



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DR. MARY JEAN P. LORECHE-AMIT,

G.R. No. 216635

Petitioner,

Present:

- versus -

CARPIO, *Chairperson*,
PERLAS-BERNABE,
CAGUIOA,*
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

CAGAYAN DE ORO MEDICAL CENTER, INC. (CDMC), DR. FRANCISCO OH and DR. HERNANDO EMANO,

Promulgated:

03 JUN 2019

Respondents.

HM Cabalag Projecto

x-----x

DECISION

REYES, J. JR. J.:

Before us is a Petition for Review on *Certiorari*,¹ which seeks to assail the Decision² dated August 3, 2012 and Resolution³ dated April 12, 2013 of the Court of Appeals (CA)-Cagayan de Oro City, in CA-G.R. SP No. 03067-MIN which affirmed the decision of the National Labor Relations Commission (NLRC).

* On wellness leave.

¹ *Rollo*, pp. 4-28.

² Penned by Associate Justice Renato C. Francisco, with Associate Justices Edgardo A. Camello and Marilyn B. Lagura-Yap; *id.* at 41-55.

³ *Id.* at 57-58.

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The Relevant Antecedents

Dr. Mary Jean P. Loreche-Amit (petitioner) started working with Cagayan De Oro Medical Center, Inc. (CDMC), sometime in May 1996, when she was engaged by the late Dr. Jose N. Gaerlan (Dr. Gaerlan) as Associate Pathologist in the Department of Laboratories. Upon the demise of Dr. Gaerlan, CDMC's Board of Directors formally appointed petitioner as Chief Pathologist for five years or until May 15, 2011.⁴

On June 13, 2007, (CDMC's) Board of Directors passed a resolution, recalling petitioner's appointment as Chief Pathologist. This prompted petitioner to file a complaint for illegal dismissal, contending that she was dismissed by CDMC from her work without just cause and due process.⁵

In her complaint, petitioner narrated the circumstances which surrounded the recall of her appointment. She averred that Dr. Hernando Emamo (Dr. Emamo) asked her to help his daughter Dr. Helga Emamo-Bleza (Dr. Emamo-Bleza) to qualify as a pathologist considering that petitioner is one of the six members of the Board of Governors accredited by the Professional Regulation Commission. However, petitioner refused to assist Dr. Emamo-Bleza because the latter failed to qualify in the clinical pathology examination. Such refusal, according to petitioner, started the subtle attempt of Dr. Emamo to oust her from her job.⁶

Soon thereafter, Dr. Francisco Oh (Dr. Oh) issued an Inter-Office Memorandum addressed to all laboratory personnel stating that working in and out of the building without proper permission is to be treated as absence without official leave and payment for printing of duplicate copies not endorsed to the hospital is a form of stealing. As petitioner slammed the Memorandum against the wall and tagged the name of Dr. Oh as an irrational man, she received an Inter-Office Memorandum from Dr. Oh for alleged conduct unbecoming/insubordination, and to explain why her appointment should not be revoked due to such behavior.⁷ Finally, a Memorandum recalling her appointment was issued.⁸

For their part, Dr. Emamo, Dr. Oh, and CDMC (collectively referred to as respondents) averred that petitioner was not hired by them as she merely assisted Dr. Gaerlan in operating the hospital's laboratory. Respondents maintained that petitioner worked at the same time as pathologist in Capitol College Hospital and J.R. Borja Memorial Hospital as she was not prohibited to do so.⁹

⁴ Id. at 42.

⁵ Id.

⁶ Id.

⁷ Id. at 43.

⁸ Id.

⁹ Id. at 43-44.

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In dismissing the complaint for lack of jurisdiction, the Labor Arbiter rendered a Decision¹⁰ dated March 31, 2008. The Labor Arbiter found that petitioner is a corporate officer of the hospital because of her appointment by the Board of Directors through a resolution; thus, matters relating to the propriety of her dismissal is under the jurisdiction of the Regional Trial Court (RTC) under Section 5.2 of Republic Act (R.A.) No. 8799 (The Securities Regulation Code of the Philippines). The dispositive portion of the Decision reads:

WHEREFORE, foregoing premises considered, the above-entitled case is **DISMISSED** for lack of jurisdiction.

SO ORDERED.¹¹

On appeal, the NLRC in a Resolution¹² dated March 31, 2009, affirmed the ruling of the Labor Arbiter and reiterated that petitioner is a corporate officer and that there was no employer-employee relationship between CDMC and her. As it is, the issue is an intra-corporate matter, the jurisdiction of which belongs to the regular courts, *viz.*:

WHEREFORE, in view of all the foregoing considerations, the instant appeal is hereby **DISMISSED** for lack of merit. The assailed Decision dated March 31, 2008 is **AFFIRMED**.

SO ORDERED.¹³

Petitioner filed a Petition for *Certiorari* before the CA.

In a Decision¹⁴ dated August 3, 2012, the CA dismissed the petition and echoed the rulings of the Labor Arbiter and NLRC, thus:

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.¹⁵

The motion for reconsideration filed by petitioner was likewise dismissed in a Resolution¹⁶ dated April 12, 2013.

The Issue

Whether or not the labor tribunals have jurisdiction over the complaint for illegal dismissal filed by petitioner.

¹⁰ Penned by Executive Labor Arbiter Bario-Rod M. Talon; *id.* at 60-66.

¹¹ *Id.* at 66.

¹² Penned by Presiding Commissioner Salic B. Dumarpa, with Commissioners Proculo T. Sarmen and Dominador B. Medroso, Jr.; *id.* at 87-92.

¹³ *Id.* at 92.

¹⁴ *Supra* note 2.

¹⁵ *Id.* at 54.

¹⁶ *Supra* note 3.

The Court's Ruling

The determination of whether petitioner was indeed an employee of CDMC is necessary before we proceed to rule on the propriety of her dismissal.

Petitioner argues that she is not a corporate officer because her position as Pathologist is not among those included in the by-laws of CDMC.

This Court agrees.

To be considered as a corporate officer, the designation must be either provided by the Corporation Code or the by-laws of the corporation, to wit:

Corporate officers are given such character either by the Corporation Code or by the corporation's by-laws. Under Section 25 of the Corporation Code, the corporate officers are the president, secretary, treasurer and such other officers as may be provided in the by-laws. Other officers are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.¹⁷ (Citation omitted)

In this case, nowhere in the records could the by-laws of CDMC be found. An appointment through the issuance of a resolution by the Board of Directors does not make the appointee a corporate officer. It is necessary that the position is provided in the Corporation Code or in the by-laws. In the absence of the by-laws of CDMC, there is no reason to conclude that petitioner, as Pathologist, is considered as a corporate officer. In the cases of *WPP Marketing Communications, Inc. v. Galera*¹⁸ and *Marc II Marketing, Inc. v. Joson*,¹⁹ this Court declared that respondents are not corporate officers because neither the Corporation Code nor the by-laws of the respective corporations provided so. In the latter case, this Court treated as employee the respondent whose position was not expressly mentioned in the Corporation Code or the by-laws.²⁰

Thus, the RTC does not have jurisdiction over the case as there was no intra-corporate controversy, the latter being operative in vesting jurisdiction upon Regional Trial Courts over all controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships or associations.

However, this is not an automatic declaration that petitioner is an employee of CDMC. The four-fold test, to wit: 1) the selection and engagement of the employees; 2) the payment of wages; 3) the power of

¹⁷ *WPP Marketing Communications, Inc. v. Galera*, 630 Phil 410, 425 (2010).

¹⁸ *Id.*

¹⁹ 678 Phil. 232, 253 (2011)

²⁰ *Id.*

dismissal; and 4) the power to control the employee's conduct, must be applied to determine the existence of an employer-employee relationship.²¹

In this case, it is apparent that CDMC, through the Board of Directors, exercised the power to select and supervise petitioner as the Pathologist. It must be emphasized that petitioner was appointed as Pathologist with a term of five years from May 2006 to May 2011. She was likewise paid compensation which is at 4% of the gross receipts of the Clinical Section of the laboratory.

However, based on the records, CDMC does not exercise the power of control over petitioner.

The power to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This test is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end.²²

As the Labor Arbiter, NLRC, and the CA aptly observed, petitioner was working for two other hospitals aside from CDMC, not to mention those other hospitals which she caters to when her services are needed. Such fact evinces that petitioner controls her working hours. On this note, relevant is the economic reality test which this Court has adopted in determining the existence of employer-employee relationship. Under this test, the economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties, to wit:

x x x. In our jurisdiction, the benchmark of economic reality in analyzing possible employment relationships for purposes of applying the Labor Code ought to be the economic dependence of the worker on his employer.²³

Thus, the fact that petitioner continued to work for other hospitals strengthens the proposition that petitioner was not wholly dependent on CDMC.

Petitioner likewise admitted that she receives in full her 4% share in the Clinical Section of the hospital regardless of the number of hours she worked therein. Alternatively put, petitioner manages her method and hours of work.

The rule is that where a person who works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the

²¹ *Marsman & Company, Inc. v. Sta. Rita*, G.R. No. 194765, April 23, 2018.

²² *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 790 (2015).

²³ *Orozco v. The Fifth Division of the Honorable Court of Appeals*, 584 Phil. 35, 52 (2008).

result of his efforts and not the amount thereof, no employer-employee relationship exists.²⁴

Moreover, the Memorandum, pertaining to petitioner's behavior, issued by Dr. Oh does not sufficiently establish the element of control. The Memorandum merely states that intolerable behavior in the hospital cannot be countenanced. It is administrative in character which does not, in any way, pertain to the manner and method of petitioner's work.


In sum, this Court finds no reason to overturn the finding of the LA, NLRC, and the CA that there was no illegal dismissal in this case as it was not sufficiently proven that petitioner is indeed an employee of CDMC.

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED** in that petitioner is not a corporate officer. The Decision dated August 3, 2012 and the Resolution dated April 12, 2013 of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP No. 03067-MIN are **AFFIRMED**.

SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson


ESTELA M. PERLAS-BERNABE
Associate Justice

(On Wellness Leave)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

²⁴ Supra note 22, at 791.

ATTESTATION

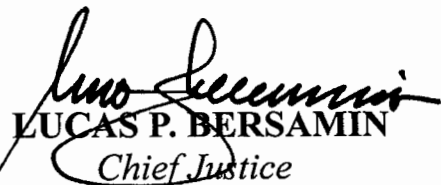
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

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.



LUCAS P. BERSAMIN
Chief Justice

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