SUPREME COURT
FIRST DIVISION

SAN MIGUEL CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 125606
October 7, 1998

NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION, and FRANCISCO DE GUZMAN, JR.,
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

Before us is the Petition for Certiorari under Rule 65 of the Revised Rules of Court seeking to set aside the April 18, 1996 Decision[1] and the May 30, 1996 Resolution[2] of public respondent National Labor Relations Commission[3] in NLRC CA No. 009490-95. Said decision reversed the June 30, 1995 Judgment[4] of the Labor Arbiter[5] in NLRC-NCR Case No. 00-08-05954-94, and ordered the reinstatement of private respondent as follows:

> "WHEREFORE, premises considered, the assailed decision is hereby VACATED and SET ASIDE. A new one is hereby entered ordering herein respondent San Miguel Corporation to reinstate

> complainant to his former position with full backwages from the time he was dismissed from work until he is actually reinstated without loss of seniority rights and other benefits, less earnings elsewhere, if any."[6]

The facts on record show that in November 1990, private respondent was hired by petitioner as helper/bricklayer for a specific project, the repair and upgrading of furnace C at its Manila Glass Plant. His contract of employment provided that said temporary employment was for a specific period of approximately four (4) months.

On April 30, 1991, private respondent was able to complete the repair and upgrading of furnace C. Thus, his services were terminated on that same day as there was no more work to be done. His employment contract also ended that day.

On May 10, 1991, private respondent was again hired for a specific job or undertaking, which involved the draining/cooling down of furnace F and the emergency repair of furnace E. This project was for a specific period of approximately three (3) months.

After the completion of this task, namely the draining/cooling down of furnace F and the emergency repair of furnace E, at the end of July 1991, private respondent's services were terminated.

On August 1, 1991, complainant saw his name in a Memorandum posted at the Company's Bulletin Board as among those who were considered dismissed.

On August 12, 1994, or after the lapse of more than three (3) years from the completion of the last undertaking for which private respondent was hired, private respondent filed a complaint for illegal dismissal against petitioner, docketed as NLRC NCR Case No. 08-05954-94.[7]

Both parties submitted their respective position papers, reply and rejoinder to Labor Arbiter Felipe Garduque II. On June 30, 1995, he rendered the decision dismissing said complaint for lack of merit. In his ruling Labor Arbiter Garduque sustained petitioner's argument that private respondent was a project employee. The position of a

helper does not fall within the classification of regular employees. Hence, complainant never attained regular employment status. Moreover, his silence for more than three (3) years without any reasonable explanation tended to weaken his claim.[8]

Not satisfied with the decision, private respondent interposed his appeal with public respondent NLRC on August 8, 1995. Petitioner filed its opposition thereto on August 29, 1995.

On April 18, 1996, public respondent NLRC, promulgated its assailed decision, reversing Labor Arbiter Garduque's decision. In its ruling, public respondent made the following findings:

> "Respondent's scheme of subsequently re-hiring complainant after only ten (10) days from the last day of the expiration of his contract of employment for a specific period, and giving him again another contract of employment for another specific period cannot be countenanced. This is one way of doing violence to the employee's constitutional right to security of tenure under which even employees under the probationary status are amply protected.
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> Under the circumstances obtaining in the instant case we find that herein complainant was indeed illegally dismissed. Respondent failed to adduce substantial evidence to prove that Francisco de Guzman, Jr. was dismissed for a just or authorized cause and after due process. The only reason they advanced is that his contract of employment which is for a specific period had already expired. We, however, find this scheme, as discussed earlier, not in accordance with law."[9]

Petitioner then moved for the reconsideration of said decision. This was, however, denied by public respondent on May 30, 1996 as it found no cogent reason, or patent or palpable error, that would warrant the disturbance of the decision sought to be reconsidered.

Hence, this petition, based on the following grounds:

1. RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE THAT PRIVATE

RESPONDENT IS A PROJECT OR A FIXED PERIOD EMPLOYEE.

2. RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONER VIOLATED PRIVATE RESPONDENT'S RIGHT TO SECURITY OF TENURE AND THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED.

3. RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN RULING THAT LACHES OR SILENCE OR INACTION FOR AN UNREASONABLE LENGTH OF TIME DID NOT BAR PRIVATE RESPONDENT'S CLAIM.

Given these grounds, this petition may be resolved once the following issues are clarified: (a) What is the nature of the employment of private respondent, that of a project employee or a regular employee? and (b) Was he terminated legally or dismissed illegally?

As a general rule, the factual findings and conclusions drawn by the National Labor Relations Commission are accorded not only great weight and respect, but even clothed with finality and deemed binding on the Court, as long as they are supported by substantial evidence. However, when such findings and those of the Labor Arbiter are in conflict, it behooves this Court to scrutinize the records of the case, particularly the evidence presented, to arrive at a correct decision.[10]

Art. 280 of the Labor Code defines regular, project and casual employment as follows:

> "ART. 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.
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> An employment shall be deemed to be casual if it 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 above mentioned provision reinforces the Constitutional mandate to protect the interest of labor and as it sets the legal framework for ascertaining one's nature of employment, and distinguishing different kinds of employees. Its language manifests the intent to safeguard the tenurial interest of worker who may be denied the enjoyment of the rights and benefits due to an employee, regardless of the nature of his employment, by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual or contractual status for as long as it is convenient to the employer.

Thus, under Article 280 of the Labor Code, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business or trade of the employer even if the parties enter into an agreement stating otherwise. But considered not regular under said Article are (1) the so-called "project employment" the termination of which is more or less determinable at the time of employment, such as those connected with a particular construction project; and (2) seasonal employment, which by its nature is only for one season of the year and the employment is limited for the duration of that season, such as the Christmas holiday season. Nevertheless, an exception to this exception is made: any employee who has rendered at least one (1) year of service, whether continuous or intermittent, with respect to the activity he performed and while such activity actually exists, must be deemed regular.

Following Article 280, whether one is employed as a project employee or not would depend on whether he was hired to carry out a "specific project or undertaking", the duration and scope of which were specified at the time his service were engaged for that particular

project.[11] Another factor that may be considered is the reasonable connection between the particular activity undertaken by the employee in relation to the usual trade or business of the employer; if without specifying the duration and scope, the work to be undertaken is usually necessary or desirable in the usual business or trade of the employer, then it is regular employment and not just "project" much less "casual" employment.

Thus, the nature of one's employment does not depend on the will or word of the employer. Nor on the procedure of hiring and the manner of designating the employee, but on the nature of the activities to be performed by the employee, considering the employer's nature of business[12] and the duration and scope of the work to be done.

In ALU-TUCP vs. NLRC,[13] this Court discussed two types of projects:

> "In the realm of business and industry, we note that project could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times.
>
> The term project could also refer to, secondly, a particular job or undertaking that is not within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times." (Emphasis supplied)

Public respondent NLRC's findings that herein private respondent is a regular employee is erroneous as the latter's employment clearly falls within the definition of "project employees" under paragraph 1 of Article 280 of the Labor Code and such is a typical example of the second kind of project employment in the ALU-TUCP case discussed above.

Note that the plant where private respondent was employed for only seven months is engaged in the manufacture of glass, an integral component of the packaging and manufacturing business of petitioner. The process of manufacturing glass requires a furnace, which has a limited operating life. Petitioner resorted to hiring project or fixed term employees in having said furnaces repaired since said activity is not regularly performed. Said furnaces are to be repaired or overhauled only in case of need and after being used continuously for a varying period of five (5) to ten (10) years.

In 1990, one of the furnaces of petitioner required repair and upgrading. This was an undertaking distinct and separate from petitioner's business of manufacturing glass. For this purpose, petitioner must hire workers to undertake the said repair and upgrading. Private respondent was, thus, hired by petitioner on November 28, 1990 on a "temporary status for a specific job" for a determined period of approximately four months.

Upon completion of the undertaking, or on April 30, 1991, private respondent's services were terminated. A few days, thereafter, two of petitioner's furnaces required "draining/cooling down" and "emergency repair". Private respondent was again hired on May 10, 1991 to help in the new undertaking, which would take approximately three (3) months to accomplish. Upon completion of the second undertaking, private respondent's services were likewise terminated.[14] He was not hired a third time, and his two engagements taken together did not total one full year in order to qualify him as an exception to the exception falling under the cited proviso in the second paragraph of Art. 280 of the Labor Code.

Clearly, private respondent was hired for a specific project that was not within the regular business of the corporation. For petitioner is not engaged in the business of repairing furnaces. Although the activity was necessary to enable petitioner to continue manufacturing glass, the necessity therefor arose only when a particular furnace reached the end of its life or operating cycle. Or, as in the second undertaking, when a particular furnace required an emergency repair. In other words, the undertakings where private respondent was hired primarily as helper/bricklayer have specified goals and purposes which are fulfilled once the designated work was completed.

Moreover, such undertakings were also identifiably separate and distinct from the usual, ordinary or regular business operations of petitioner, which is glass manufacturing. These undertakings, the duration and scope of which had been determined and made known to private respondent at the time of his employment, clearly indicated the nature of his employment as a project employee. Thus, his services were terminated legally after the completion of the project.[15]

Public respondent NLRC's decision, if upheld, would amount to negating the distinctions made in Article 280 of the Labor Code. It would shunt aside the rule that since a project employee's work depends on the availability of a project, necessarily, the duration of his employment is coterminous with the project to which he is assigned.[16] It would become a burden for an employer to retain an employee and pay him his corresponding wages if there was no project for him to work on. Well to remember is the language of the Court in the case of Mamansag vs. NLRC:[17]

> "While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every dispute will be automatically decided in favor of labor. Management has also rights, which, as such, are entitled to respect and enforcement in the interest of fair play. Although the Supreme Court has inclined more often than not toward the worker and has upheld his cause in his conflicts with the employer, such favoritism has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine."

Considering that private respondent was a project employee whose employment, the nature of which he was fully informed, related to a specific project, work or undertaking, we find that the Labor Arbiter correctly ruled that said employment legally ended upon completion of said project. Hence the termination of his employment was not tantamount to an illegal dismissal; and it was a grave abuse of discretion on public respondent's part to order his reinstatement by petitioner.

WHEREFORE, the instant petition is hereby **GRANTED**. The decision of respondent NLRC is hereby **REVERSED**, and the judgment of the Labor Arbiter **REINSTATED**.

NO COSTS.

SO ORDERED.

Davide, Jr., Bellosillo, Vitug and Panganiban, *JJ.*, concur.

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[1] Rollo, pp. 28-35.
[2] Ibid., pp. 36-37, denying the motion for reconsideration of petitioner.
[3] Third Division, composed of Comm. Ireneo B. Bernardo, ponente; Comm. Joaquin A. Tanodra, concurring, and Pres. Comm. Lourdes C. Javier, concurring and dissenting.
[4] Rollo, pp. 38-41.
[5] Labor Arbiter Felipe T. Garduque II.
[6] Rollo, p. 34.
[7] Rollo, p. 42.
[8] Rollo, pp. 38-41.
[9] Rollo, pp. 33-34.
[10] Jimenez vs. NLRC, 256 SCRA 84 (1996); Madlos vs. NLRC, 254 SCRA 248 (1996); Tanala vs. NLRC 252 SCRA 314 (1996).
[11] Ibid.
[12] L.T Datu and Co. Inc. vs. NLRC, 253 SCRA 440 (1996); Raycor Aircontrol Systems, Inc. vs. NLRC, 261 SCRA 589 (1996).
[13] 234 SCRA 678 (1994) at 685.
[14] Rollo, pp. 307-308.
[15] Cosmos Bottling Co. vs. NLRC, 255 SCRA 358 (1996); De Ocampo vs. NLRC, 186 SCRA 360 (1990).
[16] Archbuild Masters and Construction, Inc. vs. NLRC, 251 SCRA 483 (1995); Cartagenas vs. Romago Electric Company, 177 SCRA 637 (1989), citing Sandoval Shipyards Inc. vs. NLRC, 136 SCRA 674.
[17] 218 SCRA 722 (1993).
