SUPREME COURT
SECOND DIVISION

PHILIPPINE VILLAGE HOTEL,
***Petitioner*,**

-versus-

G.R. No. 105033
February 28, 1994

NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND TUPAS LOCAL CHAPTER NO. 1362, JUANITO ACUIN, MAMERTA MANGUBAT, RAUL SONON, ELGAR PEMIS, ORLANDO PARAGUISON, FERDINAND VELASCO, MIKE ASTULERO, MAGNO DECALSO, NENITA OROSEA, JOSE TIMING, ANTONIO MANALILI, RODELIO QUERIA and REYNALDO SANTOS,
***Respondents*.**
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D E C I S I O N

NOCON, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court with a Prayer for the Issuance of a Temporary Restraining Order to Annul and Set Aside the Decision[1] promulgated November 7, 1991 by

the National Labor Relations Commission (NLRC) of Manila reversing the decision dated December 19, 1989 of the Labor Arbiter Cornelio L. Linsangan.

It appears on record that private respondents Juanito Acuin, Mamerta Mangubat, Raul Sonon, Elgar Pemis, Orlando Paraguison, Ferdinand Velasco, Mike Astulero, Magno Decalso, Nenita Orosea, Jose Timing, Antonio Manalili, Rodelio Queria and Reynaldo Santos were employees of petitioner Philippine Village Hotel. However, on May 19, 1986, petitioner had to close and totally discontinue its operations due to serious financial and business reverses resulting in the termination of the services of its employees.

Thereafter, the Philippine Village Hotel Employees and Workers Union filed against petitioner a complaint for separation pay, unfair labor practice and illegal lock-out.

On May 27, 1987, the Labor Arbiter issued and Order finding the losses suffered by petitioner to be actual, genuine and of such magnitude as to validly terminate the services of private respondents but directed petitioner "to give priority to the complainants (herein private respondents) in [the] hiring of personnel should they resume their business operations in the future."[2]

On appeal, the NLRC affirmed the validity of the closure of petitioner but ordered petitioner to pay private respondents separation pay at the rate of ½ month pay every year of service. However, there is nothing in the records to show that private respondents received their separation pay as the decision of the NLRC remained unenforced as of this date.

On February 1, 1989, petitioner decided to have a one (1) month dry-run operation to ascertain the feasibility of resuming its business operations. In order to carry out its dry-run operation, petitioner hired casual workers, including private respondents, for a one (1) month period, or from February 1, 1989 to March 1, 1989, as evidenced by the latter's Contract of Employment.[3]

After evaluating the individual performance of all the employees and upon the lapse of the contractual one-month period or on March 2, 1989, petitioner terminated the services of private respondents.

On April 6, 1989, private respondents and Tupas Local Chapter No. 1362 filed a complaint against petitioner for illegal dismissal and unfair labor practice with the NLRC-NCR Arbitration Branch in NLRC Case No. 00-04-01665-89.

On December 19, 1989, the Labor Arbiter rendered a decision, the dispositive portion of which reads, as follows:

> "WHEREFORE, finding the above-entitled complaint to be without factual and legal basis, judgment is hereby rendered dismissing the same."[4]

Thereafter, private respondents appealed to the public respondent NLRC.

On November 7, 1991, public NLRC reversed the decision of the Labor Arbiter, the dispositive portion of which reads, as follows:

> "WHEREFORE, under the premises, let the decision appealed from be, as it is hereby reversed, and a new judgment rendered, hereby ordering the respondent Philippine Village Hotel to reinstate the above-named complainants to their former or substantially equivalent positions without loss of seniority rights plus full backwages from the time they were actually dismissed on 02 March 1989 up to the time of their actual reinstatement, but which period of time should not exceed three (3) years.
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> "The complaint for unfair labor practice is hereby dismissed for lack of adequate factual basis."[5]

On March 5, 1992, petitioner's Motion for Reconsideration was denied for lack of merit.

Hence, this petition alleging grave abuse of discretion on the part of the public respondent NLRC in finding that private respondents are

regular employees of petitioner considering that the latter's services were already previously terminated in 1986 and that their employment contracts specifically provided only for a temporary one-month period of employment.

The petition is impressed with merit.

An examination of the contents of the private respondents' contracts of employment shows that indeed private respondents voluntarily and knowingly agreed to be employed only for a period of one (1) month or from February 1, 1989 to March 1, 1989.

The fact that private respondents were required to render services usually necessary or desirable in the operation of petitioner's business for the duration of the one (1) month dry-run operation period does not in any way impair the validity of the contractual nature of private respondents' contracts of employment which specifically stipulated that the employment of the private respondents was only for one (1) month.

In upholding the validity of a contract of employment with a fixed or specific period, we have held that the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be that which must necessarily come, although it may not be known when. The term period was further defined to be the length of existence; duration. A point of time marking a termination as of a cause or an activity; an end, a limit, a bound; conclusion; termination. A series of years, months or days in which something is completed. A time of definite length or the period from one fixed date to another fixed date.[6] This ruling is only in consonance with Article 280 of the Labor Code which 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.
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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 actually exists."

Inasmuch as private respondents' contracts of employment categorically provided a fixed period and their termination had already been agreed upon at the time of their engagement, private respondents' employment was one with a specific period or day certain agreed upon by the parties. In Philippine National Oil Company-Energy Development Corporation vs. NLRC,[7] we held that:

> "As can be gleaned from the said case (Brent School, Inc. vs. Zamora, 181 SCRA 702), the two guidelines by which fixed contracts of employments can be said NOT to circumvent security of tenure, are either:
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> "1. The fixed period of employment was knowingly and voluntarily agreed upon 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
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> "2. 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 on the latter."

In the instant case, private respondents were validly terminated by the petitioner when the latter had to close its business due to financial losses. Following the directives of the NLRC to give priority in hiring private respondents should it resume its business, petitioner hired private respondents during their one (1) month dry-run operation. However, this does not mean that private respondents were deemed to have continued their regular employment status, which they had enjoyed before their aforementioned termination due to petitioner's financial losses. As stated by the Labor Arbiter in his decision:

> "It should be borne in mind that when complainants were first terminated as a result of the company's cessation from operation in May, 1986 the employer-employee relationship between the parties herein was totally and completely severed. Such being the case, respondent acted well within its discretion when in rehiring the complainants (herein private respondents) it made them casual and for a specific period. The complainants are no better than the new employees of respondent (petitioner) for the matter of what status or designation to be given them exclusively rests in the discretion of management."[8]

Besides, the previous decision of the public respondent NLRC in Case No. 8-3277-86 finding the termination of private respondents' employment to be valid has long become final and executory. Public respondent NLRC cannot anymore argue that the temporary cessation of the petitioner's operation due to financial reverses merely suspended private respondents' employment. The employee-employer relationship had come to an end when the employer had closed its business and ceased operations. The hiring of new employees when it re-opened after three (3) years is valid and to be expected. The prior employment which was terminated cannot be joined or tacked to the new employment for purposes of security of tenure.

While it is true that security of tenure is a constitutionally guaranteed right of the employees, it does not, however, mean perpetual employment for the employee because our law, while affording protection to the employee, does not authorize oppression or destruction of an employer. It is well settled that the employer has the right or is at liberty to choose who will be hired and who will be

denied employment. The right of a laborer to sell his labor to such persons as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer and the employee have an equality of right guaranteed by the Constitution. If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression.[9]

Thus, public respondent NLRC had indubitably committed grave abuse of discretion when it modified the final decision of the NLRC Case No. 8-3277-86 which remain unenforced as of this date. Private respondents' remedy is to file a motion for execution, if it is still within the reglementary 5-year period, or to file an action to enforce said decision. (Article 224(a), Labor Code)

WHEREFORE, this Petition for *Certiorari* is **GRANTED** and the questioned Decision of the public respondent NLRC is hereby **SET ASIDE** thereby dismissing the complaint against petitioner.

SO ORDERED.

Narvasa, *C.J.*, Padilla, Regalado and Puno, *JJ.*, concur.

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[1] Penned by Commissioner Edna Bonto-Perez with the concurrence of Commissioner Domingo H. Zapanta and Commissioner Rustico L. Diokno.
[2] Rollo, p. 24.
[3] Id., at pp. 35-41, Annex "C" - "I".
[4] Id., at p. 45.
[5] Id., at pp. 32-33.
[6] Escareal vs. National Labor Relations Commissions, 213 SCRA 472 [1992].
[7] G.R. No. 97747, promulgated on March 31, 1993.
[8] Rollo, pp. 44-45.
[9] International Catholic Migration Commission vs. NLRC, 169 SCRA 606, January 30, 1989.