SUPREME COURT
THIRD DIVISION

FILIPINAS PRE-FABRICATED BUILDING SYSTEMS (FILSYSTEMS), INC., and FELIPE A. CRUZ JR.,
***Petitioners*,**

-versus-

G.R. No. 153832
March 18, 2005

ROGER D. PUENTE,[1]
***Respondent*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Without a valid cause, the employment of project employees cannot be terminated prior to expiration. Otherwise, they shall be entitled to reinstatement with full back wages. However, if the project or work is completed during the pendency of the ensuing suit for illegal dismissal, the employees shall be entitled only to full back wages from the date of the termination of their employment until the actual completion of the project or work.

The Case

Before us is a Petition for Review[2] under Rule 45 of the Rules of Court, seeking to annul and reverse the April 16, 2002 Decision[3] and the May 30, 2002 Resolution[4] of the Court of Appeals (CA) in CA-GR SP No. 66756. The assailed Decision disposed as follows:

> "WHEREFORE, premises considered, the petition is GRANTED and the decision dated May 18, 2001 and resolution dated June 29, 2001 of the NLRC are hereby annulled and set aside. Petitioner, Filsystems, Inc. is hereby ordered to reinstate respondent immediately to his former position without loss of seniority and privileges with full back wages from the date of his dismissal until his actual reinstatement, plus 10% of the total monetary award as attorney's fees." [5]

The assailed Resolution denied petitioners' Motion for Reconsideration.

The Facts

The factual antecedents are summarized by the CA as follows:

> "Respondent avers that he started working with Petitioner Filsystems, Inc., a corporation engaged in construction business, on June 12, 1989; that he was initially hired by petitioner company as an 'installer'; that he was later promoted to mobile crane operator and was stationed at the company premises at No. 69 Industria Road, Bagumbayan, Quezon City; that his work was not dependent on the completion or termination of any project; that since his work was not dependent on any project, his employment with the [petitioner-]company was continuous and without interruption for the past ten (10) years; that on October 1, 1999, he was dismissed from his employment allegedly because he was a project employee. He filed a pro forma complaint for illegal dismissal against the petitioner company on November 18, 1999.
>
> "The petitioner-company however claims that complainant was hired as a project employee in the company's various projects; that his employment contracts showed that he was a project worker with specific project assignments; that after completion

of each project assignment, his employment was likewise terminated and the same was correspondingly reported to the DOLE.

"Labor Arbiter Veneranda C. Guerrero dismissed the complaint for lack of merit, ruling thus:

> 'WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit.
>
> 'Petitioner Filsystems, Inc. is hereby ordered to pay complainant Roger D. Fuente the amount of FOUR THOUSAND TWO HUNDRED TWELVE PHILIPPINE PESOS (P4,212.00) representing his pro-rata 13th month pay for 1999, plus ten percent (10%) thereof as and for attorney's fees.
>
> 'SO ORDERED.'

"Respondent appealed. However, the National Labor Relations Commission (NLRC) dismissed the same and the subsequent motion for reconsideration."[6]

Ruling of the Court of Appeals

The Court of Appeals reversed the NLRC and the labor arbiter thus:

> "The employment contracts signed by petitioner Puente do not have the specified duration for each project contrary to the provision of Article 280 of the Labor Code, nor did petitioner work in the project sites, but had always been assigned at the company plant attending to the maintenance of all mobile cranes of the company, performing tasks vital and desirable in the employer's usual business for ten (10) continuous years."[7]

The CA concluded that respondent was a regular employee of petitioners.

Hence, this Petition.[8]

The Issues

In its Memorandum, petitioners raise the following issues for our consideration:

> "1. Whether or not the Court of Appeals erred and committed grave abuse of discretion in finding that:
>
> > 'The employment contracts signed by private respondent Puente do not have the specified duration for each project contrary to the provision of Art. 280 of the Labor Code, nor did petitioner work in the project sites, but had always been assigned at the company plant attending to the maintenance of all mobile cranes of the company, performing tasks vital and desirable in the company's usual business for ten (10) continuous years.'
>
> "2. Whether or not the Court a quo erred and committed grave abuse of discretion in finding that the private respondent is a regular employee and not a project employee?
>
> "3. Whether or not the Court a quo erred and committed grave abuse of discretion in giving due course to the private respondent's petition for certiorari under Rule 65 of the 1997 Rules on Civil Procedure; and in annulling and setting aside the Decision dated May 18, 2001 and the Resolution dated June 29, 2001 of the NLRC?
>
> "4. Whether or not the Court a quo erred and committed grave abuse of discretion in ruling that the evidence submitted by the petitioners proving that there was retrenchment program implemented by the petitioner company, as a defense that the private respondent's services was terminated due to absence if not lack of construction project contract, where he may be redeployed or reinstated?
>
> "5. Whether or not the Court a quo erred and committed grave abuse of discretion in ordering the reinstatement of the

> private respondent, with full back wages plus payment of 10% attorney's fees?"[9]

In the main, the issues boil down to (1) whether Roger Puente is a project employee, and (2) whether he is entitled to reinstatement with full back wages.

This Court's Ruling

The Petition is partly meritorious.

First Issue:

Project Employee

In general, the factual findings of the Court of Appeals are binding on the Supreme Court. One exception to this rule, however, is when the factual findings of the former are contrary to those of the trial court (or the lower administrative body, as the case may be).[10] The question of whether respondent is a regular or a project employee is essentially factual in nature; nonetheless, the Court is constrained to resolve it due to the incongruent findings of the NLRC and the CA.

The Labor Code defines regular, project and casual employees as follows:

> ART. 280. Regular and Casual Employment. - The provision 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.

With particular reference to the construction industry, to which Petitioner Filsystems belongs, Department (of Labor and Employment) Order No. 19,[11] Series of 1993, states:

x x x

> 2.1 Classification of employees. – The employees in the construction industry are generally categorized as a) project employees and b) non-project employees. Project employees are those employed in connection with a particular construction project or phase thereof and whose employment is co-terminus with each project or phase of the project to which they are assigned.
>
> x x x
>
> 2.2 Indicators of project employment. – Either one or more of the following circumstances, among other, may be considered as indicators that an employee is a project employee.
>
> > (a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.
> >
> > (b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.
> >
> > (c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.
> >
> > (d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

> (e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.
>
> (f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

The above-quoted provisions of Department (of Labor and Employment) Order No. 19, Series of 1993, make it clear that a project employee is one whose "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."

In D.M. Consunji, Inc. vs. NLRC, [348 SCRA 441, 447, December 18, 2000] citing Rada vs. NLRC, [205 SCRA 69, January 9, 1992],[12] the Supreme Court has ruled that "the length of service of a project employee is not the controlling test of employment tenure but whether or not '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.'"

In the present case, the contracts of employment[13] of Puente attest to the fact that he was hired for specific projects. His employment was coterminous with the completion of the projects for which he had been hired. Those contracts expressly provided that his tenure of employment depended on the duration of any phase of the project or on the completion of the construction projects. Furthermore, petitioners regularly submitted to the labor department reports of the termination of services of project workers. Such compliance with the reportorial requirement confirms that respondent was a project employee. (Association of Trade Unions vs. Abella, 380 Phil. 6, January 24, 2000). [14]

With regard specifically to the last employment contract executed by the parties, a contract that respondent accepted on August 26, 1996, we find that he worked at the site of the World Finance Plaza project. That he did is amply proven by the Affidavit of Eduardo Briagas,[15] another employee who was also stationed at the World Finance Plaza project, as well as by respondent's Travel Trip Reports.[16]

Furthermore, respondent's Complaint[17] specified the address of Filsystems, as "69 INDUSTRIA ROAD, B.BAYAN Q.C.," but specified his place of work as "PROJECT TO PROJECT." These statements, coupled with the other pieces of evidence presented by petitioners, convinces the Court that -- contrary to the subsequent claims of respondent -- he performed his work at the project site, not at the company's premises.

That his employment contract does not mention particular dates that establish the specific duration of the project does not preclude his classification as a project employee. This fact is clear from the provisions of Clause 3.3(a) of Department Order No. 19, which states:

> a) Project employees whose aggregate period of continuous employment in a construction company is at least one year shall be considered regular employees, *in the absence of a "day certain" agreed upon by the parties for the termination of their relationship*. Project employees who have become regular shall be entitled to separation pay.
>
> *A "day" as used herein, is understood to be that which must necessarily come, although is may not be known exactly when. This means that where the final completion of a project or phase thereof is in fact determinable and the expected completion is made known to the employee, such project employee may not be considered regular*, notwithstanding the one-year duration of employment in the project or phase thereof or the one-year duration of two or more employments in the same project or phase of the object. *(Italicization and emphasis supplied)*

Respondent's employment contract provides as follows:

> "x x x employment, under this contract is good only for the duration of the project unless employee's services is terminated due to completion of the phase of work/section of the project or piece of work to which employee is assigned:
>
> > "We agree clearly that employment is on a Project to Project Basis and that upon termination of services there is no separation pay:
> >
> > POSITION : Mobil Crane Operator
> > PROJECT NAME : World Finance Plaza
> > LOCATION : Meralco Ave., Ortigas Center, Pasig City
> > ASSIGNMENT : Lifting & Hauling of Materials
> >
> > *(Phase of Work/Piece of Work)*"[18]

Evidently, although the employment contract did not state a particular date, it did specify that the termination of the parties' employment relationship was to be on a "day certain" -- the day when the phase of work termed "Lifting & Hauling of Materials" for the "World Finance Plaza" project would be completed. Thus, respondent cannot be considered to have been a regular employee. He was a project employee.

That he was employed with Petitioner Filsystems for ten years in various projects did not ipso facto make him a regular employee, considering that the definition of regular employment in Article 280 of the Labor Code makes a specific exception with respect to project employment. The mere rehiring of respondent on a project-to-project basis did not confer upon him regular employment status.[19] "The practice was dictated by the practical consideration that experienced construction workers are more preferred."[20] It did not change his status as a project employee.

Second Issue:

Reinstatement

In termination cases, the burden of proving that an employee has been lawfully dismissed lies with the employer.[21] Thus, employers who hire project employees are mandated to state and, once its veracity is challenged, to prove the actual basis for the latter's dismissal.[22]

In the present case, petitioners claim that respondent's services were terminated due to the completion of the project.[23] There is no allegation or proof, however, that the World Finance Plaza project -- or the phase of work therein to which respondent had been assigned -- was already completed by October 1, 1999, the date when he was dismissed. The inescapable presumption is that his services were terminated for no valid cause prior to the expiration of the period of his employment; hence, the termination was illegal. Reinstatement with full back wages, inclusive of allowances and other benefits or their monetary equivalents -- computed from the date of his dismissal until his reinstatement -- is thus in order.[24]

However, if indeed the World Finance Plaza project has already been completed during the pendency of this suit, then respondent -- being a project employee -- can no longer be reinstated.[25] Instead, he shall be entitled to the payment of his salary and other benefits corresponding to the unexpired portion of his employment,[26] specifically from the time of the termination of his employment on October 1, 1999, until the date of the completion of the World Finance Plaza project.

WHEREFORE, the Petition is **PARTLY GRANTED**. Respondent Roger D. Puente is **DECLARED** to be a project employee, whose employment was terminated without any valid cause prior to its expiration and is thus entitled to reinstatement with full back wages. However, if reinstatement is no longer possible due to the completion of the World Finance Plaza project during the pendency of this case, Petitioner Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. is **ORDERED** to **PAY** respondent the equivalent of his salaries and other employment benefits, computed from October 1, 1999, until the date of the project's actual completion. **No costs**.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio Morales, and Garcia, *JJ.*, concur.

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[1] Also spelled as "Fuente" in some parts of the record.
[2] Rollo, pp. 17-42.
[3] Id., pp. 126-130. Third Division. Penned by Justice Eliezer R. de los Santos, and concurred in by Justices Buenaventura J. Guerrero (Division chairman) and Rodrigo V. Cosico (member).
[4] Id., p. 211.
[5] CA Decision, p. 4; rollo, p. 129.
[6] Id., pp. 1-2 & 126-127.
[7] Id., pp. 4 & 129.
[8] The case was deemed submitted for decision on April 13, 2004, upon this Court's receipt of petitioners' Second Supplemental Memorandum, signed by Atty. Rodolfo P. Orticio. Respondent's Memorandum, signed by Atty. Remigio D. Saladero Jr., was received by this Court on March 19, 2003. Petitioners' Memorandum was filed on February 28, 2003.
[9] Petitioners' Memorandum, pp. 7-8; rollo, pp. 456-457.
[10] Litonjua Group of Companies vs. Vigan, 360 SCRA 194, June 28, 2001; Litonjua vs. Court of Appeals, 286 SCRA 136, February 10, 1998.
[11] (Dated April 1, 1993. This Department Order superseded Policy Instructions No. 20 of 1977, which stated: "Project employees are those employed in connection with a particular construction project. Non-project (regular) employees are those employed by a construction company without reference to any particular project.")
[12] [348 SCRA 441, 447, December 18, 2000, per Kapunan, J. (citing Rada vs. NLRC, 205 SCRA 69, January 9, 1992).
[13] Exhibits "A" to "O" of petitioners' Position Paper; rollo, pp. 158-172.
[14] (Association of Trade Unions vs. Abella, 380 Phil. 6, January 24, 2000).
[15] Rollo, pp. 59-60.
[16] Id., pp. 61-62.
[17] Id., p. 43.
[18] Id., p. 158.
[19] (Cioco vs. C.E. Construction, G. R. No. 156748, September 8, 2004).
[20] Id., per Puno, J. (citing Millares vs. NLRC, 385 SCRA 306, July 29, 2002).
[21] (D.M. Consunji, Inc. vs. NLRC, 348 SCRA 441, 447, December 18, 2000; Archbuild Masters and Construction, Inc. vs. NLRC, 251 SCRA 483, 492, December 26, 1995.
[22] Ibid.
[23] Department Order No. 19, Series of 1993, gives guidelines on when a project can be considered as completed, as follows:
2.3. Project completion and rehiring of workers. –

a) The employees of a particular project are not separated from work at the same time. Some phases of the project are completed ahead of others. For this reason, the completion of a phase of the project is considered the completion of the project for an employee employed in such phase.

[24] Imbuido vs. NLRC, 329 SCRA 357, March 31, 2000.

[25] Archbuild Masters and Construction, Inc. vs. NLRC, supra.

[26] D.M. Consunji, Inc. vs. NLRC, supra; Vinta Maritime Co., Inc. vs. NLRC, 284 SCRA 656, 672, January 23, 1998.