreign government, international organization, or their wholly-owned instrumentality employing workers in the Philippines or employing Filipinos outside of the Philippines may enter into an agreement with the Philippine Government for the inclusion of such employees in the SSS except those already covered by their respective civil service retirement systems: Provided, further, That the terms of such agreement shall conform with the provisions of this Act on coverage and amount of payment of contributions and benefits: Provided, finally, That the provisions of this Act shall be supplementary to any such agreement. (As amended by Sec. 1, R.A. 3839; Sec. 3, R.A. 4857; and Sec. 5, P.D. No. 735, S-1975)
8. Such other services performed by temporary employees who may be excluded by regulation of the Commission. Employees of bona fide independent contractors shall not be deemed employees of the employer engaging the services of said contractors. (As amended by Sec. 5, P.D. No. 735, S-1975).

[42] 122 Phil. 1110 (1966).
[43] Id. at 1114.
[44] 345 Phil. 762 (1997).
[45] Id. at 774.
[46] Tomas Lao Construction vs. NLRC, 344 Phil. 268, 279 (1997).
[47] Ibid.
[48] Rollo, p. 69; Decision of the NLRC-Third Division in NLRC Case No. RAB-III-8-2373-85 promulgated on 29 November 1989.
[49] Uy vs. NLRC, G.R. No. 117983, 330 Phil. 218 (1996).

[50] Section 22(b), R.A. 1161, as amended, in part reads:
The right to institute the necessary action against the employer may be commenced within twenty years from the time the delinquency is known or the assessment is made by the SSS, or from the time the benefit accrues, as the case may be. (As amended by Sec. 15, P.D. No. 1636, S-1979).
[51] Rovels Enterprises, Inc. vs. Ocampo, G.R. No. 136821, 17 October 2002, 391 SCRA 176, 191.
[52] 141 Phil. 633 (1969).
[53] Id. at 640.

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