Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

UNIVERSITY OF SANTO TOMAS (UST), Petitioner,	**G.R. No. 184262**** Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, DEL CASTILLO, PERLAS-BERNABE, and CAGUIOA, *JJ.*
SAMAHANG MANGGAGAWA NG UST, FERNANDO PONTESOR,* RODRIGO CLACER, SANTIAGO BUISA, JR., and JIMMY NAZARETH, Respondents.	Promulgated: APR 24 2017

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 12, 2008 and the Resolution[3] dated August 22, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 85464, which reversed and set aside the Resolutions dated March 26, 2004[4] and May 25, 2004[5] of the National Labor Relations Commission (NLRC) in NLRC NCR CASE NO. 00-08-08586-99 (NLRC CA No. 035509-03) and, accordingly, reinstated the Decision[6] dated October 23, 2002 of the Labor Arbiter (LA) in NLRC-NCR-0-08-08586-99 declaring respondents Fernando Pontesor (Pontesor), Rodrigo Clacer

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* "Pontessor" in some parts of the records.

** Part of the Supreme Court's Case Decongestion Program.

1 *Rollo*, pp. 8-47.

2 Id. at 52-66. Penned by Associate Justice Romeo F. Barza with Associate Justices Mario L. Guariña III and Japar B. Dimaampao concurring.

3 Id. at 68.

4 Id. at 188-197. Signed by Presiding Commissioner Lourdes C. Javier and Commissioners Ernesto C. Verceles and Tito F. Genilo.

5 Id. at 204-205.

6 Id. at 140-144. Penned by LA Madjayran H. Ajan.

(Clacer), Santiago Buisa, Jr. (Buisa), and Jimmy Nazareth (Nazareth; Pontesor, *et al.*, collectively) as regular employees of petitioner University of Santo Tomas (petitioner) and, thus, were illegally dismissed by the latter.

The Facts

The instant case stemmed from a complaint[7] for regularization and illegal dismissal filed by respondents Samahang Manggagawa ng UST and Pontesor, *et al.* (respondents) against petitioner before the NLRC. Respondents alleged that on various periods spanning the years 1990-1999, petitioner repeatedly hired Pontesor, *et al.* to perform various maintenance duties within its campus, *i.e.*, as laborer, mason, tinsmith, painter, electrician, welder, carpenter. Essentially, respondents insisted that in view of Pontesor, *et al.*'s performance of such maintenance tasks throughout the years, they should be deemed regular employees of petitioner. Respondents further argued that for as long as petitioner continues to operate and exist as an educational institution, with rooms, buildings, and facilities to maintain, the latter could not dispense with Pontesor, *et al.*'s services which are necessary and desirable to the business of petitioner.[8]

On the other hand, while petitioner admitted that it repeatedly hired Pontesor, *et al.* in different capacities throughout the aforesaid years, it nevertheless maintained that they were merely hired on a per-project basis, as evidenced by numerous Contractual Employee Appointments (CEAs)[9] signed by them. In this regard, petitioner pointed out that each of the CEAs that Pontesor, *et al.* signed defined the nature and term of the project to which they are assigned, and that each contract was renewable in the event the project remained unfinished upon the expiration of the specified term. In accordance with the express provisions of said CEAs, Pontesor, *et al.*'s project employment were automatically terminated: (*a*) upon the expiration of the specific term specified in the CEA; (*b*) when the project is completed ahead of such expiration; or (*c*) in cases when their employment was extended due to the non-completion of the specific project for which they were hired, upon the completion of the said project. As such, the termination of Pontesor, *et al.*'s employment with petitioner was validly made due to the completion of the specific projects for which they were hired.[10]

The LA Ruling

In a Decision[11] dated October 23, 2002, the LA ruled in Pontesor, *et al.*'s favor and, accordingly, ordered petitioner to reinstate them to their

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7 Id. at 70-71.
8 See id. at 52-55, 140-141, and 190-191.
9 *CA rollo*, pp. 25-43.
10 See *rollo*, pp. 55, 141-142, and 191-194.
11 Id. at 140-144. Penned by Labor Arbiter Madjayran H. Ajan.

former jobs with full backwages and without loss of seniority rights.[12] The LA found that Pontesor, *et al.* should be deemed as petitioner's regular employees, considering that: (*a*) they have rendered at least one (1) year of service to petitioner as its employees; (*b*) the activities for which they were hired for are vital or inherently indispensable to the maintenance of the buildings or classrooms where petitioner's classes were held; and (*c*) their CEAs were contrived to preclude them from obtaining security of tenure. In this light and in the absence of any valid cause for termination, the LA concluded that Pontesor, *et al.* were illegally dismissed by petitioner.[13]

Aggrieved, petitioner appealed[14] to the NLRC.

The NLRC Ruling

In a Resolution[15] dated March 26, 2004, the NLRC vacated the LA ruling and, consequently, entered a new one dismissing respondents' complaint for lack of merit.[16] Contrary to the LA's findings, the NLRC found that Pontesor, *et al.* cannot be considered regular employees as they knowingly and voluntarily entered into fixed term contracts of employment with petitioner. As such, they could not have been illegally dismissed upon the expiration of their respective last valid and binding fixed term employment contracts with petitioner. This notwithstanding, the NLRC rejected petitioner's contention that Pontesor, *et al.* should be deemed project employees, ratiocinating that their work were not usually necessary and desirable to petitioner's main business or trade, which is to provide elementary, secondary, tertiary, and post-graduate education. As such, the NLRC classified Pontesor, *et al.* as mere fixed term casual employees.[17]

Respondents moved for reconsideration,[18] which was, however, denied in a Resolution[19] dated May 25, 2004. Dissatisfied, they filed a petition[20] for *certiorari* before the CA.

The CA Ruling

In a Decision[21] dated June 12, 2008, the CA reversed and set aside the NLRC ruling and, accordingly, reinstated that of the LA.[22] It held that Pontesor, *et al.* cannot be considered as merely fixed term or project

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12 Id. at 144.
13 See id. at 142-143.
14 Dated January 15, 2002. Id. at 147-164.
15 Id. at 188-197.
16 Id. at 197.
17 See id. at 194-196.
18 Dated April 21, 2004. Id. at 198-202.
19 Id. at 204-205.
20 Dated August 2, 2004. Id. at 206-215.
21 Id. at 52-66.
22 Id. at 65.

employees, considering that: (*a*) they performed work that is necessary and desirable to petitioner's business, as evidenced by their repeated rehiring and petitioner's continuous need for their services; and (*b*) the specific undertaking or project for which they were employed were not clear as the project description set forth in their respective CEAs were either too general or too broad. Thus, the CA classified Pontesor, *et al.* as regular employees, who are entitled to security of tenure and cannot be terminated without any just or authorized cause.[23]

Undaunted, petitioner moved for reconsideration,[24] but the same was denied in a Resolution[25] dated August 22, 2008; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that Pontesor, *et al.* are regular employees and, consequently, were illegally dismissed by petitioner.

The Court's Ruling

The petition is without merit.

"Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."[26]

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[27]

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23 See id. at 58-65.

24 Dated July 2, 2008. Id. at 278-305.

25 Id. at 68.

26 See *Quebral v. Angbus Construction, Inc.*, G.R. No. 221897, November 7, 2016, citing *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

27 See id., citing *Gadia v. Sykes Asia, Inc.*, G.R. No. 209499, January 28, 2015, 748 SCRA 633, 641.

"In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."[28]

Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC, as its finding that Pontesor, *et al.* are not regular employees of petitioner patently deviates from the evidence on record as well as settled legal principles of labor law.

Article 295[29] of the Labor Code,[30] as amended, distinguishes project employment from regular employment as follows:

> Art. 295 [280]. *Regular and casual employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Under the foregoing provision, the law provides for two (2) types of regular employees, namely: (*a*) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (*b*) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category).[31] In *Universal Robina*

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28 See id.; citations omitted.

29 Formerly Article 280. See Department Advisory No. 01, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

30 Presidential Decree No. 442, entitled "A DECREE INSTITUTING A LABOR CODE, THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE" (May 1, 1974).

31 *Kimberly Independent Labor Union for Solidarity, Activism, and Nationalism – Organized Labor Ass'n. in Line Industries and Agrigulture (KILUSAN-OLALIA) v. Drilon*, 263 Phil. 892, 905 (1990).

Corporation v. Catapang,[32] citing *Abasolo v. NLRC*,[33] the Court laid down the test in determining whether one is a regular employee, to wit:

> The primary standard, therefore, of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety. **Also, if the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity and while such activity exists**.[34] (Emphasis and underscoring supplied.

In *Kimberly Independent Labor Union for Solidarity, Activism, and Nationalism – Organized Labor Ass'n. in Line Industries and Agrigulture (KILUSAN-OLALIA) v. Drilon* (*Kimberly*),[35] the company was engaged in the manufacture of paper products, while the questioned employees occupied the positions of mechanics, electricians, machinists, machine shop helpers, warehouse helpers, painters, carpenters, pipefitters and masons. In that case, the Court held that since they have worked for the company for more than one (1) year, they should belong to the second category of regular employees by operation of law.

In the case at bar, a review of Pontesor, *et al.*'s respective CEAs[36] reveal that petitioner repeatedly rehired them for various positions in the nature of maintenance workers, such as laborer, mason, painter, tinsmith, electrician, carpenter, and welder, for various periods spanning the years 1990-1999. Akin to the situation of the employees in *Kimberly*, Pontesor, *et al.*'s nature of work are not necessary and desirable to petitioner's usual business as an educational institution; hence, removing them from the ambit of the first category of regular employees under Article 295 of the Labor Code. Nonetheless, it is clear that their respective cumulative periods of employment as per their respective CEAs each exceed one (1) year. Thus, Pontesor, *et al.* fall under the second category of regular employees under Article 295 of the Labor Code. Accordingly, they should be deemed as regular employees but only with respect to the activities for which they were hired and for as long as such activities exist.

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32 509 Phil. 765 (2005).
33 400 Phil. 86, 103 (2000); further citation omitted.
34 Id. at 778-779.
35 Supra note 31.
36 *CA rollo*, pp. 25-43.

In this relation, the Court clarifies that Pontesor, *et al.* were not project employees of petitioner, who were validly terminated upon the completion of their respective projects/undertakings. In *Gadia v. Sykes Asia, Inc.*,[37] the Court discussed the requisites for a valid project employment, to wit:

> A project employee is assigned to a project which begins and ends at determined or determinable times. Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as "project[-based] employees" may be lawfully terminated at the completion of the project.
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> According to jurisprudence, the principal test for determining whether particular employees are properly characterized as "project[-based] employees" as distinguished from "regular employees," is **whether or not the employees were assigned to carry out a "specific project or undertaking,"** the duration (and scope) of which were specified at the time they were engaged for that project. **The project could either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation.** In order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining a regular status, **employers claiming that their workers are project[-based] employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also, that there was indeed a project**.[38] (Emphases and underscoring supplied)

As aptly held by the CA, Pontesor, *et al.* could not be considered as project employees because the specific undertakings or projects for which they were employed were not clearly delineated. This is evidenced by the vagueness of the project descriptions set forth in their respective CEAs,[39] which states that they were tasked "to assist" in various carpentry, electrical, and masonry work. In fact, when the aforesaid CEAs are pieced together, it appears that during the years 1990 to 1999, Pontesor, *et al.* were each engaged to perform all-around maintenance services throughout the various facilities/installations in petitioner's campus. Thus, it seems that petitioner, through the CEAs, merely attempted to compartmentalize Pontesor, *et al.*'s various tasks into purported "projects" so as to make it appear that they were hired on a per-project basis. Verily, the Court cannot countenance this practice as to do so would effectively permit petitioners to avoid hiring permanent or regular employees by simply hiring them on a temporary or casual basis, thereby violating the employees' security of tenure relative to their jobs.[40]

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37 Supra note 27.
38 Id. at 643, citing *Omni Hauling Services v. Bon*, 742 Phil. 335, 343-344 (2014).
39 *CA rollo*, pp. 25-43.
40 See *Universal Robina Corporation v. Catapang*, supra note 32, at 779.

Lest it be misunderstood, there are instances when the validity of project[41] or fixed term[42] employments were upheld on the ground that it was "agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter."[43] However, if it is apparent from the circumstances of the case "that periods have been imposed to preclude acquisition of tenurial security by the employee," such project or fixed term contracts are disregarded for being contrary to public policy,[44] as in this case.

In view of the foregoing, Pontesor, *et al.* should, as discussed earlier, be considered *regularized casual employees* who enjoy, *inter alia*, security of tenure. Accordingly, they cannot be terminated from employment without any just and/or authorized cause, which unfortunately, petitioner was guilty of doing in this case. Hence, Pontesor, *et al.* must be reinstated to their former or equivalent positions, with full backwages and without loss of seniority rights. As pointed out by the LA, the NLRC Computation & Examination Unit should be directed to compute the monetary awards that petitioner should be ordered to pay Pontesor, *et al.* as a consequence of this ruling.

WHEREFORE, the petition is **DENIED**. The Decision dated June 12, 2008 and the Resolution dated August 22, 2008 of the Court of Appeals in CA-G.R. SP No. 85464 are hereby **AFFIRMED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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41 See *Gadia v. Sykes Asia, Inc.*, supra note 27.
42 See *Brent School, Inc. v. Zamora*, 260 Phil. 747, 763 (1990).
43 Id.
44 See *Poseidon Fishing v. NLRC*, 518 Phil. 146, 157 (2006).

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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.

MARIA LOURDES P. A. SERENO
Chief Justice