



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SERVFLEX, INC.,

G.R. No. 246369

Petitioner,

Present:

- versus -

GESMUNDO, C.J., *Chairperson,*
CAGUIOA,
INTING,
GAERLAN, and
DIMAAMPAO, JJ.

LOVELYNN* M. URERA,
SHERRYL I. CABRERA,
PRECIOUS** C. PALANCA and
JOCO JIM L. SEVILLA,

Promulgated:

Respondents.

MAR 29 2022

X -----

DECISION

INTING, J.:

Assailed in the Petition for Review¹ on *Certiorari* under Rule 45 of the Rules of Court is the Decision² dated July 5, 2018 and the Resolution³ dated April 1, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 148586. The CA granted the petition for *certiorari* before it and denied the motions for reconsideration separately filed by the respondents therein.

* Spelled as Lovelyn in some parts of the *rollo*.

** Referred as Previous in some parts of the *rollo*.

¹ *Rollo*, pp. 21-37.

² Id. at 43-54; penned by Associate Justice Rosmari D. Carandang (now a retired Member of the Court) with Associate Justices Elihu A. Ybañez and Pedro B. Corales, concurring.

³ Id. at 56-58; penned by Associate Justice Elihu A. Ybañez with Associate Justices Pedro B. Corales and Ronaldo Roberto B. Martin, concurring.

The Antecedents

The case stemmed from a complaint for regularization of employment and nonpayment of benefits with prayer for moral and exemplary damages and attorney's fees filed by Lovelynn M. Urera, Sherryl I. Cabrera, Precious C. Palanca, and Joco Jim L. Sevilla (respondents) against Philippine Long Distance Telephone Company (PLDT), Servflex, Inc. (petitioner), and their respective officers – Rosalie C. Simeon (Simeon) and Dandy D. Abundo (Abundo).⁴

PLDT is a domestic company engaged in the telecommunications industry. It alleged that due to an increase in internet usage, its revenue from call and text messaging services decreased. To facilitate its digital shift, PLDT invested in new technologies and was constrained to outsource staff from contractors.⁵ In such regard, it engaged petitioner who agreed to undertake the supply of labor, particularly Database Engineers, to support the network facility build-up, migrations, optimization, and testing and troubleshooting of PLDT. The contract of service⁶ between petitioner and PLDT was for three years commencing on January 1, 2014 to December 31, 2016.⁷ However, even before the commencement of the contract of service, petitioner had already assigned respondents at PLDT. In particular, respondents began working for PLDT on the dates and with the monthly salaries as follows:

NAME	START OF WORK WITH PLDT	MONTHLY SALARY
1 Lovelynn M. URERA	18 March 2013	₱15,860.00
2 Precious C. PALANCA	14 May 2013	₱13,110.00
3 Sherryl I. CABRERA	7 March 2013	₱13,110.00
4 Joco Jim L. SEVILLA	1 Oct. 2013	₱13,110.00 ⁸

Meanwhile, respondents alleged that they applied at PLDT, but the latter referred them to petitioner which, after their engagement, still deployed them at PLDT. They stated that petitioner was a mere labor-

⁴ Id. at 96.

⁵ Id. at 43-44.

⁶ See Agreement No. PNC-C002-2014 between Philippine Long Distance Telephone Company and Servflex, Inc. for Contracted Services, id. at 79-95.

⁷ Id. at 81.

⁸ Id. at 97.

only contractor considering that: (1) it had no independent business for which it hired respondents; (2) respondents' work was integral to the business of PLDT; and (3) their work performance was under the control of PLDT.⁹

On the other hand, PLDT, petitioner, and their officers (Simeon and Abundo) countered that petitioner deployed respondents at the premises of PLDT pursuant to an agreement for contracted service, and such agreement laid down petitioner's hiring, termination, control and supervision over respondents and their work; thus, respondents were regular employees of petitioner, not of PLDT.¹⁰ They averred that petitioner was a legitimate job contractor as shown by: (1) its registration and certification issued by the Securities and Exchange Commission (SEC) and the Department of Labor and Employment (DOLE), respectively; (2) certifications showing that it had no pending case with the DOLE; (3) its General Information Sheet for the year 2016; and (4) petitioner's goodwill and established clientele.¹¹

The Ruling of the Labor Arbiter (LA)

In the Decision¹² dated June 10, 2016, the LA ruled for respondents, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1. DECLARING SERVFLEX, INC. (SERVFLEX) as a labor only contractor and considered merely as an agent of PHILIPPINE LONG DISTANCE [TELEPHONE] CO. (PLDT);
2. DECLARING complainants LOVELYNN M. URERA, PRECIOUS C. PALANCA, SHERRYL CABRERA, and JOCO LIM L. SEVILLA as regular employees of PLDT, since they started working with PLDT and are entitled to security of tenure and all benefits and rights appurtenant thereto, including those which should have been received by them;
3. ORDERING PLDT and SERVFLEX to pay jointly and severally complainants, (a) previous entitlements, which

⁹ Id. at 97.

¹⁰ Id. at 98.

¹¹ Id. at 98-99.

¹² Id. at 96-106; penned by Labor Arbiter Julio R. Gayaman.

should have been given to them, had they been treated as regular employees of PLDT, which are partially computed as of 16 May 2016 in the amount of ₱1,169,463.52, for LOVELYNN M. URERA; ₱1,218,963.52, for PRECIOUS C. PALANCA; ₱1,037,885.54, for SHERRYL CABRERA; and ₱785,860.24, for JOCO LIM L. SEVILLA; (b) moral and exemplary damages of ₱25,000.00 each; and (c) attorney's fees of ten percent of the monetary award, except damages; and

4. DISMISSING all other claims, for want of substantiation.¹³

The LA elucidated that:

One, in the absence of proof that the assets or capital of petitioner was used in the service it provided to PLDT, petitioner's registration with the DOLE could not be considered as conclusive proof that it possessed substantial capital for a job contracting services. Moreover, it was PLDT, not petitioner, which exercised control over respondents as shown by the following circumstances: (1) respondents were required to work at the premises of PLDT and the latter required them to follow a work schedule; (2) the Manager and the Section Head of PLDT supervised and gave work instructions to respondents; and (3) PLDT gave training and seminars intended for the work development of respondents.¹⁴

Two, the over-reliance of petitioner and PLDT on the language of their contract of service, where it was stipulated that petitioner had control over the contract workers, was "more apparent than real. The determination of whether or not one is carrying an independent business is not by stipulations in the contract, but on the nature of the activities performed by [the] employees."¹⁵

Three, the award of moral and exemplary damages was warranted as the referral of respondents to petitioner as a condition of employment—to circumvent their security of tenure—was a reflection of bad faith on the part of petitioner and PLDT. Attorney's fees must likewise be awarded because respondents were forced to file the case to protect their rights and interest. The complaint against Simeon and Abundo was, however, dismissed for failure to prove their individual liability.¹⁶

¹³ Id. at 106.

¹⁴ Id. at 101-103.

¹⁵ Id. at 103.

¹⁶ Id. at 105-106.

Petitioner and PLDT filed their separate appeals before the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

On July 29, 2016, the NLRC reversed and set aside the LA Decision and accordingly dismissed the complaint for lack of merit.¹⁷

The NLRC declared that petitioner was the employer of respondents as shown by the latter's application for employment, contract of employment, payslips, leave applications and remittances to government institutions.¹⁸ It ruled that petitioner was engaged in legitimate job contracting as: (1) it was registered as such with the DOLE; (2) it was registered with the SEC as a corporation with "contracting" as one of its purposes; (3) it had an independent business and had clients; and (4) respondents performed their work in their own manner and method free from control and supervision of PLDT.¹⁹

With the denial of their motion for reconsideration, respondents filed a petition for *certiorari* with the CA.

The Ruling of the CA

On July 5, 2018, the CA granted the petition for *certiorari*. It ordered PLDT and petitioner to solidarily pay respondents: (1) salary and employee benefits reckoned from the commencement of their work with PLDT; (2) moral and exemplary damages in the amount of ₱25,000.00 each; and (3) attorney's fees at 10% of the amount of wages recovered.

The CA ruled as follows:

¹⁷ See Decision dated July 29, 2016 of the National Labor Relations Commission as penned by Commissioner Pablo C. Espiritu, Jr. with Presiding Commissioner Alex A. Lopez and Commissioner Cecilio Alejandro C. Villanueva, id. at 108-125.

¹⁸ Id. at 121.

¹⁹ Id.

First, respondents were working for PLDT since 2013, or prior to the effectivity of the service agreement between petitioner and PLDT that only commenced on January 1, 2014. The arrangement between petitioner and PLDT, if allowed, would permit them to avoid hiring regular employees and enable them to deny the employees the right to security of tenure and just keep them indefinitely on a temporary status.²⁰

Second, respondents were regular employees of PLDT because petitioner deployed them to perform activities directly related to the principal business of PLDT. More particularly, their work as Database Engineers were necessary and indispensable to the business of PLDT.²¹

Last, the award of moral and exemplary damages and attorney's fees was in order in view of bad faith on the part of petitioner and PLDT in entering the service agreement to purposely disregard respondents' security of tenure and benefits, and the latter were compelled to litigate to protect their rights and interests.²²

Petitioner and PLDT filed their separate motions for reconsideration, which the CA denied in its Resolution²³ dated April 1, 2019.

Aggrieved, petitioner filed the present petition raising the following arguments:

I

CONTRARY TO THE COURT OF APPEALS' RULING, [PETITIONER]'S CERTIFICATE OF REGISTRATION PROVES THAT IT IS A LEGITIMATE JOB CONTRACTOR.

II

CONTRARY TO THE COURT OF APPEALS' RULING, [PETITIONER]'S EMPLOYEES --- INCLUDING RESPONDENTS HEREIN --- INDEPENDENTLY PERFORM THE CONTRACTED

²⁰ Id. at 50.

²¹ Id. at 51.

²² Id. at 53.

²³ Id. at 56-58.

WORK OF PROVIDING ADDITIONAL SUPPORT ON
ADDRESSING PLDT'S NETWORK PROJECTS.²⁴

Petitioner's Arguments

Petitioner contends that: (1) it is validly registered and has substantial capital and necessary tools to operate as an independent job contractor; (2) it has been providing manpower service to several clients; and (3) respondents are its regular employees because it exercised the power to hire, pay, and control them.²⁵

Respondents' Arguments

Respondents counter that: (1) petitioner's DOLE registration as an independent contractor is not a conclusive evidence of such status;²⁶ (2) it was PLDT which exercised the power of control over the work of respondents which they performed in the premises of PLDT; and (3) petitioner did not at all prove how it controlled respondents' work performance, free from the control and direction of PLDT.²⁷

The Issue

Whether the CA erred in finding grave abuse of discretion on the part of the NLRC in reversing the LA Decision.

Our Ruling

The petition lacks merit.

Foremost, the Court underscores that the issues of whether petitioner is an independent contractor or a mere labor-only contractor, and of whether respondents are its regular employees are factual in nature and therefore, they are not within the scope of a Rule 45 petition. Nonetheless, there being divergent factual findings between the LA and

²⁴ Id. at 27.

²⁵ Id. at 28, 32-36.

²⁶ Id. at 135.

²⁷ Id. at 137.

CA, on one hand, and the NLRC, on the other hand, the Court deems it necessary to reevaluate the evidence for the just disposition of the case.²⁸

Equally important, “in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether [in a petition for *certiorari*,] the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision.”²⁹

There is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not supported by substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.³⁰ *Such grave abuse of discretion on the part of the NLRC warrants the grant of the extraordinary remedy of certiorari.*³¹

In the present case, the Court finds that the CA did not err in finding that the NLRC committed grave abuse of discretion in reversing and setting aside the LA Decision and accordingly dismissing the case.

Let it be underscored that to fully resolve the matters on hand, it is significant for the Court to delve into the concept of labor-only contracting as defined in law and discussed in jurisprudence.

Labor-only contracting refers to an arrangement whereby a person who does *not* have substantial capital or investment deploys workers to the employer for them to perform tasks that are directly necessary to the employer's principal business.³² It is present where: (1) a person who supplies workers to an employer does not possess substantial capital or investment in the form of tools, pieces of equipment or machinery, work premises, among others; and (2) the workers are made to perform tasks which are directly related to the employer's principal business. Under the circumstances, the intermediary or the person who assigned the workers

²⁸ See *Inocentes v. R. Syjuco Construction, Inc.*, G.R. No. 237020, July 29, 2019, citing *Dacuita v. L.M. Camus Engineering Corp.*, 644 Phil. 158, 169 (2010).

²⁹ *Slord Development Corporation v. Noya*, G.R. No. 232687, February 14, 2019.

³⁰ *Ace Navigation Company v. Garcia*, 760 Phil. 924 (2015); *Mercado v. AMA Computer College-Paranaque City, Inc.*, 632 Phil. 228 (2010).

³¹ *Ace Navigation Company v. Garcia*, *id.* (2015).

³² See *Consolidated Building Maintenance, Inc. v. Asprec*, 832 Phil. 630, 642 (2018).

to the employer shall be deemed as the latter's agent, and the employer shall be responsible for the workers, as if it directly hired them.³³

Overall, the presence of a labor-only contracting is evident in such a situation where the contractor merely recruits, supplies, and assigns workers to perform a job for a principal, as in the present case.

First, it bears stressing that in the context of labor-only contracting, substantial capital or investment rests not only on the capitalization indicated in the financial documents but on the pieces of equipment and machinery, and work premises a person or entity *actually and directly used in the performance of the work or service it contracts out*. In other words, to be considered as a legitimate labor contractor, a person or entity must possess the necessary tools and premises in relation to the job or service it renders.³⁴ Definitely, job contracting *per se* is not prohibited. It is permissible where the contractor establishes that it has substantial capital or investment in relation to the service or job that it provides and it undertakes an independent business, which is free from the control of the principal.³⁵

Here, petitioner did not at all specify any tool or equipment it owned and supplied respondents for them to perform their work for PLDT. On the contrary, PLDT provided the relevant tools and the premises for the performance of respondents' work. More importantly, respondents have been performing tasks central and necessary to the business of PLDT. Undeniably, all these matters indicate that PLDT is the employer of respondents. This is as properly observed by the CA:

Although the functions of [respondents] were described in the service agreement, there was no indication how these duties are different, highly-technical or specialized from those duties performed by PLDT's regular employees in the Technical Group. [Respondents'] duties of checking [the] availability of port and bandwidth or speed before the issuance of the Certificate of Authorization Order (CAO), issuance of the CAO for purposes of activation of internet connection to the PLDT equipment installed in the client's premises, record the connection in PLDT's database, and "after sale" tasks, such as, checking, organizing and/or trouble-shooting of network connections,

³³ *W.M. Manufacturing, Inc. v. Dalag*, 774 Phil. 353, 375-376 (2015), citing Article 106 of the Labor Code of the Philippines.

³⁴ *Id.* at 379.

³⁵ *Consolidated Building Maintenance, Inc. v. Asprec*, supra note 32 at 644.

among others, are functions clearly necessary and desirable to PLDT's services. In fact, the Service Agreement states that the contract was for purposes of providing "additional support" or to add manpower to PLDT's Technical Group. It is even undisputed that [respondents] perform the same work in the same premises as PLDT's regular employees, using the same tools and implements provided for by PLDT.³⁶

Second, there is no clear showing that petitioner had the power of control over respondents.

Right of control is defined as such "right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end."³⁷ The element of control is indicative of an employer-employee relationship. It does not only relate to a mutually desirable end intended by the agreement but it is of such a nature as to dictate the means and methods to be done to achieve the work result.³⁸

In the case, PLDT not only possessed, but actually wielded and exercised the power of control over the work performance of respondents. This is made evident by the following circumstances duly noted by the LA:

[Respondents] are required to work in the premises of PLDT. Indeed, control of the premises in which the work is performed, is also viewed as another phase or control over the work. PLDT similarly obliged them to follow work schedule, just like the regular employees of PLDT. The electronic mails (email) manifestly display that [respondents] directly received orders from PLDT Manager, Garnel Gilberto Dangel, and Section Head, Willie Sison. These instructions, consisting of orders to delete or add Network Orders (NOs) and directives to expedite revision or accommodation of NOs, have something to do with how [respondents] should perform their work. This is contrary to PLDT's stance that [respondents] are not subject to its direct supervision and that what was given to them were merely job orders.

Furthermore, x x x PLDT's action of providing trainings and seminars about its processes and software, are intended to improve

³⁶ *Rollo*, p. 49.

³⁷ *Daguinod v. Southgate Foods, Inc.*, G.R. No. 227795, February 20, 2019.

³⁸ *Consolidated Building Maintenance, Inc. v. Asprec*, supra note 32 at 647.

and develop [respondents] so that they can better contribute to the realization of the company's goal. Differently put, it was *PLDT, which planned and implemented [respondents'] career development* in order to improve their level of competence. On top of this, a review of the [respondents'] job description actually pertains to the manner and method by which their work should be done.

Verily, PLDT's control over work premises; imposition of work activities and schedules; supervision over the work; requisite seminars and trainings; and required process, rules and regulations; successfully controlled how [respondents] performed their work.³⁹ (Italics supplied.)

At the same time, the reliance of petitioner on the stipulation under the contract of service that it has the right of control over respondents is untenable. This is especially true given that respondents, as stressed by the CA, started working for PLDT since 2013 or even prior to the execution of the contract of service between petitioner and PLDT. Undoubtedly, respondents were already under the control and supervision of PLDT and the latter did not transfer such function by the mere execution of the contract of service with petitioner.

Indeed, the contract stipulation on the supposed control of petitioner over respondents is unavailing because not only did petitioner fail to prove that it exercised supervision over respondents' work, the stipulation itself only stated in general terms such power of control, viz.:

- 9.5 It is hereby agreed and understood that the Contractor shall have the exclusive authority to select, engage and discharge its employees/personnel or otherwise direct and control their services hereunder. The determination of the wages, salaries and compensation of the employees/personnel of the Contractor, and the manner, frequency and place of their payment shall be within the Contractor's full and exclusive control. In the performance of its obligations hereunder, the Contractor shall be free to use such means and devices not contrary to law and existing regulations and is subject to the control and direction of PLDT only as far as the results to be accomplished by this Agreement are concerned. However, the Contractor shall promptly act on PLDT's complaints regarding the Contractor's employees/personnel assigned to perform the Services, and at the Contractor's discretion, if it [finds reasonable grounds therefor, assign other employee/personnel

³⁹ *Rollo*, pp. 101-103.

to perform] the Services to replace the employee/personnel subject of PLDT's complaints.⁴⁰

And *last*, petitioner's reliance on its certificate of registration is not sufficient to establish that it is an independent labor contractor. Notably, a certificate of registration with the DOLE is not a conclusive proof of legitimacy as a manpower provider. The certificate only prevents the presumption of labor-only contracting from arising. Petitioner's insistence that it is registered with the DOLE as an independent contractor cannot fully establish its status as such. To reiterate, the registration is only for the purpose of preventing the presumption of labor-only contracting to arise, but it is not a conclusive proof that petitioner is indeed a legitimate labor contractor.⁴¹ The presumption cannot prevail in this case, there being overwhelming evidence supporting the conclusion that petitioner is a mere labor-only contractor.

Verily, the ruling of the NLRC that petitioner is the employer of respondents and that it is engaged in a legitimate job contracting is not supported by substantial evidence. The Court finds that petitioner and PLDT are engaged in labor-only contracting. Consequently, by legal fiction, they are considered agent and principal, respectively and thus, are jointly and severally liable to pay respondents the salaries and benefits due them as regular employees.⁴² All told, the CA did not err in finding that the NLRC committed grave abuse of discretion when it reversed and set aside the LA decision and concomitantly, dismissed the case.

Finally, in conformity with prevailing jurisprudence,⁴³ the Court hereby imposes legal interest at the rate of 6% *per annum* on all the monetary awards from the finality of this Decision until full payment.

WHEREFORE, the petition is **DENIED**. The Decision dated July 5, 2018 and the Resolution dated April 1, 2019 of the Court of Appeals in CA-G.R. SP No. 148586 are **AFFIRMED** with **MODIFICATION** in that all the monetary awards shall earn interest at the rate of 6% *per annum* from the finality of this Decision until full payment.

⁴⁰ Id. at 84.

⁴¹ *W.M. Manufacturing, Inc. v. Dalag*, supra note 33 at 379-380.


⁴² Id. at 381

⁴³ *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUITA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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
Chairperson