

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PHILIPPINE NATIONAL OIL
COMPANY-ENERGY DEVELOPMENT
CORPORATION,**

Petitioner,

-versus-

**G.R. No. 58494
July 5, 1989**

**HON. VICENTE T. LEOGARDO,
DEPUTY MINISTER OF LABOR AND
VICENTE D. ELLELINA,**

Respondents.

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DECISION

MELENCIO-HERRERA, J.:

Through this Petition for *Certiorari*, Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) seeks to declare null and void, for lack of jurisdiction, the Order of public respondent, the Deputy Minister of Labor, sustaining his jurisdiction over the instant controversy.

Petitioner PNOC-EDC is a subsidiary of the Philippine National Oil Company (PNOC). On 20 January 1978, it filed with the Ministry of Labor and Employment, Regional Office No. VII, Cebu City (MOLE),

a clearance application to dismiss/terminate the services of private respondent, Vicente D. Ellelina, a contractual employee.

The application for clearance was premised on Ellelina's alleged commission of a crime (Alarm or Public Scandal) during a Christmas party on 19 December 1977 at petitioner's camp in Uling, Cebu, when, because of the refusal of the raffle committee to give him the prize corresponding to his lost winning ticket, he tried to grab the armalite rifle of the PC Officer outside the building despite the warning shots fired by the latter.

Clearance to dismiss was initially granted by MOLE but was subsequently revoked and petitioner was ordered to reinstate Ellelina to his former position, without loss of seniority rights, and with backwages from 1 February 1978 up to his actual reinstatement.

Petitioner appealed to the Minister of Labor who, acting through public respondent, affirmed, on 14 August 1981, the appealed Order. Hence, this Petition predicated substantially on the following grounds:

1. Under Article 277 of the Labor Code, the Ministry of Labor and Employment has no jurisdiction over petitioner because it is a government-owned or controlled corporation;
2. Ellelina's dismissal is valid and just because it is based upon the commission of a crime.

On the other hand, public respondent contends:

- (a) While the petitioner is a subsidiary of the PNOC, it is still covered by the Labor Code and, therefore, within the jurisdiction of the Ministry of Labor inasmuch as petitioner was organized as a private corporation under the Corporation Law and registered with the Securities and Exchange Commission;
- (b) Petitioner is estopped from assailing the Labor Department's jurisdiction, having subjected itself to the

latter when it filed the application for clearance to terminate Ellelina's services; and

(c) Dismissal is too harsh a penalty.

The issues that confront us, therefore, are (1) whether or not public respondent committed grave abuse of discretion in holding that petitioner is governed by the Labor Code; and (2) whether or not Ellelina's dismissal was justified.

Under the laws then in force, employees of government-owned and/or controlled corporations were governed by the Civil Service Law and not by the Labor Code. Thus;

Article 277 of the Labor Code (PD 442) then provided:

“The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations shall be governed by the Civil Service Law, rules and regulations.”

In turn, the 1973 Constitution provided:

“The Civil Service embraces every branch, agency, subdivision and instrumentality of the government, including government-owned or controlled corporations.”

In *National Housing Corporation vs. Juco* (L-64313, January 17, 1985, 134 SCRA 172), we laid down the doctrine that employees of government-owned and/or controlled corporations, whether created by special law or formed as subsidiaries under the general Corporation Law, are governed by the Civil Service Law and not by the Labor Code.

However, the above doctrine has been supplanted by the present Constitution, which provides:

“The Civil Service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including

government-owned or controlled corporations with original charters.” (Article IX-B, Section 2 [1])

Thus, under the present state of the law, the test in determining whether a government-owned or controlled corporation is subject to the Civil Service Law is the manner of its creation such that government corporations created by special charter are subject to its provisions while those incorporated under the general Corporation Law are not within its coverage.

In *NASECO vs. NLRC* (G.R. No. 69870, November 29, 1988), we had occasion to apply the present Constitution in deciding whether or not the employees of NASECO (a subsidiary of the NIDC, which is in turn a subsidiary wholly-owned by the PNB, a government-owned corporation) are covered by the Civil Service Law or the Labor Code notwithstanding that the case arose at the time when the 1973 Constitution was still in effect. We held that the NLRC has jurisdiction over the employees of NASECO “on the premise that it is the 1987 Constitution that governs because it is the Constitution in place at the time of decision;” and that being a corporation without an original charter, the employees of NASECO are subject to the provisions of the Labor Code.

We see no reason to depart from the ruling in the aforesaid case.

We hold, therefore, that the PNOC-EDC, having been incorporated under the general Corporation Law, is a government-owned or controlled corporation whose employees are subject to the provisions of the Labor Code. This is apparently the intendment in the *NASECO* case notwithstanding the fact that the *NASECO* therein was a subsidiary of the PNB, a government-owned corporation.

In so far as Ellelina is concerned, we hold that the reinstatement ordered by public respondent, without loss of seniority rights, is proper. However, consistent with the rulings of the Court, backwages should be limited to three years from 1 February 1978. The dismissal ordered by petitioner was a bit too harsh considering the nature of the act which he had committed and that it was his first offense.

WHEREFORE, the Petition is **DISMISSED**, and the judgment of respondent public official is hereby **AFFIRMED** No costs.

SO ORDERED.

Paras, Padilla, Sarmiento and Regalado, JJ., concur.

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