



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**SOCIAL
COMMISSION,**

Petitioner,

-versus-

**COURT OF APPEALS (FORMER
EIGHTEENTH DIVISION, CEBU
CITY and PEOPLE'S
BROADCASTING SERVICES,
INC. (BOMBO RADIO PHILS.,
NBN),**

Respondents.

SECURITY G.R. No. 221621

Present:

LEONEN, *J.*, Chairperson,
HERNANDO*,
INTING,
DELOS SANTOS, and
LOPEZ, *J.*, *JJ.*

Promulgated:
June 14, 2021

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DECISION

LEONEN, *J.*:

Damages under Section 24(b) of the Social Security Act of 1997 become due to the Social Security System when the employer: (1) misrepresents the true date of employment of the employee member; or (2) remits to the Social Security System contributions which are less than those required in this Act; or (3) fails to remit any contribution due prior to the date of contingency, resulting in a reduction of benefits.

For this Court's resolution is a Petition for Review on Certiorari¹ under Rule 45 of the Rules of Court assailing the January 22, 2015 Decision² and

* On official leave.

¹ *Rollo*, pp. 14–34. Under Rule 45 of the Rules of Court.

² *Id.* at 35–41. The Decision in CA-G.R. CEB SP No. 05848 was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino of the Eighteenth Division, Court of Appeals, Cebu City.

November 9, 2015 Resolution³ of the Court of Appeals, which affirmed with modification the August 27, 2008 Resolution⁴ of the Social Security Commission. The Court of Appeals deleted the Social Security Commission's award of damages for lack of factual basis.

From March 1989 to November 1999, People's Broadcasting Service, Inc., also known as Bombo Radio Phils., NBN (Bombo Radio), hired Florentino A. Racasa (Racasa) as a talent, writer, and director.⁵

When he failed to avail of his retirement benefits, Racasa filed a petition for remittance of unpaid Social Security contributions before the Social Security Commission. He alleged that despite being a regular employee, Bombo Radio failed to remit Social Security contributions in his behalf for the following months: March to June 1989; January to March 1990; July to September 1990; January to March 1992; January to March 1994; July to September 1996; and October to November 1999.⁶

In its Answer in Intervention, the Social Security System stated that: (1) Bombo Radio is a "registered employer-member" of the Social Security System since May 1961; (2) in May 1990, Bombo Radio has declared Racasa to Social Security System as an employee since July 1989; and (3) a total of 108 monthly contributions were remitted for Racasa from July 1989 to September 1999, except for the periods complained of.⁷

Bombo Radio was declared in default for failure to file its answer within the reglementary period.⁸ However, the order of default was set aside when Bombo Radio filed a Position Paper on July 7, 2005, which the Commission treated as its Answer.⁹

Bombo Radio denied its duty to remit the contributions, and alleged that Racasa was not an employee required to fill-out daily time records, but a "drama talent" in its DYMF Bombo Radyo Cebu.¹⁰ As drama talent, Racasa was allegedly an independent contractor involved in drama production under the control and supervision of a drama director and/or supervisor. Further, his work was by specific piecework or per project basis only and dependent upon the completion of a particular drama series.¹¹ Bombo Radio further claimed that the remittances were paid by Racasa's drama director or supervisor as an

³ Id. at 42-43. The Resolution in CA-G.R. CEB SP No. 05848 was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino of the Former Eighteenth Division, Court of Appeals, Cebu City.

⁴ Id. at 54-58. The Resolution in SSC Case No. 11-115794-04 was penned by Commissioner Donald G. Dee of the Social Security Commission, Makati City.

⁵ Id. at 54.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id. at 55.

¹¹ Id. at 37 and 55.

accommodation, and not an obligation. Thus, Racasa had no cause of action against it.¹²

Pursuant to the Social Security Commission's directive, the parties filed their respective position papers.¹³

On May 17, 2006, Bombo Radio filed a Manifestation claiming that all contributions during the period Racasa was engaged as independent contractor—or from July 1989 to September 1999—were paid, and that it is not liable before and after this period.¹⁴

In its Comment, Social Security System averred that not only are the payments made by Bombo Radio an indication of Racasa's employment with it, but Bombo Radio's station manager also reported Racasa as its employee effective March 16, 1989.¹⁵

In its August 27, 2008 Resolution,¹⁶ the Social Security Commission held that Racasa was an employee of Bombo Radio; and thus, he is subject to compulsory Social Security System coverage.¹⁷ The dispositive portion of the Resolution reads:

WHEREFORE, PREMISES CONSIDERED, petitioner Florentino A. Racasa is an employee of respondent People's Broadcasting Services, Inc. (Bombo Radio Phils. NBN) subject to compulsory SS coverage as there was an employer-employee relationship between them for the period from March 1989 to November 1999 (not inclusive).

Accordingly, respondent People's Broadcasting Services, Inc. (Bombo Radio Phils. NBN) is hereby ordered to pay the SSS within thirty (30) days from receipt hereof the amount of ₱4,533.00 representing the unremitted SS contributions less those already paid, if any, for the period from March 1989 to November 1999 (not inclusive), plus the amount of ₱24,107.83 representing the 3% per month penalty for late payment thereof, computed as of June 30, 2008, without prejudice to the right of the SSS to collect the additional penalties, accruing thereafter, and ₱83,609.53 as damages (subject to adjustment, if warranted).

On the other hand, the SSS is directed to collect from the respondent the adjudged liabilities in this case, to pay the petitioner his proper retirement benefits, and to inform this Commission of its compliance herewith.

SO ORDERED.¹⁸ (Emphasis in the original)

¹² Id.

¹³ Id. at 55–56.

¹⁴ Id. at 56.

¹⁵ Id.

¹⁶ Id. at 54–58.

¹⁷ Id. at 57.

¹⁸ Id. at 57–58.

In its October 20, 2010 Order,¹⁹ the Social Security Commission denied the reconsideration sought by Bombo Radio.²⁰

In a January 22, 2015 Decision,²¹ the Court of Appeals affirmed with modification the Resolution of the Social Security Commission, deleting the award of damages. The dispositive portion of the Decision reads:

WHEREFORE, the Petition is **DENIED**. The assailed Resolution of the Social Security Commission (Makati City) in SSC CASE NO. 11-15794-04 is hereby **AFFIRMED** with the **MODIFICATION** that the award of damages in the amount of ₱83,609.53 is deleted for lack of factual basis.

SO ORDERED.²² (Emphasis in the original, citation omitted)

The Court of Appeals held that Bombo Radio's own acts, representations, and admissions reveal its intention to treat Racasa as its employee, contrary to its claim that he was an independent contractor.²³ It also found that the summary/report on the manual verification and posting of Racasa's contributions reveal that no amounts were remitted by Bombo Radio during the periods complained of.²⁴ Finally, the Court of Appeals deleted the award of damages as it was not substantiated.²⁵

The Court of Appeals denied Bombo Radio's and the Social Security Commission's separate motions for reconsideration for lack of merit.²⁶

On January 15, 2016, petitioner filed before this Court a Petition for Review on Certiorari.²⁷ On June 20, 2016 private respondent filed its Comment²⁸ while petitioner filed its Reply on March 15, 2017.²⁹

Petitioner submits that this case is an exception to the rule against the raising questions of facts before this Court, as the Court of Appeals' findings are contrary to the Commission's findings, and it overlooked relevant facts and mandatory provisions of the Social Security Act of 1997, which could modify the results of this case.³⁰

¹⁹ Id. at 59–70.

²⁰ Id. at 69.

²¹ Id. at 35–41.

²² Id. at 40–41.

²³ Id. at 39–40.

²⁴ Id. at 40.

²⁵ Id.

²⁶ Id. at 43.

²⁷ Id. at 14.

²⁸ Id.

²⁹ Id. at 242.

³⁰ Id. at 15.

Petitioner avers that since both the existence of an employer-employee relationship and the period of employment are established, private respondent is mandated to pay the contributions for the period complained of and the damages under Section 24(b) of the Social Security Act of 1997.³¹ Petitioner essentially argues that there are legal and factual bases for the liability of damages, which public respondent erroneously deleted.³²

Petitioner claims that damages under Section 24(b) of the Social Security Act of 1997 is based on private respondent's failure to timely remit the contributions, which in turn led to a reduction of Racasa's benefits.³³ Petitioner argues that Racasa only qualified for the lump sum, "with only 111 monthly contributions until his death on January 7, 2012[,]” when he could have been entitled to his monthly pension had the contributions been paid on time to complete the 120 required months of contributions for the pension benefit.³⁴ Petitioner alleges that private respondent is liable for damages of ₱83,609.53, which is the difference between the Total Accrued Monthly Pension³⁵ plus the 13th month pension³⁶ amounting to ₱124,330.00, and the lump sum retirement benefit equivalent to ₱40,720.47.³⁷

Petitioner argues that payment of damages under Section 24(b) attaches to the employer by operation of law for its "failure to pay any contribution due prior to the date of contingency resulting into a reduction of benefits suffered by the member-claimant or retiree" and is different from damages under the Civil Code.³⁸ Petitioner claims that the damages under Section 24(b) of the Social Security Act of 1997 are similar to the penalty imposed under Section 22 of the same law, and public respondent should have accorded respect to the Commission's findings and imposition of damages being an administrative agency with expertise on the matter.³⁹

On the other hand, private respondent, applying the control test in *Sonza v. ABS-CBN*⁴⁰ insists that Racasa was not its employee but an independent contractor, because it did not control or interfere with his performance as a drama talent.⁴¹ Private respondent further claims that the payment of contributions to the Social Security System is not conclusive proof of the existence of an employer-employee relationship.⁴²

³¹ Id. at 22.

³² Id. at 21.

³³ Id. at 22.

³⁴ Id. at 25.

³⁵ Id. The Total Accrued Monthly Pension from March 2001 to July 2008 is at ₱115,235.11.

³⁶ Id. at 24. The 13th Month Pension from 2001 to 2007 is at ₱124,330.00.

³⁷ Id. at 23–25.

³⁸ Id. at 25.

³⁹ Id. at 28 and 30.

⁴⁰ 475 Phil. 539 (2004) [Per J. Carpio, First Division].

⁴¹ *Rollo*, pp. 132–133.

⁴² Id. at 140.

Private respondent argues that it submitted Racasa's name to the Social Security System and paid contributions for him as an accommodation.⁴³ Nevertheless, it insists that it paid the required contributions on the months complained of based on the Special Bank Receipts, R-5s and R3s it offered, and denies liability for non-posting of the remittances.⁴⁴ Finally, it claims that since it remitted the contributions and the non-posting was not attributable to it, penalties and damages should not be assessed against it.⁴⁵

In its Reply, petitioner reiterates that damages should not have been deleted and should have attached by operation of law, since the records show that private respondent failed to fully remit the required monthly contributions resulting to the reduction of Racasa's retirement benefits pursuant to Section 24(b) of the Social Security Act of 1997.

The only issue for resolution is whether the Court of Appeals erred in deleting the petitioner's award of damages for failure of the employer to remit the contributions due to the employee resulting to a reduction of the employee's benefits.

We grant the Petition.

Generally, only questions of law may be raised in a Rule 45 petition,⁴⁶ subject to specifically alleged and substantiated exceptions.⁴⁷ A question of fact would require this Court to review the truthfulness of the parties' allegations and the correctness of the lower courts' appreciation of the evidence presented by the parties.⁴⁸ Thus, factual findings made by appellate courts and supported by substantial evidence are binding and conclusive upon the parties and this Court.⁴⁹ Essentially, whether an employer-employee relationship exists is a question of fact.⁵⁰

⁴³ Id. at 140–141.

⁴⁴ Id.

⁴⁵ Id. at 146.

⁴⁶ RULES OF COURT, Rule 45, sec. 1.

⁴⁷ *Pascual v. Burgos, et. al.*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division], citing *Medina v. Mayor Asistio, Jr* 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division] provides:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

⁴⁸ *Pascual v. Burgos, et. al.*, 776 Phil. 167, 183 (2016) [Per J. Leonen, Second Division].

⁴⁹ Id.

⁵⁰ *Orozco v. Court of Appeals*, 584 Phil. 35 (2008) [Per J. Nachura, Third Division]; *Social Security Commission v. Alba*, 581 Phil. 446 (2008) [Per J. Tinga, Second Division].

In this case, the issues of whether Racasa is private respondent's employee and whether private respondent failed to remit any contribution due to Racasa are questions of fact, which is not within the province of a petition for review under Rule 45 of the Rules of Court. Both the Social Security Commission and the Court of Appeals found that Racasa is private respondent's employee and private respondent failed to remit the contributions to the Social Security System for the period complained of resulting in a reduction of Racasa's benefits.

The Court of Appeals considered the following representations of private respondent revealing its intention to treat Racasa as its employee: (1) its station manager Jose Panes Jr. reported Racasa to the Social Security System as its employee effective March 16, 1989; (2) it remitted a total of 108 monthly contributions on behalf of Racasa from July 1989 to September 1999, excluding the delinquent months complained of; and (3) its Human Resource Department Head Jenalin I. Paller issued a Certification dated June 26, 2003 stating that the contributions of Racasa were deducted from his salary for the delinquent periods complained of.⁵¹ Also, the summary or report on the manual verification and posting of Racasa's contributions shows that no amounts were remitted by private respondent on the periods complained of.⁵² Thus, these factual findings supported by substantial evidence are binding upon us. Moreover, petitioner no longer raised these factual issues before us.

The only issue raised by petitioner is the deletion of damages made by the Court of Appeals in its decision.

Section 24 of the Social Security Act of 1997 provides:

SECTION 24. *Employment Records and Reports.* — (a) Each employer shall immediately report to the SSS the names, ages, civil status, occupations, salaries and dependents of all his employees who are subject to compulsory coverage: *Provided,* That if an employee subject to compulsory coverage should die or become sick or disabled or reach the age of sixty (60) without the SSS having previously received any report or written communication about him from his employer, the said employer shall pay to the SSS damages equivalent to the benefits to which said employee member would have been entitled had his name been reported on time by the employer to the SSS, except that in case of pension benefits, the employer shall be liable to pay the SSS damages equivalent to the accumulated pension due as of the date of settlement of the claim or the five (5) years' pension, whichever is higher, including dependents' pension: *Provided, further,* That if the contingency occurs within thirty (30) days from the date of employment, the employer shall be relieved of his liability for damages: *Provided, further,* That any person or entity engaging the services of an independent contractor shall be subsidiarily liable with such contractor for any civil liability incurred by the latter under this act: *Provided, finally,* That the same person or entity engaging the services of

⁵¹ *Rollo*, p. 39.

⁵² *Id.* at 40.

an independent contractor shall require such contractor to post a surety bond to guarantee the payment of the worker's benefits.

(b) Should the employer misrepresent the true date of employment of the employee member or remit to the SSS contributions which are less than those required in this Act or **fail to remit any contribution due prior to the date of contingency, resulting in a reduction of benefits, such employer shall pay to the SSS damages equivalent to the difference between the amount of benefit to which the employee member or his beneficiary is entitled had the proper contributions been remitted to the SSS and the amount payable on the basis of the contributions actually remitted:** *Provided*, That if the employee member or his beneficiary is entitled to pension, benefits, the damages shall be equivalent to the accumulated pension due as of the date of settlement of the claim or to the five (5) years' pension, whichever is higher, including dependents' pension.

In addition to the liability mentioned in the preceding paragraphs (a) and (b) hereof, the employer shall also be liable for the payment of the corresponding unremitted contributions and penalties thereon[.] (Emphasis supplied)

Damages under Section 24(b) of the Social Security Act of 1997 become due when employers: (1) "misrepresent the true date of employment of the employee member[;]" or (2) "remit to the [Social Security System] contributions which are less than those required in this Act[;]" or (3) "fail to remit any contribution due prior to the date of contingency, resulting in a reduction of benefits[.]" In any of these instances, the employer is mandated to pay the Social Security System damages "equivalent to the difference between the amount of benefit to which the employee member or his beneficiary is entitled had the proper contributions been remitted to the [Social Security System] and the amount payable on the basis of the contributions actually remitted[.]"

In *Ang Biat Huan Sons Industries, Inc. v. Court of Appeals*,⁵³ this Court upheld the Commission's order for the employer to pay damages, among others, to the Social Security System for misrepresenting the deceased petitioner's true date of employment, pursuant to Section 24(b) of the Social Security Act of 1997, as amended. In *Social Security Commission v. Alba*,⁵⁴ this Court found the employer accountable to the Social Security System for unremitted contributions of its employee and reinstated the Social Security Commission's Resolution ordering the employer to pay Social Security System the delinquent monthly contributions due the employee, the 3% per month penalty due thereon, and the damages under Section 24 (b) of the Social Security Act of 1997. This Court further sustained the jurisdiction of the Social Security Commission over disputes under the Social Security Act of 1997.

⁵³ 547 Phil. 588 (2007) [Per J. Corona, First Division].

⁵⁴ 581 Phil. 446 (2008) [Per J. Tinga, Second Division].

Having established in this case that private respondent failed to remit Social Security contributions resulting to a reduction of Racasa's benefits, private respondent is liable for damages amounting to ₱83,609.53,⁵⁵ which petitioner computed as the difference between ₱124,330.00, the amount of benefit to which the employee member or his beneficiary is entitled to had the proper contributions been remitted, computed by adding the total accrued monthly pension⁵⁶ and 13th month pension,⁵⁷ and the lump sum retirement benefit equivalent to ₱40,720.47,⁵⁸ or the amount payable on the basis of the contributions actually remitted.

The damages under Section 24(b) of the Social Security Act of 1997 is similar to the imposition of penalty under Section 22(a)⁵⁹ of the same law, as both attach by operation of law and become due if any contribution is not paid by the employer to the Social Security System. However, it is different from damages under the Civil Code, as to legal basis, cause of action, and evidence required.

Thus, the Court of Appeals erred in not applying the specific provision of the Social Security Act of 1997 on damages. Moreover, any dispute arising under the Social Security Act of 1997 with respect to coverage, benefits, contributions, and penalties thereon or any other matter related thereto, including damages, shall be cognizable by the Social Security Commission.⁶⁰ In *Poblete Construction Co. v. Asiain*,⁶¹ this Court emphasized the mandatory nature of Section 24⁶² of the Social Security Act of 1954 and held that the

⁵⁵ *Rollo*, p. 25.

⁵⁶ *Id.* at 24. The Total Accrued Monthly Pension from March 2001 to July 2008 is at ₱115,235.11.

⁵⁷ *Id.* The 13th Month Pension from 2001 to 2007 is at ₱124,330.00.

⁵⁸ *Id.* at 23–25.

⁵⁹ Republic Act No. 8282 (1997), sec. 22 provides:

SECTION 22. *Remittance of Contributions.* — (a) The contribution imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: *Provided*, That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer[.]

⁶⁰ Republic Act No. 8282 (1997), sec. 5(a).

⁶¹ 127 Phil. 573 (1967) [Per J. Makalintal, En Banc].

⁶² Republic Act No. 1161, as amended by Republic Act No. 4857 (1966), sec. 24 provides:

SECTION 24. *Employment records and reports.* — (a) Each employer shall report to the System the names, ages, civil status, occupations, salaries and dependents of all his employees, who are in his employ and who are or may later be subject to compulsory coverage within a period of thirty days from the date of their employment: *Provided*, That if an employee subject to compulsory coverage should die or become sick or disabled without the System having previously received a report about him from his employer within the period prescribed, the said employer shall pay to the employee or his legal heirs damages equivalent to the benefits to which said employee would have been entitled had his name been reported on time by the employer to the System: *Provided, further*, That the records and reports duly accomplished and submitted to the System by the employee or the employer, as the case may be, shall be kept confidential, shall not be divulged without the consent of the parties involved, shall be presumed to be correct of the data and other matters stated therein unless the necessary corrections to such records and reports have been properly made by the parties concerned before the right to the benefit being claimed accrues and shall be made the basis for the adjudication of the claim and such adjudication shall be final.

final determination of damages is vested in the Social Security Commission, thus:

Section 24 is mandatory, to such an extent that if the employee should die or become sick or disabled without the report having been made by the employer, the latter is liable for an amount equivalent to the benefits to which the employee would have been entitled had such report been made. It is true that the provision uses the word “damages” in referring to the amount that may be claimed. But this fact alone does not mean that the Social Security Commission lacks jurisdiction to award the same. **Section 5(a) of the Social Security Act provides that “the filing, determination and settlement of claims shall be governed by the rules and regulations promulgated by the Commission;” and the rules and regulations thus promulgated state that “the effectivity of membership in the System, as well as the final determination and settlement of claims, shall be vested in the Commission.”** The term “claims” is broad enough to include a claim for “damages” under Section 24[.]⁶³ (Emphasis supplied)

Accordingly, the Social Security Commission has legal and factual bases in ordering the private respondent to pay the Social Security System damages under Section 24(b) of the Social Security Act of 1997.

WHEREFORE, the Petition is **GRANTED**. The August 27, 2008 Resolution of the Social Security Commission in SSC Case No. 11-15794-04 is **REINSTATED**.

SO ORDERED.




MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

On official leave
RAMON PAUL L. HERNANDO
Associate Justice

⁶³ *Poblete Construction Co. v. Asiain*, 127 Phil. 573, 576–577 (1967) [Per J. Makalintal, En Banc].

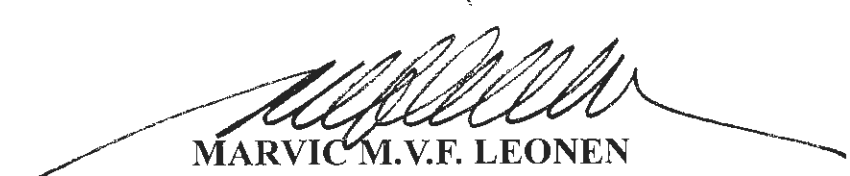

HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

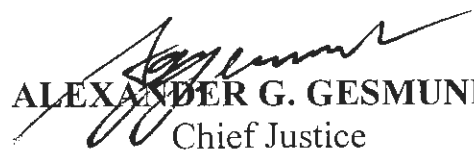
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice