SUPREME COURT
SECOND DIVISION

MEGASCOPE GENERAL SERVICES,
***Petitioner*,**

-versus-

G.R. No. 109224
June 19, 1997

NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER ARIEL C. SANTOS, ERLINDA ARAOJO, LILING C. ARAGO, LUZ P. BALENA, ADELA R. BAUTISTA, GEMENA D. CANTA, VICTORINA S. COLLENA, ELISA H. DE GUZMAN, YOLANDA J. GOB, JULING R. GOB, FRANCISCO N. GUMARO, LOURDES P. MANALO, ROSALINA O. RAMIREZ, RODRIGO O. RAMIREZ, VENTURA RAMOS, REYNALDO MAGTANONG, AURELIA H. SAN JOSE, NESTOR SERIL, LUIS TUTOL and GENER J. DEL ROSARIO,
***Respondents*.**
x----------x

D E C I S I O N

ROMERO, *J.*:

Petitioner questions the award of separation pay to respondent workers after their employment was terminated when the company ceased operations.

Petitioner Megascope General Services is a sole proprietorship engaged in contracting out general services. In 1977, it entered into a landscaping contract with the System and Structures, Inc. (SSI) which subcontracted the construction of the National Power Corporation Housing Village in Bagac, Bataan. In hiring laborers, petitioner would give them work from five (5) to ten (10) days as the need arose and there were periodical gaps in the hiring of employees.[1]

Between February 15, 1977 and January 1, 1989, it contracted the services of the herein nineteen (19) private respondents as gardeners, helpers and maintenance workers. They were deployed at the National Power Corporation (NPC) in Bagac, Bataan. Except for Gener J. del Rosario whose employment ended on April 30, 1989, the work of the other workers ceased on January 31, 1991. At the time, private respondents Nestor Seril And Gener J. del Rosario were receiving P65.00 a day; private respondent Reynaldo Magtanong, P56.00 a day, and the rest of the private respondents, P54.00 a day.[2]

Consequently, private respondents filed before Regional Arbitration Branch No. III in San Fernando, Pampanga, a complaint for illegal dismissal, underpayment of salaries, nonpayment of five-day service incentive leave credits and holiday pay against petitioner and Andres M. David (NLRC Case No. RAB-III-04-2096-91).

Petitioner and David countered that private respondents were hired for a definite period of employment, the commencement and termination of which were already known to them; that the two-year period stipulated in the private respondents' contract with NPC had expired; that it was the NPC which requested petitioner and David for an extension on a monthly basis of the employment of some of the private respondents; and that the reason for the termination of private respondents' employment was the termination itself of petitioner's contract with NPC.[3]

On October 7, 1992, Labor Arbiter Ariel C. Santos promulgated his decision finding that, by the nature of their employment, private

respondents were "usually contractual employees." Nonetheless, he opined, in view of the length of their service, that private respondents had attained the status of "regular contractual employees" who, pursuant to Policy Instruction No. 20 issued by then Labor Secretary Blas Ople, "cannot just be terminated after the expiration of a contract in an area to where they are assigned without paying them the corresponding separation pay from the time they have served respondent's company." He also held that since private respondents' termination of employment was the result of the expiration of petitioner's contract with the NPC, there was no unlawful dismissal. He resolved the complaint as follows:

> "WHEREFORE, respondents MEGASCOPE and ANDRES DAVID are hereby directed to pay complainants their separation pay based on one-half month for every year of service. (Please see Annex 'A').
>
> The other monetary claims of complainants are hereby DISMISSED for lack of merit.
>
> SO ORDERED."[4]

Petitioner and David appealed to the National Labor Relations Commission (NLRC). On November 20, 1992, the NLRC[5] affirmed the Decision of the Labor Arbiter, holding as follows:

> "Respondents' assertion that complainants' services were not continuous and therefore the award of separation (sic) is without basis deserve scant consideration. While it may be true that respondents' business depends on contracts upon which complaints (sic) were hired, no other evidence was presented to controvert complainants' assertion that they served respondent for the periods claimed. Respondents had been extended full opportunity to present evidence. It agreed to submit case for decision (p. 57, Rollo). Hence, it is too late in the day to assert otherwise."

Petitioner and David filed a motion for reconsideration which, on January 23, 1993, was "dismissed" by the NLRC on the ground that

the issues raised therein had been "amply ruled upon in the questioned Decision."

On March 22, 1993, petitioner filed the instant petition for *certiorari* with prayer for the issuance of a temporary restraining order on the ground that "to sustain an award without factual basis is to conjure, and a decision based on pure conjecture is clearly one issued with grave abuse of discretion amounting to lack of jurisdiction and within the province of the special civil action of *certiorari* to correct."[6]

Petitioner asserts that the respondent NLRC gravely abused its discretion in affirming the decision of the Labor Arbiter, notwithstanding the latter's finding that private respondents were its contractual employees which finding, in turn, was based merely on the allegations of private respondents. Petitioner likewise averred that the Labor Arbiter decided the complaint solely on the basis of the parties' position papers, notwithstanding that he knew "fully well" that the case could not be resolved on that basis alone.

Petitioner's allegations are premised on its stand that the complaint was not supported by facts. Citing Batongbacal vs. Associated Bank[7] wherein the Court noted "with dismay the impracticability of the position paper method of disposing labor cases," it avers that the Labor Arbiter should have conducted a trial on the merits of the case in order that the parties could fully ventilate their respective sides of the controversy.

The petition is devoid of merit.

We have reiterated time and again that the yardstick in the determination of the existence of an employer-employee relationship consists of these four (4) elements: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal, and (4) the power to control the employee's conduct.[8] All these elements are present in this case.

Private respondents were selected and hired by petitioner which assigned them to the NPC housing village in Bagac and in Km. 168, Morong, Bataan. They drew their salaries from petitioner which eventually dismissed them. Petitioner's control over private

respondents was manifest in its power to assign and pull them out of clients at its own discretion. Power of control refers merely to the existence of the power and not to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee. It is enough that the former has the right to wield the power.[9]

The existence of an employer-employee relationship in the case at bar was established, not merely by the allegations and assertions of private respondents, but also by petitioner's own admission in its position paper subscribed before Notary Public Restituto M. David (who also filed the instant petition as counsel for petitioner), that "(c)omplainants had been respondent's employees assigned at the National Power Corporation in its housing Villages situated at Bagac and at km 168, Morong, Bataan as gardeners under Megascope Lawn and Garden Maintenance contract with NPC."[10]

In light of this recorded admission, how can petitioner now claim that the decision of the NLRC regarding the existence of an employer-employee relationship between the parties, was based on conjecture? Petitioner should bear in mind that in proceedings before administrative and quasi-administrative bodies, substantial evidence is sufficient to establish a fact in issue. Said quantum of evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[11] We find that there is substantial evidence in instant case to warrant the conclusion that private respondents were employees of petitioner. Petitioner's admission in a sworn pleading before the Labor Arbiter suffices to support the private respondents' allegations regarding their employment. Hence, grave abuse of discretion cannot be attributed to the public respondents for holding that an employer-employee relationship did exist between petitioner and private respondents.

As regards petitioner's contention that a hearing has to be conducted to fully ventilate the issues in the case, the portion of this Court's decision in the Batongbakal case relied upon by petitioner is merely an obiter dictum and not the ratio decidendi of the case. Suffice it to state that nonverbal devices such as written explanations, affidavits, position papers or other pleadings can establish just as clearly and concisely an aggrieved party's defenses.[12] Petitioner was amply

provided with the opportunity to present evidence that private respondents were not its employees. Indeed, it was petitioner's failure to present substantial evidence to buttress its claims that worked to its disadvantage and not the absence of a full-blown hearing before the public respondents.

On whether or not private respondents were regular employees of petitioner, the Labor Code provides:

> "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 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."

Undeniably, private respondents had been performing activities which were necessary or desirable in the usual trade or business of petitioner. Their services as gardeners, helpers and maintenance workers were continuously availed of by petitioner in the conduct of its business as supplier of such services to clients. Thus, even if there were a contrary agreement between the parties, if the worker has worked for more than a year and there is a reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer, an employer-employee relationship is deemed to exist between the parties.[13]

Granting arguendo that private respondents were initially contractual employees, by the sheer length of service they had rendered for petitioner, they had been converted into regular employees by virtue of the aforequoted proviso in the second paragraph of Art. 280 since they all served petitioner's client for more than a year. Thus, in Baguio Country Club Corporation vs. NLRC,[14] the Court said:

> "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."

The cessation of the NPC operations in Bagac and Morong did not in any way affect the employer-employee relationship between petitioner and private respondents. While this might have severed the contractual relationship between petitioner and the NPC, as regards the supply of services, it did not and will not, under the law, affect the employer-employee relationship between petitioner and private respondents.

Petitioner asserts that private respondents were not prejudiced because all along they knew that they were employed for the specific NPC "project" and therefore when the NPC ceased operations in Bagac and Morong, private respondents knew that their employment perforce ceased. It should be noted, however, that considering the nature of its business, petitioner may not be presumed to have hired private respondents solely for the purpose of supplying maintenance workers for the NPC. It had hired workers starting with its contract with System Structures, Inc. (SSI) even before it entered into a contract with NPC. Petitioner's assertion would have been tenable if it were successfully established that private respondents were indeed project employees.

As the aforequoted Art. 280 of the Labor Code provides, project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of which project or undertaking has been determined at the time of the engagement of

the employee. In this case, petitioner failed to submit in evidence employment contracts or records showing the dates of hiring and termination of employment in relation to the particular project or phases in which they were employed.[15] It must be noted that Policy Instruction No. 20 invoked by Labor Arbiter is inapplicable in instant case as the same applies to the construction industry while petitioner is engaged in the contracting out of general services.

By not redeploying private respondents to other clients, there being no evidence that petitioner itself had ceased its business operations, petitioner is deemed to have constructively dismissed private respondents. Constructive dismissal exists when there is a quitting because continued employment is rendered impossible, unreasonable or unlikely.[16] In the instant case, the failure of petitioner to redeploy private respondents to other projects without showing that it had ceased its operations after the termination of its contract with NPC may be deemed unreasonable considering that private respondents have been the former's regular employees for periods ranging from two to fourteen years. This is the correct basis of the award of separation pay to private respondents.

WHEREFORE, the part of the Decision of the NLRC holding that private respondents were not illegally dismissed is hereby **SET ASIDE**. The other portions are **AFFIRMED**.

SO ORDERED.

Regalado, Puno, Mendoza and Torres, Jr., *JJ.*, concur.

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[1] Memorandum of Respondent in NLRC Case No. RAB-111-04-2096-91, pp. 102; Record, pp. 85-86.
[2] Rollo, p. 23.
[3] Ibid., pp. 23-24.
[4] Annex A is a roster of the employees concerned, their respective length of service and their "half-month salary based on latest" salary, as follows:

"Complainant	Length of Service based on latest	Half-month salary
1. Liling C. Arago	11 yrs.	P7,722.00
2. Erlinda F. Araojo	3 yrs.	P2,106.00
3. Luz P. Balena	14 yrs.	P9,828.00

4.	Adela R. Bautista	14 yrs.	P9,828.00
5.	Gemena D. Canta	14 yrs.	P9,828.00
6.	Victorina S. Collena	14 yrs.	P9,828.00
7.	Elisa H. de Guzman	11 yrs.	P7,722.00
8.	Yolanda J. Gob	11 yrs.	P7,722.00
9.	Juling R. Gob	14 yrs.	P9,828.00
10.	Francisco N. Gumaro	2 yrs.	P1,404.00
11.	Lourdes P. Manalo	14 yrs.	P9,828.00
12.	Rosalina O. Ramirez	12 yrs.	P8,424.00
13.	Rodrigo O. Ramirez	11 yrs.	P7,722.00
14.	Benturada A. Ramos	12 yrs.	P8,424.00
15.	Reynaldo Magtanong	3 yrs.	P2,106.00
16.	Aurelia M. San Jose	14 yrs.	P9,828.00
17.	Nestor Seril	3 yrs.	P2,535.00
18.	Luis Tutol	3 yrs.	P2,535.00
19.	Gener J. del Rosario	10 yrs.	P8,450.00
	TOTAL		P135,239.00"

[5] Thru Presiding Commissioner Lourdes C. Javier. Concurring were Commissioners Ireneo B. Bernardo and Joaquin A. Tanodra.

[6] Petition, p. 2; Rollo, p. 3.

[7] G.R. No. 72977, December 21, 1988, 168 SCRA 600.

[8] Rhone-Poulenc Agrochemical Phil., Inc. vs. NLRC, G.R. Nos. 102633-35, January 19, 1993, 217 SCRA 249; Canlubang Security Agency vs. NLRC, G.R. No. 97492, December 8, 1992, 216 SCRA 280; Ruga vs. NLRC, G.R. Nos. 72654-61, January 22, 1990, 181 SCRA 266.

[9] MAM Realty Development Corporation vs. NLRC, G.R. No. 114787, June 2, 1995, 244 SCRA 797, 800-801 citing Zanotte Shoes/Leonardo Lorenzo vs. NLRC, G.R. No. 100665, February 13, 1995, 241 SCRA 261 and Dy Keh Beng vs. International Labor and Marine Union of the Philippines, L-32245, May 25, 1979, 90 SCRA 161.

[10] Record of NLRC Case No. RAB-III-04-2096-91, p. 45.

[11] Reno Foods, Inc. vs. NLRC, G.R. No. 116462, October 18, 1995, 249 SCRA 379, 185 citing Sec. 5, Rule 133 of the Rules of Court and Manila Electric Co. vs. NLRC, G.R. No. 60054, July 2, 1991, 198 SCRA 681.

[12] Manggagawa ng Komunikasyon sa Pilipinas vs. NLRC and PLDT, G.R. No. 90964, February 10, 1992, 206 SCRA 109, 114-115 citing De Leon vs. NLRC, G.R. No. 52056, October 30, 1980, 100 SCRA 691.

[13] De Leon vs. NLRC, G.R. No. 70705, August 21, 1989, 176 SCRA 615 where an employer-employee relationship was considered as existing between a building painter who was paid petty cash vouchers for more than a year and the La Tondeña, Inc. which was engaged in the business of distillery.

[14] G.R. No. 71664, February 28, 1992, 206 SCRA 643, 649, citing De Leon, supra.

[15] Fernandez vs. NLRC, G.R. No. 106090, February 28, 1994, 230 SCRA 460; Philippine National Oil Co. — Energy Dev't Corp. vs. NLRC, G.R. No. 97747,

March 31, 1993, 220 SCRA 695; Rada vs. NLRC, G.R. No. 96078, January 9, 1992, 205 SCRA 69, 81.

[16] People's Security Inc. vs. NLRC, 226 SCRA 146 (1993).