Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **February 15, 2022** *which reads as follows:*

"G.R. No. 245297 (*Amorsolo L. De Leon v. Datem, Inc.*). — Before this Court is a Petition for Review on *Certiorari*[1] seeking to reverse and set aside the Decision[2] dated May 11, 2018 and Resolution[3] dated February 11, 2019 of the Court of Appeals (*CA*) in CA-G.R. SP No. 153195. The CA reversed and set aside the Decision[4] dated June 14, 2017 and Resolution[5] dated August 14, 2017 of the National Labor Relations Commission (*NLRC*) which affirmed a labor arbiter decision granting the retirement benefit claim of petitioner Amorsolo Laguisma De Leon (*De Leon*).

In his Complaint, De Leon alleged that on January 8, 2008, respondent Datem, Inc. (*Datem*) hired him as leadman and required him to report for work from Mondays to Saturdays for eight hours a day. He received a salary in the amount of ₱369.52[6] a day in 2008, but his pay eventually increased to ₱566.00[7] a day in 2015.[8]

Upon reaching the age of sixty (60) on April 15, 2015, De Leon thought of retiring from work. Thus, on February 2, 2016, he sent a letter to Datem signifying such intention. Datem accepted his resignation, but denied him payment of his retirement benefits prompting him to file a complaint[9] before the NLRC.[10]

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1 *Rollo*, pp. 11-30.

2 Penned by Associate Justice Danton Q. Bueser, with Associate Justices Mariflor P. Punzalan Castillo and Henry Jean Paul B. Inting (now a member of this Court), concurring; *id.* at 35-42.

3 *Id.* at 44-45.

4 *Id.* at 226-233.

5 *Id.* at 244-249.

6 *Id.* at 103.

7 *Id.* at 152.

8 *Id.* at 13.

9 *Id.* at 67-69.

10 *Id.* at 13.

Datem, for its part, contended that it is a duly organized corporation engaged in the construction business. Due to the nature of its business, it hires project-based workers, like De Leon, whose employment are co-terminous with the completion of a specific construction project or phases thereof. As a project employee, De Leon's employment is deemed terminated after the completion of every project for which he was hired. He was rehired whenever there is a need for his services, and always under a new project employment contract indicating the specific duration of the project, the work to be performed and the understanding that he is free to offer his services to another employer after the completion of his contract.[11]

De Leon's last engagement by Datem as leadman was for the Civil/Structural Works at the New Port PP3 Project for a contract period commencing on November 6, 2015 until February 5, 2016. When he manifested that he wanted to stop working, Datem reported to the Department of Labor and Employment (*DOLE*) the termination of his project employment with the company. As project employee, De Leon was not entitled to retirement benefits under its Retirement Plan as the same is accorded only to its regular employees.[12]

In a Decision[13] dated March 31, 2017, the Labor Arbiter held that even if De Leon was engaged by Datem to work on specific undertakings, the duration of which was specifically stated in the employment contracts signed by him, he cannot be regarded as a project employee, but a regular employee. This is because of his repeated and uninterrupted hiring by Datem for its different projects for the entire period that he worked for, his having performed tasks which were necessary and desirable to the usual business of Datem, as well as Datem's failure to submit termination reports to the DOLE after the completion of every project for which De Leon was engaged. Being Datem's regular employee, the Labor Arbiter ruled that De Leon was entitled to retirement benefits under its Retirement Plan provided that it did not fall below the benefits provided under Article 287 of the Labor Code.[14] The *fallo* of the said Decision reads:

> **WHEREFORE**, premises considered, judgment is rendered finding complainant entitled to retirement benefits from respondents. Respondent Datem, Inc. is hereby directed to grant

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11 *Id.* at 174, 227.
12 *Id.* at 174-175, 227-228.
13 *Id.* at 173-178.
14 *Id.* at 175-178.

> complainant retirement benefits under its Retirement Plan but which shall not be lower than the benefits provided under the law as herein computed at Php89,145.00.
>
> **SO ORDERED.**[15]

Aggrieved, Datem appealed to the NLRC.

In a Decision[16] dated June 14, 2017, the NLRC affirmed the Decision rendered by the Labor Arbiter. The decretal portion of its Decision reads:

> **WHEREFORE,** premises considered, respondents' Appeal is hereby **DENIED**. The Decision of Labor Arbiter Ma. Claradel C. Javier-Rotor dated March 31, 2017 is hereby **AFFIRMED**.
>
> **SO ORDERED.**[17]

Like the Labor Arbiter, the NLRC held that notwithstanding the submission of project employment contracts providing for specific duration of employment, De Leon cannot be regarded as contractual or project-based considering that his employment was continuous and uninterrupted from the time he started working for Datem on January 8, 2008 until he formally expressed his intent to resign on February 2, 2016. The fact that in certain instances De Leon's employment was simultaneously with other projects and Datem's non-submission of project completion reports each time a project is completed further militate against the finding that he is merely a project employee.[18]

Datem moved for reconsideration, but the NLRC denied it in a Resolution[19] dated August 14, 2017.

Undaunted, Datem brought a petition for *certiorari* before the CA.

On May 11, 2018, the CA rendered a Decision[20] reversing and setting aside the Decision and Resolution of the NLRC. The CA found the NLRC to have gravely abused its discretion in considering De Leon as a regular employee on the ground that he was continuously re-hired project after project and due to the failure of

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15 *Id.* at 178.
16 *Id.* at 226-233.
17 *Id.* at 232.
18 *Id.* at 230-231.
19 *Id.* at 244-249.
20 *Id.* at 35-42.

Datem to submit termination reports to DOLE. According to the CA, it is settled jurisprudence that the repeated and successive rehiring of project employees does not, by and of itself, qualify them as regular employees. It is not the length of service through rehiring that dictates the employment classification of an employee, but whether the employment has been fixed for a specific project or undertaking, with its completion having been determined at the time of the engagement of the employee. Considering that the employment contracts De Leon signed with Datem adequately informed him of his employment status as project employee at the time of his hiring for the various projects of Datem as well as the duration and scope of each project, De Leon is clearly a project employee. Also, De Leon's engagement to perform tasks necessary and desirable in the usual business or trade of the employer does not automatically imply regular employment. Datem's non-compliance with the reportorial requirement will not detract from his status as project employee as compliance therewith is merely one of the indicators of project employment under DOLE Department Order No. 19, Series of 1993 (*D.O. 19*), especially when the evidence presented proved his status as project employee.[21]

Even if De Leon was not illegally dismissed from his employment, the CA deemed it proper to award him financial assistance in the amount of ₱50,000.00, thus:

> Note, We deem it proper to award the respondent financial assistance in the amount of ₱50,000.00. We are not unmindful of the Supreme Court's pronouncements in Arc-Men Food Industries Corporation v. NLRC, and Lemery Savings and Loan Bank v. NLRC, where the highest Court ruled that when there is no dismissal to speak of, an award of financial assistance is not in order. But we must stress that the Supreme Court did allow, in several instances, the grant of financial assistance. Financial assistance may be allowed as a measure of social justice and exceptional circumstances, and as an equitable concession. The instant case equally calls for balancing the interests of the employer with those of the worker, if only to approximate what Justice Laurel calls justice in its secular sense.
>
> In this instance, our attention has been called to the following circumstances – that private (*sic*) had worked for the petitioner for 7 years and stayed on until he was 60 years old. In our view, with these special circumstances, we can all (*sic*) upon the same social and compassionate justice cited in several cases

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21 *Id.* at 37-40.

> allowing financial assistance. These circumstances indubitably merit equitable concessions, via the principle of compassionate justice for the working class.[22]

Thus, the CA disposed the case in this wise:

> **WHEREFORE**, the Decision dated June 14, 2017 and the Resolution dated August 14, 2017 are hereby **REVERSED** and **SET ASIDE**. The amount of ₱50,000.00, as financial assistance, is awarded to Amorsolo Laguisima De Leon to be paid by Datem Construction Inc.
>
> **SO ORDERED**.[23]

De Leon moved for reconsideration but the CA denied the same in a Resolution dated February 11, 2019.[24]

Hence, the present petition.

Petitioner contends that the CA gravely erred when it held that he was a project employee of respondent. He argues that although he signed contracts indicating that he was a project employee, a closer examination of said contracts would show that he was continuously hired without gap, after every three months, with some employment contracts overlapping in duration. These, coupled with the failure of respondent to adduce evidence that it submitted termination reports with the DOLE after every project completion bolster his claim of regular employment status. His successive re-engagement in order to perform the same kind of work as carpenter/leadman, function which is vital, necessary and indispensable to the construction business of respondent further proves that he is its regular employee. Respondent only made it appear that his employment is terminated at the end date of every contract to circumvent the law on regularization.[25]

Having proved that he is a regular employee of respondent and that he had already attained the age of 60 entitles petitioner to retirement benefits under Datem's Retirement Plan or the Labor Code, whichever is higher. Because he was forced to litigate in order to protect his rights and his wages were unlawfully withheld from him by reason of his illegal dismissal, attorney's fees must also be awarded to him.[26]

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22 *Id.* at 40-41.
23 *Id.* at 41.
24 *Id.* at 44-45.
25 *Id.* at 18-23.
26 *Id.* at 23-26.

Respondent counters that length of service and repeated rehiring of project employees like petitioner are not badges of regularization especially in the construction industry. A long line of jurisprudence has affirmed the legitimacy of project employment and constant re-hiring in the construction industry. Length of service which is generally used as a yardstick for determining when an employee hired on a temporary basis becomes a permanent one will not be a fair standard to apply in a construction industry owing to the unique characteristic of the construction industry in that it cannot guarantee work and funding for its payrolls beyond the life of each project since getting projects is not a matter of course.[27]

Additionally, petitioner cannot rely on respondent's failure to submit Establishment Termination Reports to support his claim that he is a regular employee of the company since Section 2.2 of D.O. clearly provides that submission of said reports is only one of the many indicators of project employment. Thus, its absence does not conclusively determine the employment status of the employee.[28]

Respondent denies petitioner's claim of simultaneous employment with other projects for which he was assigned. It explains that the perceived overlapping of employment is brought about by the fact that some of its projects were completed before the target date of its completion. After the completion of such project and after petitioner had ceased from performing work in the former project, he was only re-hired and assigned to other projects and made to sign new project employment contracts.[29]

As project employee, respondent insists that petitioner is not entitled to retirement benefits. He is also not entitled to attorney's fees as his reason of being forced to litigate to protect his rights is not a compelling reason for the grant of attorney's fees under Article 2208 of the Civil Code.[30]

The issue for this Court's resolution is whether the CA gravely erred in ruling that petitioner was a project employee of respondent and therefore, not entitled to retirement benefits.

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27 *Id.* at 294-299.
28 *Id.* at 299-301.
29 *Id.* at 302-303.
30 *Id.* at 303-304.

At the outset, it bears stressing that in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether it had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision,[31] not on the basis of whether the NLRC's Decision on the merits of the case was correct.[32]

"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."[33] Guided by these considerations, the primordial task of the Court is to determine whether the CA correctly ruled that the NLRC committed grave abuse of discretion in affirming the findings of the Labor Arbiter and holding that petitioner was a regular employee.

The Court rules that it did.

At the outset, it bears stressing that the nature of ones employment is determined by law, regardless of any contract expressing otherwise. The supremacy of the law over the nomenclature of the contract and the stipulations contained therein is to bring to life the policy enshrined in the Constitution to afford full protection to labor. Labor contracts, being imbued with public interest, are placed on a higher plane than ordinary contracts and are subject to the police power of the State.[34]

Here, petitioner insists he is a regular employee of respondent. Respondent, on the other hand, contends that petitioner is a mere project employee.

Article 295 of the Labor Code reads:

> Article 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 was fixed for a specific project or undertaking the completion or termination of which has been

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31 *Dela Rosa v. ABS-CBN Corp.*, 916 SCRA 360, 371 (2019).

32 *The Heritage Hotel, Manila v. Sio*, 906 SCRA 167, 178 (2019), citation omitted.

33 *University of Santo Tomas v. Samahang Manggagawa ng UST*, 809 Phil. 212, 220 (2017), citation omitted.

34 *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 169 (2013).

> determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> 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 which such activity exists.[35]

Under Article 295, regular employment is said to exist when the employee is: (a) engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (b) a casual employee whose activities are not usually necessary or desirable in the employer's usual business or trade, and has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.[36] On the other hand, employment is considered project-based if: (a) the employee was assigned to carry out a specific project or undertaking; and (b) the duration and scope of which were specified at the time of hiring.[37]

With particular reference to the construction industry, the DOLE issued D.O. 19 dated April 1, 1993 which classifies employees in the construction industry as project or non-project employees and provides the indicators of project employment. It states:

> *Section 2. EMPLOYMENT STATUS*
>
> 2.1 Classification of employees. — The employees in the construction industry are generally categorized as a) project employees and b) non-project employees. Project employees are those employed in connection with a particular construction project or phase thereof and whose employment is co-terminous with each project or phase of the project to which they are assigned.
>
> Non-project employees, on the other hand, are those employed without reference to any particular construction project or phase of a project.
>
> 2.2 Indicators of project employment. — Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.

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35 DOLE Department Advisory No. 01, Series of 2015.
36 *Freyssinet Filipinas Corp. v. Lapuz*, 897 SCRA 265, 277 (2019).
37 *Dacles v. Millenium Erectors Corporation,* 763 Phil. 550, 558 (2015), citation omitted.

(a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.

(b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.

(c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.

(d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

(e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' termination/dismissals/suspensions.

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

Recognizing the peculiarity of the construction industry where availability of projects is not dependent on the employer, as well as the need to harmonize and clarify the myriad pronouncements defining who are regular employees *vis-à-vis* project employees, the Court, in *Carpio v. Modair Manila Co. Ltd., Inc.*,[38] issued guidelines for the proper determination of the nature of employment of workers with particular reference to the construction business. It held:

> Thus, synthesizing all the above-discussed jurisprudence, and to obviate further confusion regarding the nature of employment for workers in the construction industry, the Court articulates the following principles for the guidance of workers, employers, labor tribunals, the bench, bar, and public:
>
> *First*, a worker is presumed a regular employee, unless the employer established that (1) the employee was hired under a contract specifying that the employment will last only for a specific undertaking, the termination of which is determined at the time of engagement; (2) there was indeed a project undertaken; and (3) the parties bargained on equal terms, with no vices of consent.

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38 G.R. No. 239622, June 21, 2021.

> *Second*, if considered a regular employee at the outset, a security of tenure already attaches, and the subsequent execution of project employment contracts cannot undermine such security, but will simply be considered a continuation in the regular engagement of such employee.
>
> *Third*, even if initially engaged as a project employee, such nature of employment may ripen into regular status if (1) there is a continuous rehiring of project employees even after cessation of a project; and (2) the tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer. Conversely, project-based employment will not ripen into regularity if the construction worker was truly engaged as a project-based employee, and between each successive project, the employer made no manifestation of any intent to treat the worker as a continuing resource for the main business.
>
> *Fourth*, regularized construction workers are subject to the "no work, no pay" principle, such that the employer is not obliged to pay them a salary when "on leave." In case of an oversupply of regularized construction workers, then the employer can exercise management prerogative to decide whom to engage for the limited projects and whom to consider as still "on leave."
>
> *Finally*, submission of termination reports to the DOLE Field Office "may be considered" only as an indicator of project employment; conversely, non-submission does not automatically grant regular status. By themselves, such circumstances do not determine the nature of employment.

Guided by these principles, the Court rules that petitioner is a project employee.

One. The records of this case show that petitioner was sufficiently informed of the status of his employment as project-based at the time of his hiring. All twenty-eight (28) employment contracts between petitioner and respondent clearly state that his engagement will only be for the duration of the particular project, the start date and the end date of which had been clearly spelled out, or upon the completion of such project, if the project is accomplished sooner than the target completion date. Moreover, all of these contracts fully apprised petitioner not only of his work designation, but also the nature and scope of work he is required to accomplish for every project.

Two. All projects specified in the contracts had been undertaken. There is no allegation, much less any evidence proffered which will show that the projects were merely a farce, and that petitioner was made to sign project employment contracts only as a means to circumvent the law on regularization.

Three. There is no showing that petitioner was tricked, coerced or pressured into signing these employment contracts. It must be underscored that the focal point of petitioner's argument why he considers himself as respondent's regular employee is not because of any misrepresentation by the company, but because of his successive re-engagement by respondent to perform the same kind of work, which according to him manifested the necessity of his work to the usual business of the employer, thus, making his employment regular. It is settled that project employment contracts are valid under the law.[39] By voluntarily entering into these project employment contracts, petitioner is deemed to have understood that his employment is coterminous with the particular project indicated therein. He cannot be expected to be employed continuously beyond the completion of such project because a project employment is terminated as soon as it is completed.[40]

Four. The continuous rehiring of petitioner for the performance of tasks that are vital, necessary and indispensable to the usual business of respondent does not accord to him regular status of employment inasmuch as respondent made no manifestation of any intent to treat him as a continuing resource for its main business.

It must be pointed out that the project employment contracts signed by petitioner all contain the proviso that he is free to offer his services to any other employer while he is not employed and awaiting a new project.[41] Contrary to the claim of petitioner, records show that his contracts with respondent actually had gaps. While it may be true that some successive employment contracts[42] have no gaps or were spaced too narrowly apart thereby providing no real opportunity for the employee to seek gainful employment elsewhere while in between

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39 *E. Ganzon, Inc. v. Ando,* 806 Phil. 58, 68 (2017).

40 *Herma Shipyard, Inc. v. Oliveros,* 808 Phil. 668, 684 (2017), citing *Jamias v. National Labor Relations Commission*, 783 Phil. 16 (2016).

41 *Rollo*, pp. 103, 105, 107, 109, 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133, 135, 137, 139, 141, 143, 145, 147, 149, 151, 153; CA *rollo*, pp. 90, 118.

42 *Id.* at 103-113; 116-129; 132-141; 144-153; *id.* at 89-90, 117-118.

projects,[43] the Court still cannot discount the fact that there was an instance where petitioner was not engaged by respondent for one whole year.[44] There was likewise an occasion where there was a 3-month gap in between the contracts[45] of petitioner with the company. Yet, despite these opportunities and adequate time to offer his services to another employer, he still chose to make himself available and remain with respondent. Having done so on his own volition, petitioner cannot be allowed to claim that his employment has ripened into regular status to the detriment of respondent.

As a project employee, petitioner is not entitled to retirement benefits under the company's retirement plan as the same is reserved only for its regular employees. Neither is he entitled to the same under the Labor Code since he did not serve respondent for at least five years upon reaching the age of retirement considering that as a project employee, his employment is coterminous with each project he agrees to undertake.[46]

All told, the Court finds that the CA did not err in ascribing grave abuse of discretion on the part of the NLRC when the latter body found that petitioner was a regular employee and as such, entitled to retirement pay, since such finding is not supported by substantial evidence, applicable law and jurisprudence.

The Court must point out that it does not escape its notice that despite holding that petitioner is a project employee, the CA still awarded to him ₱50,000.00 by way of financial assistance. Inasmuch as respondent did not question such award, the Court will no longer disturb the grant thereof and refrain from ruling on its propriety. Moreover, being in the nature of a monetary award, this amount shall earn 6% per annum from the finality of this Resolution until fully paid.

WHEREFORE, the Decision dated May 11, 2018 and the Resolution dated February 11, 2019 of the Court of Appeals in CA-G.R. SP No. 153195 are **AFFIRMED WITH MODIFICATION** in that interest at the rate of 6% *per annum* shall be imposed on the monetary award from the finality of this Resolution until fully paid.

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43 See: *Carpio v. Modair Manila Co. Ltd., Inc*, G.R. No. 239622, June 21, 2021, citing *Liganza v. RBL Shipyard Corp.*, 535 Phil. 662, 670 (2006).

44 The contract before the September 28, 2010 to December 28, 2010 contract was from June 18, 2009 to September 18, 2009; *rollo*, pp. 112-115.

45 The contract before the July 20, 2014 to October 19, 2014 contract was from January 21, 2014 to April 20, 2014; *id.* at 140-143.

46 See: *Bajaro v. Metro Stonerich Corporation*, 830 Phil. 714, 720 (2018).

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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