SUPREME COURT
SECOND DIVISION

ARTEMIO J. ROMARES,
***Petitioner*,**

-versus-

G.R. No. 122327
August 19, 1998

NATIONAL LABOR RELATIONS COMMISSION and PILMICO FOODS CORPORATION,
***Respondents*.**
x----------x

D E C I S I O N

MARTINEZ, *J.*:

This is a case of illegal dismissal. The Decision of the Executive Labor Arbiter[1] reinstating petitioner was reversed by the National Labor Relations Commission. Hence, this appeal.

The antecedent facts as summarized in the decision of the Executive Labor Arbiter are as follows:

> Complainant in his Complaint and Position Paper alleged that he was hired by respondent in its Maintenance/Projects/Engineering Department during the periods and at respective rates as follows:

1. Sept. 1, 1989 to Jan. 31, 1990 — P89.00/day.
2. Jan. 16, 1991 to Jun. 15, 1991 — 103.00/day
3. Aug. 16, 1992 to Jan. 15, 1993 — 103.00/day

> "That having rendered a total service of more than one (1) year and by operation of law, complainant has become a regular employee of respondent; That complainant has performed tasks and functions which were necessary and desirable in the operation of respondent's business which include painting, maintenance, repair and other related jobs; That complainant was never reprimanded nor subjected to any disciplinary action during his engagement with the respondent; That without any legal cause or justification and in the absence of any time to know of the charge or notice nor any opportunity to be heard, respondent terminated him; That his termination is violative to security of tenure clause provided by law; That complainant be awarded damages and prays that he be reinstated to his former position, be awarded backwages, moral and exemplary damages and attorney's fees.
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> "Respondent on the other hand maintains that complainant was a former contractual employee of respondent and as such his employment was covered by contracts; That complainant was hired as mason in the Maintenance/Project Department and that he was engaged only for a specific project under such department; That complainant's services as mason was not continuous, in fact, he was employed with International Pharmaceuticals, Inc. in Opol, Misamis Oriental from January to April 1992; That when his last contract expired on January 15, 1993, it was no longer renewed and thereafter, complainant filed this instant complaint; he prays that this instant petition be dismissed for lack of merit."[2]

In finding that petitioner is a regular employee, the Executive Labor Arbiter said:

> "The records reveal that complainant has been hired and employed by respondent PILMICO since September 1, 1989 to January 15, 1993, in a broken tenure but all in all totalled to

over a year's service. Complainant's period of employment started on September 1, 1989 up to January 31, 1990 or for a period of five (5) months. Then on January 16 1991, he was hired again up to June 15, 1991, or for a period covering another five (5) months. Then on August 16, 1992, he was hired again up to January 15, 1993 or for a period of another five (5) months. Thus, from September 1, 1989 up to January 15, 1993, complainant has worked for fifteen (15) months more or less and has been hired and terminated three times. But in all his engagements by respondent, he was assigned at respondent's Maintenance/Projects/Engineering Department performing maintenance work, particularly the painting of company buildings, maintenance chores, like cleaning and sometimes operating company equipment and sometimes assisting the regulars in the Maintenance/Engineering Department. The fact that complainant was hired, terminated and rehired again for three times in a span of more than three (3) years and performing the same functions, only bolstered our findings that complainant is already considered a regular employee and therefore covered by security of tenure and cannot be removed except for lawful and valid cause as provided by law and after due process. There is no dispute that complainant, in the case at bar, has already served respondent for more than six (6) months, the period allowable for probationary period and even more than one year service which under the law shall be considered a regular employee. This finding and conclusion finds application in the case of Kimberly Independent Labor Union for Solidarity, Activism and Nationalism — Olalia vs. Hon. Franklin M. Drilon, G R. No. 77629 and 78791, promulgated last May 9, 1990, wherein the Honorable Supreme Court has classified the two kinds of regular employees as:

1. those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and

2. those who have rendered at least one (1) year of service whether continuous or broken with respect to the activity in which they are employed.

"While the actual regularization of the employees entails the mechanical act of issuing regular appointment papers and compliance with such other operating procedures, as may be adopted by the employer, it is more in keeping with the intent and spirit of the law to rule that the status of regular employment attaches to the casual employee on the day immediately after the end of his first year of service.

"Applying the above classification in this particular case, there is no doubt that herein complainant falls within the second classification and as such, he is a regular employee of respondent PILMICO. And being a regular employee, he is vested with his constitutional right to due process before he can be terminated from his work and only for valid and lawful cause as provided by law. In the case of National Service Corporation vs. NLRC, 168 SCRA 122, the Court has laid down the guidelines or requisites to be complied in order that termination of employment can be legally effected, to wit:

"These are:

1. the notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and

2. the subsequent notice which informs the employee of the employer's decision to dismiss him.

x x x

"In the case at bar, respondent did not comply with the above guidelines for the dismissal of herein complainant. The procedure prescribed by law is mandatory. Unless followed, the employee's right to due process of law is breached and vitiates management's decision to terminate the employment.

"This ELA having declared herein complainant as a regular employee as above stated, then his separation or termination from respondent company not being in consonance with the

guidelines enunciated by law, his termination is therefore illegal."[3]

And thereafter disposed of the case as follows:

"WHEREFORE, in the light of the above-discussion, it is hereby declared and ordered that complainant ARTEMIO J. ROMARES is a regular employee of respondent PILMICO FOODS CORPORATION since January 16, 1993 and his termination on the same date is illegal as contrary to law and public policy and therefore, he would be reinstated to his former position as if he was not terminated and to be entitled to all benefits, allowances accruing thereto and without loss of seniority rights.

"Likewise, respondent PILMICO in consonance with the above-discussion is hereby ordered to pay complainant the following, to wit:

1. Backwages in the amount of P34,814.00

2. Attorney's fees representing 5% of the amount awarded for backwages, allowances and other benefits.

3. All other claims are hereby dismissed for lack of merit.

SO ORDERED."[4]

On appeal, the NLRC[5] set aside the decision of the Executive Labor Arbiter and ruled:

"Respondent argues that even if the employee was performing work which is related to the business or trade of the employer, the employee cannot be considered a regular employee if his employment is for a specific project or undertaking and for a fixed period (Vol. 1, p. 26, supra), hence, the applicable provision is paragraph 1 and not paragraph 2 of Article 280 of the Labor Code, as amended (Vol. 2, p. 5, supra).

> "With the given circumstances, we cannot agree with the pronouncement of the Executive Labor Arbiter that it is the intent and spirit of the law that the status of regular employment is attached to the worker on the day immediately after the end of his first year of service (Vol. I, p. 50, supra).
>
> "What is apparently applicable in the case at bar is paragraph 1 of Article 280 of the Labor Code, as amended. As clearly shown by evidence, complainant's employment contracts (Vol. 1, pp. 39-40, supra), were for fixed or temporary periods. Thus, when complainant's employment with respondent was terminated (Vol. 1, p. 41, supra), such cannot be considered as illegal since the termination was due to the expiration of the contract.
>
> "WHEREFORE, the assailed decision is Vacated and Set Aside. The complaint is hereby Dismissed for lack of merit.
>
> SO ORDERED."[6]

The Motion for Reconsideration having been denied, petitioner interposed this Petition for *Certiorari* and prohibition.

We find the petition meritorious.

Petitioner seeks to traverse the NLRC's ruling that the applicable provision in the case at bar is paragraph 1 of Article 280 of the Labor Code, as amended. In this regard, the NLRC concluded that since petitioner's employment contracts were for fixed or temporary periods, as an exception to the general rule, he was validly terminated due to expiration of the contract of employment.

In determining the status of petitioner as a regular employee, reference is made to Article 280 of the Labor Code, as amended.[7] Thus, the two kinds of regular employees are (1) those who are engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.[8]

Construing the aforesaid provision, the phrase "usually necessary or desirable in the usual business or trade of the employer" should be emphasized as the criterion in the instant case. Facts show that petitioner's work with PILMICO as a mason was definitely necessary and desirable to its business. PILMICO cannot claim that petitioner's work as a mason was entirely foreign or irrelevant to its line of business in the production of flour yeast feeds and other flour products.

The language of the law evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient.[9] It is noteworthy that during each rehiring, the summation of which exceeded one (1) year, petitioner was assigned to PILMICO's Maintenance/Projects/Engineering Department performing the same kind of maintenance work such as painting of company buildings cleaning and operating company equipment, and assisting the other regular employees in their maintenance works. Such a continuing need for the services of petitioner is sufficient evidence of the necessity and indispensability of his services to PILMICO's business or trade.[10] The fact that petitioner was employed with another company in the interregnum from January to April 1992 is of no moment.

To expound further, granting arguendo that petitioner was regarded as a temporary employee, he had been converted into a regular employee by virtue of the proviso in the second paragraph of Article 280 for having worked with PILMICO for more than one (1) year. We held in Baguio Country Club Corporation vs. NLRC[11] that:

> "If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity is not indispensability of that activity to the business. Hence, the employment is also considered regular but only with respect to such activity and while such activity exists."

Succinctly put, in rehiring petitioner, employment contracts[12] ranging from two (2) to three (3) months with an express statement that his temporary job/service as mason shall be terminated at the end of the said period or upon completion of the project was obtrusively a convenient subterfuge utilized to prevent his regularization. It was a clear circumvention of the employee's right to security of tenure and to other benefits.[13] It likewise evidenced bad faith on the part of PILMICO.

The limited period specified in petitioner's employment contract having been imposed precisely to circumvent the constitutional guarantee on security of tenure should, therefore, be struck down or disregarded as contrary to public policy or morals.[14] To uphold the contractual arrangement between PILMICO and petitioner would, in effect permit the former to avoid hiring permanent or regular employees by simply hiring them on a temporary or casual basis thereby violating the employee's security of tenure in their jobs.[15]

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.[16] 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.[17]

We cannot subscribe to the erroneous ruling of the NLRC that the applicable provision is paragraph 1 of Article 280 of the Labor Code, as amended, which makes petitioner's employment contracts for fixed or temporary periods. Stated otherwise, NLRC erred in finding that the contract of employment of petitioner was for a fixed or specified period.

At this juncture, the leading case of Brent School, Inc. vs. Zamora[18] proves instructive. As reaffirmed in subsequent cases,[19] this Court has upheld the legality of fixed-term employment. It ruled that 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. But this Court went on to say that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down or disregarded as contrary to public policy and morals.

The Brent ruling[20] also laid down the criteria under which "term employment" cannot be said to be in circumvention of the law on security of tenure:

1) The fixed period or employment was knowingly and voluntarily agreed upon 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

2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.

None of these requisites were complied with.

WHEREFORE, prescinding from the foregoing disquisition, the present Petition is **GRANTED**. The challenged Resolution dated February 21, 1995 of the NLRC is **REVERSED** and **SET ASIDE**, and the Decision dated February 15, 1994 of the Executive Labor Arbiter is hereby **REINSTATED**.

SO ORDERED.

Melo, Puno and Mendoza, *JJ.*, concur.

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[1] Decision of Executive Labor Arbiter Quintin B. Cueto III dated February 15, 1994 in NLRC RAB XII Case No. 12-05-11679-93.
[2] Decision of Executive Labor Arbiter, Ibid.; Rollo, pp. 48-49.
[3] Ibid., Rollo, pp. 49-50; 50-51; 52.
[4] Ibid., Rollo, p. 58.

[5] NLRC (Fifth Division) Resolution dated February 21, 1995, penned by Commissioner Leon G. Gonzaga, Jr., and concurred in by Presiding Commissioner Musib M. Buat and Commissioner Oscar N. Abella.

[6] Rollo pp. 81-82.

[7] 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 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."

[8] Purefoods Corporation vs. NLRC, Rodolfo Cordova, Violeta Crusis, et. al., G.R. No. 122653, December 12, 1997; citing Philippine Geothermal, Inc. vs. NLRC, 189 SCRA 211, 215 [1990]; Mercado vs. NLRC, 201 SCRA 332, 341-342 [1991]; Aurora Land Project Corp. vs. NLRC, G.R. No. 114733, January 2, 1997, 266 SCRA 48.

[9] Baguio Country Club Corporation vs. NLRC, 206 SCRA 643 [1992], citing the case of De Leon vs. NLRC, 176 SCRA 615 [1989]; cited in Bustamante vs. NLRC, G.R. No. 111651, March 15, 1996, 255 SCRA 145.

[10] See Aurora Land Projects Corp. vs. NLRC, supra.

[11] 206 SCRA 643, cited in Megascope General Service vs. NLRC, G.R. No. 109224, June 19, 1997, 274 SCRA 147, 156-157.

[12] Rollo pp. 42-43.

[13] See Cielo vs. NLRC, 193 SCRA 410 [1991] cited in Purefoods Corporation vs. NLRC, et al., supra.

[14] See Purefoods Corporation vs. NLRC et al., supra, citing Samson vs. NLRC 253 SCRA 112 124 [1996].

[15] Ibid., citing Conti vs. NLRC G.R. No 119253 April 10, 1997, 271 SCRA 114.

[16] See Brent School, Inc., et al. vs. NLRC, et. al., 181 SCRA 702 [1990] cited in Isabelo Violeta and Jovito Salazar vs. NLRC; Fifth Division, and Dasmariñas Industrial and Steelworks Corporation G.R. No. 119573 October 10, 1997.

[17] Isabelo Violeta and Jovito Baltazar vs. NLRC, et. al., ibid., citing Tucor Industries, Inc., et. al. vs. NLRC, et. al., 197 SCRA 296 [1991].

[18] 181 SCRA 702 [1990] cited in Purefoods Corporation vs. NLRC, et. al., supra.

[19] Purefoods Corporation vs. NLRC, et. al., ibid., citing Blancaflor vs. NLRC, 218 SCRA 366 [1993]; Caramol vs. NLRC, 225 SCRA 582 [1993]; Pines City Educational Center vs. NLRC, 227 SCRA 655 [1993]; Philippine Village Hotel vs. NLRC, 230 SCRA 423 [1994].

[20] Cited in Purefoods Corporation vs. NLRC, et. al., ibid.