

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ISABELO VIOLETA and JOVITO
BALTAZAR,**

Petitioners,

-versus-

**G.R. No. 119523
October 10, 1997**

**NATIONAL LABOR RELATIONS
COMMISSION, Fifth Division, and
DASMARIÑAS INDUSTRIAL AND
STEELWORKS CORPORATION,**

Respondents.

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DECISION

REGALADO, J.:

Petitioners Isabelo Violeta and Jovito Baltazar were former employees of private respondent Dasmariñas Industrial Steelworks

Corporation (DISC). Their records of service and employment, insofar as the same are material to this case, are not in dispute.

Petitioner Violeta worked in Construction and Development Corporation of the Philippines (CDCP), a sister corporation of private respondent, at its project in CDCP Mines, Basay, Negros Oriental from December 15, 1980 up to February 15, 1981. Private respondent then hired him as Erector II at the former's project for Philphos in Isabel, Leyte on November 10, 1982 until the termination of the project on December 3, 1984. On January 21, 1985, he was reassigned as Erector II for Five Stand TCM Project, with vacation and sick leaves, and was designated as a regular project employee at private respondent's project for National Steel Corporation (NSC) in Iligan City. After receiving a salary adjustment, he was again hired on June 6, 1989 as Handyman for the civil works of a construction project for NSC.^[1] On February 10, 1992, he was appointed for project employment, again as Handyman, to NSC ETL #3 Civil Works by private respondent. Due to the completion of the particular item of work he was assigned to, private respondent terminated the services of petitioner Violeta on March 15, 1992.^[2]

Petitioner Baltazar started in the employ of CDCP on June 23, 1980. He was hired by private respondent as Lead Carpenter for project Agua VII on October 1, 1981. Like petitioner Violeta, he was transferred from one project to another as a regular project employee.^[3] On November 28, 1991, he was hired as Leadman II in ETL #3 Civil Works by private respondent in its project for NSC, but he was separated from such employment on December 20, 1991 as a result of the completion of said item of work.^[4]

Upon their separation, petitioners executed a quitclaim wherein they declared that they have no claim against private respondent and supposedly discharged private respondent from any liability arising from their employment.^[5]

Contending that they are already regular employees who cannot be dismissed on the ground of completion of the particular project where they are engaged, petitioners filed two separate complaints for illegal dismissal against private respondent, with a prayer for reinstatement and back wages plus damages.

Private respondent admitted that it is engaged in the development and construction of infrastructure projects and maintained that Violeta was hired on June 6, 1989 to March 15, 1992 as Handyman while Baltazar was employed on June 6, 1989 to December 20, 1991 as Leadman II.^[6] It argued that both are project employees based on their declaration in their Appointments for Project Employment that they are employed only for the period and specific works stated in their respective appointments, in addition to their admission that they are project employees who are subject to the provisions of Policy Instruction No. 20.^[7]

Labor Arbiter Guardson A. Siao dismissed the claims of petitioners for lack of merit but ordered private respondent to grant them separation pay.^[8] The labor arbiter concluded that petitioners are project employees based on their admission that they are regular project employees. Thus, their employment was deemed coterminous with the project for which their employer engaged them. Their separation was declared valid and their claims for reinstatement and back wages were denied. The award of separation pay was based on the findings of the labor arbiter that it is the policy of private respondent to pay employees who have rendered at least one year of continuous service.

Petitioners and private respondent duly appealed the ruling of the labor arbiter to respondent NLRC.

Finding petitioners to be non-project employees in its resolution dated August 17, 1994,^[9] the Fifth Division of the NLRC reversed the decision of the labor arbiter and declared petitioners' dismissal as illegal. Private respondent company was thereafter ordered to reinstate petitioners to their former positions without loss of seniority rights and to pay them back wages operative from the date of petitioners' dismissal. In the event that reinstatement can no longer be made due to any lawful supervening event, the labor tribunal directed private respondent to further give petitioners the corresponding separation pay. Private respondent was also required to pay attorney's fees to petitioners.

According to the NLRC, although the appointment contracts of petitioners specified fixed terms or periods of employment, the fact that they were hired and transferred from one project to another made both petitioners non-project employees who cannot be terminated by reason alone of the completion of the project. They were hired not only for one particular project but different projects, one after the other.

However, on November 15, 1994,^[10] the same division of the NLRC reversed itself upon motion of private respondent and set aside its earlier resolution. Reportedly, a reexamination of the same evidence before it led the labor court to conclude that the employment of petitioners in ETL #3 Civil Works was allegedly for a specific or fixed period thus making petitioners project employees. This time, it held that since the termination of petitioners' employment was due to the completion of the project, petitioners are therefore not entitled to separation pay. It ruled that this would hold true even if petitioners were categorized as regular project employees because their employment was not permanent but coterminous with the projects to which they were assigned. No other substantial reason was given for the adjudicative turnabout.

In this petition for *certiorari*, petitioners contend that public respondent (NLRC) committed grave abuse of discretion amounting to lack of jurisdiction when it granted the motion for reconsideration of private respondents in its November 15, 1994 resolution. Such novatory resolution, petitioners contend, was not only too abbreviated but actually disregarded applicable laws and jurisprudence governing the characterization of employees in the construction industry.

We have held that the services of project employees are coterminous with the project and may be terminated upon the end or completion of that project for which they were hired. Regular employees, in contrast, are legally entitled to remain in the service of their employer until their services are terminated by one or another of the recognized modes of termination of service under the Labor Code.^[11]

Foremost for our resolution then is the issue of whether petitioners are regular (non-project) employees or project employees. Upon the resolution of this query rests the validity of petitioners' dismissal.

The source of the definition of a regular employee *vis-a-vis* a project employee is found in 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 service to be performed is seasonal in nature and the employment is for the duration of the season.

An employee 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. (Emphases ours).

Article 280 was emplaced in our statute books to prevent the circumvention of the employee's right to be secure in his tenure by indiscriminately and completely ruling out all written and oral agreements inconsistent with the concept of regular employment defined therein.^[12] Where an employee has been engaged to perform activities which are usually necessary or desirable in the usual business of the employer, such employee is deemed a regular employee and is entitled to security of tenure notwithstanding the contrary provisions of his contract of employment.^[13]

As Handyman and Erector II, respectively, petitioners' services are both necessary and vital to the operation of the business of private respondent. This is not at all traversed, but is even confirmed by the fact that they were continually and successively assigned to the different projects of private respondent and its sister company, CDCP.

In order to properly characterize petitioners' employment, we now proceed to ascertain whether or not their employment falls under the exceptions provided in Article 280 of the Code.

The principal test for determining whether particular employees are properly characterized as "project employees," as distinguished from "regular employees," is whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.^[14] As defined, project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee.^[15]

Based on the above criteria, we find petitioners to be regular employees of private respondent, and not project employees as postulated by respondent NLRC. Petitioners' dismissal, therefore, could not be justified by the completion of their items of work.

The predetermination of the duration or period of a project employment is important in resolving whether one is a project employee or not. On this score, the term period has been defined to be "a 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."^[16]

There is no debate that petitioners were hired for a specific project or undertaking. Their Appointments for Project Employment clearly state that their employment is for NSC ETL #3 Civil Works. The fact of the completion of said item of work is also undisputed. However, the records are barren of any definite period or duration for the

expiration of the assigned items of work of petitioners at the time of their engagement. An examination of said appointments reveal that the completion or termination of the project for which petitioners were hired was not determined at the start of their employment. There is no specific mention of the period or duration when the project will be completed or terminated. In fact, the lines for “DATE OF COVERAGE” in the appointments (referring to the particular items of work for which petitioners are engaged) are left blank.

While the word “co-terminus” was adopted in the appointments of petitioners, it cannot readily be concluded that their employment with private respondent is for a definite duration, that is, until the completion of their items of work, because there are other words used in the aforesaid appointments affecting their entitlement to stay in their job. To be concrete, the pertinent terms of the Appointments For Project Employment of petitioners are quoted below, thus:

Your herein Appointments will be co-terminus with the need of _____ as it will necessitate personnel in such number and (State Item of Work) duration contingent upon the progress accomplishment from time to time. The company shall determine the personnel and the number as work progresses.

An interpretation of the above provisions is important for the correct labeling of petitioners’ employment with private respondent. Propitiously, this Court has already been confronted with contracts of employment of the same and exact tenor as above in *De Jesus vs. Philippine National Construction Corp. and National Labor Relations Commission, et al.*^[17] The contracts involved in said case also provided as follows:

Your herein Appointment Employment will be co-terminus with the need of Structures [of North. Luzon Expressway (Stage) II] as it will necessitate personnel in such number and duration contingent upon the progress accomplishment from time to time. The company shall determine the personnel and the number as the work progresses.

On such premises, the Court declared:

Without question, the petitioner, a carpenter, performs work “necessary, or desirable” in the construction business, the corporation’s field of activity. The fact however that he had been involved in project works will not alter his status because the law requires “specific project or undertaking the completion or termination of which has been determined at the time of engagement” in order to make a project employee a true project employee we can not say that the petitioner’s engagement has been predetermined because the duration of the work is “contingent upon the progress accomplishment” and secondly, the company, under the contract, is free to “determine the personnel and the number as the work progresses.” Clearly, the employment is subject to no term but rather, a condition, that is, “progress accomplishment.” It can not therefore be said to be definite that will therefore exempt the respondent company from the effects of Article 280.

Following the rule on precedents, we once again hold that the respective employments of the present petitioners is not subject to a term but rather to a condition, that is, “progress accomplishment.” As we have stated in De Jesus, it cannot be said that their employment had been pre-determined because, firstly, the duration of their work is “contingent upon the progress accomplishment” and, secondly, the contract gives private respondent the liberty to “determine the personnel and the number as the work progresses.” It is ineluctably not definite so as to exempt private respondent from the strictures and effects of Article 280.

To add our own observation, the appointments of petitioners herein were not coterminous with NSC ETL #3 Civil Works but with the “need” for such particular items of work as were assigned to them, as distinguished from the completion of the project.

With such ambiguous and obscure words and conditions, petitioners’ employment was not co-existent with the duration of their particular work assignments because their employer could, at any stage of such work, determine whether their services were needed or not. Their

services could then be terminated even before the completion of the phase of work assigned to them.

We find this explication necessary and in accord with the principle that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writings should be resolved in the former's favor.^[18]

To be exempted from the presumption of regularity of employment, therefore, the agreement between a project employee and his employer must strictly conform with the requirements and conditions provided in Article 280. It is not enough that an employee is hired for a specific project or phase of work. There must also be a determination of or a clear agreement on the completion or termination of the project at the time the employee is engaged if the objective of Article 280 is to be achieved. Since this second requirement was not met in petitioners' case, they should be considered as regular employees despite their admissions and declarations that they are project employees made under circumstances unclear to us.

Parenthetically, it is relevant to observe that the similarities in the stipulations of the employment/appointment contracts can be explained by the indirect relationship of the Philippine National Construction Corporation (PNCC) and private respondent. CDCP was the predecessor of PNCC which, in turn, is an existing sister company of private respondent. Apparently, private respondent ignored the mistake committed by its said sister company. Also, if only the NLRC had thoroughly read the De Jesus decision, it would have discovered that the PNCC also raised as a defense the admission of therein petitioner De Jesus that he was a project employee, but to no avail.

There is another reason why we should rule in favor of petitioners. Nowhere in the records is there any showing that private respondent reported the completion of its projects and the dismissal of petitioners in its finished projects to the nearest Public Employment Office in compliance with Policy Instruction No. 20 of then Labor Secretary Blas F. Ople.

Jurisprudence abounds with the consistent rule that the failure of an employer to report to the nearest Public Employment Office the termination of its workers' services every time a project or a phase thereof is completed indicates that said workers are not project employees.^[19] In the case at bar, only the last and final termination of petitioners was reported to the aforementioned labor office.

Private respondent should have filed as many reports of termination as there were construction projects actually finished if petitioners were indeed project employees, considering that petitioners were hired and again rehired for various projects or the phases of work therein. Its failure to submit reports of termination cannot but sufficiently convince us further that petitioners are truly regular employees. Just as important, the fact that petitioners had rendered more than one year of service at the time of their dismissal overturns private respondent's allegations that petitioners were hired for a specific or a fixed undertaking for a limited period of time.^[20]

Even if we disregard the stints of petitioners with CDCP, it cannot be disclaimed that they have rendered long years of service in private respondent's business affairs. Beginning his service in 1982, petitioner Violeta served in the employ of private respondent up to 1992. In the case of petitioner Baltazar, he worked for private respondent from 1981 to 1991. Private respondent repeatedly appointed petitioners to new projects after the completion of every project or item of work in which they were previously employed, each over a span of about 10 years.

Public respondent contends that the gaps in the employment of petitioners, consisting of the periods in between the completion of one project and the engagement of petitioners in the next, show that they could not have been regular employees under the control of private respondent, and that petitioners could have applied for or accepted employment from other employers during those periods. This is puerile and speculative.

In the first place, Article 280 of the Labor Code contemplates both continuous and broken services. In the second place, there is absolutely no evidence of petitioners having applied for or accepted such other or outside employment during the brief interregna in the

continuity of their work with private respondent. Their undertaking in the “Employment Terms and Conditions” of their service to private respondent bound them “to work in such place of work or project as DISC may assign or transfer” them, with the further agreement that they would so “work during rest day, holidays, night time and night shift or during emergencies.”^[21]

These are self-evident refutations of private respondent’s theory and further bolster petitioners’ position that they were not mere employees engaged for a single or particular project. They were thus removed from the scope of project employment and considered as regular employees since their employment as so-called project employees was extended long after the termination of different projects.^[22]

The fact that petitioners signed quitclaims will not bar them from pursuing their claims against private respondent because quitclaims executed by laborers are frowned upon as contrary to public policy, and are ineffective to bar claims for the full measure of the workers’ legal rights.^[23] The so-called quitclaims signed by petitioners were actually pro forma provisions printed in the clearance certificate they had to get from private respondent. These were not in the nature of a compromise but a compulsory general release required from them, for which no consideration was either given or even stated.

In answer to private respondent’s reliance on Department of Labor and Employment (DOLE) Order No. 19, Series of 1993, which took effect on April 1, 1993, we have ruled in *Samson vs. National Labor Relations Commission, et al.*^[24] that said administrative order does not have retroactive effect. Since the termination of petitioners’ services and the filing of their complaints took place long before the effectivity of the said regulation, it cannot be applied in favor of private respondent.

Besides, as expounded earlier, contrary to private respondent’s insistence, the following badges of project employment are lacking in this particular case, viz.: (1) the duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable, and (2) such duration, as well as the specific work/service to be performed, is defined in an employment

agreement and made clear to the employee at the time of hiring. Hence, even assuming for the moment that DOLE Order No. 19 is effectual in the case at bar, private respondent cannot successfully invoke the Order in its favor because the absence of the above indicia persuades us all the more that petitioners are really regular employees of private respondent.

WHEREFORE, the instant Petition for *Certiorari* is **GRANTED**. The challenged Resolution of the Fifth Division of respondent National Labor Relations Commission dated November 15, 1994 in NLRC CA No. M-001233 is **REVERSED** and **SET ASIDE**, and its earlier Resolution therein dated August 17, 1994 is hereby **REINSTATED**.

SO ORDERED.

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

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- [1] Rollo, 10, 46-47, 148-149.
[2] Ibid., 116, 120-121.
[3] Ibid., 10, 47, 149.
[4] Ibid., 117, 123-124.
[5] Ibid., 119 for Violeta and 122 for Baltazar.
[6] Ibid., 208-209.
[7] Ibid., dorsal pages of 116 for Violeta and of 117 for Baltazar.
[8] Ibid., 46-50.
[9] Ibid., 9-18.
[10] Ibid., 4-6.
[11] ALU-TUCP, et al. vs. NLRC, et al., G.R. No. 109902, August 2, 1994, 234 SCRA 678.
[12] See Brent School, Inc., et al. vs. NLRC, et al., L-48494, February 5, 1990, 181 SCRA 702.
[13] Tucor Industries, Inc., et al. vs. NLRC, et al., G.R. Nos. 96608-09, May 20, 1991, 197 SCRA 296.
[14] ALU-TUCP, et al. vs. NLRC, et al., supra.
[15] Uy vs. NLRC, et al., G.R. NO. 117983, September 6, 1996.
[16] Philippine Village Hotel vs. NLRC, et al., G.R. No. 105033, February 28, 1994, 230 SCRA 423.
[17] G.R. No. 89990, March 20, 1991, 195 SCRA 468.
[18] L.T. Datu and Co., Inc., et al. vs. NLRC, et al., G.R. No. 113166, February 9, 1996, 253 SCRA 440.

- [19] Philippine National Construction Corp. vs. NLRC, et al., G.R. No. 85323, June 20, 1989, 174 SCRA 191; Magante vs. NLRC, et al., G.R. No. 74969, May 7, 1990, 185 SCRA 21; Phesco, Inc., et al. vs. NLRC, et al., G.R. Nos. 104444-49, December 27, 1994, 239 SCRA 446.
- [20] Tucor Industries Inc., et al. vs. NLRC, et al., G.R. No. 96608-09, May 20, 1991, 197 SCRA 296.
- [21] Rollo, 232.
- [22] See Phesco Inc., et al. vs. NLRC et al., supra, fn. 19.
- [23] Philippine National Construction Corp. vs. NLRC, et al., G.R. No. 95816, October 27, 1992, 215 SCRA 204.
- [24] G.R. No. 113166, February 1, 1996, 253 SCRA 112.

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