SUPREME COURT
THIRD DIVISION

SHOPPERS GAIN SUPERMART, JERRY TAN, JACK TAN and HEIRS OF JAMES TAN,

***Petitioners*,**

-versus-

G.R. No. 110731
July 26, 1996

NATIONAL LABOR RELATIONS COMMISSION, SHOPPERS GAIN SUPERMART EMPLOYEES UNION-UMP and EDUARDO TARROSA, WARLITO AQUAIADAN, ARREO JOSE, MAGDALENA ARZAGA, JEROGE BANAGA, CORA BOLO-TAOLO, ELMAR DOLUNTAR, FRANCISCO CABULADA, EVELYN CENA, ROQUITO CENA, JUANITO DAYMON, PABLITO ESMAS, ARTEMIO GERE, ROSALINDA GO, ROLITO HANDIG, ALBERTO HOLANDA, AIDA JAVIER, AVELINO JAVIER, JR., JESUS LEGASPI, MARIETA LEGASPI, PEDRO LOPEZ, ELARIO LOS BANES, GEORGE MANAL, EMMA MATIRA, RAFAEL MENODIADO, LUCILA MONARES, MYRNA ORTIZ, TERESITA PANGAHIN, ALFREDO PERLAS, JR., PACITA MANALO, ORLANDO SAN JOSE,

TERESITA SANTOS, TERESITA SENGSENG, AND NARCITO TUAZON,
Respondents.
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

In this Decision, the Court rules, inter alia, on the tests for determining the existence of employer-employee relations, as they relate to the grant of monetary benefits due to closure of a business establishment.

Before this Court is a special civil action for *certiorari* to reverse the Decision[1] of the National Labor Relations Commission promulgated on May 26, 1993 in NLRC NCR CA Case No. 002953-92 which affirmed with modifications the labor arbiter's monetary awards in favor of private respondents.

The Facts

It appears that the 34 private respondents had worked for at least one year each (from 1982 to 1990) in the Shoppers Gain Supermart (SGS) in various capacities as "merchandiser, cashier, bagger, check-out personnel, sales lady, printer/film and warehouseman". Said respondents were part of a pool of workers from three manpower agencies which supplied petitioner with workers under "labor only" contracts. In December 1990, due to the non-renewal of its lease contract over the premises it was using a grocery and supermarket, petitioner corporation was constrained to terminate its contracts with the "labor only" agency contractors and to apply for business retirement. It paid separation benefits to its regular employees but not to private respondents, with whom it believed it had no employer-employee relationship.

Ruling on the complaint for illegal dismissal, the labor arbiter rendered his decision dated December 27, 1991, the dispositive portion[2] of which reads:

> "WHEREFORE, judgment is hereby rendered: (1) finding the respondents Shoppers Gain Supermart (SGS Marketing Corporation) and/or James Tan, Jack Tan and Jerry Tan to be guilty of labor only contracting; (2) ordering the respondents Shoppers Gains Supermart (SGS Marketing Corp.) and/or James Tan, Jack Tan and Jerry Tan, and Respondents (manpower agencies) Lipercon Services, Inc.; Golden Services, Inc.; Versatile Consultative and Radium Multi Resources to pay jointly and severally complainants the following:
>
> a) One (1) month backwages as a consequence of the illegal closure in the amount of P3,068.00 for each of the 34 complainants; (excluding Benilda Pableo) in the total amount of P104,312.00;
>
> b) Separation pay of one (1) month for every year of service (including complainant Pablito Esmas), in lieu of reinstatement as regular workers considering that reinstatement is no longer feasible due to the closure of the business of Shoppers Gain Supermarket in the following amounts of:
>
> 1. Warlito Acquiadan P18,408.00
>
> x x x
>
> c) Underpayment of wages, unpaid salaries,[5] days service incentive leave with pay, proportionate 13th month pay and cash bond in the amount of P400.00 refund of Teresita Pangahin, in the following amounts of: [amounts omitted];
>
> d) Ten (10%) Percent attorney's fees in the amount of P59,501.32 based on the total judgment award of P595,013.22;

(3) Dismissing the complaint for unfair labor practice for lack of evidence."

On appeal, the respondent NLRC affirmed the labor arbiter in the assailed Decision, with the following disposition:[3]

> "WHEREFORE, premises considered, the assailed decision is hereby affirmed with the modification that the amount of 13th month and service incentive leave pay already paid to the employees recruited and hired by respondent Lipercon Services, Inc. should be deducted from the amount due them as stated in the assailed decision."

Hence, this recourse.

The Issues

The Petition[4] as well as the petitioners' Memorandum[5] allege the following grounds:

I.

> "Public respondent gravely abused its discretion when it affirmed that there exist an employer-employee relationship between petitioner Corporation and respondents;

II.

> "Public Respondent gravely abused its discretion when it declared respondents illegally dismissed by petitioner Corporation;

III.

> "Public Respondent gravely abused its discretion in affirming that Pablito Esmas was not paid his separation pay without discussing said issue in the body of the decision;

IV.

> "Public respondent gravely abused its discretion in holding petitioner Corporation liable for backwages, separation pay, underpayment, and attorney's fees;

V.

> "Public respondent gravely abused its discretion in holding individual petitioner(s) James Tan, Jerry Tan, and Jack Tan jointly and severally liable with Petitioner Corporation for the above mentioned monetary obligations."

The First and Pivotal Issue: Existence of Employer-Employee Relationship

In affirming the findings of the labor arbiter that the manpower agencies were "labor only" contractors, the respondent NLRC held:[6]

> "It is likewise our considered view that respondents manpower agencies were "labor only" contractors, who had acted as mere suppliers of manpower for respondent SGS. Prescinding on this finding, it is the unavoidable conclusion that employer-employee relations existed between complainants and respondent SGS. As held by the Supreme Court in the case of Industrial Timber Corporation vs. NLRC, 169 SCRA 341, thus:
>
> > 'Hence, a finding that a contractor is a "labor only" contractor is equivalent to a finding that there exists an employer-employee relationship between the owner of the project and the employees of the "labor only" contractor since that relationship is defined and prescribed by the law itself.'"
>
> Suffice it for us to point out that despite the admission of respondent manpower agencies that herein complainants were their contractual employees assigned only to respondent SGS and that they have direct control and supervision over their work performance including payment of wages, the obvious fact remains that complainants were employees of respondent SGS

as provided by law more particularly under Articles 106 and 107, and Section(s) 8 and 9 of Rule VIII of Book III of the Omnibus Rules Implementing the Labor Code. It must be so for the simple reason that all respondent agencies are "labor only" contractors. As such, they are agents of respondent SGS and the latter assumes responsibility of an employer. Thus, the contention of respondent SGS that complainants were (not) its employees because it did not have control over them is untenable. It is not denied that all complainants had worked within the premises of respondent and not within the premises of each respondent agency. As such, complainants must have been subjected to at least the same control and supervision that respondent exercised over any other person physically within its premises or rendering services for it. It is quite unbelievable that complainants would be allowed to work within the premises without being subjected to a substantial measure of control and supervision, whether in respect of the manner in which they discharged their functions, or in respect of the end results of their functions or activities or both.

Moreover, it appears that complainants' work had (become) regular in nature. Aside from the fact that complainants(') job(s) as cashier, bagger, sales lady, merchandiser, check-out personnel, printer/film and warehouseman is directly related to the day-to-day operation of the respondent supermarket, they have also rendered more than one year of service doing the same job in respondent. Apparently, their assignment had become for an indefinite period or for unstated period of time. As such, they have become regular employees who may not be dismissed except for a just cause. It is not difficult to see that to uphold the contractual agreement between the respondent SGS and the different manpower agencies would in effect be to permit employers to avoid the necessity of hiring regular or permanent employees to enable them to keep their employees indefinitely on a temporary or casual status, thus to deny them security of tenure in their jobs. Article 106 of the Labor Code is precisely designed to prevent such a result. (PBC vs. NLRC, 146 SCRA 347)."

On the other hand, petitioners — citing Singer Sewing Machine Company vs. Drilon, et al.,[7] — argue that performance of "activities which are desirable and necessary for the business of the employer" is not determinative of the existence of employer-employee relationships. In said case, this Court specifically stated:

> "The Court finds the contention of the respondents that the union members are employees under Article 280 of the Labor Code to have no basis. The definition that regular employees are those who perform activities which are desirable and necessary for the business of the employer is not determinative in this case. Any agreement may provide that one party shall render services for and in behalf of another for a consideration (no matter how necessary for the latter's business) even without being hired as an employee. This is precisely true in the case of an independent contractorship as well as in an agency agreement. The Court agrees with the petitioner's argument that Article 280 is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, i.e. regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure. Article 280 does not apply where the existence of an employment relationship is in dispute."

Citing various Decisions[8] of this Court, petitioners essay that "the existence of employer-employee relationship is determined by four (4) elements, namely: (1) selection and engagement of the employees; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control employees' conduct."

Petitioners then argue that since the manpower or labor agencies admitted in their respective position papers that they selected, hired, paid, disciplined, dismissed and controlled the private respondents, perforce, the latter are not the employees of the petitioner corporation but of the agencies only.

We do not agree.

The applicable law is not Article 280 of the Labor Code which is cited by petitioners, but Art. 106, which provides:

> "Art. 106. Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
>
> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him." (Emphasis supplied)

In accordance with the above provision, petitioner corporation is deemed the direct employer of the private respondents and thus liable for all benefits to which such workers are entitled, like wages,

separation benefits and so forth. There is no denying the fact that private respondents' work as merchandisers, cashiers, baggers, check-out personnel, sales ladies, warehousemen and so forth were directly related, necessary and vital to the day-to-day operations of the supermarket; their jobs involved normal and regular functions in the ordinary business of the petitioner corporation. Given the nature of their functions and responsibilities, it is improbable that petitioner did not exercise direct control over their work. Moreover, there is no evidence — as in fact, petitioners do not even allege — that aside from supplying the manpower, the labor agencies have "substantial capital or investment in the form of tools, equipment, machineries, work premises, among others."

Singer Case vis-a-vis the instant case

At this juncture, it would be useful to draw material distinctions between Singer and the instant case. The former case involved collectors of the Baguio City branch of the Singer Sewing Machine Company who formed a union and petitioned to be certified as sole and exclusive bargaining agent; the company opposed on the ground that these so-called union members were not employees but independent contractors, as evidenced by the collection agency agreement they signed.

This Court held that there did not exist any employment relationship between the company and its collectors. The collection agency agreement stipulated in plain language that the designation of the collectors as collection agents of the company shall not create an employment relationship, and that the collectors were at all times to be considered independent contractors. Naturally, the literal meaning of the provisions in the agreement is controlling.

Furthermore, the agreement did not fix the amount for wages, nor the required working hours. The collectors' earnings were determined solely on the basis of the tangible results they produced (i.e., total collections made). They worked at their pleasure and were not required to observe office hours nor to report to the company's premises, except only to remit collections; neither were they required to devote their time exclusively for the company. The manner and method of effecting collections were left entirely to their discretion

without any interference on the part of the company. The collectors even spent for their own transportation and other expenses incurred in collecting. Moreover, the grounds specified in the collection agency agreement for termination of the relationship had no relation to the means and methods of work that are ordinarily required of or imposed upon employees, and hence, do not support the view that the company exercised control over the collectors. Therefore, the Court held that the last and most important element of the control test was not satisfied by the terms and conditions of said agreement, as there was nothing in the agreement which indicated control by the company over not only the end to be achieved, but also the means and methods in achieving the end. The Court was convinced that the company and the collecting agents intended that the former would take control only over the amounts of collection, which are the end results of the job performed.

In contrast, in the case before us, it cannot be claimed that private respondents were being paid purely on the basis of tangible results. Neither is it possible that they were not controlled by petitioner corporation in the performance of their work as merchandiser, cashier, bagger, warehouseman, etc., insofar as the work premises, hours of work, means and methods of performing their assigned tasks, and end results were concerned. Nor could it be said that they worked at their pleasure and did not have to devote full time to their jobs. Obviously, the Singer ruling cannot apply to the instant case.

Second and Fourth Issues: Illegal Dismissal and Monetary Awards

Having established that there existed an employment relationship between petitioner corporation and the private respondents, it is now necessary to determine if private respondents were dismissed in accordance with law.

Generally speaking, to validate a dismissal, the employer must show that (1) there was sufficient or just cause therefor and that (2) due process was observed.

It is indisputable that petitioner corporation's situation comes under Art. 283 of the Labor Code, which reads as follows:

> "Art. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in case of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year." (Emphasis added)

The non-renewal of petitioner corporation's lease contract and its consequent closure and cessation of operations may be considered an event beyond the control of petitioners, in the nature of a force majeure situation. As such it amounts to a just cause for termination of the private respondents. However, as the latter are deemed by law to have been employees of the petitioner corporation, they are entitled to receive separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher, on account of such termination due to closure.

On the other hand, the due process requirement in this situation consists of serving written notice upon each worker to be terminated and upon the Department of Labor and Employment at least one (1) month prior to the date of termination.

As held in Century Textile Mills, Inc. vs. NLRC,[9] "the rights of an employee to be informed beforehand of his proposed dismissal (or suspension) as well as of the reasons therefor, are rights personal to

the employee." In short, an employee is entitled to be personally informed; and this requirement is not a mere technicality or formality which the employer may dispense with.

From the foregoing, it is clear that the dismissal of private respondents failed to fully satisfy this requirement for validity and legality. The mere posting of petitioners' notice to terminate private respondents' employment on the employees' bulletin board is not sufficient compliance with the statutory requirement. As held by the NLRC:

> "Anent the contention of respondent SGS that complainants were sufficiently notified of the closure by reason of the notice posted in the bulletin board 30 days prior to the closure is untenable. The law is very clear than an employer who seeks to terminate the employment of its employee must notify him in writing at least 30 days before the intended dismissal. The requisite of notice is intended to inform the employee concerned of the employer's intent to dismiss him and the reason for the proposed dismissal. Since the notice posted in the bulletin board cannot be considered compliance with the notice required by law, it follows that the dismissal is illegal."

Inasmuch as the dismissal had been tainted with illegality, the monetary award for backwages, separation pay and attorney's fees, as modified by public respondent NLRC, are justified. Besides, the matter of establishing the bases for the awards constitute factual issues, and as a rule, the factual findings of the labor tribunals are not disturbed by the Supreme Court, particularly where both the labor arbiter and the NLRC are in agreement.[10]

Third Issue: Non-payment of Separation Pay of Pablito Esmas

Petitioners argue that the NLRC erred when it affirmed the labor arbiter's holding that Pablito Esmas "was not paid his separation pay" without discussing the matter in its assailed Decision. Suffice it to say that when an appellate tribunal or court affirms a decision, it adopts the affirmed decision as its own and there is thus no need to rewrite every word or item, or re-discuss every piece of evidence or argument

so affirmed. On the other hand, the labor arbiter held Esmas to be entitled to separation pay on the basis of Esmas' evidence, as pointed out by private respondents' counsel, including "a police report when he filed a complaint against petitioners."

Fifth Issue: Joint and Several Liability

With respect to the last issue, it is well-settled that the responsible officers of a corporation can be held liable for non-payment of back wages.[11] More so, where the corporation has been dissolved.[12]

> "After petitioner Corporation closed its supermarket business, it applied with the City Hall of Manila for a business retirement. On January 10, 1991 the office of the City Treasurer of Manila through Asst. City Treasurer Victor B. Endriga approved the business retirement of respondent company.
>
> Consequently, the contract of the agency employers were likewise terminated."[13]

WHEREFORE, there being no clear showing of any grave abuse of discretion on the part of respondent NLRC, the petition must be as it is hereby **DISMISSED**, with costs against petitioners.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Melo and Francisco, *JJ.*, concur.

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[1] Rollo, pp. 45-58.
[2] Rollo, pp. 5-6; 146-147.
[3] NLRC Decision, p. 14; rollo, p. 58.
[4] Rollo, pp. 11-12.
[5] Rollo, pp. 151-152.
[6] Rollo, pp. 53-55.
[7] 193 SCRA 270 (January 24, 1991).
[8] Continental Marble Corporation vs. NLRC, et al., 161 SCRA 151 (May 9, 1988; Sarra vs. Agarrado et al., 166 SCRA 625 (October 26, 1988); Deferia vs. NLRC, et al., 194 SCRA 525 (February 27, 1991); Sevilla vs. Court of Appeals, et al., 160 SCRA 171 (April 15, 1988); Cartegenas vs. Romago Electric Company et al., 177 SCRA 637 (September 15, 1989); Insular Life

Assurance Company vs. NLRC, et al., 179 SCRA 459 (November 15, 1989); De Ocampo, Jr., vs. NLRC, 186 SCRA 360 (June 6, 1990); Aboitiz Shipping Employees Association vs. NLRC, et al., 186 SCRA 825 (June 27, 1990); Mafinco Trading Corporation vs. Ople, et al., 70 SCRA 139 (March 25, 1976).

[9] 161 SCRA 528, (May 25, 1988); italics in the original text.

[10] Vide Maya Farms Employees Organization vs. NLRC, 239 SCRA 508 (December 28, 1994); Associated Labor Unions-TUCP vs. NLRC, 235 SCRA 395 (August 16, 1994).

[11] A.C. Ransom Labor Union-CLU vs. NLRC, 142 SCRA 269 (June 10, 1986).

[12] Gudez vs. NLRC, 183 SCRA 644 (March 23, 1990).

[13] Petition, p. 8; rollo, p. 9.