**SUPREME COURT**
**SECOND DIVISION**

**FORTUNATO MERCADO, SR., ROSA MERCADO, FORTUNATO MERCADO, JR., ANTONIO MERCADO, JOSE CABRAL, LUCIA MERCADO, ASUNCION GUEVARA, ANITA MERCADO, MARINA MERCADO, JULIANA CABRAL, GUADALUPE PAGUIO, BRIGIDA ALCANTARA, EMERLITA MERCADO, ROMEO GUEVARA, ROMEO MERCADO and LEON SANTILLAN,**

***Petitioners*,**

***-versus-***

**G.R. No. 79869**
**September 5, 1991**

**NATIONAL LABOR RELATIONS COMMISSION (NLRC), THIRD DIVISION; LABOR ARBITER LUCIANO AQUINO, RAB-III; AURORA L. CRUZ; SPOUSES FRANCISCO DE BORJA and LETICIA DE BORJA; and STO. NIÑO REALTY, INCORPORATED,**

***Respondents*.**

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**D E C I S I O N**

**PADILLA, *J.*:**

Assailed in this Petition for *Certiorari* is the Decision[*] of the respondent national Labor Relations Commission (NLRC) dated 8 August 1984 which affirmed the Decision of respondent Labor Arbiter Luciano P. Aquino with the slight modification of deleting the award of financial assistance to petitioners, and the Resolution of the respondent NLRC dated 17 August 1987, denying petitioners' Motion for Reconsideration.

This petition originated from a complaint for illegal dismissal, underpayment of wages, non-payment of overtime pay, holiday pay, service incentive leave benefits, emergency cost of living allowances and 13th month pay, filed by above-named petitioners against private respondents Aurora L. Cruz, Francisco Borja, Leticia C. Borja and Sto. Niño Realty Incorporated, with Regional Arbitration Branch No. III, National Labor Relations Commission in San Fernando, Pampanga.[1]

Petitioners alleged in their complaint that they were agricultural workers utilized by private respondents in all the agricultural phases of work on the 7 ½ hectares of rice land and 10 hectares of sugar land owned by the latter; that Fortunato Mercado, Sr. and Leon Santillan worked in the farm of private respondents since 1949, Fortunato Mercado, Jr. and Antonio Mercado since 1972 and the rest of the petitioners since 1960 up to April 1979, when they were all allegedly dismissed from their employment; and that, during the period of their employment, petitioners received the following daily wages:

| | | |
|---|---|---|
| From 1962-1963 | — | P1.50 |
| 1963-1965 | — | P2.00 |
| 1965-1967 | — | P3.00 |
| 1967-1970 | — | P4.00 |
| 1970-1973 | — | P5.00 |
| 1973-1975 | — | P5.00 |
| 1975-1978 | — | P6.00 |
| 1978-1979 | — | P7.00 |

Private respondent Aurora Cruz in her answer to petitioners' complaint denied that said petitioners were her regular employees

and instead averred that she engaged their services, through Spouses Fortunato Mercado, Sr. and Rosa Mercado, their "mandarols", that is, persons who take charge in supplying the number of workers needed by owners of various farms, but only to do a particular phase of agricultural work necessary in rice production and/or sugar cane production, after which they would be free to render services to other farm owners who need their services.[2]

The other private respondents denied having any relationship whatsoever with the petitioners and state that they were merely registered owners of the land in question included as correspondents in this case.[3]

The dispute in this case revolves around the issue of whether or not petitioners are regular and permanent farm workers and therefore entitled to the benefits which they pray for. And corollary to this, whether or not said petitioners were illegally dismissed by private respondents.

Respondent Labor Arbiter Luciano P. Aquino ruled in favor of private respondents and held that petitioners were not regular and permanent workers of the private respondents, for the nature of the terms and conditions of their hiring reveal that they were required to perform phases of agricultural work for a definite period of time after which their services would be available to any other farm owner.[4] Respondent Labor Arbiter deemed petitioners' contention of working twelve (12) hours a day the whole year round in the farm, an exaggeration, for the reason that the planting of rice and sugar cane does not entail a whole year as reported in the findings of the Chief of the NLRC Special Task Force.[5] Even the sworn statement of one of the petitioners, Fortunato Mercado, Jr., the son of spouses Fortunato Mercado, Sr. and Rosa Mercado, indubitably show that said petitioners were hired only as casuals, on an "on and off" basis, thus, it was within the prerogative of private respondent Aurora Cruz either to take in the petitioners to do further work or not after any single phase of agricultural work had been completed by them.[6]

Respondent Labor Arbiter was also of the opinion that the real cause which triggered the filing of the complaint by the petitioners who are related to one another, either by consanguinity or affinity, was the

filing of a criminal complaint for theft against Reynaldo Mercado, son of spouses Fortunato Mercado, Sr. and Rosa Mercado, for they even asked the help of Jesus David, Zone Chairman of the locality to talk to private respondent, Aurora Cruz regarding said criminal case.[7] In his affidavit, Jesus David stated under oath that petitioners were never regularly employed by private respondent Aurora Cruz but were, on-and-off hired to work and render services when needed, thus adding further support to the conclusion that petitioners were not regular and permanent employees of private respondent Aurora Cruz.[8]

Respondent Labor Arbiter further held that only money claims from years 1976-1977, 1977-1978 and 1978-1979 may be properly considered since all the other money claims have prescribed for having accrued beyond the three (3) year period prescribed by law.[9] On grounds of equity, however, respondent Labor Arbiter awarded petitioners financial assistance by private respondent Aurora Cruz, in the amount of Ten Thousand Pesos (P10,000.00) to be equitably divided among all the petitioners except petitioner Fortunato Mercado, Jr. who had manifested his disinterest in the further prosecution of his complaint against private respondent.[10]

Both parties filed their appeal with the National Labor Relations Commissions (NLRC). Petitioners questioned respondent Labor Arbiter's finding that they were not regular and permanent employees of private respondent Aurora Cruz while private respondents questioned the award of financial assistance granted by respondent Labor Arbiter.

The NLRC ruled in favor of private respondents affirming the decision of the respondent Labor Arbiter, with the modification of the deletion of the award for financial assistance to petitioners. The dispositive portion of the decision of the NLRC reads:

> "WHEREFORE, the Decision of Labor Arbiter Luciano P. Aquino dated March 3, 1983 is hereby modified in that the award of P10,000.00 financial assistance should be deleted. The said Decision is affirmed in all other aspects.
>
> SO ORDERED."[11]

Petitioners filed a motion for reconsideration of the Decision of the Third Division of the NLRC dated 8 August 1984; however, the NLRC denied this motion in a resolution dated 17 August 1987.[12]

In the present Petition for *Certiorari*, petitioners seek the reversal of the above-mentioned rulings. Petitioners contend that respondent Labor Arbiter and respondent NLRC erred when both ruled that petitioners are not regular and permanent employees of private respondents based on the terms and conditions of their hiring, for said findings are contrary to the provisions of Article 280 of the Labor Code.[13] They submit that petitioners' employment, even assuming said employment were seasonal, continued for so many years such that, by express provision of Article 280 of the Labor Code as amended, petitioners have become regular and permanent employees.[14]

Moreover, they argue that Policy Instruction No. 12[15] of the Department of Labor and Employment clearly lends support to this contention, when it states:

> "PD 830 has defined the concept of regular and casual employment. What determines regularity or casualness is not the employment contract, written or otherwise, but the nature of the job. If the job is usually necessary or desirable to the main business of the employer, then employment is regular. If not, then the employment is casual. Employment for a definite period which exceeds one (1) year shall be considered regular for the duration of the definite period.
>
> This concept of regular and casual employment is designed to put an end to casual employment in regular jobs which has been abused by many employers to prevent so-called casuals from enjoying the benefits of regular employees or to prevent casuals from joining unions.
>
> This new concept should be strictly enforced to give meaning to the constitutional guarantee of employment tenure."[16]

Tested under the laws invoked, petitioners submit that it would be unjust, if not unlawful, to consider them as casual workers since they

have been doing all phases of agricultural work for so many years, activities which are undeniably necessary, desirable and indispensable in the rice and sugar cane production business of the private respondents.[17]

In the Comment filed by private respondents, they submit that the decision of the Labor Arbiter, as affirmed by respondent NLRC, that petitioners were only hired as casuals, is based on solid evidence presented by the parties and also by the Chief of the Special Task Force of the NLRC Regional Office and, therefore, in accordance with the rule on findings of fact of administrative agencies, the decision should be given great weight.[18] Furthermore, they contend that the arguments used by petitioners in questioning the decision of the Labor Arbiter were based on matters which were not offered as evidence in the case heard before the regional office of the then Ministry of Labor but rather in the case before the Social Security Commission, also between the same parties.[19]

Public respondent NLRC filed a separate comment prepared by the Solicitor General. It submits that it has long been settled that findings of fact of administrative agencies if supported by substantial evidence are entitled to great weight.[20] Moreover, it argues that petitioners cannot be deemed to be permanent and regular employees since they fall under the exception stated in Article 280 of the Labor Code, which reads:

> "The provisions of written agreements to the contrary notwithstanding and regardless of the oral agreements 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."[21] (Emphasis supplied).

The Court resolved to give due course to the petition and required the parties to submit their respective memoranda after which the case was deemed submitted for decision.

The petition is not impressed with merit.

The invariable rule set by the Court in reviewing administrative decisions of the Executive Branch of the Government is that the findings of fact made therein are respected, so long as they are supported by substantial evidence, even if not overwhelming or preponderant;[22] that it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of the witnesses or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of the evidence;[23] that the administrative decision in matters within the executive's jurisdiction can only be set aside upon proof of gross abuse of discretion, fraud, or error of law.[24]

The questioned decision of the Labor Arbiter reads:

> "Focusing the spotlight of judicious scrutiny on the evidence on record and the arguments of both parties, it is our well-discerned opinion that the petitioners are not regular and permanent workers of the respondents. The very nature of the terms and conditions of their hiring reveal that the petitioners were required to perform phases of agricultural work for a definite period, after which their services are available to any farm owner. We cannot share the arguments of the petitioners that they worked continuously the whole year round for twelve hours a day. This, we feel, is an exaggeration which does not deserve any serious consideration inasmuch as the planting of rice and sugar cane does not entail a whole year operation, the area in question being comparatively small. It is noteworthy that the findings of the Chief of the Special Task Force of the Regional Office are similar to this.
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> "In fact, the sworn statement of one of the petitioners Fortunato Mercado, Jr., the son of spouses Fortunato Mercado, Sr. and Rosa Mercado, indubitably shows that said petitioners were only hired as casuals, on-and-off basis. With this kind of relationship between the petitioners and the respondent Aurora

> Cruz, we feel that there is no basis in law upon which the claims of the petitioners should be sustained, more specially their complaint for illegal dismissal. It is within the prerogative of respondent Aurora Cruz either to take in the petitioners to do further work or not after any single phase of agricultural work has been completed by them. We are of the opinion that the real cause which triggered the filing of this complaint by the petitioners who are related to one another, either by consanguinity or affinity, was due to the filing of a criminal complaint by the respondent Aurora Cruz against Reynaldo Mercado, son of spouses Fortunato Mercado, Sr. and Rosa Mercado. In April 1979, according to Jesus David, Zone Chairman of the locality where the petitioners and respondent reside, petitioner Fortunato Mercado, Sr. asked for help regarding the case of his son, Reynaldo, to talk with respondent Aurora Cruz and the said Zone Chairman also stated under oath that the petitioners were never regularly employed by respondent Aurora Cruz but were on-and-off hired to work to render services when needed."[25]

A careful examination of the foregoing statements reveals that the findings of the Labor Arbiter in the case are ably supported by evidence. There is, therefore, no circumstance that would warrant a reversal of the questioned decision of the Labor Arbiter as affirmed by the National Labor Relations Commission.

The contention of petitioners that the second paragraph of Article 280 of the Labor Code should have been applied in their case presents an opportunity to clarify the afore-mentioned provision of law.

Article 280 of the Labor Code reads in full:

> "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.
>
> "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."

The first paragraph answers the question of who are regular employees. It states that, regardless of any written or oral agreement to the contrary, an employee is deemed regular where he is engaged in necessary or desirable activities in the usual business or trade of the employer, except for project employees.

A project employee has been defined to be 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 service to be performed is seasonal in nature and the employment is for the duration of the season,[26] as in the present case.

The second paragraph of Art. 280 demarcates as "casual" employees, all other employees who do not fall under the definition of the preceding paragraph. The proviso, in said second paragraph, deems as regular employees those "casual" employees who have rendered at least one year of service regardless of the fact that such service may be continuous or broken.

Petitioners, in effect, contend that the proviso in the second paragraph of Art. 280 is applicable to their case and that the Labor Arbiter should have considered them regular by virtue of said proviso. The contention is without merit.

The general rule is that the office of a proviso is to qualify or modify only the phrase immediately preceding it or restrain or limit the generality of the clause that it immediately follows.[27] Thus, it has been held that a proviso is to be construed with reference to the immediately preceding part of the provision to which it is attached, and not to the statute itself or to other sections thereof.[28] The only exception to this rule is where the clear legislative intent is to restrain or qualify not only the phrase immediately preceding it (the proviso) but also earlier provisions of the statute or even the statute itself as a whole.[29]

Policy Instruction No. 12 of the Department of Labor and Employment discloses that the concept of regular and casual employees was designed to put an end to casual employment in regular jobs, which has been abused by many employers to prevent so-called casuals from enjoying the benefits of regular employees or to prevent casuals from joining unions. The same instructions show that the proviso in the second paragraph of Art. 280 was not designed to stifle small-scale businesses nor to oppress agricultural land owners to further the interests of laborers, whether agricultural or industrial. What it seeks to eliminate are abuses of employers against their employees and not, as petitioners would have us believe, to prevent small-scale businesses from engaging in legitimate methods to realize profit. Hence, the proviso is applicable only to the employees who are deemed "casuals" but not to the "project" employees nor the regular employees treated in paragraph one of Art. 280.

Clearly, therefore, petitioners being project employees, or, to use the correct term, seasonal employees, their employment legally ends upon completion of the project or the season. The termination of their employment cannot and should not constitute an illegal dismissal.[30]

**WHEREFORE**, the Petition is **DISMISSED**. The Decision of the National Labor Relations Commission affirming that of the Labor Arbiter, under review, is **AFFIRMED**. No pronouncement as to costs.

**SO ORDERED.**

**Melencio-Herrera, Paras and Regalado, *JJ*., concur. Sarmiento, *J*., is on leave.**

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[*] Penned by Presiding Commissioner of the NLRC, Guillermo C. Medina and concurred in by Commissioners Gabriel M. Gatchalian and Miguel B. Varela.
[1] Rollo, p. 23.
[2] Rollo, pp. 23-24.
[3] Rollo, p. 24.
[4] Rollo, pp. 24-25.
[5] Rollo, p. 25.
[6] Ibid.
[7] Ibid.
[8] Rollo, pp. 25-26.
[9] Rollo, p. 26 and Article 291, Labor Code of the Philippines.
[10] Rollo, p. 26.
[11] Rollo, pp. 27-30.
[12] Rollo, pp. 31-33.
[13] Rollo, p. 13.
[14] Rollo, pp. 13-14.
[15] The Labor Code of the Philippines and its Implementing Rules and Regulations compiled, edited and published by Vicente B. Foz, p. 364 cited in Rollo, p. 14.
[16] Policy instruction No. 12, The Labor Code of the Philippines and Its Implementing Rules and Regulations compiled, edited and published by Vicente B. Foz, 1991 Edition, p. 364.
[17] Rollo, p. 15.
[18] Rollo, pp. 151-152.
[19] Rollo, pp. 152-153.
[20] Rollo, p. 169.
[21] Article 280 of the Labor Code of the Philippines cited in Rollo, pp. 169-170.
[22] Ang Tibay vs. CIR, 69 Phil. 635 as cited in Feliciano Timbancaya vs. Vicente, G.R. No. L-19100, December 27, 1963, 9 SCRA 852.
[23] Lao Tang Bun vs. Fabre, 81 Phil. 682 as cited in Feliciano Timbancaya vs. Vicente, G.R. No. L-19100, December 27, 1963, 9 SCRA 852.
[24] Lovina vs. Moreno, G.R. No. L-17821, November 29, 1963, 9 SCRA 557.
[25] Rollo, pp. 24-26.
[26] Philippine National Construction Corporation vs. National Labor Relations Commission, G.R. No. 85323, 20 June 1989, 174 SCRA 191.
[27] Statutory Construction by Ruben Agpalo, 1986 ed., p. 173.
[28] Chinese Flour Importers Association vs. Price Stabilization Board, 89 Phil. 469 (1951); Arenas vs. City of San Carlos, G.R. No. 24024, April 5, 1978, 82 SCRA 318 (1978).
[29] Commissioner of Internal Revenue vs. Filipinas Compania de Seguros, 107 Phil. 1055 (1960).

[30] PNOC — Exploration Corporation vs. National Labor Relations Commission, G.R. No. 71711, 18 August 1988, 164 SCRA 501.

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