SUPREME COURT
FIRST DIVISION

ENGINEER LEONCIO V. SALAZAR,
***Petitioner*,**

-versus-

G.R. No. 109210
April 17, 1996

NATIONAL LABOR RELATIONS COMMISSION (2nd Division) and H. L. CARLOS CONSTRUCTION, CO. INC.,
***Respondents*.**
x----------x

D E C I S I O N

KAPUNAN, *J.*:

This is a Petition for *Certiorari*[*] to annul the decision of the National Labor Relations Commission in NLRC Case No. 002855-92 dated 27 November 1992 which affirmed in toto the decision of the Labor Arbiter in NLRC NCR-00-09-05335-91 dated 29 January 1992 dismissing the complaint filed by petitioner for lack of merit. The

NLRC's resolution dated 22 February 1993 is similarly impugned for denying petitioner's motion for reconsideration.

The antecedent facts are as follows:

On 17 April 1990, private respondent, at a monthly salary of P4,500.00, employed petitioner as construction/project engineer for the construction of the Monte de Piedad building in Cubao, Quezon City. Allegedly, by virtue of an oral contract, petitioner would also receive a share in the profits after completion of the project and that petitioner's services in excess of eight (8) hours on regular days and services rendered on weekends and legal holidays shall be compensable overtime at the rate of P27.85 per hour.

On 16 April 1991, petitioner received a memorandum issued by private respondent's project manager, Engr. Nestor A. Delantar informing him of the termination of his services effective on 30 April 1991. Reproduced hereunder is the abovementioned memorandum:

> April 16, 1991
>
> MEMORANDUM TO: LEONCIO V. SALAZAR
> *Project Engineer*
> MONTE DE PIEDAD BLDG. PROJECT
> Quezon City
>
> Due to the impending completion of the aforementioned project and the lack of up-coming contracted works for our company in the immediate future, volume of work for our engineering and technical personnel has greatly been diminished.
>
> In view of this, you are hereby advised to wind up all technical reports including accomplishments, change orders, etc.
>
> Further, you are advised that your services are being terminated effective at the close of office hours on April 30, 1991.
>
> This, however, has no prejudice to your re-employment in this company in its local and overseas projects should the need for your services arises.

> Thank you for your invaluable services rendered to this company.
>
> *(Sgd.)*
> NESTOR A. DELANTAR
> *Project manager*
>
> Noted By:
>
> *(Sgd.)*
> Mario B. Cornista
> *Vice President*[1]

On 13 September 1991, petitioner filed a complaint against private respondent for illegal dismissal, unfair labor practice, illegal deduction, non-payment of wages, overtime rendered, service incentive leave pay, commission, allowances, profit-sharing and separation pay with the NLRC-NCR Arbitration Branch, Manila.[2]

On 29 January 1992, Labor Arbiter Raul T. Aquino rendered a decision, the dispositive portion of which reads, thus:

> WHEREFORE, responsive to the foregoing, the instant case is hereby DISMISSED for lack of merits.
>
> SO ORDERED.[3]

The Labor Arbiter ruled that petitioner was a managerial employee and therefore exempt from payment of benefits such as overtime pay, service incentive leave pay and premium pay for holidays and rest days. Petitioner, Labor Arbiter Aquino further declared, was also not entitled to separation pay. He was hired as a project employee and his services were terminated due to the completion of the project.[4]

The Labor Arbiter, likewise, denied petitioner's claim for a share in the project's profits, reimbursement of legal expenses and unpaid wages for lack of basis.[5]

On 14 April 1992, petitioner appealed to the National Labor Relations Commission (NLRC).

On 27 November 1992, the NLRC rendered the assailed decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the appeal is hereby Dismissed and the assailed decision is Affirmed en toto.
>
> SO ORDERED.[6]

On 29 January 1993, petitioner filed a motion for reconsideration which the NLRC denied for lack of merit on 22 February 1993.[7]

Hence, the instant petition wherein the following issues were raised:

I. Granting for the sake of argument without conceding, that complainant-petitioner herein was a managerial employee, was his verbal contract to be paid his overtime services as stated in paragraph 2(b) of this Petition invalid? and the payments of such overtime services as evidenced by Exhibits "B" to "B-24" (the genuineness and authenticity of which are not disputed) are they not evidentiary and of corroborative value to the true unwritten agreement between the parties in this case?

II. Is there any portion of the Labor Code that prohibits contracts between employer and employee giving the latter the benefit of being paid overtime services, as in this particular case?

III. Where an employee was induced to accept a low or distorted salary or wage level, because of an incentive promise to receive a bigger compensation than that which would be his true and correct wage level as shown by documents for the payment of his distorted wages and overtime services, is it not legally proper, in the alternative to claim payment of the differential of his undistorted salary or wage level when the promised incentive

compensation is denied by his employer after the completion of the job for which he was employed?

IV. Is the Certificate of employment issued to an employee by his employer, assailable by mere affidavits of denials to the effect that said Certificate was issued because of the insistence of the employee that it be made to include a period he did not work, but which such fact of insistence or request is also denied by the employee, because he really worked during the period included in said Certificate?

V. Is the employer liable for the payment of the attorney's pay incurred by his employee in a work connected criminal prosecution against him for an act done by another employee assigned by same employer to do the act which was the subject of the criminal prosecution?[8]

Petitioner prays that judgment be rendered, thus:

1. That the decision of the NLRC and its resolution denying the Motion for Reconsideration be set aside on grounds of grave abuse of discretion; and

2. That private respondent be ordered to pay petitioner the following:

    a. the premium pays for his overtime services of 368 hours on ordinary days at 25%; 272 hours on Saturdays at 30%; 272 hours on Sundays plus 24 hours on legal holidays at 200% — computed at the rate of P27.85 per hour of undistorted wage level;

    b. in the alternative, to pay at least one (1) percent of 4.5 million pesos profit share, or the sum total of the differential of his salaries, in the amount of P2,184.00 per month, since April 17, 1990 to April 30, 1991, his undistorted salary being P6,684.00 per month; and to pay his unpaid salary for 15 days — May 1 to 15, 1991, with his undistorted salary rate;

c. the amount of P3,000.00 reimbursement for what he paid his defense counsel in that criminal action which should have instead been against respondent's general manager;

d. Separation pay of at least one month salary, he having been terminated unreasonably without cause, and three days service incentive leave pay; and to pay the costs;[9]

Before proceeding to the merits of the petition, we shall first resolve the procedural objection raised. Private respondent prays for the outright dismissal of the instant petition on grounds of wrong mode of appeal, it being in the form of a petition for review on certiorari (Rule 45 of the Revised Rules of Court) and not a special civil action for certiorari (Rule 65 thereof) which is the correct mode of appeal from decisions of the NLRC.

Although we agree with private respondent that appeals to the Supreme Court from decisions of the NLRC should be in the form of a special civil action for certiorari under Rule 65 of the Revised Rules of Court, this rule is not inflexible. In a number of cases,[10] this Court has resolved to treat as special civil actions for *certiorari* petitions erroneously captioned as petitions for review on certiorari "in the interest of justice." In People's Security, Inc. vs. NLRC,[11] we elaborated, thus:

> Indeed, this Court has time and again declared that the only way by which a labor case may reach the Supreme Court is through a petition for certiorari under Rule 65 of the Rules of Court alleging lack or excess of jurisdiction or grave abuse of discretion (Pearl S. Buck Foundation vs. NLRC, 182 SCRA 446 [1990]).
>
> This petition should not be dismissed on a mere technicality however. "Dismissal of appeal purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeal on their merits. The rules of procedure ought not to be applied in a very rigid technical sense, rules of Procedure are used only to help secure, not override substantial

> justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated" (Tamayo vs. Court of Appeals, 209 SCRA 518, 522 [1992] citing Gregorio vs. Court of Appeals, 72 SCRA 120 [1976]). Consequently, in the interest of justice, the instant petition for review shall be treated as a special civil action on *certiorari*. (Emphasis ours.)

Moving on to the merits, stated differently, the issues for our resolution are the following:

1) Whether or not petitioner is entitled to overtime pay, premium pay for services rendered on rest days and holidays and service incentive leave pay, pursuant to Articles 87, 93, 94 and 95 of the Labor Code;

2) Whether or not petitioner is entitled to a share in the profits of the construction project;

3) Whether or not petitioner rendered services from 1 May to 15 May 1991 and is, therefore, entitled to unpaid wages;

4) Whether or not private respondent is liable to reimburse petitioner's legal expenses and; and

5) Whether or not petitioner is entitled to separation pay.

On the first issue, the NLRC concurred with the Labor Arbiter's ruling that petitioner was a managerial employee and, therefore, exempt from payment of overtime pay, premium pay for holidays and rest days and service incentive leave pay under the law. The NLRC declared that:

> Book III on conditions of employment exempts managerial employees from its coverage on the grant of certain economic benefits, which are the ones the complainant-appellant was demanding from respondent. It is an undisputed fact that appellant was a managerial employee and such, he was not entitled to the economic benefits he sought to recover.[12]

Petitioner claims that since he performs his duties in the project site or away from the principal place of business of his employer (herein private respondent), he falls under the category of "field personnel." However, petitioner accentuates that his case constitutes the exception to the exception because his actual working hours can be determined as evidenced by the disbursement vouchers containing payments of petitioner's salaries and overtime services.[13] Strangely, petitioner is of the view that field personnel may include managerial employees.

We are constrained to disagree with petitioner.

In his original complaint, petitioner stated that the nature of his work is "supervisory-engineering."[14] Similarly, in his own petition and in other pleadings submitted to this Court, petitioner confirmed that his job was to supervise the laborers in the construction project.[15] Hence, although petitioner cannot strictly be classified as a managerial employee under Art. 82 of the Labor Code,[16] and sec. 2(b), Rule 1, Book III of the Omnibus Rules Implementing the Labor Code,[17] nonetheless he is still not entitled to payment of the aforestated benefits because he falls squarely under another exempt category — "officers or members of a managerial staff" as defined under sec. 2(c) of the abovementioned implementing rules:

> SECTION 2. Exemption. — The provisions of this Rule shall not apply to the following persons if they qualify for exemption under the condition set forth herein:
>
> x x x
>
> (c) Officers or members of a managerial staff if they perform the following duties and responsibilities:
>
> (1) The primary duty consists of the performance of work directly related to management policies of their employer;
>
> (2) Customarily and regularly exercise discretion and independent judgment;

(3) [i] Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof; or [ii] execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or [iii] execute under general supervision special assignments and tasks; and

(4) who do not devote more than 20 percent of their hours worked in a work-week to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2), and (3) above.

A case in point is National Sugar Refineries Corporation vs. NLRC.[18] On the issue of "whether supervisory employees, as defined in Article 212 (m), Book V of the Labor Code, should be considered as officers or members of the managerial staff under Article 82, Book III of the same Code and hence not entitled to overtime, rest day and holiday pay,"[19] this Court ruled:

> A cursory perusal of the Job Value Contribution Statements of the union members will readily show that these supervisory employees are under the direct supervision of their respective department superintendents and that generally. they assist the latter in planning, organizing, staffing, directing, controlling, communicating and in making decisions in attaining the company's set goals and objectives. These supervisory employees are likewise responsible for the effective and efficient operation of their respective departments.
>
> x x x
>
> From the foregoing, it is apparent that the members of respondent union discharge duties and responsibilities which ineluctably qualify them as officers or members of the managerial staff, as defined in Section 2, Rule 1, Book III of the

> aforestated Rules to Implement the Labor Code, viz.: (1) their primary duty consists of the performance of work directly related to management policies of their employer; (2) they customarily and regularly exercise discretion and independent judgment; (3) they regularly and directly assist the managerial employee whose primary duty consists of the management of a department of the establishment in which they are employed; (4) they execute, under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; (5) they execute, under general supervision, special assignments and tasks; and (6) they do not devote more than 20% of their hours worked in a work-week to activities which are not directly and clearly related to the performance of their work hereinbefore described.
>
> Under the facts obtaining in this case, we are constrained to agree with petitioner that the union members should be considered as officers or members of the managerial staff and are, therefore, exempt from the coverage of Article 82. Perforce, they are not entitled to overtime, rest day and holiday pay.[20]

The aforequoted rationale equally applies to petitioner herein considering in the main his supervisory duties as private respondent's project engineer, duties which, it is significant to note, petitioner does not dispute.

Petitioner, likewise, claims that the NLRC failed to give due weight and consideration to the fact that private respondent compensated him for his overtime services as indicated in the various disbursement vouchers he submitted as evidence.

Petitioner's contention is unmeritorious. That petitioner was paid overtime benefits does not automatically and necessarily denote that petitioner is entitled to such benefits. Art. 82 of the Labor Code specifically delineates who are entitled to the overtime premiums and service incentive leave pay provided under Art. 87, 93, 94 and 95 of the Labor Code and the exemptions thereto. As previously determined, petitioner falls under the exemptions and therefore has no legal claim to the said benefits. It is well and good that petitioner was compensated for his overtime services. However, this does not

translate into a right on the part of petitioner to demand additional payment when, under the law, petitioner is clearly exempted therefrom.

Going to the second issue, petitioner insists that private respondent promised him a share in the profits after completion of the construction project. It is because of this oral agreement, petitioner elucidates, that he agreed to a monthly salary of P4,500.00, an amount which he claims is too low for a professional civil engineer like him with the rank of project engineer.

Arguing further, petitioner states that payment of his overtime services, as shown by the aforementioned disbursement vouchers, proves the existence of this verbal agreement since payment of his overtime services constitutes part of this so-called understanding.

We cannot accede to petitioner's demand. Nowhere in the disbursement vouchers can we find even the remotest hint of a profit-sharing agreement between petitioner and private respondent. Petitioner's rationalization stretches the imagination way too far.

Thus, we concur with the ruling of the Labor Arbiter:

> As to the issue of profit sharing, we simply cannot grant the same on the mere basis of complainant's allegation that respondent verbally promised him that he is entitled to a share in the profits derive(d) from the projects. Benefits or privileges of this nature (are) usually in writing, besides complainant failed to (establish) that said benefits or privileges (have) been given to any of respondent('s) employees as a matter of practice or policy.[21] (Words in parenthesis supplied.)

Anent the third issue, petitioner alleges that on 30 April 1991, before closing hours, private respondent's project manager, Engineer Nestor Delantar advised him to continue supervising the "finishing touches on many parts of the building which took him and the assisting laborers until 15 May 1991."[22]

As proof of his extended service, petitioner presented the certificate of service issued by Engr. Delantar attesting to petitioner's employment as project engineer from April 1990 to May 1991.[23]

In contrast, private respondent argues that the abovementioned certificate was issued solely to accommodate petitioner who needed the same for his work application abroad. It further stressed that petitioner failed to prove he actually worked during the aforestated period.

On this score, we rule for the petitioner. The purpose for which the said certificate was issued becomes irrelevant. The fact remains that private respondent knowingly and voluntarily issued the certificate. Mere denials and self-serving statements to the effect that petitioner allegedly promised not to use the certificate against private respondent are not sufficient to overturn the same. Hence, private respondent is estopped from assailing the contents of its own certificate of service.

During the construction of the Monte de Piedad building, a criminal complaint for unjust vexation was filed by one Salvador Flores against the officers of the Monte de Piedad & Savings Bank, the owner thereof, for constructing a bunkhouse in front of his (Flores) apartment and making it difficult for him to enter the same.

Petitioner avers that he was implicated in the complaint for the sole reason that he was the construction engineer of the project. Hence, private respondent, being the employer, is obligated to pay petitioner's legal expenses, particularly, reimbursement of the fees petitioner paid his counsel amounting to P3,000.00. Petitioner argues that private respondent's act of giving allowances to enable petitioner to attend the hearings, as shown in the disbursement voucher submitted as evidence,[24] constitutes an admission of the aforestated obligation.

We agree with petitioner. Although not directly implicated in the criminal complaint, private respondent is nonetheless obligated to defray petitioner's legal expenses. Petitioner was included in the complaint not in his personal capacity but in his capacity as project engineer of private respondent and the case arose in connection with

his work as such. At the construction site, petitioner is the representative of private respondent being its employee and he acts for and in behalf of private respondent. Hence, the inclusion of petitioner in the complaint for unjust vexation, which was work-related, is equivalent to inclusion of private respondent itself.

On the last issue, we rule that petitioner is a project employee and, therefore, not entitled to separation pay.

The applicable provision is Article 280 of the Labor Code which defines the term "project employee," thus:

> 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. (Emphasis ours.)[25]

In the case at bench, it was duly established that private respondent hired petitioner as project or construction engineer specifically for its Monte de Piedad building project. In his own words, petitioner declared:

x x x

> 2. That complainant-petitioner herein, by virtue of an oral agreement entered into with private respondent herein through its proprietor, president and general manager, Engr. Honorio L. Carlos, on April 17 1990, began to work as a duly licensed Civil Engineer as construction or project engineer of its contracted project, the Monte de Piedad Bank Building, at Cubao, Quezon City, on the following terms and conditions, to wit:

x x x. (Emphasis ours.)[26]

Accordingly, as project employee, petitioner's services are deemed coterminous with the project, that is, petitioner's services may be terminated as soon as the project for which he was hired is completed.[27]

There can be no dispute that petitioner's dismissal was due to the completion of the construction of the Monte de Piedad building. Petitioner himself stated that it took him and his assisting laborers until 15 May 1991 to complete the "finishing touches" on the said building.[28]

Petitioner, thus, has no legal right to demand separation pay.[29] Policy Instruction No. 20 entitled "Stabilizing Employer-Employee Relations in the Construction Industry" explicitly mandates that:

x x x

> Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes.

x x x

Department Order No. 19 of the Department of Labor and Employment (DOLE) entitled "Guidelines Governing the Employment of Workers in the Construction Industry" promulgated on 1 April 1993, reiterates the same rule.[30]

WHEREFORE, premises considered, the assailed Decision is hereby **MODIFIED** as follows:

1) Private respondent is ordered to pay petitioner for services rendered from 1 May to 15 May 1991; and

2) Private respondent is ordered to reimburse petitioner's legal expenses in the amount of P3,000.00.

In all other respects, the impugned Decision is hereby **AFFIRMED**.

SO ORDERED.

Padilla, Bellosillo, Vitug and Hermosisima, Jr., *JJ.*, concur.

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[*] Erroneously captioned as Appeal by Petition for Review on Certiorari in the petition.
[1] Rollo, p. 49.
[2] Id., at 27.
[3] Id., at 72.
[4] Id., at 69-71.
[5] Ibid.
[6] Id., at 108.
[7] Id., at 110.
[8] Id., at 16-17.
[9] Id., at 25.
[10] Cando vs. NLRC, 189 SCRA (1990); Leopard Security and Investigation Agency vs. NLRC, 186 SCRA 756 (1990); Mansalay vs. NLRC, 172 SCRA 465 (1989).
[11] 226 SCRA 146 (1993).
[12] Rollo, p. 108.
[13] Exhibits "B" to B"-24", Rollo, pp. 36-48.
[14] Rollo, p. 27.
[15] Id., at 22, 150.
[16] ART. 82. Coverage. — The provision of this title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.
As used herein, "managerial employees" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff

"Field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

[17] Sec. 2. Exemption. — The provisions of this Rule shall not apply to the following persons if they qualify for exemption under the condition set forth herein:

x x x

(b) Managerial employees, if they meet all of the following conditions, namely:

(1) Their primary duty consists of the management of the establishment in which they are employed or of a department or sub-division thereof;

(2) They customarily and regularly direct the work of two or more employees therein;

(3) They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendation as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight.

[18] 220 SCRA 452 (1993).

[19] Id., at 454.

[20] Id., at 460-462.

[21] Rollo, p. 70.

[22] See note 18, Supra., p. 20

[23] Rollo, p. 56.

June 15, 1991

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that Engr. LEONCIO V. SALAZAR of Punta, Sta. Ana Manila has been employed by this company as Project Engineer at our Monte de Piedad & Savings Bank project in Cubao, Quezon city from April, 1990 to May, 1991.

This certification is issued to Engr. Salazar in connection with his desire to seek overseas employment.

(SGD)

NESTOR A. DELANTAR

Project Manager

[24] Exhibit D, Rollo, p. 50.

[25] See also Mamansag vs. NLRC, 218 SCRA 722 (1993); Mercado, Sr. vs. NLRC, 201 SCRA 332 (1991); Philippine National Contraction Corporation vs. NLRC, 174 SCRA 191 (1989).

[26] Rollo, pp. 9-10.

[27] ALU-TUCP vs. NLRC, 234 SCRA 678 (1994); Cartagenas vs. Romago Electric Company, Inc., 177 SCRA 637 (1989); Sandoval Shipyards, Inc. vs. NLRC, 136 SCRA 674 (1985).

[28] Rollo, p. 10.

[29] Sandoval Shipyards, Inc. vs. NLRC, supra., see note 26.

[30] 3.2. Project employees not entitled to separation pay. — The project employees contemplated by paragraph 2.1 hereof are not by law entitled to separation pay if their services are terminated as a result of the completion of the project or any phase thereof in which they are employed. Likewise, project employees whose services are terminated because they have no more work to do their services are no longer needed in the particular phase of the project are not by law entitled to separation pay.