SUPREME COURT
THIRD DIVISION

JOAQUIN T. SERVIDAD,
***Petitioner*,**

-versus-

G.R. No. 128682
March 18, 1999

NATIONAL LABOR RELATIONS COMMISSION, INNODATA PHILIPPINES, INC./INNODATA CORPORATION, TODD SOLOMON,
***Respondents*.**
x----------x

D E C I S I O N

PURISIMA, *J.*:

Commodum ex injuria sua nemo habere debet. No one should obtain an advantage from his own wrong. Schemes which preclude acquisition of tenurial security should be condemned as contrary to public policy. No member of the work force of this country should be allowed to be taken advantage of by the employer.[1]

In this special civil action for Certiorari petitioner seeks to annul the Decision[2] of the National Labor Relations Commission (NLRC) reversing the Labor Arbiter's disposition[3] that he was illegally dismissed.

The facts of the case are as follows:

Petitioner Joaquin T. Servidad was employed on May 9, 1994 by respondent INNODATA as a "Data Control Clerk", under a contract of employment Section 2 of which, reads:

> "SECTION 2. This Contract shall be effective for a period of 1 year commencing on May 10, 1994, until May 10, 1995 unless sooner terminated pursuant to the provisions hereof.

From May 10, 1994 to November 10, 1994, or for a period of six (6) months, the EMPLOYEE shall be contractual during which the EMPLOYER can terminate the EMPLOYEE's services by serving written notice to that effect. Such termination shall be immediate, or at whatever date within the six-month period, as the EMPLOYER may determine. Should the EMPLOYEE continue his employment beyond November 10, 1994, he shall become a regular employee upon demonstration of sufficient skill in the terms of his ability to meet the standards set by the EMPLOYER. If the EMPLOYEE fails to demonstrate the ability to master his task during the first six months he can be placed on probation for another six (6) months after which he will be evaluated for promotion as a regular employee."[4]

On November 9, 1995, or after working for six (6) months, he was made to sign a three-month probationary employment and later, an extended three-month probationary employment good until May 9, 1995.[5]

On July 7, 1994, the petitioner was given an overall rating of 100% and 98% in the work evaluations conducted by the company. In another evaluation, petitioner received a rating of 98.5% given by the private respondent.[6]

On May 9, 1995, petitioner was dismissed from the service on the ground of alleged termination of contract of employment.

Such happening prompted petitioner to institute a case for illegal dismissal against the private respondent. In ruling for petitioner, the Labor Arbiter disposed as follows:

> "WHEREFORE, premises considered judgment is hereby rendered finding Respondent guilty of illegal dismissal and concomitantly, Respondent is ordered to pay complainant full backwages from the time of his dismissal till actual or payroll reinstatement, in the amount of P53,826.50 *(computed till promulgation only).*
>
> Respondent is hereby further ordered to reinstate complainant to his former position or equivalent position without loss of seniority rights, privileges and benefits as a regular employee immediately upon receipt of this decision.
>
> SO ORDERED."[7]

On appeal thereto by INNODATA, the NLRC reversed the aforesaid judgment of the Labor Arbiter. It declared that the contract between petitioner and private respondent was for a fixed term and therefore, the dismissal of petitioner Joaquin T. Servidad, at the end of his one year term agreed upon, was valid. The decretal portion of the decision of NLRC is to the following effect:

> "All said the judgment dated August 20, 1996 is hereby, REVERSED.
>
> WHEREFORE, premises considered, the instant case is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[8]

Undaunted, petitioner found his way to this Court via the present petition faulting NLRC for acting with grave abuse of discretion in adjudging subject contract of employment of petitioner to be for a definite or fixed period.

The petition is impressed with merit.

At bar is just another scheme to defeat the constitutionally guaranteed right of employees to security of tenure. The issue posited

centers on the validity and enforceability of the contract of employment entered into by the parties.

The NLRC found that the contract in question is for a fixed term. It is worthy to note, however, that the said contract provides for two periods. The first period was for six months terminable at the option of private respondent, while the second period was also for six months but probationary in character. In both cases, the private respondent did not specify the criteria for the termination or retention of the services of petitioner. Such a wide leeway for the determination of the tenure of an employee during a one year period of employment is violative of the right of the employee against unwarranted dismissal.

Decisively in point is Article 1377 of the Civil Code, which provides:

> "ARTICLE 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity."

Certainly, favorable interpretation of the contract in the case under scrutiny should be for petitioner and not for the private respondent which caused the preparation of said contract.

If the contract was really for a fixed term, the private respondent should not have been given the discretion to dismiss the petitioner during the one year period of employment for reasons other than the just and authorized causes under the Labor Code. Settled is the rule that an employer can terminate the services of an employee only for valid and just causes which must be shown by clear and convincing evidence.[9]

According to the private respondent, the one-year period stipulated in subject contract was to enable petitioner to acquire the skill necessary for the job. In effect, what respondent employer theorized upon is that the one-year term of employment is probationary. If the nature of the job did actually necessitate at least one year for the employee to acquire the requisite training and experience, still, the same could not be a valid probationary employment as it falls short of the requirement of Article 281[10] of the Labor Code. It was not brought to

light that the petitioner was duly informed at the start of his employment, of the reasonable standards under which he could qualify as a regular employee. The rudiments of due process demand that an employee should be apprised before hand of the conditions of his employment and the basis for his advancement.[11]

The language of the contract in dispute is truly a double-bladed scheme to block the acquisition of the employee of tenurial security. Thereunder, private respondent has two options. It can terminate the employee by reason of expiration of contract, or it may use "failure to meet work standards" as the ground for the employee's dismissal. In either case, the tenor of the contract jeopardizes the right of the worker to security of tenure guaranteed by the Constitution.[12]

In the case of Brent School, Inc. vs. Zamora, Et Al.,[13] the Court upheld the principle that where from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be disregarded for being contrary to public policy.

Such circumstance has been indubitably shown here to justify the application of the following conclusion:

> "Accordingly, and since the entire purpose behind the development of the 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."[14]

The agreement in the case under consideration has such an objective and consequently, is a complete nullity.[15]

It is abundantly clear that the petitioner was hired as a regular employee, at the outset. He worked as a "Data Control Clerk". His job was directly related to the data processing and data encoding

business of Innodata. His work was therefore necessary and important to the business of his employer. Such being the scenario involved, under Article 280[16] of the Labor Code petitioner is considered a regular employee of private respondent. At any rate, even assuming that his original employment was probationary, petitioner was anyway permitted to work beyond the first six-month period and under Article 281[17] an employee allowed to work beyond the probationary period is deemed a regular employee.

Reliance by NLRC on the ruling in Mariwasa Manufacturing, Inc., Et Al. vs. Hon. vs. Leogardo Jr., Et Al.[18] is misplaced. Pertinent portion of the disquisition therein was as follows:

> "By voluntary agreeing to an extension of the probationary period, Dequila in effect waived any benefit attaching to the completion of said period if he still failed to make the grade during the period of extension. The Court finds nothing in the law which by any fair interpretation prohibits such waiver. And no public policy protecting the employee and the security of tenure is served by proscribing voluntary agreements which, by reasonably extending the period of probation, actually improve and further a probationary employee's prospects of demonstrating his fitness for regular employment."[19]

The above-described situation, however, is not the same as what obtained in this case. In the Mariwasa case, the employment was expressly agreed upon as probationary. Here, no such specific designation is stipulated in the contract. The private respondent sought to alternatively avail of probationary employment and employment for a fixed term so as to preclude the regularization of the status of petitioner. The utter disregard of public policy by the contract in question negates the ruling of NLRC that said contract is the law between the parties. The private agreement of the parties cannot prevail over Article 1700 of the Civil Code, which provides:

> "ARTICLE 1700. The relation between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to special laws on labor unions,

> collective bargaining, strikes and lockouts, closed shops, wages, working conditions, hours of labor and similar subjects."

Similarly telling is the case of Pakistan Airlines Corporation vs. Pole, Et Al.[20] There, it was said:

> "Provisions of applicable law, especially provisions relating to matters affected with public policy, are deemed written into the contract. Put a little differently, the governing principle is that the parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest. The law relating to labor and employment is clearly such an area and parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other."[21]

> On the averment that NLRC gravely abused its discretion in finding that petitioner failed to meet the standards of the company, we find for petitioner. The decision of NLRC on the matter simply stated that the petitioner fell short of the expectations of the company without specifying factual basis therefor.[22] The public respondent overlooked the undisputed satisfactory ratings of the performance of petitioner in the two job evaluations conducted by the respondent company. Even granting, therefore, that the contract litigated upon is valid; still, the petitioner, who was permitted to work beyond six months could not be dismissed on the ground of failure to meet the standards of Innodata. By the provisions of the very contract itself, petitioner has become a regular employee of private respondent. Therein, it is stipulated that: "Should the EMPLOYEE continue employment beyond November 10, 1994, he shall become a regular employee upon demonstration of sufficient skill in the terms of his ability to meet the standards set by the EMPLOYER."[23]

Then too, the case at bar is on all fours with the recent case of Villanueva vs. NLRC, Et Al.[24] where the same standard form of employment contract prepared by INNODATA was at issue. In

deciding that the said contract violated the employee's right to security of tenure, the court ratiocinated:

> "The termination of petitioner's employment contract on 21 February 1995, as well as the subsequent issuance on 13 March 1995 of a "new" contract for five months as "data encoder," was a devious, but crude, attempt to circumvent petitioner's right to security of tenure as a regular employee guaranteed by Article 279 of the Labor Code.[25] Hence, the so called "end of contract on 21 February 1995 amounted to a dismissal without any valid cause."

Indeed, the NLRC gravely abused its discretion in construing the contract sued upon as one with a fixed term. To uphold such a finding would be to concede to the private respondent an advantage arising from its own mistake.

On the matter of moral damages, however, we rule for the private respondent. Mere allegations of besmirched reputation, embarrassment and sleepless nights are insufficient to warrant an award for moral damages. It must be shown that the proximate cause thereof was the unlawful act or omission of the private respondent.[26] However, the petitioner herein predicated his claim for such damages on mere allegations of sleepless nights, embarrassment, etc., without detailing out what was responsible therefor or the cause thereof.

As regards the backwages to be granted to petitioner, the amount thereof should be computed from the time he was illegally dismissed to the time of his actual or payroll reinstatement, without any deduction.[27]

WHEREFORE, the petition is **GRANTED**, the questioned decision of NLRC is **SET ASIDE**, and the decision of the Labor Arbiter, dated August 20, 1996, in NLRC-NCR-00-055-03471-95 **REINSTATED**, with the modification that the award of backwages be computed from the time of the dismissal of petitioner to his actual or payroll reinstatement. Costs against the private respondent.

SO ORDERED.

Romero, Vitug, Panganiban and Gonzaga-Reyes, *JJ.*, concur.

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[1] Lina Octavio vs. NLRC, G.R. No. 88636, 202 SCRA 332, 336 [October 3, 1991].
[2] dated January 20, 1997, Annex "A", Rollo, pp. 29-44.
[3] dated August 20, 1996, Annex "C", Rollo, pp. 46-60.
[4] Annex "I", Rollo, pp. 67-68.
[5] Rollo, pp. 63-64.
[6] Rollo, pp. 61-62.
[7] Decision, Annex "C", Rollo, pp. 59-60.
[8] Decision, Annex "A", Rollo, p. 43.
[9] Philippine Long Distance Telephone Company vs. NLRC, G.R. No. 99030, 276 SCRA 462, p. 468 [July 31, 1997], citing: Pili vs. NLRC, 217 SCRA 338 [1993]; San Miguel Corporation vs. NLRC, 180 SCRA 681 [1989]; Garcia vs. NLRC, 180 SCRA 618 [1989].
[10] Art. 281. Probationary employment. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.
[11] Orient Express Philippines vs. NLRC, G.R. No. 113713, 273 SCRA 256, p. 260 [June 11, 1997].
[12] Section 3, Article XIII, 1987 Constitution.
[13] G.R No. L-48494, 181 SCRA 702 [February 5, 1990].
[14] Supra, p. 716.
[15] Cielo vs. NLRC, 193 SCRA 410, p. 417.
[16] 16. "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"
[17] Supra.
[18] 169 SCRA 465.
[19] Supra, p. 470.
[20] 190 SCRA 90.
[21] Supra, p. 99 citing: Commission of Internal Revenue vs. United Lines Co., 5 SCRA 175 [1962].
[22] Rollo, p. 33.

[23] Rollo, pp. 67-68.
[24] G.R. No. 127448, September 10, 1998.
[25] Art. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
[26] Guita vs. Court of Appeals, et al., 139 SCRA 576, p. 580.
[27] Bustamante vs. NLRC, 265 SCRA 61, p. 71.