

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

MOISES DE LEON,
Petitioner,

-versus-

**G.R. No. 70705
August 21, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION and LA TONDEÑA, INC.,**
Respondents.

X-----X

DECISION

FERNAN, C.J.:

This Petition for *Certiorari* seeks to annul and set aside: (1) the majority decision dated January 28, 1985 of the National Labor Relations Commission First Division in Case No. NCR-83566-83, which reversed the Order dated April 6, 1984 of Labor Arbiter Bienvenido S. Hernandez directing the reinstatement of petitioner Moises de Leon by private respondent La Tondeña, Inc. with payment

of backwages and other benefits due a regular employee; and, (2) the Resolution dated March 21, 1985 denying petitioner's Motion for Reconsideration.

It appears that petitioner was employed by private respondent La Tondeña, Inc. on December 11, 1981, at the Maintenance Section of its Engineering Department in Tondo, Manila.^[1] His work consisted mainly of painting company building and equipment, and other odd jobs relating to maintenance. He was paid on a daily basis through petty cash vouchers.

In the early part of January, 1983, after a service of more than one (1) year, petitioner requested from respondent company that he be included in the payroll of regular workers, instead of being paid through petty cash vouchers. Private respondent's response to this request was to dismiss petitioner from his employment on January 16, 1983. Having been refused reinstatement despite repeated demands, petitioner filed a complaint for illegal dismissal, reinstatement and payment of backwages before the Office of the Labor Arbiter of the then Ministry now Department of Labor and Employment.

Petitioner alleged that he was dismissed following his request to be treated as a regular employee; that his work consisted of painting company buildings and maintenance chores like cleaning and operating company equipment, assisting Emiliano Tanque, Jr., a regular maintenance man; and that weeks after his dismissal, he was re-hired by the respondent company indirectly through the Vitas-Magsaysay Village Livelihood Council, a labor agency of respondent company, and was made to perform the tasks which he used to do. Emiliano Tanque, Jr. corroborated these averments of petitioner in his affidavit.^[2]

On the other hand, private respondent claimed that petitioner was not a regular employee but only a casual worker hired allegedly only to paint a certain building in the company premises, and that his work as a painter terminated upon the completion of the painting job.

On April 6, 1984, Labor Arbiter Bienvenido S. Hernandez rendered a Decision^[3] finding the complaint meritorious and the dismissal

illegal; and ordering the respondent company to reinstate petitioner with full backwages and other benefits. Labor Arbiter Hernandez ruled that petitioner was not a mere casual employee as asserted by private respondent but a regular employee. He concluded that the dismissal of petitioner from the service was prompted by his request to be included in the list of regular employees and to be paid through the payroll and is, therefore, an attempt to circumvent the legal obligations of an employer towards a regular employee.

Labor Arbiter Hernandez found as follows:

“After a thorough examination of the records of the case and evaluation of the evidence and versions of the parties, this Office finds and so holds that the dismissal of complainant is illegal. Despite the impressive attempt of respondents to show that the complainant was hired as casual and for the work on particular project, that is the re-painting of Mama Rosa Building, which particular work of painting and repainting is not pursuant to the regular business of the company, according to its theory, we find differently. Complainant’s being hired on casual basis did not dissuade from the cold fact that such painting of the building and the painting and repainting of the equipment and tools and other things belonging to the company and the odd jobs assigned to him to be performed when he had no painting and repainting works related to maintenance as a maintenance man are necessary and desirable to the better operation of the business company. Respondent did not even attempt to deny and refute the corroborating statements of Emiliano Tanque, Jr., who was regularly employed by it as a maintenance man doing same jobs not only of painting and repainting of building, equipment and tools and machineries or machines of the company but also other odd jobs in the Engineering and Maintenance Department that complainant Moises de Leon did perform the same odd jobs and assignments as were assigned to him during the period de Leon was employed for more than one year continuously by said respondent company. We find no reason not to give credit and weight to the affidavit and statement made therein by Emiliano Tanque, Jr. This strongly confirms that complainant did the work pertaining to the regular business in which the company

had been organized. Respondent cannot be permitted to circumvent the law on security of tenure by considering complainant as a casual worker on daily rate basis and after working for a period that has entitled him to be regularized that he would be automatically terminated.”^[4]

On appeal, however, the above decision of the Labor Arbiter was reversed by the First Division of the National Labor Relations Commission by virtue of the votes of two members^[5] which constituted a majority. Commissioner Geronimo Q. Quadra dissented, voting “for the affirmation of the well-reasoned decision of the Labor Arbiter below.”^[6] The motion for reconsideration was denied. Hence, this recourse.

Petitioner asserts that the respondent Commission erred and gravely abuse its discretion in reversing the Order of the Labor Arbiter in view of the uncontroverted fact that the tasks he performed included not only painting but also other maintenance work which are usually necessary or desirable in the usual business of private respondent: hence, the reversal violates the Constitutional and statutory provisions for the protection of labor.

The private respondent, as expected, maintains the opposite view and argues that petitioner was hired only as a painter to repaint specifically the Mama Rosa building at its Tondo compound, which painting work is not part of their main business; that at the time of his engagement, it was made clear to him that he would be so engaged on a casual basis, so much so that he was not required to accomplish an application form or to comply with the usual requisites for employment; and that, in fact, petitioner was never paid his salary through the regular payroll but always through petty cash vouchers.^[7]

The Solicitor General, in his Comment, recommends that the petition be given due course in view of the evidence on record supporting petitioner’s contention that his work was regular in nature. In his view, the dismissal of petitioner after he demanded to be regularized was a subterfuge to circumvent the law on regular employment. He further recommends that the questioned decision and resolution of respondent Commission be annulled and the Order of the Labor

Arbiter directing the reinstatement of petitioner with payment of backwages and other benefits be upheld.^[8]

After a careful review of the records of this case, the Court finds merit in the petition as We sustain the position of the Solicitor General that the reversal of the decision of the Labor Arbiter by the respondent Commission was erroneous.

The law on the matter is Article 281 of the Labor Code which defines regular and casual employment as follows:

“Art. 281. Regular and casual employment. — The provisions of a written agreement to the contrary notwithstanding and regardless of the oral agreements 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 actually exists.”

This provision reinforces the Constitutional mandate to protect the interest of labor. Its language evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient. Thus, contrary agreements notwithstanding, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business or

trade of the employer. Not considered regular are the so-called "project employment" the completion or termination of which is more or less determinable at the time of employment, such as those employed in connection with a particular construction project, 9 and seasonal employment which by its nature is only desirable for a limited period of time. However, any employee who has rendered at least one year of service, whether continuous or intermittent, is deemed regular with respect to the activity he performed and while such activity actually exists.

The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.

In the case at bar, the respondent company, which is engaged in the business of manufacture and distillery of wines and liquors, claims that petitioner was contracted on a casual basis specifically to paint a certain company building and that its completion rendered petitioner's employment terminated. This may have been true at the beginning, and had it been shown that petitioner's activity was exclusively limited to painting that certain building, respondent company's theory of casual employment would have been worthy of consideration.

However, during petitioner's period of employment, the records reveal that the tasks assigned to him included not only painting of company buildings, equipment and tools but also cleaning and oiling machines, even operating a drilling machine, and other odd jobs assigned to him when he had no painting job. A regular employee of

respondent company, Emiliano Tanque, Jr., attested in his affidavit that petitioner worked with him as a maintenance man when there was no painting job.

It is noteworthy that, as wisely observed by the Labor Arbiter, the respondent company did not even attempt to negate the above averments of petitioner and his co-employee. Indeed, the respondent company did not only fail to dispute this vital point, it even went further and confirmed its veracity when it expressly admitted in its comment that, “The main bulk of work and or activities assigned to petitioner was painting and other related activities. Occasionally, he was instructed to do other odd things in connection with maintenance while he was waiting for materials he would need in his job or when he had finished early one assigned to him.”^[10]

The respondent Commission, in reversing the findings of the Labor Arbiter reasoned that petitioner’s job cannot be considered as necessary or desirable in the usual business or trade of the employer because, “Painting the business or factory building is not a part of the respondent’s manufacturing or distilling process of wines and liquors.”^[11]

The fallacy of the reasoning is readily apparent in view of the admitted fact that petitioner’s activities included not only painting but other maintenance work as well, a fact which even the respondent Commission, like the private respondent, also expressly recognized when it stated in its decision that, “Although complainant’s (petitioner) work was mainly painting, he was occasionally asked to do other odd jobs in connection with maintenance work.”^[12] It misleadingly assumed that all the petitioner did during his more than one year of employment was to paint a certain building of the respondent company, whereas it is admitted that he was given other assignments relating to maintenance work besides painting company building and equipment.

It is self-serving, to say the least, to isolate petitioner’s painting job to justify the proposition of casual employment and conveniently disregard the other maintenance activities of petitioner which were assigned by the respondent company when he was not painting. The law demands that the nature and entirety of the activities performed

by the employee be considered. In the case of petitioner, the painting and maintenance work given him manifest a treatment consistent with a maintenance man and not just a painter, for if his job was truly only to paint a building there would have been no basis for giving him other work assignments in between painting activities.

It is not tenable to argue that the painting and maintenance work of petitioner are not necessary in respondent's business of manufacturing liquors and wines, just as it cannot be said that only those who are directly involved in the process of producing wines and liquors may be considered as necessary employees. Otherwise, there would have been no need for the regular Maintenance Section of respondent company's Engineering Department, manned by regular employees like Emiliano Tanque, Jr., whom petitioner often worked with.

Furthermore, the petitioner performed his work of painting and maintenance activities during his employment in respondent's business which lasted for more than one year, until early January, 1983 when he demanded to be regularized and was subsequently dismissed. Certainly, by this fact alone he is entitled by law to be considered a regular employee. And considering further that weeks after his dismissal, petitioner was rehired by the company through a labor agency and was returned to his post in the Maintenance Section and made to perform the same activities that he used to do, it cannot be denied that his activities as a regular painter and maintenance man still exist.

It is of no moment that petitioner was told when he was hired that his employment would only be casual, that he was paid through cash vouchers, and that he did not comply with regular employment procedure. Precisely, the law overrides such conditions which are prejudicial to the interest of the worker whose weak bargaining position needs the support of the State. What determines whether a certain employment is regular or casual is not the will and word of the employer, to which the desperate worker often accedes, much less the procedure of hiring the employee or the manner of paying his salary. It is the nature of the activities performed in relation to the particular business or trade considering all circumstances, and in some cases the length of time of its performance and its continued existence.

Finally, considering its task to give life and spirit to the Constitutional mandate for the protection of labor, to enforce and uphold our labor laws which must be interpreted liberally in favor of the worker in case of doubt, the Court cannot understand the failure of the respondent Commission to perceive the obvious attempt on the part of the respondent company to evade its obligations to petitioner by dismissing the latter days after he asked to be treated as a regular worker on the flimsy pretext that his painting work was suddenly finished only to rehire him indirectly weeks after his dismissal and assign him to perform the same tasks he used to perform. The devious dismissal is too obvious to escape notice. The inexplicable disregard of established and decisive facts which the Commission itself admitted to be so, in justifying a conclusion adverse to the aggrieved laborer clearly spells a grave abuse of discretion amounting to lack of jurisdiction.

WHEREFORE, the Petition is **GRANTED**. The assailed Decision and Resolution of the National Labor Relations Commission are hereby annulled and set aside. The Order of Labor Arbiter Bienvenido S. Hernandez dated April 6, 1984 is reinstated. Private respondent is ordered to reinstate petitioner as a regular maintenance man, and to pay petitioner 1) backwages equivalent to three years from January 16, 1983, in accordance with the Minimum Wage Orders in effect for the period covered, 2) ECOLA, 3) 13th Month Pay, 4) and other benefits under pertinent Collective Bargaining Agreements, if any.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin and Cortes, JJ., concur.

[1] NLRC Decision, Annex “A”, Petition, p. 16, Rollo; Labor Arbiter’s Decision, Annex “E,” Petition, p. 25, Rollo.

[2] Annex “D”, Petition, p. 24, Rollo.

[3] Annex “E,” Petition, p. 25; Rollo.

[4] Rollo, pp. 29-30.

[5] Namely, Diego P. Atienza, Presiding Commissioner and Cleto T. Villatuya, Commissioner.

[6] Rollo, p. 19.

[7] Private Respondent’s Comment, p. 2; Rollo, p. 55.

- [8] Rollo, pp. 60-71.
[9] Sandoval Shipyards, Inc. vs. NLRC, 136 SCRA 674.
[10] Rollo, p. 55.
[11] NLRC Decision, p. 3; Rollo, p. 18.
[12] NLRC Decision, p. 2; Rollo, p. 17.

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