FIRST DIVISION

[G.R. No. 97896. June 2, 1997]

TEKNIKA SKILLS AND TRADE SERVICES, INC., *petitioner, vs.* HON. SECRETARY OF LABOR AND EMPLOYMENT, acting through Hon. Undersecretary MA. NIEVES ROLDAN-CONFESOR; HON. ADMINISTRATOR OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); and ROSANNA L. DE LEON, *respondents.*

D E C I S I O N

HERMOSISIMA, JR., *J.*:

The herein petition for *certiorari* seeks the nullification of the Order[1] of the Secretary of Labor and Employment denying petitioners appeal from the decision[2] of the Philippine Overseas Employment Administration (POEA)[3] which found petitioner guilty of misrepresentation. As penalty therefor , petitioners license was suspended for two (2) months or, in lieu thereof, there was imposed on petitioner a fine of ₱ 20,000.00. The Motion for Reconsideration was denied.

The following relevant facts are not disputed:

Private respondent Rosanna de Leon applied for a job with petitioner Teknika Skills and Trade Services, Inc., a duly licensed recruitment agency. She sought foreign employment as a nursing aide. At that time, however, petitioner claims not to have any job order for nursing aides. What vacant positions petitioner had which needed immediate deployment were those for janitresses.

On February 10, 1988, private respondent was deployed to Jeddah, Saudi Arabia, as a janitress with salary rate of U.S. $ 300.00 a month. It was only in this very date of her departure for Jeddah that the private respondent was given her Travel Exit Pass. Said Travel Exit Pass indicated her job position to be that of a janitress.

Upon reaching Saudi Arabia, private respondent was brought to Jeddah where she immediately assumed work as a baby sitter at a social nursery or a kind of orphanage. After working for one (1) month, private respondent was paid only Five Hundred Eighty One (SR 581.00) Rials. After barely two (2) months of service, private respondent was terminated by petitioners foreign principal.

On April 6, 1988, private respondent arrived in Manila. Immediately thereafter, she filed a complaint against petitioner which gave rise to two (2) separate cases: (a) The money claims which included her demand for salary corresponding to the unexpired portion of her employment contract; and (b) the administrative case charging petitioner with illegal exaction of excessive placement fees and acts of misrepresentation in violation of Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations.

With respect to private respondents money claims, the POEA found petitioner solidarily liable with private respondents foreign employer, for an amount corresponding to the unexpired

portion of her contract. This court, in G.R. No. 100399, sustained said award in a Decision[4] promulgated on August 4, 1992.

The other aspect of private respondents complaint concerned the administrative charge against petitioner for illegal exaction and acts of misrepresentation.

On the question of wether or not petitioner was guilty of illegal exaction, the POEA was not persuaded by the evidence presented before it; hence, it dismissed that charge for lack of merit. The POEA explained:

Anent the charge of illegal exaction, a careful perusal of the records of the case reveal[s] that no competent and corroborating evidence was submitted by complainant to contovert respondents denial of alleged receipt of the amount of ₱ 15,000.00. This Office has consistently ruled that the charge of illegal exaction is a serious charge which may cause the suspension or cancellation of the authority or license of the offending agency. As such, the charge should be proven and substantiated by clear and convincing evidence.

In the case at bar, although the complainant was able to present the receipt covering the partial payment of ₱ 3,000.00, she was not able to present additional receipts which would show that the amount collected by the respondent exceed that which the law authorizes. Moreover, she failed to specify the exact dates when the alleged payments were made. Complainants bare allegation that only the cash payment of ₱ 3,000.00 out of the total amount collected was receipt deserves scant consideration. In the absence of any receipt showing that respondent charge more than that allowed by law, complainant could have supported her allegations by other evidence like statement of witnesses, if any or a more detailed narration of facts. Complainant however failed to do so. On the other hand, respondent adduced as evidence the same receipt presented by the complainant covering the amount of ₱ 3,000.00, which is not in excess of the allowable placement fee. This leads us to conclude that respondent is not liable for illegal exaction.[5]

The POEA, however, found petitioner guilty of submitting false and deceptive information regarding the deployment of private respondent as a janitress when she had in fact actually been hired as a nursing aide by petitioners foreign principal. As such, the POEA adjudged petitioner liable for misrepresentation and penalized it with a two-month suspension license or in lieu thereof, a fine of ₱20,000.00. More particularly, the POEA ruled:

As regards the charge of acts of misrepresentation, on the basis of the evidence presented and admissions made by the respondent, We find respondent liable for acts of misrepresentation for having caused the processing of complainants travel exit pass [TEP] in a job position and salary rate different from that for which she has applied for. It was the respondent who admitted that complainant has indeed applied for the position of nursing aide with a salary rate of $325.00 but in the TEP processed by POEA, her position was that of a janitress x x x. We do not find merit in the respondents contention that there was a previous agreement between them and the complainant regarding the processing of complainants TEP. Granting that there was such an agreement, this will not erase the fact that the respondent had committed acts of misrepresentation. What the respondent violated are POEA rules and regulations. The travel exit pass is a duly approved and processed official form issued by the POEA. In lieu of employment contract, the TEP may be used in determining vital information of the terms of employment. x x x [T]hat the act of respondent as in this case will run counter to those contained in a valid TEP would be an act of misrepresentation, a violation of the rules and regulations of the POEA (Rule VI, Section 2 (c), Book II). Having violated the POEA rules and regulations on recruitment and placement, respondent should be penalized accordingly. Under the Schedule of Penalties, misrepresentation is sanctioned by two months suspension of license [or] in lieu thereof a fine of ₱20,000.00.[6]

On April 11, 1990, petitioner filed a Motion for Reconsideration of the aforecited Order of the POEA. It reasoned:

With due respect, there was no act of misrepresentation, much less, violation of the x x x POEA rules and regulations. Complainant, while applying for the position of nursing aide, agreed to be deployed as a janitress. Accordingly, her travel exit pass was duly processed and approved by the POEA for employment as janitress. She left the country as janitress according to her TEP. There was therefore no misrepresentation that should be deployed as a janitress as, in fact, she left for Saudi Arabia as a janitress. Now, the fact that she was employed as a nursing aide in Saudi Arabia, which is a higher category position, is in effect a promotion to which she should not be denied. There is no POEA rule or regulation that curtails the right of an employee to a promotion.[7]

On September 21, 1990, the POEA issued a Resolution denying petitioners Motion for Reconsideration. The POEA disposed of petitioners arguments in the following manner:

Respondent would want to convince this Office that it has not committed any act of misrepresentation that would warrant the imposition of the administrative penalty of suspension of license. It justified this argument by citing Section 2 (c), Rule VI of Book II of the POEA Rules and Regulations and maintains that their act of deploying complainant as janitress is not the misrepresentation envisioned by the aforecited section of the POEA Rules. Furthermore, respondent continued to argue that complainant knew before hand that she would be deployed as a janitress but upon arrival at the jobsite would work actually as a nursing aide. This fact of actually working as a nursing aide which is higher in category is in effect a promotion which should not be denied the complainant. Moreover, there is no rule or regulation which could curtain the right of an employee to a promotion.

We find no merit in respondents motion.

The quoted provision is clear and unmistakable. For clarity, it is hereto reproduced *en toto*:

Section 2. Grounds for Suspension, Cancellation or Revocation.

A license or authority shall be cancelled, suspended or revoked on any of the following grounds, among others:

x x x

c. Engaging in acts of misrepresentation, such as publication or advertisement of false deceptive notices or information in relation to the recruitment and placement of workers;

x x x.'

The information submitted by respondent for approval of this Office were false [and] deceptive and misrepresented that the complainant will work at the employ of Arabian Gulf Co. for Maintenance and Contracting as a janitress whereas the truth of the matter is that the latter was actually hired as nursing aide and had in fact applied as such. This is certainly an act of misrepresentation aptly covered by the cited section. The misrepresentation was committed against the POEA when respondent Teknika declared before us that the worker will be deployed as a janitress whereas the truth is that the worker was hired as a nursing aide. There was also no truth in respondents argument that complainant upon reaching the jobsite was promoted to that of a nursing aide. The pleadings on record [are] replete with facts to the effect that complainant applied and was hired as a nursing aide. [H]owever, due to lack of available job order for nursing aide, she was deployed as a janitress. This is the misrepresentation respondent has clearly committed.[8]

Aggrieved by the POEA ruling above, petitioner appealed[9] therefrom to the Secretary of Labor and Employment. Said appeal was grounded on the following postulations:

1. x x x

POEA Administrator ratiocinates that because the complainant applied and was hired as nursing aide, the processing of her travel exit pass in a position of janitress is an act of misrepresentation.

It is true that complainant did apply for the position of nursing aide. But, with respect to the finding that she was hired as nursing aide is another thing for such is mere conjecture and surmise. She was definitely hired as nursing aide for the reason that there was no job order available for said position. Thus, it was complainant herself who agreed to the offer to be hired as janitress. In fact, she read and signed the travel exit pass for the position of janitress. She is a high school graduate and it cannot reasonably be said that she was deceived or that the respondent concealed from the position for which she was being deployed for employment. Accordingly, complainants travel exit pass was processed and approved by the POEA for employment as janitress. She left the country as janitress in accordance with the TEP. It is plain that there was no misrepresentation that she would be deployed to what she agreed to be hired as janitress.

x x x When the POEA Administrator concluded that the complainant herein was hired as nursing aide, the same was actually baseless because the term hire assumes that the application for nursing aide was what was accepted. But x x x complainant could not have been hired as a nursing aide for lack of available job order for that position. Thus, when complainant was offered to be deployed as janitress and she accepted the offer, she was hired for no other than as janitress.

It may be true that the complainant expected to work as nursing attendant when she reaches Saudi Arabia. This is something else. If this happens, it would work to her advantage. It would constitute a promotion in job category and would result in increase in pay.

2. x x x

x x x [Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations] is clearly designed for the protection of the applications for overseas employment. This is why the rule speaks loud and clear of publication and advertisement. Under this rule, what is prohibited is the misrepresentation made to the applicant or worker for overseas employment, such as, those publications and advertisement that would deceive and mislead them with false and deceptive information and notices. What is contemplated in the rule does not refer to what the POEA Administrator had in mind which is the alleged misrepresentation or false information allegedly given to the POEA to the effect that the complainant was hired as a janitress when in truth she was hired as a nursing aide. As shown earlier, this is not a correct finding of fact, but even assuming, arguendo, that it is a correct finding, it is clear that such alleged misrepresentation is not the misrepresentation to the worker or applicant contemplated by Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations.[10]

Passing upon the contentions of petitioner in its Appeal, the Secretary of Labor and Employment, speaking through Undersecretary Ma. Nieves Roldan-Confesor, rejected the same and forthwith denied the Appeal. Such denial was worded in this wise:

We have carefully reviewed the records of the case at bar and we find no cogent reason to reverse or modify the assailed Order of the POEA Administrator.

Records reveal that respondent admitted that complainant applied for the position of nursing aide and that the Travel Exit Pass (TEP) it submitted to the POEA stated her position to be that of a janitress because

the only available job order respondent had that time, was only for janitress. Respondents contention that there was a previous agreement with complainant regarding the processing of her TEP cannot be given any consideration. Such an agreement does not erase the fact that an act of misrepresentation was committed by respondent.

We herein reiterate that the information submitted by respondent for approval by the POEA was false. Respondent mirepresented that complainant will work at the Arabian Gulf Co. for Maintenance and Contracting as a janitress when the truth of the matter was that the complainant worked as a nursing aide at a nursery in Saudi Arabia. This is clearly an act of misrepresentation covered by Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations x x x.[11]

Hence this petition which essentially reiterates the arguments on appeal raised before the Secretary of Labor and Employment. Invariably, petitioner here re-asserts that:

A. x x x

x x x The alleged admission to the effect that private respondent applied as nursing aide was taken out of context. It is true, as in fact, it was admitted that private respondent applied for the position of nursing aide. But the position applied for was not available and thus not considered at all. There was no job order for that position at the time private respondent applied therefor. Hence, she was not hired for that position.

However, there was then a job opening for janitress, which was offered to private respondent in lieu of the position of nursing attendant. She agreed to apply for that position x x x .

She read and signed the Travel Exit Pass (TEP) for the position of janitress. x x x

It is of no moment that private respondent originally applied for the position of nursing aide, because that application was not considered as, in fact, it was in effect rejected. It is petitioners respectful submission that if ones application is disapproved and another job offer is made to which one agrees to, it is the latter that counts. x x x Thus, when respondent POEA Administrator concluded that the private respondent was hired as nursing aide, the same was actually baseless because the term hire assumes that the application for nursing aide was what was accepted. But x x x private respondent could not have been hired as a nursing aide because the position was already filled up at that time. And when she was offered to be deployed as janitress which she accepted, she was in fact hired as janitress.

It may be true that when private respondent reached Saudi Arabia she was promoted to nursing aide because several contract workers holding the same position had already completed their contracts and there was shortage in manpower. But this is something else. It has nothing to do with the charge of misrepresentation. Relevantly, it worked to private respondents advantage as it is a promotion in job category and resulted in increase in pay. x x x

B. x x x

Under [Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations], what is prohibited is the misrepresentation made to the applicant contained in those publications and advertisements, such as, false and deceptive information and notices. There was no deception when petitioner advertised for the position of nursing aide; but the position was already filled up when private respondent belatedly applied therefor. What is clearly contemplated in the rule does not refer to what respondent POEA Administrator had in mind which is the alleged misrepresentation or false information given to the POEA to the effect that private respondent was hired as a janitress when in truth she was hired as a nursing aide. As shown earlier, this is not a correct finding of fact, but even assuming arguendo, that it is, such is not the

misrepresentation to the worker or applicant contemplated by Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations.

x x x So now that it has been demonstrated that the aforementioned rule does not apply to the situation presented by public respondent, the penalty imposed on petitioner x x x is clearly erroneous, not to say, too harsh and excessive. Significantly, there was no prejudice or injury to the private respondent that she was deployed as janitress upon her own voluntary and free will to be deployed as such, more so, is [that] she were subsequently employed as nursing aide with the corresponding salary increase, which indeed would work to her advantage and benefit.[12]

The instant petition, with its rehashed arguments above, is utterly without merit.

First. Petitioner vehemently insists that it hired private respondent as a janitress, not as a nursing aide, for which reason private respondents Travel Exit Pass (TEP) indicated her job position as one for janitress and not for anything else. The records reveal, however, that the job actually waiting for private respondent in Jeddah was one for nursing aide and not at all for a janitress. Petitioner does not dispute the fact that the first and only work actually performed by private respondent in the service of petitioners principal, was baby-sitting. The oft-repeated theory of petitioner to the effect that private respondent was promoted from janitress to nursing aide, thus, impresses us as a mere afterthought in order to explain the discrepancy between the job position indicated on private respondents TEP and the actual work waiting for and in fact performed by, private respondent upon arrival in Jeddah. The records, instead, show as correct and substantiated, the findings of both the POEA and the Secretary of Labor and Employment, that, with the full knowledge that the actual work waiting for and to be performed by, private respondent in the service of petitioners foreign principal was that as a nursing aide or baby-sitter, petitioner submitted to the POEA information about the deployment of private respondent as a janitress. Ultimately, no amount of denial on the part of petitioner can overcome the blatant and unrebutted fact that the first and only work waiting for and actually performed by, private respondent in Jeddah, for petitioners principal, was that as nursing aide or baby-sitter which was precisely the work applied for by private respondent when she first sought to be deployed by petitioner for foreign employment. Otherwise put, the POEA and the Secretary of Labor and Employment correctly appreciated the evidence upon which their findings of fact were based, including their finding as to the hiring of private respondent as janitress when in truth and in fact the only job awaiting for her in Jeddah was that as a nursing aide or baby-sitter. As such, no grave abuse of discretion may be attributed to public respondents on the ground of misappreciation of facts and evidence.

Second. Petitioner reiteratingly asseverates that the misrepresentation contemplated by Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations is limited to false and deceptive information and notices disseminated to applicants for overseas employment who, by reason of such misinformation, are victimized by illegal recruiters or in any way cheated, defrauded, exploited, oppressed or somehow psychologically, financially or culturally affected in an adverse manner. As such, petitioner submits that excluded from the coverage of this reglementary provision, are acts of misrepresentation against the POEA itself such as the submission of deployment papers that contain false information, as in the instant case. Petitioner, however, fails to explain the basis for differentiating between acts of misrepresentation against the overseas employment applicants themselves and those against the POEA itself. Perhaps this is so, because there is in fact no difference as the rule itself provides none.

Whether the acts of misrepresentation are committed against the overseas employment applicants or the POEA, their perpetration are undeniably a proper object for the exercise by

the POEA of their supervisory and regulatory power over placement and recruitment agencies under Section 2 (c), Rule VI, Book II of the POEA Rules and Regulations. The fact that said rule gives one example of a kind of misrepresentation covered thereby, does not transmute into a prohibition against including other kinds of misrepresentation and certainly does not justify an interpretation that limits the application of said rule to that sole specie of misrepresentation exemplified therein.

The TEP of private respondent categorically shows that the job position for which she was deployed was one as janitress. This only means that the deployment papers submitted by petitioner to the POEA contained information as private respondents deployment as a janitress and not as a nursing aide or baby-sitter. Upon reaching her job site, however, the one and only work waiting for private respondent was that as a baby-sitter or nursing aide which was the position admitted by petitioner to be precisely the one applied for by private respondent when she first approached petitioner for foreign deployment. Of course petitioner now denies having prior knowledge that the actual work to be performed by the private respondent in Jeddah was one as baby-sitter and explains the discrepancy by insisting that private respondent was promoted to baby-sitter upon reaching Jeddah. But petitioners denial cannot prevail over the overwhelming evidence on record that petitioner had in fact misrepresented the true nature of private respondents deployment. As such, we find sufficient legal and jurisprudential basis for the herein assailed decisions of the POEA and the Secretary of Labor and Employment. Needless to say, the instant petition has utterly failed to show any grave abuse of discretion on the part of the POEA and the Secretary of Labor and Employment.

WHEREFORE, the instant petition is HEREBY DISMISSED.

Cost against petitioner.

SO ORDERED.

Bellosillo, Vitug, and *Kapunan, JJ.,* concur.
Padilla, J., (Chairman), on leave.

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[1] Dated March 20, 1991, issued in behalf of the Secretary of Labor and Employment by Undersecretary Ma. Nieves Roldan-Confesor; *Rollo*, pp. 18-20.

[2] Order dated March 28, 1990, promulgated in POEA Case No. (L)88-04-309 by Administrator Tomas D. Achacoso; *Rollo*, pp. 22-26.

[3] Adjudication Office.

[4] In Teknika Skills and Trade Services, Inc. *v.* NLRC, POEA and Rosanna de Leon, 212 SCRA 132.

[5] Order dated March 28, 1990, pp. 2-3; *Rollo*, pp. 23-24.

[6] *Id.*, p. 4; *Rollo*, p. 25.

[7] Motion for Reconsideration dated April 11, 1990, pp. 2-3; *Rollo*, pp. 33-34.

[8] Resolution dated September 21, 1990, pp. 2-4; *Rollo*, pp. 29-31.

[9] Appeal dated October 4, 1990; *Rollo*, pp. 36-45.

[10] *Id.*, pp. 4-8; *Rollo*, pp. 39-43.

[11] Order dated March 20, 1991, p. 2; *Rollo*, p. 19.

[12] Petition dated April 5, 1991, pp. 8-12; *Rollo*, pp. 9-13.