SUPREME COURT
SECOND DIVISION

E. GANZON, INC.,
***Petitioner*,**

-versus-

G.R. No. 123769
December 22, 1999

NATIONAL LABOR RELATIONS COMMISSION (Third Division), RENE PERMARAN, NERIO VALENZUELA, RODRIGO PRADO, MARIO PLAQUIA, ERNESTO MATEO, ROMMEL NAADAT, ARTEMIO AGOSTO, SALVADOR URBANOZO, CESAR CASTILLO and PONCIANO DEL ROSARIO,
***Respondents*.**[*]
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D E C I S I O N

BELLOSILLO, *J.*:

TWENTY-TWO (22) EMPLOYEES of petitioner E. Ganzon, Inc. — Rolando Reyes, Rene Permaran, Jonathan Sayco, Ernesto Guerra, Nerio Valenzuela, Henry Sayco, Emiliano Telacas, Rodrigo Prado, Mario Plaquia, Gildardo Migabon, Ernesto Mateo, Felix Nicolasora, Joven Jordan, Alberto Bellingan, Rommel Naadat, Vidal Gumanad, Jimmy Cañete, Carlito Moril, Artemio Agosto, Salvador Urbanozo,

Cesar Castillo and Ponciano del Rosario filed on 9 January 1991 a complaint against the company for illegal deduction, non-payment of overtime pay, legal holiday, pay premium pay for holiday and rest day, service incentive leave pay, vacation/sick leave pay and 13th month pay. On 25 January 1991 all the complainants, many of whom are private respondents herein, were dismissed from employment thus prompting them to amend their compliant to include the charge of illegal dismissal.

Subsequently however, eight (8) of the complainants, namely, Rolando Reyes, Jonathan Sayco, Joven Jordan, Carlito Moril, Vidal Gumandad, Alberto Bellingan, Henry Sayco and Felix Nicolasora signed a Release and Quitclaim; consequently, they moved for the dismissal of the complaint insofar as they were concerned. Their motion was granted.

Petitioner E. Ganzon, Inc., is engaged in the construction business. It manufacturers its own building materials, e.g., slab runners, acropos, jack bases, window grills, pulleys, sliding doors and all kinds of aluminum products. It has its own machine shop, five (5) mixer trucks, tower cranes, alimak, elevator shaft, and others.

The remaining fourteen (14) complainants who did not sign the Release and Quitclaim were hired on various dates for different positions and salaries thus —

Complainant	Date Hired	Position	Latest Salary
Rene Permaran	04-14-'89	Machinist	P18.75/hr.
Ernesto Guerra	11-00-'87	Elec. Engr.	P18.25/hr.
Nerio Valenzuela	05-09-'89	Welder/ Fabricator/ Installer	13-75/hr.
Emiliano Telacas	10-18-'89	Aluminum Fabricator/ Installer	12.50/hr.
Rodrigo Prado	06-00-'87	Aluminum Installer/ Fabricator	89.00/day/ 10 hrs work/day
Mario Plaquia	10-03-'89	Laborer/ Trainer	100.00/day
Gildardo Migabon	09-10-'87	Aluminum Installer/	15.00/hr.

		Fabricator	
Ernesto Mateo	03-09-'87	Laborer	13.75/hr./ 10 hrs work/day
Rommel Naadat	05-16-'87	Aluminum Installer/ Helper	13.75/hr.
Jimmy Cañete	07-20-'84	Laborer then Marble Setter in Jan. '85	16.25/hr.
Artemio Agosto	05-11-'88	Helper-Welder then Warehouse-man, 17 July '88	125.00/day 10 hrs/day
Salvador Urbanozo	01-18-'90	Laborer then Machinist-Operator, Oct. '90	76.00/day
Cesar Castillo	10-19-'89	Laborer-Trainee	125.00/day 10 hrs/day
Ponciano del Rosario	01-19-'89	Laborer then Machine Operator, July '89	12.50/hr.

Complainants claimed that during the period of their employment insurance premiums were deducted from their salaries without their consent, and they were not given overtime pay for work performed ten (10) hours a day, legal holiday pay, premium pay for holiday and rest day, five (5) days incentive leave pay despite having rendered services for more than a year, vacation/sick leave pay and 13th month pay. They claimed further that when they reported for work on 25 January 1991 the security guards of petitioner informed them: "Hindi na kayo puedeng pumasok/magtrabaho dito, 'yan ang order galing sa itaas."

Petitioner countered that the complainants were all contractual, project, temporary or casual employees as evidenced by their employment contracts expressly providing that the acceptance of their services was based on the need for their skill such that upon completion of the project and/or when reduction of the workforce was necessary, their services would be terminated. Their employment contracts were renewed every three (3) months. Petitioner denied having dismissed the complainants from employment but that their employment contracts expired on 25 January 1991. Petitioner then disputed their money claims as exaggerated, baseless and/or that they had already prescribed.

On 24 June 1994 the Labor Arbiter ruled as follows: (a) the remaining complainants were declared regular employees of petitioner; (b) petitioner was declared guilty of illegal dismissal; (c) petitioner was ordered to reinstate the remaining complainants to their former or equivalent positions without loss of seniority rights and privileges, either physically or in the payroll, at the option of petitioner under the same terms and conditions obtaining at the time of their illegal dismissal; (d) petitioner was ordered to pay the remaining complainants back wages and benefits, overtime pay, legal holiday pay, service incentive leave pay and 13th month pay partially computed as amounting to P1,902,681.90; and, (e) the claims for illegal deduction, premium pay for holiday and rest day and vacation/sick leave benefits were dismissed for lack of merit.[1]

On appeal, Emiliano Telacas, Gildardo Migabon and Jimmy Cañete moved for the dismissal of their complaint on account of their having subsequently executed a Release and Quitclaim. Public respondent National Labor Relations Commission granted the motion; consequently, the number of complainants was further reduced to eleven (11).

On 24 October 1995 the decision of the Labor Arbiter was affirmed subject to the modification that the awards of overtime pay to Ernesto Mateo, Artemio Agosto and Cesar Castillo were deleted for being unsubstantiated.[2] On 21 December 1995 reconsideration was denied.[3]

Petitioner insists that private respondents were contractual and/or project employees, as borne by their respective employment contracts, the durations of their employments being coterminous with the projects to which they were assigned.

Petitioner likewise insists that illegal dismissal is no longer an issue because what obtains herein is the expiration of their contracts on 25 January 1991. But assuming that petitioner is liable to private respondents for their monetary claims, it assails the computation thereof as contrary to law which provides that money claims prescribe in three (3) years, i.e., the Labor Arbiter awarded forty (40)-day holiday pay to Ernesto Mateo and Rommel Naadat, thirty-six (36) to

Rodrigo Prado and thirty-four (34) to Ernesto Guerra although they were entitled to only thirty (30)-day holiday pay for three (3) years there being ten (10) legal holidays per year. Moreover the Labor Arbiter granted 19.48 days of service incentive leave pay to Ernesto Mateo, 19.42 to Rommel Naadat and 18.34 to Rodrigo Prado notwithstanding that they were only entitled to a maximum of fifteen (15)-day service incentive leave pay for three (3) years at five (5)-day service incentive leave per year.

We conclude that the NLRC did not commit grave abuse of discretion. Article 280 of the Labor Code provides—

> ARTICLE 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 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.
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> 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.
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> This provision classifies regular employees into two (2) kinds: (a) regular employees by nature of work, and (b) regular employees by years of service. Expounding thereon the Court said in De Leon vs. NLRC.[4]

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.

Petitioner is engaged, as heretofore mentioned, in the construction business and manufactures its own building materials. It has its own machine shop and construction equipment. In this kind of integrated business respondents were hired, some as early as 1987, as Machinist, Machinist-Operator, Electrical Engineer, Aluminum Installer/Fabricator, Aluminum Installer/Helper, Welder, Warehouseman, Marble Setter, Fabricator/Welder or Laborer/Helper until their dismissal on 25 January 1991. Private respondents were made to sign employment contracts purportedly as project employees but which were renewed every three (3) months. With this backdrop, we agree with the finding of the Labor Arbiter that —

> With the successive contracts of employment where the complainants continued to perform the same kind of work throughout the entire period of their employment, which was for more than one year, it is clear that complainants' tasks were usually necessary or desirable in the usual business or trade of the respondent company. There can be no escape from the conclusion that the complainants were regular employees of the respondent as provided by Article 280 of the Labor Code.[5]

We likewise agree with the Labor Arbiter, citing Magante vs. NLRC,[6] that if petitioner's submission that respondents were hired as project employees were to be taken as true, then it should have submitted a report of termination to the nearest Public Employment Office every time their employment was terminated due to completion of each construction project as required by Policy Instruction No. 20 of the

Department of Labor and Employment Stabilizing Employer-Employee Relations in the Construction Industry —

> The company is not required to obtain a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes.

Moreover, the Labor Arbiter correctly ruled that the supposed fixed periods of employment of private respondents as stated in their employment contracts precluded their acquisition of tenurial security. Caramol vs. NLRC[7] is authoritative —

> There is no question that a stipulation on an employment contract providing for a fixed period of employment such as "project-to-project" contract is valid provided the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. However, where from the circumstances it is apparent that periods have been imposed to preclude the acquisition of tenurial security by the employee, they should be struck down as contrary to public policy, morals, good custom or public order.

As in Caramol, sufficiently established in the present case are circumstances showing that the alleged fixed periods of employment by way of project-to-project contracts were imposed to preclude acquisition of tenurial security by private respondents. We reiterate that private respondents performed activities necessary or desirable in the usual business or trade of petitioner and that they rendered services for more than a year. Accordingly, the arrangement on fixed periods of employment must be struck down as contrary to public policy.

Petitioner submitted the employment contracts of some private respondents to show, inter alia, the duration thereof and in the

process prove that their services were terminated due to expiration of their respective contracts: Rene Permaran, 6 November 1990; Ernesto Guerra, 29 September 1990; Ernesto Mateo, 26 October 1990; Artemio Agosto, 20 July 1990 and Rommel Naadat, 3 March 1991.

Considering our finding however that private respondent are regular employees of petitioner, the expiry dates of their employment as shown in their respective contracts are rendered meaningless. we also note that the employment contract of private respondent Naadat was yet to expire on 3 March 1991 so that particular circumstance cannot, by any stretch of the imagination, justify his termination on 25 January 1991 based on the expiration of his contract. Clearly, there was no legal cause for private respondent's termination from employment. Neither were the accorded due process since petitioner's security guards simply prevented them from reporting for work as it appears their termination was triggered off by their having sought relief from the labor tribunal on 9 January 1999 regarding money claims. Petitioner received the notification and summons on 18 January 1991. It must have resented their move such that after only a week they were eased out from its employ under the pretext of expiration of their employment contracts.

All money claims arising from employer-employee relationship shall be filed within three (3) years from the time the cause of action accrued, otherwise, they shall be forever barred.[8] And so petitioner assails the award of holiday pay for more than thirty (30) days to Ernesto Mateo, Rommel Naadat, Rodrigo Prado and Ernesto Guerra, and more than fifteen (15) days of service incentive leave pay to the same employees except Ernesto Guerra. We agree with petitioner in this regard that the Labor Arbiter should not have awarded such money claims that went beyond three (3) years. There are ten (10) regular holidays[9] and five (5) days of service incentive leave in a year. At most, private respondents can only claim thirty (30)-day holiday pay and fifteen (15)-day service incentive leave pay with respect to their amended complaint of 25 January 1991. Any other claim is now barred by prescription.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The questioned Decision of respondent National Labor Relations

Commission of 24 October 1995, which sustained with modification the decision of the Labor Arbiter, and its Resolution of 21 December 1995 denying reconsideration are **AFFIRMED** with **MODIFICATION**.

Private respondents Rene Permaran, Ernesto Guerra, Nerio Valenzuela, Rodrigo Prado, Mario Plaquia; Ernesto Mateo, Rommel Naadat, Artemio Agosto, Salvador Urbanozo, Cesar Castillo and Ponciano del Rosario are declared regular employees of petitioner E. Ganzon, Inc. They are likewise declared to have been illegally dismissed by petitioner E. Ganzon, Inc.; consequently, petitioner is ordered to reinstate them without loss of seniority rights and other privileges and to grant them full back wages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time compensation was withheld from them up to actual reinstatement.[10] In addition, petitioner is ordered to pay private respondents their overtime pay, except as to Ernesto Mateo, Cesar Castillo and Artemio Agosto who, as found by public respondent NLRC, were not entitled thereto, as well as legal holiday pay, service incentive leave pay and 13th month pay.

The assailed Decision of the NLRC is **MODIFIED** in that with respect to the amended complaint of 26 January 1991 the entitlement to legal holiday pay of private respondents Ernesto Mateo, Rommel Naadat, Rodrigo Prado and Ernesto Guerra and to service incentive leave pay of the same private respondents, except Ernesto Guerra, is limited to three (3) years from the date of the amended complaint.

SO ORDERED.

Mendoza, Quisumbing, Buena and De Leon, Jr., *JJ*., concur.

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[*] Ernesto Guerra was inadvertently omitted as among private respondents in above caption but included nevertheless in body of Petition.
[1] Decision penned by Labor Arbiter Pedro C. Ramos; Rollo, pp. 61-62.
[2] Decision penned by Presiding Commissioner Lourdes C. Javier, concurred in by Commissioner Ireneo B. Bernardo and Joaquin A. Tanodra; Rollo, pp. 36-37.
[3] Rollo, p. 40.

[4] G.R. No. 70705, 21 August 1989, 176 SCRA 615.
[5] Rollo, P. 54.
[6] G.R. No. 74969, 7 May 1990, 185 SCRA 21.
[7] G.R. No. 102973, 24 August 1993, 225 SCRA 582.
[8] Art. 291, Labor Code.
[9] E.O. No. 203.
[10] Art. 279, Labor Code as amended by Sec. 34, RA 6715.