803 Phil. 463

# FIRST DIVISION

# [ G.R. No. 205727, January 18, 2017 ]

## RUTCHER T. DAGASDAS, PETITIONER, VS. GRAND PLACEMENT AND GENERAL SERVICES CORPORATION, RESPONDENT.

## D E C I S I O N

**DEL CASTILLO, J.:**

Before us is a Petition for Review on *Certiorari* assailing the September 26, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 115396, which annulled and set aside the March 29, 2010[2] and June 2, 2010[3] Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC OFW-L-02-000071-10, and concomitantly reinstated the November 27, 2009 Decision[4] of the Labor Arbiter (LA) dismissing the Complaint for lack of merit.

Also challenged is the January 28, 2013 Resolution[5] denying the Motion for Reconsideration filed by Rutcher T. Dagasdas (Dagasdas).

***Factual Antecedents***

Grand Placement and General Services Corp. (GPGS) is a licensed recruitment or placement agency in the Philippines while Saudi Aramco (Aramco) is its counter part in Saudi Arabia. On the other hand, Industrial & Management Technology Methods Co. Ltd. (ITM) is the principal of GPGS, a company existing in Saudi Arabia.[6]

In November 2007, GPGS, for and on behalf of ITM, employed Dagasdas as Network Technician. He was to be deployed in Saudi Arabia under a one year contract[7] with a monthly salary of Saudi Riyal (SR) 5,112.00. Before leaving the Philippines, Dagasdas underwent skill training[8] and pre departure orientation as Network Technician.[9] Nonetheless, his Job Offer[10] indicated that he was accepted by Aramco and ITM for the position of "Supt" Dagasdas contended that although his position under his contract was as a Network Technician, he actually applied for and was engaged as a Civil Engineer considering that his transcript of records,[11] diploma[12] as well as his curriculum vitae[13] showed that he had a degree in Civil Engineering, and his work experiences were all related to this field. Purportedly, the position of Network Technician was only for the purpose of securing a visa for Saudi Arabia because ITM could not support visa application for Civil Engineers.[14]

On February 8, 2008, Dagasdas arrived in Saudi Arabia.[15] Thereafter, he signed with

ITM a new employment contract[16] which stipulated that the latter contracted him as Superintendent or in any capacity within the scope of his abilities with salary of SR5,112.00 and allowance of SR2,045.00 per month. Under this contract, Dagasdas shall be placed under a three month probationary period; and, this new contract shall cancel all contracts prior to its date from any source.

On February 11, 2008, Dagasdas reported at ITM's worksite in Khurais, Saudi Arabia.[17] There, he was allegedly given tasks suited for a Mechanical Engineer, which were foreign to the job he applied for and to his work experience. Seeing that he would not be able to perform well in his work, Dagasdas raised his concern to his Supervisor in the Mechanical Engineering Department. Consequently, he was transferred to the Civil Engineering Department, was temporarily given a position as Civil Construction Engineer, and was issued an identification card good for one month. Dagasdas averred that on March 9, 2008, he was directed to exit the worksite but Rashid H. Siddiqui (Siddiqui), the Site Coordinator Manager, advised him to remain in the premises, and promised to secure him the position he applied for. However, before Dagasdas' case was investigated, Siddiqui had severed his employment with ITM.[18]

In April 2008, Dagasdas returned to Al-Khobar and stayed at the ITM Office.[19] Later, ITM gave him a termination notice[20] indicating that his last day of work was on April 30, 2008, and he was dismissed pursuant to clause 17.4.3 of his contract, which provided that ITM reserved the right to terminate any employee within the three-month probationary period without need of any notice to the employee.[21]

Before his repatriation, Dagasdas signed a Statement of Quitclaim[22] with Final Settlement[23] stating that ITM paid him all the salaries and benefits for his services from February 11, 2008 to April 30, 2008 in the total amount of SR7,156.80, and ITM was relieved from all financial obligations due to Dagasdas.

On June 24, 2008, Dagasdas returned to the Philippines.[24] Thereafter, he filed an illegal dismissal case against GPGS, ITM, and Aramco.

Dagasdas accused GPGS, ITM, and Aramco of misrepresentation, which resulted in the mismatch in the work assigned to him. He contended that such claim was supported by exchanges of electronic mail (e-mail) establishing that GPGS, ITM, and Aramco were aware of the job mismatch that had befallen him.[25] He also argued that although he was engaged as a project employee, he was still entitled to security of tenure for the duration of his contract. He maintained that GPGS, ITM, and Aramco merely invented "imaginary cause/s" to terminate him. Thus, he claimed that he was dismissed without cause and due process of law.[26]

GPGS, ITM, and Aramco countered that Dagasdas was legally dismissed. They explained that Dagasdas was aware that he was employed as Network Technician but he could not perform his work in accordance with the standards of his employer. They added that Dagasdas was informed of his poor performance, and he conformed to his termination as evidenced by his quitclaim.[27] They also stressed that Dagasdas was

only a probationary employee since he worked for ITM for less than three months.[28]

***Ruling of the Labor Arbiter***

On November 27, 2009, the LA dismissed the case for lack of merit.

The LA pointed out that when Dagasdas signed his new employment contract in Saudi Arabia, he accepted its stipulations, including the fact that he had to undergo probationary status. She declared that this new contract was more advantageous for Dagasdas as his position was upgraded to that of a Superintendent, and he was likewise given an allowance of SR2,045.00 aside from his salary of SR5,112.00 per month. According to the LA, for being more favorable, this new contract was not prohibited by law. She also decreed that Dagasdas fell short of the expected work pe1formance; as such, his employer dismissed him as part of its management prerogative.

Consequently, Dagasdas appealed to the NLRC.

***Ruling of the National Labor Relations Commission***

On March 29, 2010, the NLRC issued a Resolution finding Dagasdas' dismissal illegal. The decretal portion of the NLRC Resolution reads:

> WHEREFORE, the decision appealed from is hereby REVERSED, and the respondent[s] are hereby ordered to pay the complainant the salaries corresponding to the unexpired portion of his contract amounting to SR46,008 (SR5112 x 9 months, or from May 1, 2008 to January 31, 2009), plus ten percent (10%) thereof as attorney's fees. The respondents are jointly and severally liable for the judgment awards, which are payable in Philippine currency converted on the basis of the exchange rate prevailing at the time of actual payment.
>
> SO ORDERED.[29]

The NLRC stated that Dagasdas, who was a Civil Engineering graduate, was "recruited on paper" by GPGS as Network Technician but the real understanding between the parties was to hire him as Superintendent. It held that GPGS erroneously recruited Dagasdas, and tailed to inform him that he was hired as a "Mechanical Superintendent" meant for a Mechanical Engineer. It declared that while ITM has the prerogative to continue the employment of individuals only if they were qualified, Dagasdas' dismissal amounted to illegal termination since the mismatch between his qualifications and the job given him was no fault of his.

The NLRC added that Dagasdas should not be made to suffer the consequences of the miscommunication between GPGS and ITM considering that the government obligates employment agencies recruiting Filipinos for overseas work to "select only medically and technically qualified recruits."[30]

On June 2, 2010, the NLRC denied the Motion for Reconsideration of its Resolution dated March 29, 2010.

Undeterred, GPGS filed a Petition for *Certiorari* with the CA ascribing grave abuse of discretion on the part of the NLRC in ruling that Dagasdas was illegally dismissed.

***Ruling of the Court of Appeals***

On September 26, 2012, the CA set aside the NLRC Resolutions and reinstated the LA Decision dismissing the case for lack of merit.

The CA could not accede to the conclusion that the real agreement between the parties was to employ Dagasdas as Superintendent. It stressed that Dagasdas left the Philippines pursuant to his employment contract indicating that he was to work as a Network Technician; when he arrived in Saudi Arabia and signed a new contract for the position of a Superintendent, the agreement was with no participation of GPGS, and said new contract was only between Dagasdas and ITM. It emphasized that after commencing work as Superintendent, Dagasdas realized that he could not perform his tasks, and "[s]eemingly, it was [Dagasdas] himself who voluntarily withdrew from his assigned work for lack of competence."[31] It faulted the NLRC for failing to consider that Dagasdas backed out as Superintendent on the excuse that the same required the skills of a Mechanical Engineer.

In holding that Dagasdas' dismissal was legal, the CA gave credence to Dagasdas' Statement of Quitclaim and Final Settlement. It ruled that for having voluntarily accepted money from his employer, Dagasdas accepted his termination and released his employer from future financial obligations arising from his past employment with it.

On January 28, 2013, the CA denied Dagasdas' Motion for Reconsideration.

Hence, Dagasdas filed this Petition raising these grounds:

> [1] THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT REVERSED THE FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION.[32]
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> [2] THE HONORABLE COURT OF APPEALS PATENTLY ERRED WITH ITS FINDINGS THAT THE CONTRACT SIGNED BY DAGASDAS IN ALKHOBAR IS MORE ADVANTAGEOUS TO THE LATTER AND THAT IT WAS [H]IS PERSONAL ACT OR DECISION [TO SIGN] THE SAME.[33]
>
> [3] THE HONORABLE COURT OF APPEALS ALSO GRAVELY ERRED IN FAULTING THE NLRC FOR HS FAILURE TO INVALID ARE OR DISCUSS THE FINAL SETTLEMENT AND STATEMENT OF QUITCLAIM SIGNED BY [DAGASDAS].[34]

Dagasdas reiterates that he was only recruited "on paper" as a Network Technician but the real agreement between him and his employer was to engage him as

Superintendent in the field of Civil Engineering, he being a Civil Engineering graduate with vast experience in said field. He stresses that he was terminated because of a "discipline mismatch" as his employer actually needed a Mechanical (Engineer) Superintendent, not a Civil Engineer.

In addition, Dagasdas insists that he did not voluntarily back out from his work. If not for the discipline mismatch, he could have performed his job as was expected of him. He also denies that the new employment contract he signed while in Saudi Arabia was more advantageous to him since the basic salary and allowance stipulated therein are just the same with that in his Job Offer. He argues that the new contract was even disadvantageous because it was inserted therein that he still had to undergo probationary status for three months.

Finally, Dagasdas contends that the new contract he signed while in Saudi Arabia was void because it was not approved by the Philippine Overseas Employment Administration (POEA). He also claims that CA should have closely examined his quitclaim because he only signed it to afford his plane ticket for his repatriation.

On the other hand, GPGS maintains that Dagasdas was fully aware that he applied for and was accepted as Network Technician. It also stresses that it was Dagasdas hirnself who decided to accept from ITM a new job offer when he arrived in Saudi Arabia. It further declares that Dagasdas' quitclaim is valid as there is no showing that he was compelled to sign it.

**Issue**

Was Dagasdas validly dismissed from work?

**Our Ruling**

The Petition is with merit.

As a rule, only questions of law may be raised in a petition under Rule 45 of the Rules of Court. However, this rule allows certain exceptions, including a situation where the findings of fact of the courts or tribunals below are conflicting.[35] In this case, the CA and the NLRC arrived at divergent factual findings anent Dagasdas' termination. As such, the Court deems it necessary to re-examine these findings and determine whether the CA has sufficient basis to annul the NLRC Decision, and set aside its finding that Dagasdas was illegally dismissed from work.

Moreover, it is well-settled that employers have the prerogative to impose standards on the work quantity and quality of their employees and provide measures to ensure compliance therewith. Non-compliance with work standards may thus be a valid cause for dismissing an employee. Nonetheless, to ensure that employers will not abuse their prerogatives, the same is tempered by security of tenure whereby the employees are guaranteed substantive and procedural due process before they are dismissed from work.[36]

Security of tenure remains even if employees, particularly the overseas Filipino workers (OFW), work in a different jurisdiction. Since the employment contracts of OFWs are perfected in the Philippines, and following the principle of *lex loci contractus* (the law of the place where the contract is made), these contracts are governed by our laws, primarily the Labor Code of the Philippines and its implementing rules and regulations, [37] At the same time, our laws generally apply even to employment contracts of OFWs as our Constitution explicitly provides that the State shall afford full protection to labor, whether local or overseas.[38] Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights.[39]

In this case, prior to his deployment and while still in the Philippines, Dagasdas was made to sign a POEA-approved contract with GPGS, on behalf of ITM; and, upon arrival in Saudi Arabia, ITM made him sign a new employment contract. Nonetheless, this new contract, which was used as basis for dismissing Dagasdas, is void.

First, Dagasdas' new contract is in clear violation of his right to security of tenure.

Under the Labor Code of the Philippines the following are the just causes for dismissing an employee:

> ARTICLE 297. [282] Termination by Employer. - An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> (b) Gross and habitual neglect by the employee of his duties;
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> (c) Fraud or willful breach by the employee of the 1ntst reposed in him by his employer or duly authorized representative;
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> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
>
> (e) Other causes analogous to the foregoing.[40]

However, per the notice of termination given to Dagasdas, ITM tem1inated him for violating clause 17.4.3 of his new contract, *viz*.:

> 17.4 The Company reserves the right to terminate this agreement without serving any notice to the Consultant in the following cases:
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> x x x x x x x x x
>
> 17.4.3 If the Consultant is terminated by company or its client within the probation period of 3 months.[41]

Based on the foregoing, there is no clear justification for the dismissal of Dagasdas other than the exercise of ITM's right to terminate him within the probationary period.

While our Civil Code recognizes that parties may stipulate in their contracts such terms and conditions as they may deem convenient, these terms and conditions must not be contrary to law, morals, good customs, public order or policy.[42] The above-cited clause is contrary to law because as discussed, our Constitution guarantees that employees, local or overseas, are entitled to security of tenure. To allow employers to reserve a right to terminate employees without cause is violative of this guarantee of security of tenure.

Moreover, even assuming that Dagasdas was still a probationary employee when he was terminated, his dismissal must still be with a valid cause. As regards a probationary employee, his or her dismissal may be allowed only if there is just cause or such reason to conclude that the employee fails to qualify as regular employee pursuant to reasonable standards made known to the employee at the time of engagement.[43]

Here, ITM failed to prove that it informed Dagasdas of any predetermined standards from which his work will be gauged.[44] In the contract he signed while still in the Philippines, Dagsadas was employed as Network Technician; on the other hand, his new contract indicated that he was employed as Superintendent. However, no job description - or such duties and responsibilities attached to either position - was adduced in evidence. It thus means that the job for which Dagasdas was hired was not definite from the beginning.

Indeed, Dagasdas was not sufficiently informed of the work standards for which his performance will be measured. Even his position based on the job title given him was not fully explained by his employer. Simply put, ITM failed to show that it set and communicated work standards for Dagasdas to follow, and on which his efficiency (or the lack thereof) may be determined.

Second, the new contract was not shown to have been processed through the POEA. Under our Labor Code, employers hiring OFWs may only do so through entities authorized by the Secretary of the Department of Labor and Employment.[45] Unless the employment contract of an OFW is processed through the POEA, the same does not bind the concerned OFW because if the contract is not reviewed by the POEA, certainly the State has no means of determining the suitability of foreign laws to our overseas workers.[46]

This new contract also breached Dagasdas' original contract as it was entered into even before the expiration of the original contract approved by the POEA. Therefore, it cannot supersede the original contract; its terms and conditions, induding reserving in favor of the employer the right to terminate an employee without notice during the probationary period, are void.[47]

Third, under this new contract, Dagasdas was not afforded procedural due process

when he was dismissed from work.

As cited above, a valid dismissal requires substantive and procedural due process. As regards the latter, the employer must give the concerned employee at least two notices before his or her ten11ination. Specifically, the employer must inform the employee of the cause or causes for his or her termination, and thereafter, the employer's decision to dismiss him. Aside from the notice requirement, the employee must be accorded the opportunity to be heard.[48]

Here, no prior notice of purported infraction, and such opportunity to explain on any accusation against him was given to Dagasdas. He was simply given a notice of termination. In fact, it appears that ITM intended not to comply with the twin notice requirement. As above-quoted, under the new contract, ITM reserved in its favor the right to terminate the contract without serving any notice to Dagasdas in specified cases, which included such situation where the employer decides to dismiss the employee within the probationary period. Without doubt, ITM violated the due process requirement in dismissing an employee.

Lastly, while it is shown that Dagasdas executed a waiver in favor of his employer, the same does not preclude him from filing this suit.

Generally, the employee's waiver or quitclaim cannot prevent the employee from demanding benefits to which he or she is entitled, and from filing an illegal dismissal case. This is because waiver or quitclaim is looked upon with disfavor, and is frowned upon for being contrary to public policy. Unless it can be established that the person executing the waiver voluntarily did so, with full understanding of its contents, and with reasonable and credible consideration, the same is not a valid and binding undertaking. Moreover, the burden to prove that the waiver or quitclaim was voluntarily executed is with the employer.[49]

In this case, however, neither did GPGS nor its principal, ITM, successfully discharged its burden. GPGS and/or ITM failed to show that Dagasdas indeed voluntarily waived his claims against the employer.

Indeed, even if Dagasdas signed a quitclaim, it does not necessarily follow that he freely and voluntarily agreed to waive all his claims against his employer. Besides, there was no reasonable consideration stipulated in said quitclaim considering that it only determined the actual payment due to Dagasdas from February 11, 2008 to April 30, 2008. Verily, this quitclaim, under the semblance of a final settlement, cannot absolve GPGS nor ITM from liability arising from the employment contract of Dagasdas.[50]

All told, the dismissal of Dagasdas was without any valid cause and due process of law. Hence, the NLRC properly ruled that Dagasdas was illegally dismissed. Evidently, it was an error on the part of the CA to hold that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when the NLRC ruled for Dagasdas.

**WHEREFORE**, the Petition is **GRANTED**. The Decision dated September 26, 2012 and

Resolution dated January 28, 2013 of the Court of Appeals in CA-G.R. SP No. 115396 are **REVERSED** and **SET ASIDE**. Accordingly, the March 29, 2010 and June 2, 2010 Resolutions of the National Labor Relations Commission in NLRC LAC OFW-L-02-000071-10 are **REINSTATED**.

**SO ORDERED.**

*Sereno, C.J., (Chairperson), Leonardo-De Castro, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

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[1] CA *rollo*, pp. 312-320; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro.

[2] Id. at 128-135; penned by Commissioner Napoleon M. Menese and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora,

[3] Id. at 145-146.

[4] Id. at 103-108; penned by Labor Arbiter Virginia T. Luyas Azarraga.

[5] Id. at 353-355.

[6] Id. at 21, 38.

[7] Id. at 62-65.

[8] Id. at 66.

[9] Id. at 67

[10] Id. at 60-61.

[11] Id. at 54-57.

[12] Id. at 58.

[13] Id. at 49-52.

[14] Id. at 39.

[15] Id. at 75.

[16] Id. at 68-72.

[17] Id. at 75.

[18] Id. at 39-40.

[19] Id. at 40.

[20] Id. at 81.

[21] Id. at 70.

[22] Id. at 82.

[23] Id. at 83-84.

[24] Id. at 21.

[25] Id. at 92-93.

[26] Id. at 42.

[27] Id. at 22-24.

[28] Id. at 88.

[29] Id. at 134.

[30] Id. at 133.

[31] Id. at 318.

[32] *Rollo*, p. 26.

[33] Id. at 29.

[34] Id. at 32.

[35] *Unicol Management Services, Inc. v. Malipot*, G.R. No. 206562, January 21, 2015, 747 SCRA 191, 202-203.

[36] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, G.R. No. 170139, August 5, 2014, 732 SCRA 22, 41-42.

[37] Id. at 42.

[38] CONSTITUTION, Article XIII.

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

[39] *Industrial Personnel & Management Services, Inc. v. De Vera*, G.R. No. 205703, March 7, 2016.

[40] LABOR CODE OF THE PHILIPPiNES, Amended and Renumbered, July 21, 2015.

[41] CA *rollo*, p. 70.

[42] CIVIL CODE OF THE PHILIPPINES.

Article 1306. The contracting parties muy establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they arc not contrary to law, morals, good customs, public order, or public policy. (1255a)

[43] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, supra note 36 at 46.

[44] Id.

[45] Article 18. *Ban on Direct-Hiring*. - No employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempted from this provision. (Labor Code of the Philippines, Amended & Renumbered, July 21, 2015.)

[46] *Industrial Personnel & Management Services, Inc. v. De Vera*, supra note 39.

[47] *Datuman v. First Cosmopolitan Manpower and Promotion Services, Inc.*, 591 Phil. 662, 673-674 (2008).

[48] *EDI-Staffbuilders International, Inc. v. National Labor Relations Commission*, 563 Phil. 1, 28-29 (2007).

[49] *Universal Staffing Services, Inc. v. National Labor Relations Commission*, 581 Phil. 199, 209-210 (2008).

[50] Id.