

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**D.M. CONSUNJI, INC.,
*Petitioner,***

-versus-

**G.R. No. 116572
December 18, 2000**

**NATIONAL LABOR RELATIONS
COMMISSION, (FOURTH DIVISION)
ALEXANDER AGRAVIADOR,
JOVENCIO MENDREZ, FELIPE
BARCELONA, CONCORCIO LASPUÑA
and ROGELIO DIAZ,**

Respondents.

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DECISION

KAPUNAN, J.:

In this special civil action of certiorari, petitioner prays that the decision of public respondent National Labor Relations Commission be set aside since it acted with grave abuse of discretion amounting to lack of jurisdiction when it directed the reinstatement of private respondents to their former positions with full backwages.

This case arose from the complaint for illegal dismissal with prayer for reinstatement and payment of full wages filed by the private respondents. Private respondents were hired by petitioner as project

employees to work on its Cebu Super Block Project in Cebu City. Their separate but identical contracts state among others:

You are hired/appointed as project employee as _____ for an estimated period of employment for - _____ in the company's construction project at Cebu Superblock.

THE TERMS AND CONDITIONS OF YOUR EMPLOYMENT ARE AS FOLLOWS:

The period of employment is for an estimated period of one month that is for _____ to _____ provided that it shall not extend beyond the duration of the project, or a particular phase thereof, for which you are hired; subject to the further condition that your services may be sooner terminated should the particular phase of work for which you are hired be completed earlier or should supervisor find your services unsatisfactory or for any other justifiable cause. Should there be other construction projects of the company at the time of your layoff for completion of phase of work, you may request for employment in such other project, subject to the availability of job vacancy in such other project suited to your skills.^[1]

Their contracts also provide for the following terms and conditions:^[2]

Name	Date of Hiring	Date of Termination	Position	Salary
Alexander Agraviador	Feb. 9, 1993	March 9, 1993	Carpenter	13.625/hr.
Jovencio Mendrez	Feb. 8, 1993	March 8, 1993	Laborer	13.125/hr.
Felipe Barcelona	Nov. 21, 1992	Dec. 21, 1992	Carpenter	13.625/hr.
Consortio Laspuna	Feb. 17, 1993	March 2, 1993	Laborer	13.125/hr.
Rogelio Diaz	Dec. 01, 1992	Jan. 01, 1993	Laborer	13.125/hr.

On March 2, 1993, private respondents' services were terminated allegedly without regard to the date of termination as specified in their contracts of employment. Petitioner reported the termination of their services to the nearest Regional Office of the Department of

Labor alleging that the term of the contracts of employment had expired.

The private respondents then filed their respective complaints for illegal dismissal. On July 9, 1993, the Labor Arbiter rendered a decision finding the dismissal of the private respondents without just cause and ordering petitioner to reinstate them to their former positions without loss of benefits and seniority rights and to pay them as their backwages, to wit:

1.	Alexander Agraviador	P5,460.00
2.	Jovencio Mendrez	P5,460.00
3.	Felipe Barcelona	P5,460.00
4.	Consortio Laspuña	P5,460.00
5.	Rogelio Diaz	P5,460.00
	GRAND TOTAL	P27,300.00 ^[3]

In ruling that the dismissals were illegal, the Labor Arbiter explained that while the private respondents voluntarily signed the employment contract which fixed the term of their employment, “their dismissal was not actually based on the expiration of the term of their employment because some of them were dismissed before the end of the contract and there were those dismissed even long after its expiration.” The Labor Arbiter, thus, concluded that the contracts of employment of the private respondents should not be honored because they were made more for breach rather than for observance.^[4]

The NLRC affirmed the decision of the Labor Arbiter. It ruled that the employment period need not reach six months in order that the private respondents attain the status of regular employees citing Article 280 of the Labor Code.^[5] It agreed with the Labor Arbiter that the private respondents could not be considered contract workers because they worked even after the expiration of their contracts of employment.^[6]

Dissatisfied with the decision of the respondent NLRC, petitioner appealed to this Court by way of a special civil action of certiorari under Rule 65 of the Rules of Court, raising the following issues:

1. ARE THE PRIVATE RESPONDENTS ENTITLED TO REINSTATEMENT WITH FULL BACKWAGES THE FACT (sic) THAT THEY WERE HIRED STRICTLY ON PROJECT TO PROJECT BASIS?
2. DID THE RESPONDENT NATIONAL LABOR RELATIONS COMMISSION ACT WITH GRAVE ABUSE OF DISCRETION WHICH AMOUNTED TO LACK OF JURISDICTION WHEN IT DIRECTED THE REINSTATEMENT OF THE PRIVATE RESPONDENTS TO THEIR PREVIOUS POSITION (sic) DESPITE THEIR BEING PROJECT EMPLOYEES?^[7]

In resolving these issues, we shall discuss whether or not the private respondents were project employees; and if in the affirmative, whether or not the termination of their employment was illegal.

Petitioner maintains that the private respondents were project employees since they were hired on a project-to-project basis.^[8] Moreover, private respondents cannot be regular employees because they were all employed for less than six (6) months such that even assuming that they were not project employees, they have not attained that status of regular employment.^[9]

On the other hand, private respondents claim that they were dismissed from their employment on March 2, 1993 even though the construction project was not yet completed. They also allege that after their services were terminated, petitioner hired new workers.^[10] They argue that their dismissal was effected without just cause and without due process of law.^[11]

The Office of the Solicitor General in its Memorandum recommended that the decision of the NLRC be reversed and the complaints filed by private respondents dismissed as they were project employees whose employment periods were pre-determined at the moment they were

hired. As project employees, private respondents are not entitled to reinstatement and full backwages.^[12]

The petition is impressed with merit.

Project employee is one whose “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.”^[13] This Court has held that the length of service of a project employee is not the controlling test of employment tenure but whether or not “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.”^[14]

We hold that the private respondents are project employees. Their contracts of employment readily show that the private respondents were employed with respect to a specific project. The private respondents in this case were workers in a construction project of the petitioner. While employed with respect to a specific project, the contracts of employment between the private respondents and the petitioner provide that the former were employed for a term of one (1) month which was the estimated period for the project to be finished. The private respondents do not even claim to be regular employees but merely that, as employees at the Cebu Super Block, they were terminated before the completion of the project without just cause and due process. As project employees, there is no showing that they were part of the work pool of the petitioner construction company. Hence, in their memorandum, private respondents admit that “they are not unaware that as project employees their employment can be terminated upon the completion of the project.”^[15]

Examining the standard contracts signed by the private respondents, there are three ways by which their employment may be terminated: one, the expiration of the one month period, which was the estimated period for the completion of the project; two, the completion of the project or phase of the project for which they were engaged prior to the expiration of the one month period; and three, upon the finding of unsatisfactory services or other just cause. The private respondents

admitted before the labor arbiter that they signed their employment contract voluntarily.^[16] By this admission, the private respondents necessarily bound themselves to be employed for a fixed duration knowingly and voluntarily without any force, duress or improper pressure. There is no showing that the term fixed was used to preclude acquisition of tenorial security since private respondents were admittedly employed with respect to a specific project, the Cebu Super Block. Inescapably, being a valid contract between the private respondents and the petitioner, the provisions thereof, specifically with respect to the one (1) month period of employment, has the force of law between the parties.

At the time of the termination of the private respondents' employment on March 2, 1993, the respective periods or terms of employment of private respondents Felipe Barcelona, Consorcio Laspuna and Rogelio Diaz had already expired. The fact that they were allowed to work for weeks after the expiration of their contracts would not necessarily show that petitioner had dishonored the contracts. Indeed, some phases of the project may not have been completed after the estimated one month period and that their services were still necessary.

On the other hand, the one month period under the contracts of Alexander Agraviador and Jovencio Mendrez had not yet expired when their services were terminated on March 2, 1993 considering that the duration of their contracts was from February 9 to March 9, 1993 with respect to Agraviador, and from February 8 to March 8, 1993 with respect to Mendrez. Petitioner merely claims that all the private respondents were terminated because of the expiration of the period of the contract.^[17] Petitioner has not alleged, much less established, that the premature termination of the services of private respondents Agraviador and Mendrez was due to the earlier completion of the project or any phase or phases thereof to which they were assigned. Neither has it been shown that the services of Agraviador and Mendrez were unsatisfactory. In termination cases, the burden of proving that an employee has been lawfully dismissed lies with the employer.^[18] It is in the interest of justice to require employers to state the reason for their project employees' dismissal and prove this ground once its veracity is challenged. Employers who hire project employees are mandated to prove the actual basis of the

latter's dismissal.^[19] The inescapable conclusion is that Agraviador and Mendrez were terminated prior to the expiration of the period of their employment without just cause, hence, their termination was illegal. However, private respondents can not be reinstated since the project they were assigned to was already completely finished.^[20] What they are entitled to is the payment of their salaries corresponding to the unexpired portions of their employment.^[21] Specifically, private respondents Agraviador and Mendrez are entitled to the payment of their salaries equivalent to their salary from the time of termination until the expiration of their employment period of one (1) month, the estimated period the project was to be completed.

WHEREFORE, the instant petition is granted. The decision of the National Labor Relations Commission dated June 28, 1994 is hereby **REVERSED** and **SET ASIDE**. Petitioner is ordered to pay private respondent Alexander Agraviador and Jovencio Mendrez the unexpired portion of their contract.

SO ORDERED.

Davide, Jr., C.J., Puno, Pardo and Ynares-Santiago, JJ., concur.

[1] Rollo, p. 70.

[2] Id., at 3; Id., at 66.

[3] Rollo, p. 31.

[4] Decision, Labor Arbiter Ernesto F Carreon, pp. 2-3; Rollo, pp. 28-29.

[5] Article 280 of the Labor Code reads:

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 usually necessary or desirable in the usual business or trade of the employer, except where 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 is 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.

- [6] Decision, NLRC, pp. 4-5; Id., at 35-36
- [7] Petition, p. 4; Id., at 15.
- [8] Petition, p. 5; Rollo, p. 16.
- [9] Id., at 4; Id., at 15.
- [10] Comment of the private respondents, p. 4; Id., at 45.
- [11] Memorandum for private respondents, p 3; Id., at 120.
- [12] Rollo, pp. 125-134.
- [13] See note 5.
- [14] See Hilario Rada vs. NLRC, 205 SCRA 69 (1992).
- [15] See note 11.
- [16] Decision, Labor Arbiter, p 3; Rollo, p. 29.
- [17] Rollo, p. 46.
- [18] Archbuild Masters and Construction, Inc. vs. National Labor Relations Commission 251 SCRA 483, 492 (1995).
- [19] Ibid.
- [20] Petition, p 6; Rollo, p. 17.
- [21] Vinta Maritime Co., Inc. vs. NLRC, 284 SCRA 656, 672 (1998).