SUPREME COURT
SECOND DIVISION

ROBERTO RAVAGO,
***Petitioner*,**

-versus-

G.R. No. 158324
March 14, 2005

ESSO EASTERN MARINE, LTD. and TRANS-GLOBAL MARITIME AGENCY, INC.,
***Respondents*.**
x----------x

D E C I S I O N

CALLEJO, SR., *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Court, as amended, of the Decision[1] of the Court of Appeals (CA) as well as its Resolution in CA-G.R. SP No. 66234 which denied the motion for reconsideration thereof.

The Factual Antecedents

The Esso Eastern Marine Ltd. (EEM), now the Petroleum Shipping Ltd., is a foreign company based in Singapore and engaged in maritime commerce. It is represented in the Philippines by its manning agent and co-respondent Trans-Global Maritime Agency, Inc. (Trans-Global), a corporation organized under the Philippine laws.

Roberto Ravago was hired by Trans-Global to work as a seaman on board various Esso vessels. On February 13, 1970, Ravago commenced his duty as S/N wiper on board the Esso Bataan under a contract that lasted until February 10, 1971. Thereafter, he was assigned to work in different Esso vessels where he was designated diverse tasks, such as oiler, then assistant engineer. He was employed under a total of 34 separate and unconnected contracts, each for a fixed period, by three different companies, namely, Esso Tankers, Inc. (ETI), EEM and Esso International Shipping (Bahamas) Co., Ltd. (EIS), Singapore Branch. Ravago worked with Esso vessels until August 22, 1992, a period spanning more than 22 years, thus:

CONTRACT FROM	DURATION TO	POSITION	VESSEL	COMPANY
13 Feb 70	10 Feb 71	SN/Wiper	Esso Bataan	ETI[2]
07 May 71	27 May 72	Wiper	Esso Yokohama	EEM[3]
07 Aug 72	02 Jul 73	Oiler	Esso Kure	EEM
03 Oct 73	30 Jun 74	Oiler	Esso Bangkok	ETI
18 Sep 74	26 July 75	Oiler	Esso Yokohama	EEM
23 Oct 75	22 Jun 76	Oiler	Esso Port Dickson	EEM
10 Sep 76	26 Dec 76	Oiler	Esso Bangkok	ETI
27 Dec 76	29 Apr 77	Temporary Jr. 3AE	Esso Bangkok	ETI
08 Jul 77	15 Mar 78	Jr. 3AE	Esso Bombay	ETI
03 Jun 78	03 Feb 79	Temporary 3AE	Esso Hongkong	ETI

04 Apr 79	24 Jun 79	3AE	Esso Orient	EEM
25 Jun 79	16 Jul 79	3AE	Esso Yokohama	EEM
17 Jul 79	05 Dec 79	3AE	Esso Orient	EEM
10 Feb 80	25 Oct 80	3AE	Esso Orient	EEM
19 Jan 81	03 Jun 81	3AE	Esso Port Dickson	EEM
04 Jun 81	11 Sep 81	3AE	Esso Orient	EEM
06 Dec 81	20 Apr 82	3AE	Esso Chawan	EEM
21 Apr 82	01 Aug 82	Temporary 2AE	Esso Chawan	EEM*
03 Nov 82	06 Feb 83	2AE	Esso Jurong	EEM
07 Feb 83	10 Jul 83	2AE	Esso Yokohama	EEM
31 Aug 83	13 Mar 84	2AE	Esso Tumasik	EEM
04 May 84	08 Jan 85	2AE	Esso Port Dickson	EEM
13 Mar 85	31 Oct 85	2AE	Esso Castellon	EEM
29 Dec 85	22 Jul 86	2AE	Esso Jurong	EIS[4]
13 Sep 86	09 Jan 87	2AE	Esso Orient	EIS
21 Mar 87	15 Oct 87	2AE	Esso Port Dickson	EIS
20 Nov 87	18 Dec 87 Temporary	1AE	Esso Chawan	EIS
19 Dec 87	25 Jun 88	2AE	Esso Melbourne	EIS
04 Aug 88	19 Mar 89	Temporary 1AE	Esso Port Dickson	EIS
20 Mar 89	19 May 89	1AE	Esso Port Dickson	EIS*
28 Jul 89	17 Feb 90	1AE	Esso Melbourne	EIS
16 Apr 90	11 Dec 90	1AE	Esso Orient	EIS
09 Feb 91	06 Oct 91	1AE	Esso Melbourne	EIS

16 Dec 91	22 Aug 92	1AE	Esso Orient	EIS

* Upgraded/Confirmed on regular rank on board.[5]

On August 24, 1992, or shortly after completing his latest contract with EIS, Ravago was granted a vacation leave with pay from August 23, 1992 until October 28, 1992. Preparatory to his embarkation under a new contract, he was ordered to report, on September 28, 1992, for a Medical Pre-Employment Examination.[6] The Pre-Employment Physical Examination Record shows that Ravago passed the medical examination conducted by the O.P. Jacinto Medical Clinic, Inc. on October 6, 1992.[7] He, likewise, attended a Pre-Departure Orientation Seminar conducted by the Capt. I.P. Estaniel Training Center, a division of Trans-Global, on October 7, 1992.[8]

On the night of October 12, 1992, a stray bullet hit Ravago on the left leg while he was waiting for a bus ride in Cubao, Quezon City. He fractured his left proximal tibia and was hospitalized at the Philippine Orthopedic Hospital. Ravago's wife, Lolita, informed Trans-Global and EIS of the incident on October 13, 1992 for purposes of availing medical benefits. As a result of his injury, Ravago's doctor opined that he would not be able to cope with the job of a seaman and suggested that he be given a desk job.[9] Ravago's left leg had become apparently shorter, making him walk with a limp. For this reason, the company physician, Dr. Virginia G. Manzo, found him to have lost his dexterity, making him unfit to work once again as a seaman.[10] Citing the opinion of Ravago's doctor, Dr. Manzo wrote:

> Because of his unsteady gait, pronounced limp, and loss of normal dexterity of his leg and foot, we doubted whether Mr. Ravago can physically tackle the usual activities of a seaman in the course of his work without any added risk over and above the ordinary or standard risk inherent to his job. These activities include climbing up and down the engine room through a long flight of iron stairs with narrow steps which could be slippery at times due to grease or oil, jumping from an unsteady and floating motor launch or boat to board or alight a tanker through a flight of steps or climbing up and down a pilot ladder, wearing of heavy safety shoes, etc.

Mr. Ravago's doctor replied that, after being informed about the nature of the job, he believes that Mr. Ravago would not be able to cope with these kinds of activities. In effect, the Orthopedic doctor said Mr. Ravago is not fit to go back to his work as a seaman.

We concur with the opinion of the doctor that Mr. Ravago is not fit to go back to his job as a seaman in view of the risk of physical injury to himself as result of the deformity and loss of dexterity of his injured leg.

As a seaman, we consider his inability partial permanent. His injury corresponds to Grade 13 in the Schedule of Disability of the Standard Employment Contract.[11]

Consequently, instead of rehiring Ravago, EIS paid him his Career Employment Incentive Plan (CEIP)[12] as of March 1, 1993 and his final tax refund for 1992. After deducting his Social Security System and medical contributions from November 1992 to February 1993, EIS remitted the net amount of P162,232.65, following Ravago's execution of a Deed of Quitclaim and/or Release.[13]

However, on March 22, 1993, Ravago filed a complaint[14] for illegal dismissal with prayer for reinstatement, backwages, damages and attorney's fees against Trans-Global and EIS with the Philippine Overseas Employment Administration Adjudication Office.

In their Answer dated April 14, 1993, respondents denied that Ravago was dismissed without notice and just cause. Rather, his services were no longer engaged in view of the disability he suffered which rendered him unfit to work as a seafarer. This fact was further validated by the company doctor and Ravago's attending physician. They averred that Ravago was a contractual employee and was hired under 34 separate contracts by different companies.

In his position paper, Ravago insisted that he was fit to resume pre-injury activities as evidenced by the certification[15] issued by Dr. Marciano Foronda M.D., one of his attending physicians at the Philippine Orthopedic Hospital, that "at present, fracture of tibia has completely healed and patient is fit to resume pre-injury activities anytime."[16] Ravago, likewise, asserted that he was not a mere

contractual employee because the respondents regularly and continuously rehired him for 23 years and, for his continuous service, was awarded a CEIP payment upon his termination from employment.

On December 15, 1996, Labor Arbiter Ramon Valentin C. Reyes rendered a decision in favor of Ravago, the complainant. He ruled that Ravago was a regular employee because he was engaged to perform activities which were usually necessary or desirable in the usual trade or business of the employer. The Labor Arbiter noted that Ravago's services were repeatedly contracted; he was even given several promotions and was paid a monthly service experience bonus. This was in keeping with the increasing number of long term careers established with the respondents. Finally, the Labor Arbiter resolved that an employer cannot terminate a worker's employment on the ground of disease unless there is a certification by a competent public health authority that the said disease is of such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment. He concluded that Ravago was illegally dismissed. The decretal portion of the Labor Arbiter's decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the dismissal illegal and ordering respondents to reinstate complainant to his former position without loss of seniority rights and other benefits. Further, the respondents are jointly and severally liable to pay complainant backwages from the time of his dismissal up to the promulgation of this decision. Such backwages is provisionally fixed at US$96,285.00 less the P162,285.83 (sic) paid to the complainant as Career Employment Incentive Plan. And ordering respondents to pay complainant 10% of the total monetary award as attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[17]

Aggrieved, the respondents appealed the decision to the National Labor Relations Commission (NLRC) on July 3, 1997, raising the following grounds:

> THE DECISION IS VITIATED BY SERIOUS ERRORS IN THE FINDINGS OF FACT WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO THE RESPONDENTS. THESE FINDINGS ARE:
>
> (A) THAT COMPLAINANT WAS A REGULAR EMPLOYEE BECAUSE HE WAS HIRED AND REHIRED IN VARIOUS CAPACITIES ON BOARD ESSO VESSELS IN A SPAN OF 23 YEARS;
>
> (B) THAT COMPLAINANT WAS A REGULAR EMPLOYEE BECAUSE HE WAS ENGAGED IN THE SERVICES INDISPENSABLE IN THE OPERATION OF THE VARIOUS VESSELS OF RESPONDENTS;
>
> (C) THAT COMPLAINANT WAS FIT TO RESUME PRE-INJURY ACTIVITIES AND HIS FRACTURE COMPLETELY HEALED NOTWITHSTANDING A CONTRARY MEDICAL OPINION OF COMPLAINANT'S OWN PHYSICIAN AND RESPONDENTS' COMPANY PHYSICIAN; AND
>
> (D) THAT COMPLAINANT WAS ILLEGALLY DISMISSED BY RESPONDENTS.[18]

On April 26, 2001, the NLRC rendered a decision affirming that of the Labor Arbiter. The NLRC based its decision in the case of Millares vs. National Labor Relations Commission,[19] wherein it was held that:

> It is, likewise, clear that petitioners had been in the employ of the private respondents for 20 years. The records reveal that petitioners were repeatedly re-hired by private respondents even after the expiration of their respective eight-month contracts. Such repeated re-hiring which continued for 20 years, cannot but be appreciated as sufficient evidence of the necessity and indispensability of petitioners' service to the private respondents' business or trade.

> Verily, as petitioners had rendered 20 years of service, performing activities which were necessary and desirable in the business or trade of private respondents, they are, by express provision of Article 280 of the Labor Code, considered regular employees.[20]

The NLRC, likewise, declared that Ravago was illegally dismissed and that the quitclaim executed by him could not be considered as a waiver of his right to question the validity of his dismissal and seek reinstatement and other reliefs. According to the NLRC, such quitclaim is against public policy, considering the economic disadvantage of the employee and the inevitable pressure brought about by financial capacity.

The respondents filed a motion for reconsideration of the decision, claiming that the ruling of the Court in Millares vs. NLRC[21] had not yet become final and executory. However, the NLRC denied the motion.

Thereafter, the respondents filed a petition for certiorari before the CA on the following grounds: (a) the ruling in Millares vs. NLRC had not yet acquired finality, nor has it become a law of the case or stare decisis because the Court was still resolving the pending motion for reconsideration; (b) Ravago was not illegally dismissed because after the expiration of his contract, there was no obligation on the part of the respondents to rehire him; and (c) the quitclaim signed by Ravago was voluntarily entered into and represented a reasonable settlement of the account due him.

On August 29, 2001, the respondents filed an Urgent Application for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction to enjoin and restrain the Labor Arbiter from enforcing his decision. On September 5, 2001, the CA issued a Resolution[22] temporarily restraining NLRC Sheriff Manolito Manuel from enforcing and/or implementing the decision of the Labor Arbiter as affirmed by the NLRC.

On November 14, 2001, the CA granted the application for preliminary injunction upon filing by the respondents of a bond in the amount of P500,000.00. Thus, the respondents filed the surety bond

as directed by the appellate court. Before the approval thereof, however, Ravago filed a motion to set aside the Resolution dated November 14, 2001, principally arguing that the instant case was a labor dispute, wherein an injunction is proscribed under Article 254[23] of the Labor Code of the Philippines.

In their comment on Ravago's motion, the respondents professed that the case before the CA did not involve a labor dispute within the meaning of Article 212(l)[24] of the Labor Code of the Philippines, but a money claim against the employer as a result of termination of employment.

On August 28, 2002, the CA rendered a decision in favor the respondents. The fallo of the decision reads:

> WHEREFORE, the petition is GRANTED. The assailed decisions of the NLRC are hereby REVERSED and SET ASIDE and the injunctive writ issued on November 14, 2001, is hereby made PERMANENT.
>
> SO ORDERED.[25]

The CA ratiocinated as follows:

The employment, deployment, rights and obligation of Filipino seafarers are particularly set forth under the rules and regulations governing overseas employment promulgated by the POEA. Section C, Part I of the Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels emphatically provides the following:

> "SECTION C. DURATION OF CONTRACT
>
> The period of employment shall be for a fix (sic) period but in no case to exceed 12 months and shall be stated in the Crew Contract. Any extension of the Contract period shall be subject to the mutual consent of the parties."

It is clear from the foregoing that seafarers are contractual employees whose terms of employment are fixed for a certain period of time. A

fixed term is an essential and natural appurtenance of seamen's employment contracts to which, whatever the nature of the engagement, the concept of regular employment under Article 280 of the Labor Code does not find application. The contract entered into by a seafarer with his employer sets in detail the nature of his job, the amount of his wage and, foremost, the duration of his employment. Only a satisfactory showing that both parties dealt with each other on more or less equal terms with no dominance exercised by the employer over the seafarer is necessary to sustain the validity of the employment contract. In the absence of duress, as it is in this case, the contract constitutes the law between the parties.[26]

The CA noted that the employment status of seafarers has been established with finality by the Court's reconsideration of its decision in Millares vs. National Labor Relations Commission,[27] wherein it was ruled that seamen are contractual employees. According to the CA, the fact that Ravago was not rehired upon the completion of his contract did not result in his illegal dismissal; hence, he was not entitled to reinstatement or payment of separation pay. The CA, likewise, affirmed the writ of preliminary injunction it earlier issued, declaring that an injunction is a preservative remedy issued for the protection of a substantive right or interest, an antidote resorted to only when there is a pressing necessity to avoid injurious consequences which cannot be rendered under any standard compensation.

Hence, the present recourse.

Ravago, now the petitioner, has raised the following issues:

I.

> [WHETHER OR NOT] THE COURT OF APPLEALS GRAVELY ERRED AND VIOLATED THE LABOR CODE WHEN IT ISSUED A RESTRAINING ORDER AND THEREAFTER A WRIT OF PRELIMINARY INJUNCTION IN CA-G.R. SP NO. 66234.

II.

> [WHETHER OR NOT] THE COURT OF APPEALS GRAVELY ERRED, [AND] BLATANTLY DISREGARDED THE CONSTITUTIONAL MANDATE ON PROTECTION TO FILIPINO OVERSEAS WORKERS, AND COUNTENANCED UNWARRANTED DISCRIMINATION WHEN IT RULED THAT PETITIONER CANNOT BECOME A REGULAR EMPLOYEE.[28]

On the first issue, the petitioner asserts that the CA violated Article 254 of the Labor Code when it issued a temporary restraining order, and thereafter a writ of preliminary injunction, to derail the enforcement of the final and executory judgment of the Labor Arbiter as affirmed by the NLRC. On the other hand, the respondents contend that the issue has become academic since the CA had already decided the case on its merits.

The contention of the petitioner does not persuade.

The petitioner's reliance on Article 254[29] of the Labor Code is misplaced. The law proscribes the issuance of injunctive relief only in those cases involving or growing out of a labor dispute. The case before the NLRC neither involves nor grows out of a labor dispute. It did not involve the fixing of terms or conditions of employment or representation of persons with respect thereto. In fact, the petitioner's complaint revolves around the issue of his alleged dismissal from service and his claim for backwages, damages and attorney's fees. Moreover, Article 254 of the Labor Code specifically provides that the NLRC may grant injunctive relief under Article 218 thereof.

Besides, the anti-injunction policy of the Labor Code, basically, is freedom at the workplace. It is more appropriate in the promotion of the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor and industrial disputes.[30]

Generally, an injunction is a preservative remedy for the protection of a person's substantive rights or interests. It is not a cause of action in

itself but a mere provisional remedy, an appendage to the main suit. Pressing necessity requires that it should be resorted to only to avoid injurious consequences which cannot be remedied under any measure of consideration. The application of an injunctive writ rests upon the presence of an exigency or of an exceptional reason before the main case can be regularly heard. The indispensable conditions for granting such temporary injunctive relief are: (a) that the complaint alleges facts which appear to be satisfactory to establish a proper basis for injunction, and (b) that on the entire showing from the contending parties, the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation.[31]

It bears stressing that in the present case, the respondents' petition contains facts sufficient to warrant the issuance of an injunction under Article 218, paragraph (e) of the Labor Code of the Philippines.[32] Further, respondents had already posted a surety bond more than adequate to cover the judgment award.

On the second issue, the petitioner earnestly urges this Court to re-examine its Resolution dated July 29, 2002 in Millares vs. National Labor Relations Commission[33] and reinstate the doctrine laid down in its original decision rendered on March 14, 2000, wherein it was initially determined that a seafarer is a regular employee. The petitioner asserts that the decision of the CA and, indirectly, that of the Resolution of this Court dated July 29, 2002, are violative of the constitutional mandate of full protection to labor,[34] whether local or overseas, because it deprives overseas Filipino workers, such as seafarers, an opportunity to become regular employees without valid and serious reasons. The petitioner maintains that the decision is discriminatory and violates the constitutional provision on equal protection of the laws, in addition to being partial to and overly protective of foreign employers.

The respondents, on the other hand, asseverate that there is no law or administrative rule or regulation imposing an obligation to rehire a seafarer upon the completion of his contract. Their refusal to secure the services of the petitioner after the expiration of his contract can never be tantamount to a termination. The respondents aver that the petitioner is not entitled to backwages, not only because it is without factual justification but also because it is not warranted under the

law. Furthermore, the respondents assert that the rulings in the Coyoca vs. NLRC,[35] and the latest Millares case remain good and valid precedents that need to be reaffirmed. The respondents cited the ruling of the Court in Coyoca case where the Court ruled that a Filipino seaman's contract does not provide for separation or termination pay because it is governed by the Rules and Regulations Governing Overseas Employment.

The contention of the respondents is correct.

In a catena of cases, this Court has consistently ruled that seafarers are contractual, not regular, employees.

In Brent School, Inc. vs. Zamora,[36] the Court ruled that seamen and overseas contract workers are not covered by the term "regular employment" as defined in Article 280 of the Labor Code. The Court said in that case:

> The question immediately provoked is whether or not a voluntary agreement on a fixed term or period would be valid where the employee "has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer." The definition seems non sequitur. From the premise – that the duties of an employee entail "activities which are usually necessary or desirable in the usual business or trade of the employer" — the conclusion does not necessarily follow that the employer and employee should be forbidden to stipulate any period of time for the performance of those activities. There is nothing essentially contradictory between a definite period of an employment contract and the nature of the employee's duties set down in that contract as being "usually necessary or desirable in the usual business or trade of the employer." The concept of the employee's duties as being "usually necessary or desirable in the usual business or trade of the employer" is not synonymous with or identical to employment with a fixed term. Logically, 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." Seasonal employment, and employment for a particular project are merely instances of employment in which a period, were not expressly set down, is necessarily implied.[37]

. . .

Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance: overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied, Article 280 of the Labor Code notwithstanding; also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible.[38]

. . .

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily 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 where 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 over the latter. Unless, thus, limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.[39]

The Court made the same ruling in Coyoca vs. National Labor Relations Commission[40] and declared that a seafarer, not being a regular employee, is not entitled to separation or termination pay.

Furthermore, petitioner's contract did not provide for separation benefits. In this connection, it is important to note that neither does the POEA standard employment contract for Filipino seamen provide for such benefits.

As a Filipino seaman, petitioner is governed by the Rules and Regulations Governing Overseas Employment and the said Rules do not provide for separation or termination pay.

. . .

> Therefore, although petitioner may not be a regular employee of private respondent, the latter would still have been liable for payment of the benefits had the principal failed to pay the same.[41]

In the July 29, 2002 Resolution of this Court in Millares vs. National Labor Relations Commission,[42] it reiterated its ruling that seafarers are contractual employees and, as such, are not covered by Article 280 of the Labor Code of the Philippines:

> From the foregoing cases, it is clear that seafarers are considered contractual employees. They cannot be considered as regular employees under Article 280 of the Labor Code. Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Article 280 whose employment has been fixed for a specific

> project or undertaking the completion or termination of which has been determined at the time of 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. We need not depart from the rulings of the Court in the two aforementioned cases which indeed constitute stare decisis with respect to the employment status of seafarers.
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> . . .

The Standard Employment Contract governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels of the POEA, particularly in Part I, Sec. C, specifically provides that the contract of seamen shall be for a fixed period. And in no case should the contract of seamen be longer than 12 months. It reads:

> Section C. Duration of Contract
>
> The period of employment shall be for a fixed period but in no case to exceed 12 months and shall be stated in the Crew Contract. Any extension of the Contract period shall be subject to the mutual consent of the parties.
>
> . . .
>
> Petitioners make much of the fact that they have been continually re-hired or their contracts renewed before the contracts expired (which has admittedly been going on for twenty [20] years). By such circumstance they claim to have acquired regular status with all the rights and benefits appurtenant to it.

Such contention is untenable. Undeniably, this circumstance of continuous re-hiring was dictated by practical considerations that experienced crew members are more preferred. Petitioners were only given priority or preference because of their experience and qualifications but this does not detract the fact that herein petitioners are contractual employees. They can not be considered regular employees. We quote with favor the explanation of the NLRC in this wise:

> The reference to "permanent" and "probationary" masters and employees in these papers is a misnomer and does not alter the fact that the contracts for enlistment between complainants-appellants and respondent-appellee Esso International were for a definite periods of time, ranging from 8 to 12 months. Although the use of the terms "permanent" and "probationary" is unfortunate, what is really meant is "eligible for-re-hire." This is the only logical conclusion possible because the parties cannot and should not violate POEA's requirement that a contract of enlistment shall be for a limited period only; not exceeding twelve (12) months.

From all the foregoing, we hereby state that petitioners are not considered regular or permanent employees under Article 280 of the Labor Code. Petitioners' employment have automatically ceased upon the expiration of their contracts of enlistment (COE). Since there was no dismissal to speak of, it follows that petitioners are not entitled to reinstatement or payment of separation pay or backwages, as provided by law.[43]

The Court ruled that the employment of seafarers for a fixed period is not discriminatory against seafarers and in favor of foreign employers. As explained by this Court in its July 29, 2002 Resolution in Millares:

> Moreover, it is an accepted maritime industry practice that employment of seafarers are for a fixed period only. Constrained by the nature of their employment which is quite peculiar and unique in itself, it is for the mutual interest of both the seafarer and the employer why the employment status must be contractual only or for a certain period of time. Seafarers spend most of their time at sea and understandably, they can not stay for a long and an indefinite period of time at sea. Limited access to shore society during the employment will have an adverse impact on the seafarer. The national, cultural and lingual diversity among the crew during the COE is a reality that necessitates the limitation of its period.[44]

In Pentagon International Shipping, Inc. vs. William B. Adelantar,[45] the Court cited its rulings in Millares and Coyoca and reiterated that a seafarer is not a regular employee entitled to backwages and separation pay:

> Therefore, Adelantar, a seafarer, is not a regular employee as defined in Article 280 of the Labor Code. Hence, he is not entitled to full backwages and separation pay in lieu of reinstatement as provided in Article 279 of the Labor Code. As we held in Millares, Adelantar is a contractual employee whose rights and obligations are governed primarily by [the] Rules and Regulations of the POEA and, more importantly, by R.A. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995.

The latest ruling of the Court in Marcial Gu-Miro vs. Rolando C. Adorable and Bergesen D.Y. Manila[46] reaffirmed yet again its rulings that a seafarer is employed only on a contractual basis:

> Clearly, petitioner cannot be considered as a regular employee notwithstanding that the work he performs is necessary and desirable in the business of respondent company. As expounded in the above-mentioned Millares Resolution, an exception is made in the situation of seafarers. The exigencies of their work necessitates that they be employed on a contractual basis.
>
> Thus, even with the continued re-hiring by respondent company of petitioner to serve as Radio Officer onboard Bergesen's different vessels, this should be interpreted not as a basis for regularization but rather a series of contract renewals sanctioned under the doctrine set down by the second Millares case. If at all, petitioner was preferred because of practical considerations – namely, his experience and qualifications. However, this does not alter the status of his employment from being contractual.
>
> The petitioner failed to convince the Court why it should restate its decision in Millares and reverse its July 29, 2002 Resolution in the same case.

IN LIGHT OF ALL THE FOREGOING, the petition is hereby **DENIED**. The assailed Decision dated August 28, 2002 of the Court of Appeals is hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Puno, *J.*, *(Chairman)*, Austria-Martinez, Tinga, and Chico-Nazario, *JJ.*, concur.

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[1] Penned by Associate Justice Oswaldo D. Agcaoili (retired), with Associate Justices Eliezer R. de los Santos and Danilo B. Pine, concurring.
[2] Esso Tankers, Inc.
[3] Esso Eastern Marine Ltd.
[4] Esso International Shipping (Bahamas) Co. Ltd., Singapore Branch.
[5] Rollo, p. 53.
[6] POEA Records, p. 142.
[7] Id. at 140-141.
[8] Id. at 138.
[9] Id. at 243.
[10] Id. at 242.
[11] Rollo, p. 54.
[12] NLRC Records, p. 136.
[13] CA Rollo, p. 133.
[14] POEA Records, p. 56.
[15] Id. at 137.
[16] Id.
[17] Id. at 288.
[18] NLRC Records, pp. 6-7.
[19] 328 SCRA 79 (2000).
[20] Id. at 90.
[21] Supra.
[22] CA Rollo, p. 209.
[23] ART. 254. INJUNCTION PROHIBITED – No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 218 and 264 of this Code.
[24] "Labor dispute" includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.
[25] CA Rollo, p. 350.
[26] Id. at 346.

[27] 385 SCRA 306 (2002).
[28] Rollo, pp. 14-15.
[29] ART. 254. Injunction prohibited. – No temporary or permanent injunction or restraining order in any case involving or growing out of Labor disputes shall be issued by any court or other entity, except as, otherwise, provided in Articles 218 and 264 of this Code.
[30] Azucena, Cesario Alvero, Jr., The Labor Code With Comments and Cases, Vol. II, 1999 ed., p. 300.
[31] Philippine Airlines, Inc. vs. NLRC, 287 SCRA 672, 680 (1998), citing Del Rosario vs. Court of Appeals, 255 SCRA 152 (1996).
[32] ART. 218. Powers of the Commission. – The Commission shall have the power and authority:

. . .

(e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:
(1) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
(2) That substantial and irreparable injury to complainant's property will follow;
(3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
(4) That complainant has no adequate remedy at law; and
(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.
[33] Supra.
[34] The 1987 Philippine Constitution: Article XIII, Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
[35] 243 SCRA 190 (1995).
[36] 181 SCRA 702 (1990).
[37] Id. at 711. (Emphasis supplied)
[38] Id. at 714.

[39] Id. at 716. (Emphasis supplied)
[40] Supra.
[41] Id. at 194-195.
[42] Supra.
[43] Id. at 318-320. (Emphasis supplied)
[44] Id. at 319.
[45] G.R. No. 157373, July 27, 2004.
[46] G.R. No. 160952, August 20, 2004. (Emphasis supplied)