UNIVERSAL ROBINA SUGAR MILLING CORPORATION and RENE CABATI, Petitioners,
vs.
FERDINAND ACIBO, ROBERTO AGUILAR, EDDIE BALDOZA, RENE ABELLAR, DIOMEDES ALICOS, MIGUEL ALICOS, ROGELIO AMAHIT, LARRY AMASCO, FELIPE BALANSAG, ROMEO BALANSAG, MANUEL BANGOT, ANDY BANJAO, DIONISIO BENDIJO, JR., JOVENTINO BROCE, ENRICO LITERAL, RODGER RAMIREZ, BIENVENIDO RODRIGUEZ, DIOCITO PALAGTIW, ERNIE SABLAN, RICHARD PANCHO, RODRIGO ESTRABELA, DANNY KADUSALE and ALLYROBYL OLPUS, Respondents.

D E C I S I O N

BRION, *J.:*

We resolve in this petition for review on certiorari[1] the challenge to the November 29, 2007 decision[2] and the January 22, 2009 resolution[3] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 02028. This CA decision affirmed with modification the July 22, 2005 decision[4] and the April 28, 2006 resolution[5] of the National Labor Relations Commission (NLRC) in NLRC Case No. V-00006-03 which, in turn, reversed the October 9, 2002 decision[6] of the Labor Arbiter (LA). The LA's decision dismissed the complaint filed by complainants Ferdinand Acibo, et al.[7] against petitioners Universal Robina Sugar Milling Corporation (URSUMCO) and Rene Cabati.

The Factual Antecedents

URSUMCO is a domestic corporation engaged in the sugar cane milling business; Cabati is URSUMCO's Business Unit General Manager.

The complainants were employees of URSUMCO. They were hired on various dates (between February 1988 and April 1996) and on different capacities,[8] i.e., drivers, crane operators, bucket hookers, welders, mechanics, laboratory attendants and aides, steel workers, laborers, carpenters and masons, among others. At the start of their respective engagements, the complainants signed contracts of employment for a period of one (1) month or for a given season. URSUMCO repeatedly hired the complainants to perform the same duties and, for every engagement, required the latter to sign new employment contracts for the same duration of one month or a given season.

On August 23, 2002,[9] the complainants filed before the LA complaints for regularization, entitlement to the benefits under the existing Collective Bargaining Agreement (CBA),and attorney's fees.

In the decision[10] dated October 9, 2002, the LA dismissed the complaint for lack of merit. The LA held that the complainants were seasonal or project workers and not regular employees of URSUMCO. The LA pointed out that the complainants were required to perform, for a definite period, phases of URSUMCO's several projects that were not at all directly related to the latter's main operations. As the complainants were project employees, they could not be regularized since their respective employments were coterminous with the phase of the work or special project to which they were assigned and which employments end upon the completion of each project. Accordingly, the complainants were not entitled to the benefits granted under the CBA that, as provided, covered only the regular employees of URSUMCO.

Of the twenty-two original complainants before the LA, seven appealed the LA's ruling before the NLRC, namely: respondents Ferdinand Acibo, Eddie Baldoza, Andy Banjao, Dionisio Bendijo, Jr., Rodger Ramirez, Diocito Palagtiw, Danny Kadusale and Allyrobyl Olpus.

The Ruling of the NLRC

In its decision[11] of July 22, 2005, the NLRC reversed the LA's ruling; it declared the complainants as regular URSUMCO employees and granted their monetary claims under the CBA. The NLRC pointed out that the

complainants performed activities which were usually necessary and desirable in the usual trade or business of URSUMCO, and had been repeatedly hired for the same undertaking every season. Thus, pursuant to Article 280 of the Labor Code, the NLRC declared that the complainants were regular employees. As regular employees, the NLRC held that the complainants were entitled to the benefits granted, under the CBA, to the regular URSUMCO employees.

The petitioners moved to reconsider this NLRC ruling which the NLRC denied in its April 28, 2006 resolution.[12] The petitioners elevated the case to the CA via a petition for certiorari.[13]

The Ruling of the CA

In its November 29, 2007 decision,[14] the CA granted in part the petition; it affirmed the NLRC's ruling finding the complainants to be regular employees of URSUMCO, but deleted the grant of monetary benefits under the CBA.

The CA pointed out that the primary standard for determining regular employment is the reasonable connection between a particular activity performed by the employee vis-à-vis the usual trade or business of the employer. This connection, in turn, can be determined by considering the nature of the work performed and the relation of this work to the business or trade of the employer in its entirety.

In this regard, the CA held that the various activities that the complainants were tasked to do were necessary, if not indispensable, to the nature of URSUMCO's business. As the complainants had been performing their respective tasks for at least one year, the CA held that this repeated and continuing need for the complainants' performance of these same tasks, regardless of whether the performance was continuous or intermittent, constitutes sufficient evidence of the necessity, if not indispensability, of the activity to URSUMCO's business.

Further, the CA noted that the petitioners failed to prove that they gave the complainants opportunity to work elsewhere during the off-season, which opportunity could have qualified the latter as seasonal workers. Still, the CA pointed out that even during this off-season period, seasonal workers are not separated from the service but are simply considered on leave until they are re-employed. Thus, the CA concluded that the complainants were regular employees with respect to the activity that they had been performing and while the activity continued.

On the claim for CBA benefits, the CA, however, ruled that the complainants were not entitled to receive them. The CA pointed out that while the complainants were considered regular, albeit seasonal, workers, the CBA-covered regular employees of URSUMCO were performing tasks needed by the latter for the entire year with no regard to the changing sugar milling season. Hence, the complainants did not belong to and could not be grouped together with the regular employees of URSUMCO, for collective bargaining purposes; they constitute a bargaining unit separate and distinct from the regular employees. Consequently, the CA declared that the complainants could not be covered by the CBA.

The petitioners filed the present petition after the CA denied their motion for partial reconsideration[15] in the CA's January 22, 2009 resolution.[16]

The Issues

The petition essentially presents the following issues for the Court's resolution: (1) whether the respondents are regular employees of URSUMCO; and (2) whether affirmative relief can be given to the fifteen (15) of the complainants who did not appeal the LA's decision.[17]

The Court's Ruling

We resolve to partially GRANT the petition.

On the issue of the status of the respondents' employment

The petitioners maintain that the respondents are contractual or project/seasonal workers and not regular employees of URSUMCO. They thus argue that the CA erred in applying the legal parameters and guidelines for regular employment to the respondents' case. They contend that the legal standards – length of the employee's engagement and the desirability or necessity of the employee's work in the usual trade or business of the employer – apply only to regular employees under paragraph 1, Article 280 of the Labor Code, and, under paragraph 2 of the same article, to casual employees who are deemed regular by their length of service.

The respondents, the petitioners point out, were specifically engaged for a fixed and predetermined duration of, on the average, one (1) month at a time that coincides with a particular phase of the company's business operations or sugar milling season. By the nature of their engagement, the respondents' employment legally ends upon the end of the predetermined period; thus, URSUMCO was under no legal obligation to rehire the respondents.

In their comment,[18] the respondents maintain that they are regular employees of URSUMCO. Relying on the NLRC and the CA rulings, they point out that they have been continuously working for URSUMCO for more than one year, performing tasks which were necessary and desirable to URSUMCO's business. Hence, under the above-stated legal parameters, they are regular employees.

We disagree with the petitioners' position.*1âwphi1* We find the respondents to be regular seasonal employees of URSUMCO.

As the CA has explained in its challenged decision, Article 280 of the Labor Code provides for three kinds of employment arrangements, namely: regular, project/seasonal and casual. Regular employment refers to that arrangement whereby the employee "has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer[.]"[19] Under the definition, the primary standard that determines regular employment is the reasonable connection between the particular activity performed by the employee and the usual business or trade of the employer;[20] the emphasis is on the necessity or desirability of the employee's activity. Thus, when the employee performs activities considered necessary and desirable to the overall business scheme of the employer, the law regards the employee as regular.

By way of an exception, paragraph 2, Article 280 of the Labor Code also considers regular a casual employment arrangement when the casual employee's engagement has lasted for at least one year, regardless of the engagement's continuity. The controlling test in this arrangement is the length of time during which the employee is engaged.

A project employment, on the other hand, contemplates on arrangement whereby "the employment has been fixed for a specific project or undertaking whose completion or termination has been determined at the time of the engagement of the employee[.]"[21] Two requirements, therefore, clearly need to be satisfied to remove the engagement from the presumption of regularity of employment, namely: (1) designation of a specific project or undertaking for which the employee is hired; and (2) clear determination of the completion or termination of the project at the time of the employee's engagement.[22] The services of the project employees are legally and automatically terminated upon the end or completion of the project as the employee's services are coterminous with the project.

Unlike in a regular employment under Article 280 of the Labor Code, however, the length of time of the asserted "project" employee's engagement is not controlling as the employment may, in fact, last for more

than a year, depending on the needs or circumstances of the project. Nevertheless, this length of time (or the continuous rehiring of the employee even after the cessation of the project) may serve as a badge of regular employment when the activities performed by the purported "project" employee are necessary and indispensable to the usual business or trade of the employer.[23] In this latter case, the law will regard the arrangement as regular employment.[24]

Seasonal employment operates much in the same way as project employment, albeit it involves work or service that is seasonal in nature or lasting for the duration of the season.[25] As with project employment, although the seasonal employment arrangement involves work that is seasonal or periodic in nature, the employment itself is not automatically considered seasonal so as to prevent the employee from attaining regular status. To exclude the asserted "seasonal" employee from those classified as regular employees, the employer must show that: (1) the employee must be performing work or services that are seasonal in nature; and (2) he had been employed for the duration of the season.[26] Hence, when the "seasonal" workers are continuously and repeatedly hired to perform the same tasks or activities for several seasons or even after the cessation of the season, this length of time may likewise serve as badge of regular employment.[27] In fact, even though denominated as "seasonal workers," if these workers are called to work from time to time and are only temporarily laid off during the off-season, the law does not consider them separated from the service during the off-season period. The law simply considers these seasonal workers on leave until re-employed.[28]

Casual employment, the third kind of employment arrangement, refers to any other employment arrangement that does not fall under any of the first two categories, i.e., regular or project/seasonal.

Interestingly, the Labor Code does not mention another employment arrangement – contractual or fixed term employment (or employment for a term) – which, if not for the fixed term, should fall under the category of regular employment in view of the nature of the employee's engagement, which is to perform an activity usually necessary or desirable in the employer's business.

In Brent School, Inc. v. Zamora,[29] the Court, for the first time, recognized and resolved the anomaly created by a narrow and literal interpretation of Article 280 of the Labor Code that appears to restrict the employee's right to freely stipulate with his employer on the duration of his engagement. In this case, the Court upheld the validity of the fixed-term employment agreed upon by the employer, Brent School, Inc., and the employee, Dorotio Alegre, declaring that the restrictive clause in Article 280 "should be construed to refer to the substantive evil that the Code itself x x x singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where [the] fixed period of employment was agreed upon knowingly and voluntarily by the parties x x x absent any x x x circumstances vitiating [the employee's] consent, or where [the facts satisfactorily show] that the employer and [the] employee dealt with each other on more or less equal terms[.]"[30] The indispensability or desirability of the activity performed by the employee will not preclude the parties from entering into an otherwise valid fixed term employment agreement; a definite period of employment does not essentially contradict the nature of the employees duties[31] as necessary and desirable to the usual business or trade of the employer.

Nevertheless, "where the circumstances evidently show that the employer imposed the period precisely to preclude the employee from acquiring tenurial security, the law and this Court will not hesitate to strike down or disregard the period as contrary to public policy, morals, etc."[32] In such a case, the general restrictive rule under Article 280 of the Labor Code will apply and the employee shall be deemed regular.

Clearly, therefore, the nature of the employment does not depend solely on the will or word of the employer or on the procedure for hiring and the manner of designating the employee. Rather, the nature of the employment depends on the nature of the activities to be performed by the employee, considering

the nature of the employer's business, the duration and scope to be done,[33] and, in some cases, even the length of time of the performance and its continued existence.

In light of the above legal parameters laid down by the law and applicable jurisprudence, the respondents are neither project, seasonal nor fixed-term employees, but regular seasonal workers of URSUMCO. The following factual considerations from the records support this conclusion:

First, the respondents were made to perform various tasks that did not at all pertain to any specific phase of URSUMCO's strict milling operations that would ultimately cease upon completion of a particular phase in the milling of sugar; rather, they were tasked to perform duties regularly and habitually needed in URSUMCO's operations during the milling season. The respondents' duties as loader operators, hookers, crane operators and drivers were necessary to haul and transport the sugarcane from the plantation to the mill; laboratory attendants, workers and laborers to mill the sugar; and welders, carpenters and utility workers to ensure the smooth and continuous operation of the mill for the duration of the milling season, as distinguished from the production of the sugarcane which involves the planting and raising of the sugarcane until it ripens for milling. The production of sugarcane, it must be emphasized, requires a different set of workers who are experienced in farm or agricultural work. Needless to say, they perform the activities that are necessary and desirable in sugarcane production. As in the milling of sugarcane, the plantation workers perform their duties only during the planting season.

Second, the respondents were regularly and repeatedly hired to perform the same tasks year after year. This regular and repeated hiring of the same workers (two different sets) for two separate seasons has put in place, principally through jurisprudence, the system of regular seasonal employment in the sugar industry and other industries with a similar nature of operations.

Under the system, the plantation workers or the mill employees do not work continuously for one whole year but only for the duration of the growing of the sugarcane or the milling season. Their seasonal work, however, does not detract from considering them in regular employment since in a litany of cases, this Court has already settled that seasonal workers who are called to work from time to time and are temporarily laid off during the off-season are not separated from the service in said period, but are merely considered on leave until re-employment.[34] Be this as it may, regular seasonal employees, like the respondents in this case, should not be confused with the regular employees of the sugar mill such as the administrative or office personnel who perform their tasks for the entire year regardless of the season. The NLRC, therefore, gravely erred when it declared the respondents regular employees of URSUMCO without qualification and that they were entitled to the benefits granted, under the CBA, to URSUMCO'S regular employees.

Third, while the petitioners assert that the respondents were free to work elsewhere during the off-season, the records do not support this assertion. There is no evidence on record showing that after the completion of their tasks at URSUMCO, the respondents sought and obtained employment elsewhere.

Contrary to the petitioners' position, Mercado, Sr. v. NLRC, 3rd Div.[35] is not applicable to the respondents as this case was resolved based on different factual considerations. In Mercado, the workers were hired to perform phases of the agricultural work in their employer's farm for a definite period of time; afterwards, they were free to offer their services to any other farm owner. The workers were not hired regularly and repeatedly for the same phase(s) of agricultural work, but only intermittently for any single phase. And, more importantly, the employer in Mercado sufficiently proved these factual circumstances. The Court reiterated these same observations in Hda. Fatima v. Nat'l Fed. of Sugarcane Workers-Food and Gen. Trade[36] and Hacienda Bino/Hortencia Starke, Inc. v. Cuenca.[37]

At this point, we reiterate the settled rule that in this jurisdiction, only questions of law are allowed in a petition for review on certiorari.[38] This Court's power of review in a Rule 45 petition is limited to resolving

matters pertaining to any perceived legal errors, which the CA may have committed in issuing the assailed decision.[39] In reviewing the legal correctness of the CA's Rule 65 decision in a labor case, we examine the CA decision in the context that it determined, i.e., the presence or absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision on the merits of the case was correct.40 In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[41]

Viewed in this light, we find the need to place the CA's affirmation, albeit with modification, of the NLRC decision of July 22, 2005 in perspective. To recall, the NLRC declared the respondents as regular employees of URSUMCO.[42]With such a declaration, the NLRC in effect granted the respondents' prayer for regularization and, concomitantly, their prayer for the grant of monetary benefits under the CBA for URSUMCO's regular employees. In its challenged ruling, the CA concurred with the NLRC finding, but with the respondents characterized as regular seasonal employees of URSUMCO.

The CA misappreciated the real import of the NLRC ruling. The labor agency did not declare the respondents as regular seasonal employees, but as regular employees. This is the only conclusion that can be drawn from the NLRC decision's dispositive portion, thus:

WHEREFORE, premises considered, the appeal is hereby GRANTED. Complainants are declared regular employees of respondent.*1âwphi1* As such, they are entitled to the monetary benefits granted to regular employees of respondent company based on the CBA, reckoned three (3) years back from the filing of the above-entitled case on 23 August 2002 up to the present or to their entire service with respondent after the date of filing of the said complaint if they are no longer connected with respondent company.[43]

It is, therefore, clear that the issue brought to the CA for resolution is whether the NLRC gravely abused its discretion in declaring the respondents regular employees of URSUMCO and, as such, entitled to the benefits under the CBA for the regular employees.

Based on the established facts, we find that the CA grossly misread the NLRC ruling and missed the implications of the respondents' regularization. To reiterate, the respondents are regular seasonal employees, as the CA itself opined when it declared that "private respondents who are regular workers with respect to their seasonal tasks or activities and while such activities exist, cannot automatically be governed by the CBA between petitioner URSUMCO and the authorized bargaining representative of the regular and permanent employees."[44] Citing jurisprudential standards,[45] it then proceeded to explain that the respondents cannot be lumped with the regular employees due to the differences in the nature of their duties and the duration of their work vis-a-vis the operations of the company.

The NLRC was well aware of these distinctions as it acknowledged that the respondents worked only during the milling season, yet it ignored the distinctions and declared them regular employees, a marked departure from existing jurisprudence. This, to us, is grave abuse of discretion, as it gave no reason for disturbing the system of regular seasonal employment already in place in the sugar industry and other industries with similar seasonal operations. For upholding the NLRC's flawed decision on the respondents' employment status, the CA committed a reversible error of judgment.

In sum, we find the complaint to be devoid of merit. The issue of granting affirmative relief to the complainants who did not appeal the CA ruling has become academic.

WHEREFORE, premises considered, the petition is PARTIALLY GRANTED. Except for the denial of the respondents' claim for CBA benefits, the November 29, 2007 decision and the January 22, 2009 resolution of the Court of Appeals are SET ASIDE. The complaint is DISMISSED for lack of merit.

SO ORDERED.

JAIME N. GAPAYAO, Petitioner,
vs.
ROSARIO FULO, SOCIAL SECURITY SYSTEM and SOCIAL SECURITY COMMISSION, Respondents.

D E C I S I O N

SERENO, *CJ.:*

This is a Rule 45 Petition[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP. No. 101688, affirming the Resolution[4] of the Social Security Commission (SSC). The SSC held petitioner Jaime N. Gapayao liable to pay the unpaid social security contributions due to the deceased Jaime Fulo, and the Social Security System (SSS) to pay private respondent Rosario L. Fulo, the widow of the deceased, the appropriate death benefits pursuant to the Social Security Law.

The antecedent facts are as follows:

On 4 November 1997, Jaime Fulo (deceased) died of "acute renal failure secondary to 1st degree burn 70% secondary electrocution"[5] while doing repairs at the residence and business establishment of petitioner located at San Julian, Irosin, Sorsogon.

Allegedly moved by his Christian faith, petitioner extended some financial assistance to private respondent. On 16 November 1997, the latter executed an Affidavit of Desistance[6] stating that she was not holding them liable for the death of her late husband, Jaime Fulo, and was thereby waiving her right and desisting from filing any criminal or civil action against petitioner.

On 14 January 1998, both parties executed a Compromise Agreement,[7] the relevant portion of which is quoted below:

We, the undersigned unto this Honorable Regional Office/District Office/Provincial Agency Office respectfully state:

> 1. The undersigned employer, hereby agrees to pay the sum of FORTY THOUSAND PESOS (₱40,000.00) to the surviving spouse of JAIME POLO, an employee who died of an accident, as a complete and full payment for all claims due the victim.
>
> 2. On the other hand, the undersigned surviving spouse of the victim having received the said amount do [sic] hereby release and discharge the employer from any and all claims that maybe due the victim in connection with the victim's employment thereat.

Thereafter, private respondent filed a claim for social security benefits with the Social Security System (SSS)–Sorosogon Branch.[8] However, upon verification and evaluation, it was discovered that the deceased was not a registered member of the SSS.[9]

Upon the insistence of private respondent that her late husband had been employed by petitioner from January 1983 up to his untimely death on 4 November 1997, the SSS conducted a field investigation to clarify his status of employment. In its field investigation report,[10] it enumerated its findings as follows:

In connection with the complaint filed by Mrs. Rosario Fulo, hereunder are the findings per interview with Mr. Leonor Delgra, Santiago Bolanos and Amado Gacelo:

> 1. That Mr. Jaime Fulo was an employee of Jaime Gapayao as farm laborer from 1983 to 1997.

2. Mr. Leonor Delgra and Santiago Bolanos are co-employees of Jaime Fulo.

3. Mr. Jaime Fulo receives compensation on a daily basis ranging from ₱5.00 to ₱60.00 from 1983 to 1997.

Per interview from Mrs. Estela Gapayao, please be informed that:

1. Jaime Fulo is an employee of Mr. & Mrs. Jaime Gapayao on an extra basis.

2. Sometimes Jaime Fulo is allowed to work in the farm as abaca harvester and earn 1/3 share of its harvest as his income.

3. Mr. & Mrs. Gapayao hired the services of Jaime Fulo not only in the farm as well as in doing house repairs whenever it is available. Mr. Fulo receives his remuneration usually in the afternoon after doing his job.

4. Mr. & Mrs. Gapayao hires 50-100 persons when necessary to work in their farm as laborer and Jaime Fulo is one of them. Jaime Fulo receives more or less ₱50.00 a day. (Emphases in the original)

Consequently, the SSS demanded that petitioner remit the social security contributions of the deceased. When petitioner denied that the deceased was his employee, the SSS required private respondent to present documentary and testimonial evidence to refute petitioner's allegations.[11]

Instead of presenting evidence, private respondent filed a Petition[12] before the SSC on 17 February 2003. In her Petition, she sought social security coverage and payment of contributions in order to avail herself of the benefits accruing from the death of her husband.

On 6 May 2003, petitioner filed an Answer[13] disclaiming any liability on the premise that the deceased was not the former's employee, but was rather an independent contractor whose tasks were not subject to petitioner's control and supervision.[14] Assuming arguendo that the deceased was petitioner's employee, he was still not entitled to be paid his SSS premiums for the intervening period when he was not at work, as he was an "intermittent worker who was only summoned every now and then as the need arose."[15] Hence, petitioner insisted that he was under no obligation to report the former's demise to the SSS for social security coverage.

Subsequently, on 30 June 2003, the SSS filed a Petition-in-Intervention[16] before the SSC, outlining the factual circumstances of the case and praying that judgment be rendered based on the evidence adduced by the parties.

On 14 March 2007, the SSC rendered a Resolution,[17] the dispositive portion of which provides:

WHEREFORE, PREMISES CONSIDERED, this Commission finds, and so holds, that Jaime Fulo, the late husband of petitioner, was employed by respondent Jaime N. Gapayao from January 1983 to November 4, 1997, working for nine (9) months a year receiving the minimum wage then prevailing.

Accordingly, the respondent is hereby ordered to pay ₱45,315.95 representing the unpaid SS contributions due on behalf of deceased Jaime Fulo, the amount of ₱217,710.33 as 3% per month penalty for late remittance thereof, computed as of March 30, 2006, without prejudice to the collection of additional penalty accruing thereafter, and the sum of ₱230,542.20 (SSS) and ₱166,000.00 (EC) as damages for the failure of the respondent to report the deceased Jaime Fulo for SS coverage prior to his death pursuant to Section 24(a) of the SS Law, as amended.

The SSS is hereby directed to pay petitioner Rosario Fulo the appropriate death benefit, pursuant to Section 13 of the SS Law, as amended, as well as its prevailing rules and regulations, and to inform this Commission of its compliance herewith.

SO ORDERED.

On 18 May 2007, petitioner filed a Motion for Reconsideration,[18] which was denied in an Order[19] dated 16 August 2007.

Aggrieved, petitioner appealed to the CA on 19 December 2007.[20] On 17 March 2010, the CA rendered a Decision[21] in favor of private respondent, as follows:

In fine, public respondent SSC had sufficient basis in concluding that private respondent's husband was an employee of petitioner and should, therefore, be entitled to compulsory coverage under the Social Security Law.

Having ruled in favor of the existence of employer-employee relationship between petitioner and the late Jaime Fulo, it is no longer necessary to dwell on the other issues raised.

Resultantly, for his failure to report Jaime Fulo for compulsory social security coverage, petitioner should bear the consequences thereof. Under the law, an employer who fails to report his employee for social security coverage is liable to [1] pay the benefits of those who die, become disabled, get sick or reach retirement age; [2] pay all unpaid contributions plus a penalty of three percent per month; and [3] be held liable for a criminal offense punishable by fine and/or imprisonment. But an employee is still entitled to social security benefits even is (sic) his employer fails or refuses to remit his contribution to the SSS.

WHEREFORE, premises considered, the Resolution appealed from is AFFIRMED in toto.

SO ORDERED.

In holding thus, the CA gave credence to the findings of the SSC. The appellate court held that it "does not follow that a person who does not observe normal hours of work cannot be deemed an employee."[22] For one, it is not essential for the employer to actually supervise the performance of duties of the employee; it is sufficient that the former has a right to wield the power. In this case, petitioner exercised his control through an overseer in the person of Amado Gacelo, the tenant on petitioner's land.[23] Most important, petitioner entered into a Compromise Agreement with private respondent and expressly admitted therein that he was the employer of the deceased.[24]The CA interpreted this admission as a declaration against interest, pursuant to Section 26, Rule 130 of the Rules of Court.[25]

Hence, this petition.

Public respondents SSS[26] and SSC[27] filed their Comments on 31 January 2011 and 28 February 2011, respectively, while private respondent filed her Comment on 14 March 2011.[28] On 6 March 2012, petitioner filed a "Consolidated Reply to the Comments of the Public Respondents SSS and SSC and Private Respondent Rosario Fulo."[29]

ISSUE

The sole issue presented before us is whether or not there exists between the deceased Jaime Fulo and petitioner an employer-employee relationship that would merit an award of benefits in favor of private respondent under social security laws.

THE COURT'S RULING

In asserting the existence of an employer-employee relationship, private respondent alleges that her late husband had been in the employ of petitioner for 14 years, from 1983 to 1997.[30] During that period, he was made to work as a laborer in the agricultural landholdings, a harvester in the abaca plantation, and a repairman/utility worker in several business establishments owned by petitioner.[31] To private respondent, the "considerable length of time during which [the deceased] was given diverse tasks by petitioner was a clear indication of the necessity and indispensability of her late husband's services to petitioner's business."[32] This view is bolstered by the admission of petitioner himself in the Compromise Agreement that he was the deceased's employer.[33]

Private respondent's position is similarly espoused by the SSC, which contends that its findings are duly supported by evidence on record.[34] It insists that pakyaw workers are considered employees, as long as the employer exercises control over them. In this case, the exercise of control by the employer was delegated to the caretaker of his farm, Amado Gacelo. The SSC further asserts that the deceased rendered services essential for the petitioner's harvest. While these services were not rendered continuously (in the sense that they were not rendered every day throughout the year), still, the deceased had never stopped working for petitioner from year to year until the day the former died.[35] In fact, the deceased was required to work in the other business ventures of petitioner, such as the latter's bakery and grocery store.[36] The Compromise Agreement entered into by petitioner with private respondent should not be a bar to an employee demanding what is legally due the latter.[37]

The SSS, while clarifying that it is "neither adversarial nor favoring any of the private parties x x x as it is only tasked to carry out the purposes of the Social Security Law,"[38] agrees with both private respondent and SSC. It stresses that factual findings of the lower courts, when affirmed by the appellate court, are generally conclusive and binding upon the Court.[39]

Petitioner, on the other hand, insists that the deceased was not his employee. Supposedly, the latter, during the performance of his function, was not under petitioner's control. Control is not necessarily present even if the worker works inside the premises of the person who has engaged his services.[40] Granting without admitting that petitioner gave rules or guidelines to the deceased in the process of the latter's performing his work, the situation cannot be interpreted as control, because it was only intended to promote mutually desired results.[41]

Alternatively, petitioner insists that the deceased was hired by Adolfo Gamba, the contractor whom he had hired to construct their building;[42] and by Amado Gacelo, the tenant whom petitioner instructed to manage the latter's farm.[43] For this reason, petitioner believes that a tenant is not beholden to the landlord and is not under the latter's control and supervision. So if a worker is hired to work on the land of a tenant – such as petitioner – the former cannot be the worker of the landlord, but of the tenant's.[44]

Anent the Compromise Agreement, petitioner clarifies that it was executed to buy peace, because "respondent kept on pestering them by asking for money."[45] Petitioner allegedly received threats that if the matter was not settled, private respondent would refer the matter to the New Peoples' Army.[46] Allegedly, the Compromise Agreement was "extortion camouflaged as an agreement."[47] Likewise, petitioner maintains that he shouldered the hospitalization and burial expenses of the deceased to express his "compassion and sympathy to a distressed person and his family," and not to admit liability.[48]

Lastly, petitioner alleges that the deceased is a freelance worker. Since he was engaged on a pakyaw basis and worked for a short period of time, in the nature of a farm worker every season, he was not precluded from working with other persons and in fact worked for them. Under Article 280 of the Labor Code,[49] seasonal employees are not covered by the definitions of regular and casual employees.[50] Petitioner cites Mercado, Sr. v. NLRC,[51] in which the Court held that seasonal workers do not become regular employees by the mere fact that they have rendered at least one year of service, whether continuous or broken.[52]

We see no cogent reason to reverse the CA.

I

Findings of fact of the SSC are given weight and credence.

At the outset, it is settled that the Court is not a trier of facts and will not weigh evidence all over again. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the CA.[53] For as long as these findings are supported by substantial evidence, they must be upheld.[54]

II

Farm workers may be considered regular seasonal employees.

Article 280 of the Labor Code states:

Article 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.

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 actually exists.

Jurisprudence has identified the three types of employees mentioned in the provision: (1) regular employees or those who have been engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of their engagement, or those whose work or service is seasonal in nature and is performed for the duration of the season; and (3) casual employees or those who are neither regular nor project employees.[55]

Farm workers generally fall under the definition of seasonal employees. We have consistently held that seasonal employees may be considered as regular employees.[56] Regular seasonal employees are those called to work from time to time. The nature of their relationship with the employer is such that during the off season, they are temporarily laid off; but reemployed during the summer season or when their services may be needed.[57] They are in regular employment because of the nature of their job,and not because of the length of time they have worked.[58]

The rule, however, is not absolute. In Hacienda Fatima v. National Federation of Sugarcane Workers-Food & General Trade,[59] the Court held that seasonal workers who have worked for one season only may not be considered regular employees. Similarly, in Mercado, Sr. v. NLRC,[60] it was held that when seasonal employees are free to contract their services with other farm owners, then the former are not regular employees.

For regular employees to be considered as such, the primary standard used is the reasonable connection between the particular activity they perform and the usual trade or business of the employer.[61] This test has been explained thoroughly in De Leon v. NLRC,[62] viz:

The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade 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 the 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 one year, even if the performance is not continuous or merely intermittent, the law deems the 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 also considered regular, but only with respect to such activity and while such activity exists.

A reading of the records reveals that the deceased was indeed a farm worker who was in the regular employ of petitioner. From year to year, starting January 1983 up until his death, the deceased had been working on petitioner's land by harvesting abaca and coconut, processing copra, and clearing weeds. His employment was continuous in the sense that it was done for more than one harvesting season. Moreover, no amount of reasoning could detract from the fact that these tasks were necessary or desirable in the usual business of petitioner.

The other tasks allegedly done by the deceased outside his usual farm work only bolster the existence of an employer-employee relationship. As found by the SSC, the deceased was a construction worker in the building and a helper in the bakery, grocery, hardware, and piggery – all owned by petitioner.[63] This fact only proves that even during the off season, the deceased was still in the employ of petitioner.

The most telling indicia of this relationship is the Compromise Agreement executed by petitioner and private respondent. It is a valid agreement as long as the consideration is reasonable and the employee signed the waiver voluntarily, with a full understanding of what he or she was entering into.[64] All that is required for the compromise to be deemed voluntarily entered into is personal and specific individual consent.[65] Once executed by the workers or employees and their employers to settle their differences, and done in good faith, a Compromise Agreement is deemed valid and binding among the parties.[66]

Petitioner entered into the agreement with full knowledge that he was described as the employer of the deceased.[67]This knowledge cannot simply be denied by a statement that petitioner was merely forced or threatened into such an agreement.*1âwphi1* His belated attempt to circumvent the agreement should not be given any consideration or weight by this Court.

III

Pakyaw workers are regular employees,

provided they are subject to the control of petitioner.

Pakyaw workers are considered employees for as long as their employers exercise control over them. In Legend Hotel Manila v. Realuyo,[68] the Court held that "the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called control test and 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." It should be remembered that the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof.[69] It is not essential that the employer actually

supervises the performance of duties by the employee. It is enough that the former has a right to wield the power.[70]

In this case, we agree with the CA that petitioner wielded control over the deceased in the discharge of his functions. Being the owner of the farm on which the latter worked, petitioner – on his own or through his overseer – necessarily had the right to review the quality of work produced by his laborers. It matters not whether the deceased conducted his work inside petitioner's farm or not because petitioner retained the right to control him in his work, and in fact exercised it through his farm manager Amado Gacelo. The latter himself testified that petitioner had hired the deceased as one of the pakyaw workers whose salaries were derived from the gross proceeds of the harvest.[71]

We do not give credence to the allegation that the deceased was an independent contractor hired by a certain Adolfo Gamba, the contractor whom petitioner himself had hired to build a building. The allegation was based on the self-serving testimony of Joyce Gapay Demate,[72] the daughter of petitioner. The latter has not offered any other proof apart from her testimony to prove the contention.

The right of an employee to be covered by the Social Security Act is premised on the existence of an employer-employee relationship.[73] That having been established, the Court hereby rules in h1vor of private respondent.

WHEREFORE, the Petition for Review on Certiorari is hereby DENIED. The assailed Decision and resolution of the Court of Appeals in CA-G.R. SP. No. 101688 dated 17 March 2010 and 13 August 2010, respectively, are hereby AFFIRMED.

SO ORDERED.

ROY D. P ASOS, Petitioner,
vs.
PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, Respondent.

D E C I S I O N

VILLARAMA, JR., *J.:*

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the March 26, 2010 Decision[1] and May 26, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 107805. The appellate court had affirmed the Decision[3] of the National Labor Relations Commission (NLRC) dismissing the illegal dismissal complaint filed by petitioner Roy D. Pasos against respondent Philippine National Construction Corporation (PNCC).

The antecedent facts follow:

Petitioner Roy D. Pasos started working for respondent PNCC on April 26, 1996. Based on the PNCC's "Personnel Action Form Appointment for Project Employment" dated April 30, 1996,[4] petitioner was designated as "Clerk II (Accounting)" and was assigned to the "NAIA – II Project." It was likewise stated therein:

PARTICULARS: Project employment starting on April 26, 1996 to July 25, 1996. This contract maybe terminated at anytime for cause as provided for by law and/or existing Company Policy. This maybe terminated if services are unsatisfactory, or when it shall no longer needed, as determined by the Company. If services are still needed beyond the validity of this contract, the Company shall extend your services. After services are terminated, the employee shall be under no obligation to re-employ with the Company nor shall the Company be obliged to re-employ the employee.[5] (Emphasis supplied.)

Petitioner's employment, however, did not end on July 25, 1996 but was extended until August 4, 1998, or more than two years later, based on the "Personnel Action Form – Project Employment" dated July 7, 1998.[6]

Based on PNCC's "Appointment for Project Employment" dated November 11, 1998,[7] petitioner was rehired on even date as "Accounting Clerk (Reliever)" and assigned to the "PCSO – Q.I. Project." It was stated therein that his employment shall end on February 11, 1999 and may be terminated for cause or in accordance with the provisions of Article 282 of the Labor Code, as amended. However, said employment did not actually end on February 11, 1999 but was extended until February 19, 1999 based on the "Personnel Action Form-Project Employment" dated February 17, 1999.[8]

On February 23, 1999, petitioner was again hired by PNCC as "Accounting Clerk" and was assigned to the "SM-Project" based on the "Appointment for Project Employment" dated February 18, 1999.[9] It did not specify the date when his employment will end but it was stated therein that it will be "co-terminus with the completion of the project." Said employment supposedly ended on August 19, 1999 per "Personnel Action Form – Project Employment" dated August 18, 1999,[10] where it was stated, "termination of petitioner's project employment due to completion of assigned phase/stage of work or project effective at the close of office hours on 19 August 1999." However, it appears that said employment was extended per "Appointment for Project employment" dated August 20, 1999[11] as petitioner was again appointed as "Accounting Clerk" for "SM Project (Package II)." It did not state a specific date up to when his extended employment will be, but it provided that it will be "co-terminus with the x x x project." In "Personnel Action Form – Project Employment" dated October 17, 2000,[12] it appears that such extension would eventually end on October 19, 2000.

Despite the termination of his employment on October 19, 2000, petitioner claims that his superior instructed him to report for work the following day, intimating to him that he will again be employed for the succeeding SM projects. For purposes of reemployment, he then underwent a medical examination which allegedly revealed that he had pneumonitis. Petitioner was advised by PNCC's physician, Dr. Arthur C. Obena, to take a 14-day sick leave.

On November 27, 2000, after serving his sick leave, petitioner claims that he was again referred for medical examination where it was revealed that he contracted Koch's disease. He was then required to take a 60-day leave of absence.[13] The following day, he submitted his application for sick leave but PNCC's Project Personnel Officer, Mr. R.S. Sanchez, told him that he was not entitled to sick leave because he was not a regular employee.

Petitioner still served a 60-day sick leave and underwent another medical examination on February 16, 2001. He was then given a clean bill of health and was given a medical clearance by Dr. Obena that he was fit to work.

Petitioner claims that after he presented his medical clearance to the Project Personnel Officer on even date, he was informed that his services were already terminated on October 19, 2000 and he was already replaced due to expiration of his contract. This prompted petitioner on February 18, 2003 to file a complaint[14] for illegal dismissal against PNCC with a prayer for reinstatement and back wages. He argued that he is deemed a regular employee of PNCC due to his prolonged employment as a project employee as well as the failure on the part of PNCC to report his termination every time a project is completed. He further contended that his termination without the benefit of an administrative investigation was tantamount to an illegal dismissal.

PNCC countered that petitioner was hired as a project employee in several projects with specific dates of engagement and termination and had full knowledge and consent that his appointment was only for the duration of each project. It further contended that it had sufficiently complied with the reportorial requirements to the Department of Labor and Employment (DOLE). It submitted photocopies of three Establishment Termination Reports it purportedly filed with the DOLE. They were for: (1) the "PCSOQ.I. Project" for February 1999;[15] (2) "SM Project" for August 1999;[16] and (3) "SM Project" for October 2000,[17] all of which included petitioner as among the affected employees. The submission of termination reports by PNCC was however disputed by petitioner based on the verifications[18] issued by the DOLE NCR office that he was not among the affected employees listed in the reports filed by PNCC in August 1998, February 1999, August 1999 and October 2000.

On March 28, 2006, the Labor Arbiter rendered a Decision[19] in favor of petitioner. The fallo reads:

WHEREFORE, premises considered, the complainant had attained regular employment thereby making his termination from employment illegal since it was not for any valid or authorized causes. Consequently, Respondent is ordered to pay complainant his full backwages less six (6) months computed as follows:

Backwages:	
Feb. 18, 2000 – March 28, 2006 = 73.33 mos.	
~~₱~~6,277.00 x 73.33 =	~~₱~~460,292.41
Less:	
~~₱~~6,277.00 X 6 mos. =	37,662.00
	~~₱~~422,630.41

The reinstatement could not as well be ordered due to the strained relations between the parties, that in lieu thereof, separation pay is ordered paid to complainant in the amount of ₱37,662.00 [₱6,277.00 x 6].

SO ORDERED.[20]

The Labor Arbiter ruled that petitioner attained regular employment status with the repeated hiring and rehiring of his services more so when the services he was made to render were usual and necessary to PNCC's business. The Labor Arbiter likewise found that from the time petitioner was hired in 1996 until he was terminated, he was hired and rehired by PNCC and made to work not only in the project he had signed to work on but on other projects as well, indicating that he is in fact a regular employee. He also noted petitioner's subsequent contracts did not anymore indicate the date of completion of the contract and the fact that his first contract was extended way beyond the supposed completion date. According to the Labor Arbiter, these circumstances indicate that the employment is no longer a project employment but has graduated into a regular one. Having attained regular status, the Labor Arbiter ruled that petitioner should have been accorded his right to security of tenure.

Both PNCC and petitioner appealed the Labor Arbiter's decision. PNCC insisted that petitioner was just a project employee and his termination was brought about by the completion of the contract and therefore he was not illegally dismissed. Petitioner, on the other hand, argued that his reinstatement should have been ordered by the Labor Arbiter since there was no proof that there were strained relations between the parties. He also questioned the deduction of six months pay from the back wages awarded to him and the failure of the Labor Arbiter to award him damages and attorney's fees. Petitioner likewise moved to dismiss PNCC's appeal contending that the supersedeas bond in the amount of ₱422,630.41 filed by the latter was insufficient considering that the Labor Arbiter's monetary award is ₱460,292.41. He also argued that the person who verified the appeal, Felix M. Erece, Jr., Personnel Services Department Head of PNCC, has no authority to file the same for and in behalf of PNCC.

On October 31, 2008, the NLRC rendered its Decision granting PNCC's appeal but dismissing that of petitioner. The dispositive portion reads:

WHEREFORE, premises considered, the appeal of respondent is GRANTED and the Decision dated 28 March 2006 is REVERSED and SET ASIDE.

A new Decision is hereby issued ordering respondent Philippine National Construction Corporation to pay completion bonus to complainant Roy Domingo Pasos in the amount of ₱25,000.

Complainant's appeal is DISMISSED for lack of merit.

SO ORDERED.[21]

As to the procedural issues raised by petitioner, the NLRC ruled that there was substantial compliance with the requirement of an appeal bond and that Mr. Erece, Jr., as head of the Personnel Services Department, is the proper person to represent PNCC. As to the substantive issues, the NLRC found that petitioner was employed in connection with certain construction projects and his employment was co-terminus with each project as evidenced by the Personnel Action Forms and the Termination Report submitted to the DOLE. It likewise noted the presence of the following project employment indicators in the instant case, namely, the duration of the project for which petitioner was engaged was determinable and expected completion was known to petitioner; the specific service that petitioner rendered in the projects was that of an accounting clerk and that was made clear to him and the service was connected with the projects; and PNCC submitted termination reports to the DOLE and petitioner's name was included in the list of affected employees.

Petitioner elevated the case to the CA via a petition for certiorari but the appellate court dismissed the same for lack of merit.

Hence this petition. Petitioner argues that the CA erred when it:

I.

SUSTAINED THAT THE AMOUNT OF THE BOND POSTED BY THE RESPONDENTS FOR PURPOSES OF APPEAL WAS SUFFICIENT NOTWITHSTANDING THAT THE SAME IS LESS THAN THE ADJUDGED AMOUNT.

II.

SUSTAINED THAT FELIX M. ERECE, JR., HEAD OF RESPONDENT PNCC'S PERSONNEL SERVICE DEPARTMENT, IS DULY AUTHORIZED TO REPRESENT RESPONDENT IN THIS CASE NOTWITHSTANDING THE ABSENCE OF ANY BOARD RESOLUTION OR SECRETARY'S CERTIFICATE OF THE RESPONDENT STATING THAT INDEED HE WAS DULY AUTHORIZED TO INSTITUTE THESE PROCEEDINGS.

III.

SUSTAINED THAT PETITIONER WAS A PROJECT EMPLOYEE DESPITE THE FACT THAT RESPONDENT PNCC HAD NOT SUBMITTED THE REQUISITE TERMINATION REPORTS IN ALL OF THE ALLEGED PROJECTS WHERE THE PETITIONER WAS ASSIGNED.

IV.

SUSTAINED THAT THE PETITIONER IS A PROJECT EMPLOYEE DESPITE THE CIRCUMSTANCE THAT THE ACTUAL WORK UNDERTAKEN BY THE PETITIONER WAS NOT LIMITED TO THE WORK DESCRIBED IN HIS ALLEGED APPOINTMENT AS A PROJECT EMPLOYEE.

V.

FAILED TO FIND THAT AT SOME TIME, THE EMPLOYMENT OF THE PETITIONER WAS UNREASONABLY EXTENDED BEYOND THE DATE OF ITS COMPLETION AND AT OTHER TIMES THE SAME DID NOT BEAR A DATE OF COMPLETION OR THAT THE SAME WAS READILY DETERMINABLE AT THE TIME OF PETITIONER'S ENGAGEMENT THEREBY INDICATING THAT HE WAS NOT HIRED AS A PROJECT EMPLOYEE.

VI.

FAILED TO ORDER THE REINSTATEMENT OF THE PETITIONER BY FINDING THAT THERE WAS STRAINED RELATIONS BETWEEN THE PARTIES NOTWITHSTANDING THAT THE RESPONDENT NEVER EVEN ALLEGED NOR PROVED IN ITS PLEADINGS THE CIRCUMSTANCE OF STRAINED RELATIONS.

VII.

SUSTAINED THE FAILURE OF THE NATIONAL LABOR RELATIONS COMMISSION TO RECTIFY THE ERROR COMMITTED BY LABOR ARBITER LIBO-ON IN DEDUCTING THE EQUIVALENT OF SIX MONTHS PAY OF BACKWAGES DESPITE THE MANDATE OF THE LABOR CODE THAT WHEN THERE IS A FINDING OF ILLEGAL DISMISSAL, THE PAYMENT OF FULL BACKWAGES FROM DATE OF DIMISSAL UP TO ACTUAL REINSTATEMENT SHOULD BE AWARDED.

VIII.

SUSTAINED THE FAILURE OF THE NATIONAL LABOR RELATIONS COMMISSION TO RECTIFY THE ERROR COMMITTED BY LABOR ARBITER LIBO-ON IN FAILING TO AWARD DAMAGES AND ATTORNEY'S FEES TO THE PETITIONER.[22]

Petitioner contends that PNCC's appeal from the Labor Arbiter's decision should not have been allowed since the appeal bond filed was insufficient. He likewise argues that the appellate court erred in heavily relying in the case of Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue[23] which enumerated the officials and employees who can sign the verification and certification without need of a board resolution. He contends that in said case, there was substantial compliance with the requirement since a board resolution was submitted albeit belatedly unlike in the instant case where no board resolution was ever submitted even belatedly.

As to the substantive issue, petitioner submits that the CA erroneously concluded that he was a project employee when there are indicators which point otherwise. He contends that even if he was just hired for the NAIA 2 Project from April 26, 1996 to July 25, 1996, he was made to work until August 4, 1998. He also avers the DOLE had certified that he was not among the employees listed in the termination reports submitted by PNCC which belies the photocopies of termination reports attached by PNCC to its pleadings listing petitioner as one of the affected employees. Petitioner points out that said termination reports attached to PNCC's pleadings are mere photocopies and were not even certified by the DOLE-NCR as true copies of the originals on file with said office. Further, he argues that in violation of the requirement of Department Order No. 19 that the duration of the project employment is reasonably determinable, his contracts for the SM projects did not specify the date of completion of the project nor was the completion determinable at the time that petitioner was hired.

PNCC counters that documentary evidence would show that petitioner was clearly a project employee and remained as such until his last engagement. It argues that the repeated rehiring of petitioner as accounting clerk in different projects did not make him a regular employee. It also insists that it complied with the reportorial requirements and that it filed and reported the termination of petitioner upon every completion of project to which he was employed.

In sum, three main issues are presented before this Court for resolution: (1) Should an appeal be dismissed outright if the appeal bond filed is less than the adjudged amount? (2) Can the head of the personnel department sign the verification and certification on behalf of the corporation sans any board resolution or secretary's certificate authorizing such officer to do the same? and (3) Is petitioner a regular employee and not a mere project employee and thus can only be dismissed for cause?

Substantial compliance with appeal

bond requirement

The perfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional, and noncompliance with such legal requirement is fatal and effectively renders the judgment final and executory. As provided in Article 223 of the Labor Code, as amended, in case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

However, not only in one case has this Court relaxed this requirement in order to bring about the immediate and appropriate resolution of cases on the merits.[24] In Quiambao v. National Labor Relations Commission,[25] this Court allowed the relaxation of the requirement when there is substantial compliance with the rule. Likewise, in Ong v. Court of Appeals,[26] the Court held that the bond requirement on appeals may be relaxed when there is substantial compliance with the Rules of Procedure of the NLRC or when the

appellant shows willingness to post a partial bond. The Court held that "while the bond requirement on appeals involving monetary awards has been relaxed in certain cases, this can only be done where there was substantial compliance of the Rules or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond."

In the instant case, the Labor Arbiter in his decision ordered PNCC to pay petitioner back wages amounting to₱422,630.41 and separation pay of ₱37,662 or a total of ₱460,292.41. When PNCC filed an appeal bond amounting to ₱422,630.41 or at least 90% of the adjudged amount, there is no question that this is substantial compliance with the requirement that allows relaxation of the rules.

Validity of the verification and certification signed by a corporate officer on behalf of the corporation without the requisite board resolution or secretary's certificate

It has been the constant holding of this Court in cases instituted by corporations that an individual corporate officer cannot exercise any corporate power pertaining to the corporation without authority from the board of directors pursuant to Section 23, in relation to Section 25 of the Corporation Code which clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. However, we have in many cases recognized the authority of some corporate officers to sign the verification and certification against forum-shopping. Some of these cases were enumerated in Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue[27] which was cited by the appellate court:

In Mactan-Cebu International Airport Authority v. CA, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in Pfizer v. Galan, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in Novelty Philippines, Inc. v. CA, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd. (Lepanto), we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.

In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."[28] (Citations omitted.)

While we agree with petitioner that in Cagayan Valley, the requisite board resolution was submitted though belatedly unlike in the instant case, this Court still recognizes the authority of Mr. Erece, Jr. to sign the verification and certification on behalf of PNCC sans a board resolution or secretary's certificate as we have allowed in Pfizer, Inc. v. Galan,[29] one of the cases cited in Cagayan Valley. In Pfizer, the Court ruled as valid the verification signed by an employment specialist as she was in a position to verify the truthfulness and correctness of the allegations in the petition[30] despite the fact that no board resolution authorizing her was ever submitted by Pfizer, Inc. even belatedly. We believe that like the employment specialist in Pfizer,

Mr. Erece, Jr. too, as head of the Personnel Services Department of PNCC, was in a position to assure that the allegations in the pleading have been prepared in good faith and are true and correct.

Even assuming that the verification in the appeal filed by PNCC is defective, it is well settled that rules of procedure in labor cases maybe relaxed. As provided in Article 221 of the Labor Code, as amended, "rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process." Moreover, the requirement of verification is merely formal and not jurisdictional. As held in Pacquing v. Coca-Cola Philippines, Inc.[31]:

As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the noncompliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.[32]

Duration of project employment
should be determined at the time of
hiring

In the instant case, the appointments issued to petitioner indicated that he was hired for specific projects. This Court is convinced however that although he started as a project employee, he eventually became a regular employee of PNCC.

Under Article 280 of the Labor Code, as amended, a project employee is one whose "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." Thus, the principal test used to determine whether employees are project employees is whether or not the employees were assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time the employees were engaged for that project.[33]

In the case at bar, petitioner worked continuously for more than two years after the supposed three-month duration of his project employment for the NAIA II Project. While his appointment for said project allowed such extension since it specifically provided that in case his "services are still needed beyond the validity of the contract, the Company shall extend his services," there was no subsequent contract or appointment that specified a particular duration for the extension. His services were just extended indefinitely until "Personnel Action Form – Project Employment" dated July 7, 1998 was issued to him which provided that his employment will end a few weeks later or on August 4, 1998. While for first three months, petitioner can be considered a project employee of PNCC, his employment thereafter, when his services were extended without any specification of as to the duration, made him a regular employee of PNCC. And his status as a regular employee was not affected by the fact that he was assigned to several other projects and there were intervals in between said projects since he enjoys security of tenure.

Failure of an employer to file
termination reports after every

project completion proves that an
employee is not a project employee

As a rule, the findings of fact of the CA are final and conclusive and this Court will not review them on appeal.[34] The rule, however, is subject to the following exceptions:

The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is 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 in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings 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 respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[35]

In this case, records clearly show that PNCC did not report the termination of petitioner's supposed project employment for the NAIA II Project to the DOLE. Department Order No. 19, or the "Guidelines Governing the Employment of Workers in the Construction Industry," requires employers to submit a report of an employee's termination to the nearest public employment office every time an employee's employment is terminated due to a completion of a project. PNCC submitted as evidence of its compliance with the requirement supposed photocopies of its termination reports, each listing petitioner as among the employees affected. Unfortunately, none of the reports submitted pertain to the NAIA II Project. Moreover, DOLE NCR verified that petitioner is not included in the list of affected workers based on the termination reports filed by PNCC on August 11, 17, 20 and 24, 1998 for petitioner's supposed dismissal from the NAIA II Project effective August 4, 1998. This certification from DOLE was not refuted by PNCC. In Tomas Lao Construction v. NLRC,[36] we emphasized the indispensability of the reportorial requirement:

Moreover, if private respondents were indeed employed as "project employees," petitioners should have submitted a report of termination to the nearest public employment office every time their employment was terminated due to completion of each construction project. The records show that they did not. Policy Instruction No. 20 is explicit that employers of project employees are exempted from the clearance requirement but not from the submission of termination report. We have consistently held that failure of the employer to file termination reports after every project completion proves that the employees are not project employees. Nowhere in the New Labor Code is it provided that the reportorial requirement is dispensed with. The fact is that Department Order No. 19 superseding Policy Instruction No. 20 expressly provides that the report of termination is one of the indicators of project employment.[37]

A regular employee dismissed for a
cause other than the just or
authorized causes provided by law is
illegally dismissed

Petitioner's regular employment was terminated by PNCC due to contract expiration or project completion, which are both not among the just or authorized causes provided in the Labor Code, as amended, for dismissing a regular employee. Thus, petitioner was illegally dismissed.

Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee is entitled to reinstatement, full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent from the time his compensation was withheld from him up to the time of his actual reinstatement.

We agree with petitioner that there was no basis for the Labor Arbiter's finding of strained relations and order of separation pay in lieu of reinstatement. This was neither alleged nor proved. Moreover, it has long been settled that the doctrine of strained relations should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. As held in Globe-Mackay Cable and Radio Corporation v. NLRC:[38]

Obviously, the principle of "strained relations" cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.

Besides, no strained relations should arise from a valid and legal act of asserting one's right; otherwise an employee who shall assert his right could be easily separated from the service, by merely paying his separation pay on the pretext that his relationship with his employer had already become strained.[39]

As to the back wages due petitioner, there is likewise no basis in deducting therefrom back wages equivalent to six months "representing the maximum period of confinement PNCC can require him to undergo medical treatment." Besides, petitioner was not dismissed on the ground of disease but expiration of term of project employment.

Regarding moral and exemplary damages, this Court rules that petitioner is not entitled to them.*1âwphi1* Worth reiterating is the rule that moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy. Likewise, exemplary damages may be awarded if the dismissal was effected in a wanton, oppressive or malevolent manner.[40] Apart from his allegations, petitioner did not present any evidence to prove that his dismissal was attended with bad faith or was done oppressively.

Petitioner is also entitled to attorney's fees m the amount of ten percent (10%) of his total monetary award, having been forced to litigate in order to seek redress of his grievances, as provided in Article 111 of the Labor Code, as amended, and following this Court's pronouncement in Exodus International Construction Corporation v. Biscocho.[41]

In line with current jurisprudence, the award of back wages shall earn legal interest at the rate of six percent (6%) per annum from the date of petitioner's dismissal until the finality of this decision.[42] Thereafter, it shall earn 12% legal interest until fully paid[43] in accordance with the guidelines in Eastern Shipping Lines, Inc. v. Court of Appeals.[44]

WHEREFORE, the petition is GRANTED. The assailed March 26, 2010 Decision and May 26, 2010 Resolution of the Court of Appeals in CAG.R. SP No. 107805 are hereby REVERSED. The decision of the Labor Arbiter is hereby REINSTATED with the following MODIFICATIONS:

> 1) respondent PNCC is DIRECTED to pay petitioner Roy D. Pasos full back wages from the time of his illegal dismissal on October 19, 2000 up to the finality of this Decision, with interest at 6% per annum, and 12% legal interest thereafter until fully paid;
>
> 2) respondent PNCC is ORDERED to reinstate petitioner Pasos to his former position or to a substantially equivalent one, without loss of seniority rights and other benefits attendant to the position; and

3) respondent PNCC is DIRECTED to pay petitioner Pasos attorney's fees equivalent to 10% of his total monetary award.

No pronouncement as to costs.

JOCELYN HERRERA–MANAOIS, *Petitioner*, *v.* **ST. SCHOLASTICA'S COLLEGE**, *Respondent*.

D E C I S I O N

SERENO, *C.J.*:

The present case concerns the academic qualifications required in attaining the status of a permanent full–time faculty member in the tertiary level of a private educational institution. Petitioner Jocelyn Herrera–Manaois (Manaois) assails the judgments[1] of the Court of Appeals (CA), which reversed the Resolution[2] of the National Labor Relations Commission (NLRC) and ruled that respondent St. Scholastica's College (SSC) was not guilty of illegal dismissal. SSC did not extend to Manaois the position of permanent full–time faculty member with the rank of instructor because she failed to acquire a master's degree and because her specialization could no longer be maximized by the institution due to the changes in its curriculum and streamlining.

The Facts

SSC, situated in the City of Manila, is a private educational institution offering elementary, secondary, and tertiary education. Manaois graduated from SSC in October 1992 with a degree in Bachelor of Arts in English. In 1994, she returned to her alma mater as a part–time English teacher. After taking a leave of absence for one year, she was again rehired by SSC for the same position. Four years into the service, she was later on recommended by her Department Chairperson to become a full–time faculty member of the English Department.

Manaois thus applied for a position as full–time instructor for school year 2000–2001. She mentioned in her application letter[3] that she had been taking the course Master of Arts in English Studies, Major in Creative Writing, at the University of the Philippines, Diliman (UP); that she was completing her master's thesis; and that her oral defense was scheduled for June 2000. In a reply letter[4] dated 17 April 2000, the Dean of Arts and Sciences informed her of the SSC Administrative Council's approval of her application. She was then advised to maintain the good performance that she had shown for the past years and to submit the necessary papers pertaining to her master's degree. Accordingly, SSC hired her as a probationary full–time faculty member with the assigned rank of instructor for the school year 2000–2001.[5] Her probationary employment continued for a total of three consecutive years. Throughout her service as a probationary full–time faculty member with no derogatory record, she was given above–satisfactory ratings by both the Department Chairperson and the Dean of Arts and Sciences.

Because of the forthcoming completion of her third year of probationary employment, Manaois wrote the Dean of Arts and Sciences requesting an extension of her teaching load for the school year 2003–2004. She again mentioned in her letter that she was a candidate for a master's degree in English Studies; that the schedule of her oral defense may actually materialize anytime within the first academic semester of 2003; and that she intended to fully earn her degree that year. She also furnished the school with a Certification from UP, stating that she had already finished her coursework in her master's studies. Furthermore, she indicated that it was her long–term goal to apply for a return to full–time faculty status by then and for SSC to consider the aforesaid matters.[6]

Manaois eventually received a letter from the Dean of College and Chairperson of the Promotions and Permanency Board officially informing her of the board's decision not to renew her contract. The letter provides as follows:[7]

The Permanency Board reviewed your case and after a thorough deliberation, the members decided not to renew your contract for school year 2003–2004.

With due consideration to your services, the institution had granted your request for a three–year extension to finish your master's degree. However, you failed to comply with the terms which you yourself had requested. In addition, your specialization cannot be maximized at SSC due to the college's curriculum changes and streamlining.

It is with your best interest in mind and deep regret on our part that we have to let you go. A new environment may be able to provide you more avenues and opportunities where you can utilize your graduate studies in Creative Writing to the fullest.
Manaois sought clarification and reconsideration of the decision of SSC to terminate her services. SSC denied her request in a letter dated 11 July 2003. Consequently, she filed a complaint for illegal dismissal, payment of 13th month pay, damages, and attorney's fees against SSC.

SSC explained that upon consideration of the written application of Manaois, the Dean of Arts and Sciences wrote the following notation at the bottom of her letter of application – "APPROVED: on the basis that she finishes her MA."[8] The college clarified that the application for full–time faculty status of Manaois was accepted with the specific qualification that she would submit the necessary papers pertaining to her master's degree. It stressed that permanency may only be extended to full–time faculty members if they had fulfilled the criteria provided in the SSC Faculty Manual. According to SSC, the Chair of the English Department did not endorse the application for permanency of Manaois, since the latter had not finished her master's degree within the three–year probationary period. SSC then refuted the supposed performance ratings of Manaois and instead pointed out that she had merely received an average rating from her students. Finally, it asserted that her specialization was the subject of writing and not English Literature, which was the subject area that they needed a faculty member for.

The Labor Arbiter Ruling

On 16 July 2004, the labor arbiter rendered a Decision[9] finding the dismissal of petitioner to be illegal. In addressing the issues, he first noted the two reasons given by SSC for not renewing the contract of Manaois: (1) the failure of petitioner to finish her master's degree within the three–year probationary period; and (2) SSC's inability to maximize petitioner's specialization due to curriculum changes and streamlining.

With respect to the first reason, the labor arbiter reiterated that the alleged handwritten notation on Manaois's employment application showing that the approval thereof was premised on her completion of a master's degree had not been disclosed or made known to her at the start of her engagement. In fact, she was not given a copy of the approval until it was attached to the position paper of SSC. The labor arbiter agreed with Manaois that the only credible evidence that a precondition had been set for the acceptance of her employment application was SSC's letter expressly stating that she must (a) maintain a good performance and (b) submit the necessary papers pertaining to her master's degree. Regarding these preconditions, the labor arbiter noted that the allegation concerning the mere average performance rating of Manaois given by the students was neither made known to her nor duly substantiated with documentary proof. Even so, the labor arbiter articulated that at the very least, the performance of Manaois during her three–year probationary employment was satisfactory, as admitted by SSC itself, thereby satisfying the first condition mentioned in the letter. The labor arbiter then considered the Certification issued by UP as sufficient evidence of Manaois's compliance with the second condition set by SSC.

Next, the labor arbiter noted that under the SSC Faculty Manual, the minimum requirements for the rank of instructor, for which petitioner had been hired under the employment contract, was a bachelor's degree with at least 25% units of master's studies completed. He then found that the requirement for a master's degree actually pertained to the rank of assistant professor, a position that had not been applied for by

Manaois. Thus, he ruled that failure to finish a master's degree could not be used either as a ground for dismissing petitioner or as basis for refusing to extend to her a permanent teaching status.

Anent respondent's argument citing the Manual of Regulations for Private Schools, the labor arbiter ruled that the provisions therein were inapplicable insofar as the employment status of petitioner was concerned. He explained that the manual merely referred to the requirements for tertiary schools to be accredited and not to the employment conditions of the academic personnel. Thus, he pronounced that Sections 44(c) and 45 of the manual, which required tertiary schools to hire teachers who were holders of master's degrees, could not be used as basis for dismissing Manaois.

The labor arbiter then focused on the second reason of SSC as a reflection of the true motive behind the dismissal of Manaois. According to the labor arbiter, the clear import of the statement "your specialization cannot be maximized at SSC due to the college's curriculum changes and streamlining" was that SSC had already decided to terminate her services, regardless of the completion of her master's degree. The labor arbiter consequently ruled that this reason was not a valid cause for dismissing a probationary employee, reiterating that probationers may only be terminated either (a) for a just cause, or (b) for failure to qualify as a regular employee in accordance with reasonable standards made known at the time of engagement. Ultimately, the labor arbiter pronounced that Manaois had attained permanent status and that SSC's nonrenewal of her contract must be deemed as a dismissal without just cause.

The NLRC Ruling

On 27 July 2007, the National Labor Relations Commission (NLRC) issued a Resolution[10] upholding the labor arbiter's Decision. The NLRC reiterated the labor arbiter's finding that the failure of petitioner to finish her master's degree within the three–year probationary period was not a valid ground for the termination of employment, as the condition was not made known to her at the time of engagement. Furthermore, it reasoned that an average rating was not one of the just causes for dismissal under the Labor Code. Consequently, it affirmed the Decision of the labor arbiter *in toto*.

The CA Ruling

On 27 February 2009, the CA issued the presently assailed Decision reversing the NLRC judgment on the ground of grave abuse of discretion and thus dismissing the complaint of Manaois. According to the appellate court, it was compelled to conduct its independent evaluation of the facts of the case, since the factual findings of the labor arbiter and the NLRC were contrary to the evidence on record.

First, the CA ruled that various pieces of evidence showed that Manaois had been, at the time of engagement, aware and knowledgeable that possession of a master's degree was a criterion for permanency as a full–time faculty member at SSC. As early as April 2000, which was the period during which Manaois applied to become a full–time faculty member, she had already sent a letter indicating that she was completing her master's degree, and that the oral defense of her thesis was scheduled for June 2000. According to the appellate court, this fact reasonably implied that she was fully aware of the necessity of a master's degree in order for her to attain permanent status at SSC. Furthermore, it noted that Manaois submitted, together with her application letter, a Certification from UP stating that she had already finished her course work for her master's degree. It then deduced that this submission was proof that she had endeavored to substantially comply with one of the requirements for permanency.

The CA then juxtaposed her letter with the reply of SSC's Dean of Arts and Sciences, who said that petitioner must submit the necessary papers pertaining to the latter's master's degree, as represented in her application letter. It treated this reply as indubitable proof of SSC's appraisal of the requirement to obtain a master's degree. Consequently, the appellate court reasoned that the disclosure of the notation on petitioner's application latter was already inconsequential, since one of the topics of the exchange of

correspondences between the parties in April 2000 was the submission of petitioner's papers for her master's degree. This directive proffered no other interpretation than that the completion of a master's degree had been a precondition for the conferment of Manaois's permanent employment status.

The CA also noted that the employment contract of petitioner incorporated the conditions set in the SSC Faculty Manual. The manual explicitly stated that the criteria for permanency included the completion of a master's degree. According to the CA, the labor arbiter gravely erred when he solely relied on the minimum requirements provided for the rank of instructor. It stressed that the criteria cited for the rank of instructor referred to the basis on which full–time and part–time faculty members were ranked, and not to the requirements to be fulfilled in order to become a permanent faculty member. Instead, the appellate court agreed with SSC that what happened in this case was merely the expiration of an employment contract and the nonrenewal thereof. It pointed out that, in spite of the requests of Manaois for the extension of her employment in order for her to finish her master's degree, she failed to do so. In fact, she informed SSC that there was still no fixed schedule for her oral defense.

Thus, in the light of the foregoing pieces of evidence, the CA ruled that the labor arbiter and the NLRC committed grave abuse of discretion in ruling that petitioner had not been made aware of the reasonable standards of employment at the time of her engagement. Based on her own acts, Manaois knew of the necessity of obtaining a master's degree in order to attain permanent employment status. SSC was thus well within its rights not to renew her employment contract for her failure to qualify as a permanent full–time faculty member. Consequently, her complaint was dismissed.

The Issue

Whether the completion of a master's degree is required in order for a tertiary level educator to earn the status of permanency in a private educational institution.

Our Ruling

Probationary employment refers to the trial stage or period during which the employer examines the competency and qualifications of job applicants, and determines whether they are qualified to be extended permanent employment status.[11] Such an arrangement affords an employer the opportunity – before the full force of the guarantee of security of tenure comes into play – to fully scrutinize and observe the fitness and worth of probationers while on the job and to determine whether they would become proper and efficient employees.[12] It also gives the probationers the chance to prove to the employer that they possess the necessary qualities and qualifications to meet reasonable standards for permanent employment.[13] Article 281 of the Labor Code, as amended, provides as follows:chanRoblesvirtualLawlibrary

Art. 281. Probationary employment. Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. **The services of an employee who has been engaged on a probationary basis may be terminated** for a just cause or **when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement**. An employee who is allowed to work after a probationary period shall be considered a regular employee. (*Emphases supplied*)chanroblesvirtualawlibrary

We agree with the CA in setting aside the NLRC Decision and in ruling that the requirement to obtain a master's degree was made known to Manaois. The contract she signed clearly incorporates the rules, regulations, and employment conditions contained in the SSC Faculty Manual, *viz*:[14]

I. EMPLOYMENT

A. x x x

B. After having read and understood in full the contents of the COLLEGE UNIT's current FACULTY MANUAL, **the FACULTY MEMBER agrees to** faithfully perform all the duties and responsibilities attendant to her position as PROBATIONARY FULL–TIME FACULTY MEMBER and **comply with all the rules, regulations and employment conditions of the SCHOOL, as provided in said FACULTY MANUAL including any amendment/s pertinent to her position as may be hereinafter incorporated therein**.

x x x

IV. EFFECTIVITY

A. The **SCHOOL has the right to terminate the FACULTY MEMBER'S services for** just cause such as, among others, **failure to comply with any of the provisions of the FACULTY MANUAL pertinent to her status** as FULL–TIME PROBATIONARY FACULTY MEMBER. (*Emphases supplied*)

The SSC Faculty Manual in turn provides for the following conditions in order for a faculty member to acquire permanent employment status:[15]

B. PERMANENCY

1. Prior to the end of the probationary period, the faculty member formally applies for permanency to her/his Department Chair/Coordinator. The Department Chair/Coordinator, in consultation with the faculty member, reviews the applicant's over–all performance. If the records show that the criteria for permanency are met, the applicant is recommended for permanency to the Promotions and Permanency Board by the Department Chair/Coordinator. In certain instances (i.e., when the Department Chair/Coordinator does not give a recommendation for permanency), the Academic Dean can exercise her prerogative to recommend the applicant.

x x x

CRITERIA FOR PERMANENCY

1. **The faculty member must have completed at least a master's degree.**
2. The faculty member must manifest behavior reflective of the school's mission–vision and goals.
3. The faculty member must have consistently received above average rating for teaching performance as evaluated by the Academic Dean, Department Chair/Coordinator and the students.
4. The faculty member must have manifested more than satisfactory fulfillment of duties and responsibilities as evidenced by official records especially in the areas of: x x x
5. The faculty member must manifest awareness of and adherence to the school's code of ethics for faculty.
6. The faculty member must be in good physical health and manifest positive well being. (*Emphasis supplied*)

Viewed next to the statements and actions of Manaois – *i.e.*, the references to obtaining a master's degree in her application letter, in the subsequent correspondences between her and SSC, and in the letter seeking the extension of a teaching load for the school year 2003–2004; and her submission of certifications from UP and from her thesis adviser – we find that there is indeed substantial evidence proving that she knew about the necessary academic qualifications to obtain the status of permanency.

We also agree with the CA that the labor arbiter and the NLRC gravely misinterpreted the section in the

SSC Faculty Manual, which purportedly provided for a lower academic requirement for full–time faculty members with the rank of instructor, regardless of whether they have attained permanency or are still on probation. The labor arbiter refers to the following section in the SSC Manual:[16]

B. **ACCORDING TO RANK**

Only full–time and half–time faculty members are ranked. Subsidiary faculty members follow a separate ranking system. Based on academic preparation, fulfillment of duties and responsibilities, performance, research, output and/or community service, a full–time or half–time faculty member may be appointed to any of the following ranks:

1. INSTRUCTOR

There are **4 probationary ranks** and **8 permanent ranks**

a. Minimum Requirements

1. A bachelor's degree with **at least 25% masteral units completed**

2. At least 2 years of teaching experience or its equivalent (i.e., 1 year supervisory or professional experience)

b. Promotion within the Rank

1. A minimum of 1 year in the present level for promotion to Instructor 2, 3, 4, and 5; a minimum of 2 years for promotion to Instructor 6, 7 and 8.

2. An Instructor at any level may be promoted to the rank of Assistant Professor upon fulfillment of all the qualifications and requirements of the said rank. (*Emphases supplied*)

As correctly pointed out by the CA, the aforecited minimum requirements provided for the rank of instructor merely refer to how instructors are ranked, and not to the academic qualifications required to attain permanency. It must be noted that the section in the SSC Faculty Manual on the ranking of instructors cover those who are still on probationary employment and those who have already attained permanency. It would therefore be erroneous to simply read the section on the ranking of instructors – without taking into consideration the previously quoted section on permanency – in order to determine the academic qualifications for the position of***permanent*** *full–time faculty member with the rank of* ***instructor***. Thus, to properly arrive at the criteria, the sections on both the permanency and the ranking of an instructor, as provided in the SSC Manual, must be read in conjunction with each another.

At this juncture, we reiterate the rule that mere completion of the three–year probation, even with an above–average performance, does not guarantee that the employee will automatically acquire a permanent employment status.[17] It is settled jurisprudence[18] that the probationer can only qualify upon fulfillment of the reasonable standards set for permanent employment as a member of the teaching personnel. In line with academic freedom and constitutional autonomy, an institution of higher learning has the discretion and prerogative to impose standards on its teachers and determine whether these have been met. Upon conclusion of the probation period, the college or university, being the employer, has the sole prerogative to make a decision on whether or not to re–hire the probationer. The probationer cannot automatically assert the acquisition of security of tenure and force the employer to renew the employment contract. In the case at bar, Manaois failed to comply with the stated academic qualifications required for the position of a permanent full–time faculty member.

Notwithstanding the existence of the SSC Faculty Manual, Manaois still cannot legally acquire a permanent status of employment. Private educational institutions must still supplementarily refer[19] to the prevailing

standards, qualifications, and conditions set by the appropriate government agencies (presently the Department of Education, the Commission on Higher Education, and the Technical Education and Skills Development Authority). This limitation on the right of private schools, colleges, and universities to select and determine the employment status of their academic personnel has been imposed by the state in view of the public interest nature of educational institutions, so as to ensure the quality and competency of our schools and educators.

The applicable guidebook[20] at the time petitioner was engaged as a probationary full–time instructor for the school year 2000 to 2003 is the 1992 Manual of Regulations for Private Schools (1992 Manual).[21] It provides the following conditions of a probationary employment:chanRoblesvirtualLawlibrary
Section 89. Conditions of Employment. Every private school shall promote the improvement of the economic, social and professional status of all its personnel.

In recognition of their special employment status and their special role in the advancement of knowledge, the employment of teaching and non–teaching academic personnel shall be governed by such rules as may from time to time be promulgated, in coordination with one another, by the Department of Education, Culture and Sports and the Department of Labor and Employment.

Conditions of employment of non–academic non–teaching school personnel, including compensation, hours of work, security of tenure and labor relations, shall be governed by the appropriate labor laws and regulations.

Section 92. Probationary Period. **Subject in all instances to compliance with Department and school requirements**, the probationary period for academic personnel shall not be more than three (3) consecutive years of **satisfactory service** for those in the elementary and secondary levels, **six (6) consecutive regular semesters of satisfactory service for those in the tertiary level**, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.

Section 93. Regular or Permanent Status. **Those who have served the probationary period shall be made regular or permanent. Full–time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.** (*Emphases supplied*)chanroblesvirtualawlibrary
Considering that petitioner ultimately sought for the position of a permanent full–time instructor, we must further look into the following provisions under the 1992 Manual, which set out the minimum requirements for such status:chanRoblesvirtualLawlibrary
Section 44. Minimum Faculty Qualifications. The minimum qualifications for faculty for the different grades and levels of instruction **duly supported by appropriate credentials on file** in the school shall be as follows:

x x x

c. Tertiary

(1) For undergraduate courses, other than vocational:
(a) **Holder of a master's degree, to teach largely in his major field**; or, for professional courses, holder of the appropriate professional license required for at least a bachelor's degree. Any deviation from this requirement will be subject to regulation by the Department.
Section 45. Full–time and Part–time Faculty. As a general rule, all private schools**shall employ full–time academic personnel consistent with the levels of instruction**.

Full–time academic personnel are those meeting all the following requirements:
a. **Who possess at least the minimum academic qualifications**prescribed by the Department **under this Manual for all academic personnel**;

b. Who are paid monthly or hourly, based on the regular teaching loads as provided for in the policies, rules and standards of the Department and the school;

c. Whose total working day of not more than eight hours a day is devoted to the school;

d. Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and

e. Who are not teaching full–time in any other educational institution.
All teaching personnel who do not meet the foregoing qualifications are considered part–time.

x x x

Section 47. Faculty Classification and Ranking. At the tertiary level, the **academic teaching positions shall be classified in accordance with academic qualifications**, training and scholarship preferably into academic ranks of Professor, Associate Professor, Assistant Professor, and Instructor, without prejudice to a more simplified or expanded system of faculty ranking, at the option of the school.

Any academic teaching personnel who does not fall under any of the classes or ranks indicated in the preceding paragraph shall be classified preferably as professorial lecturer, guest lecturer, or any other similar academic designation on the basis of his qualifications. (*Emphases supplied*)chanroblesvirtualawlibrary
Thus, pursuant to the 1992 Manual, private educational institutions in the tertiary level may extend "full–time faculty" status only to those who possess, *inter alia*, a master's degree in the field of study that will be taught. This minimum requirement is neither subject to the prerogative of the school nor to the agreement between the parties. For all intents and purposes, this qualification must be deemed impliedly written in the employment contracts between private educational institutions and prospective faculty members. The issue of whether probationers were informed of this academic requirement before they were engaged as probationary employees is thus no longer material, as those who are seeking to be educators are presumed to know these mandated qualifications. Thus, all those who fail to meet the criteria under the 1992 Manual cannot legally attain the status of permanent full–time faculty members, even if they have completed three years of satisfactory service.

In the light of the failure of Manaois to satisfy the academic requirements for the position, she may only be considered as a part–time instructor pursuant to Section 45 of the 1992 Manual. In turn, as we have enunciated in a line of cases,[22] a part–time member of the academic personnel cannot acquire permanence of employment and security of tenure under the Manual of Regulations in relation to the Labor Code. We thus quote the ruling of this Court in *Lacuesta, viz*:[23]
Section 93 of the 1992 Manual of Regulations for Private Schools provides that full–time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent. Moreover, for those teaching in the tertiary level, the probationary period shall not be more than six consecutive regular semesters of satisfactory service. **The requisites to acquire permanent employment, or security of tenure, are (1) the teacher is a full–time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory.**

As previously held, a part–time teacher cannot acquire permanent status. **Only when one has served as a full–time teacher can he acquire permanent or regular status.** The petitioner was a part–time lecturer before she was appointed as a full–time instructor on probation. **As a part–time lecturer, her employment as such had ended when her contract expired.** Thus, **the three semesters she served as part–time lecturer could not be credited to her** in computing the number of years she has served to qualify her for permanent status.

Petitioner posits that after completing the three–year [full–time instructor on] probation with an above–average performance, she already acquired permanent status. On this point, we are unable to agree with petitioner.

Completing the probation period does not automatically qualify her to become a permanent employee of the university. Petitioner could only qualify to become a permanent employee upon fulfilling the reasonable standards for permanent employment as faculty member. Consistent with academic freedom and constitutional autonomy, an institution of higher learning has the prerogative to provide standards for its teachers and determine whether these standards have been met. **At the end of the probation period, the decision to re–hire an employee on probation, belongs to the university as the employer alone.** (*Emphases supplied*)chanroblesvirtualawlibrary
For the foregoing reasons, we rule that there is no legal obligation on the part of SSC to reappoint Manaois after the lapse of her temporary appointment. We thus affirm *in toto* the findings of fact of the CA and rule that SSC is not guilty of illegal dismissal.

WHEREFORE, the petition is **DENIED** for lack of merit. Accordingly, the Court of Appeals Decision dated 27 February 2009 and the Resolution dated 22 July 2009 in CA–G.R. SP. No. 101382 are hereby **AFFIRMED**.chanroblesvirtualawlibrary

SO ORDERED.

JOSE Y. SONZA, *petitioner*, *vs*. ABS-CBN BROADCASTING CORPORATION, *respondent*.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for review on *certiorari*[1] assailing the 26 March 1999 Decision[2] of the Court of Appeals in CA-G.R. SP No. 49190 dismissing the petition filed by Jose Y. Sonza (SONZA). The Court of Appeals affirmed the findings of the National Labor Relations Commission (NLRC), which affirmed the Labor Arbiters dismissal of the case for lack of jurisdiction.

The Facts

In May 1994, respondent ABS-CBN Broadcasting Corporation (ABS-CBN) signed an Agreement (Agreement) with the Mel and Jay Management and Development Corporation (MJMDC). ABS-CBN was represented by its corporate officers while MJMDC was represented by SONZA, as President and General Manager, and Carmela Tiangco (TIANGCO), as EVP and Treasurer. Referred to in the Agreement as AGENT, MJMDC agreed to provide SONZAs services exclusively to ABS-CBN as talent for radio and television. The Agreement listed the services SONZA would render to ABS-CBN, as follows:

a. Co-host for Mel & Jay radio program, 8:00 to 10:00 a.m., Mondays to Fridays;

b. Co-host for Mel & Jay television program, 5:30 to 7:00 p.m., Sundays.[3]

ABS-CBN agreed to pay for SONZAs services a monthly talent fee of ₱310,000 for the first year and ₱317,000 for the second and third year of the Agreement. ABS-CBN would pay the talent fees on the 10th and 25th days of the month.

On 1 April 1996, SONZA wrote a letter to ABS-CBNs President, Eugenio Lopez III, which reads:

Dear Mr. Lopez,

We would like to call your attention to the Agreement dated May 1994 entered into by your goodself on behalf of ABS-CBN with our company relative to our talent JOSE Y. SONZA.

As you are well aware, Mr. Sonza irrevocably resigned in view of recent events concerning his programs and career. We consider these acts of the station violative of the Agreement and the station as in breach thereof. In this connection, we hereby serve notice of rescission of said Agreement at our instance effective as of date.

Mr. Sonza informed us that he is waiving and renouncing recovery of the remaining amount stipulated in paragraph 7 of the Agreement but reserves the right to seek recovery of the other benefits under said Agreement.

Thank you for your attention.

Very truly yours,

(Sgd.)
JOSE Y. SONZA
President and Gen. Manager[4]

On 30 April 1996, SONZA filed a complaint against ABS-CBN before the Department of Labor and Employment, National Capital Region in Quezon City. SONZA complained that ABS-CBN did not pay his salaries, separation pay, service incentive leave pay, 13th month pay, signing bonus, travel allowance and amounts due under the Employees Stock Option Plan (ESOP).

On 10 July 1996, ABS-CBN filed a Motion to Dismiss on the ground that no employer-employee relationship existed between the parties. SONZA filed an Opposition to the motion on 19 July 1996.

Meanwhile, ABS-CBN continued to remit SONZAs monthly talent fees through his account at PCIBank, Quezon Avenue Branch, Quezon City. In July 1996, ABS-CBN opened a new account with the same bank where ABS-CBN deposited SONZAs talent fees and other payments due him under the Agreement.

In his Order dated 2 December 1996, the Labor Arbiter[5] denied the motion to dismiss and directed the parties to file their respective position papers. The Labor Arbiter ruled:

In this instant case, complainant for having invoked a claim that he was an employee of respondent company until April 15, 1996 and that he was not paid certain claims, it is sufficient enough as to confer jurisdiction over the instant case in this Office. And as to whether or not such claim would entitle complainant to recover upon the causes of action asserted is a matter to be resolved only after and as a result of a hearing. Thus, the respondents plea of lack of employer-employee relationship may be pleaded only as a matter of defense. It behooves upon it the duty to prove that there really is no employer-employee relationship between it and the complainant.

The Labor Arbiter then considered the case submitted for resolution. The parties submitted their position papers on 24 February 1997.

On 11 March 1997, SONZA filed a Reply to Respondents Position Paper with Motion to Expunge Respondents Annex 4 and Annex 5 from the Records. Annexes 4 and 5 are affidavits of ABS-CBNs witnesses Soccoro Vidanes and Rolando V. Cruz. These witnesses stated in their affidavits that the prevailing practice in the television and broadcast industry is to treat talents like SONZA as independent contractors.

The Labor Arbiter rendered his Decision dated 8 July 1997 dismissing the complaint for lack of jurisdiction.[6]The pertinent parts of the decision read as follows:

x x x

While Philippine jurisprudence has not yet, with certainty, touched on the true nature of the contract of a talent, it stands to reason that a talent as above-described cannot be considered as an employee by reason of the peculiar circumstances surrounding the engagement of his services.

It must be noted that **complainant was engaged by respondent by reason of his peculiar skills and talent as a TV host and a radio broadcaster. Unlike an ordinary employee, he was free to perform the services he undertook to render in accordance with his own style.** The benefits conferred to complainant under the May 1994 Agreement are certainly very much higher than those generally given to employees. For one, complainant Sonzas monthly talent fees amount to a staggering ₱317,000. Moreover, his engagement as a talent was covered by a specific contract. Likewise, he was not bound to render eight (8) hours of work per day as he worked only for such number of hours as may be necessary.

The fact that per the May 1994 Agreement complainant was accorded some benefits normally given to an employee is inconsequential. **Whatever benefits complainant enjoyed arose from specific agreement by the parties and not by reason of employer-employee relationship.** As correctly put by the respondent, All

these benefits are merely talent fees and other contractual benefits and should not be deemed as salaries, wages and/or other remuneration accorded to an employee, notwithstanding the nomenclature appended to these benefits. Apropos to this is the rule that the term or nomenclature given to a stipulated benefit is not controlling, but the intent of the parties to the Agreement conferring such benefit.

The fact that complainant was made subject to respondents Rules and Regulations, likewise, does not detract from the absence of employer-employee relationship. As held by the Supreme Court, The line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means to achieve it. (Insular Life Assurance Co., Ltd. vs. NLRC, et al., G.R. No. 84484, November 15, 1989).

x x x (Emphasis supplied)[7]

SONZA appealed to the NLRC. On 24 February 1998, the NLRC rendered a Decision affirming the Labor Arbiters decision. SONZA filed a motion for reconsideration, which the NLRC denied in its Resolution dated 3 July 1998.

On 6 October 1998, SONZA filed a special civil action for certiorari before the Court of Appeals assailing the decision and resolution of the NLRC. On 26 March 1999, the Court of Appeals rendered a Decision dismissing the case.[8]

Hence, this petition.

The Rulings of the NLRC and Court of Appeals

The Court of Appeals affirmed the NLRCs finding that no employer-employee relationship existed between SONZA and ABS-CBN. Adopting the NLRCs decision, the appellate court quoted the following findings of the NLRC:

x x x the May 1994 Agreement will readily reveal that MJMDC entered into the contract merely as an agent of complainant Sonza, the principal. By all indication and as the law puts it, the act of the agent is the act of the principal itself. This fact is made particularly true in this case, as admittedly MJMDC is a management company devoted exclusively to managing the careers of Mr. Sonza and his broadcast partner, Mrs. Carmela C. Tiangco. (Opposition to Motion to Dismiss)

Clearly, the relations of principal and agent only accrues between complainant Sonza and MJMDC, and not between ABS-CBN and MJMDC. This is clear from the provisions of the May 1994 Agreement which specifically referred to MJMDC as the AGENT. As a matter of fact, when complainant herein unilaterally rescinded said May 1994 Agreement, it was MJMDC which issued the notice of rescission in behalf of Mr. Sonza, who himself signed the same in his capacity as President.

Moreover, previous contracts between Mr. Sonza and ABS-CBN reveal the fact that historically, the parties to the said agreements are ABS-CBN and Mr. Sonza. And it is only in the May 1994 Agreement, which is the latest Agreement executed between ABS-CBN and Mr. Sonza, that MJMDC figured in the said Agreement as the agent of Mr. Sonza.

We find it erroneous to assert that MJMDC is a mere labor-only contractor of ABS-CBN such that there exist[s] employer-employee relationship between the latter and Mr. Sonza. On the contrary, We find it

indubitable, that MJMDC is an agent, not of ABS-CBN, but of the talent/contractor Mr. Sonza, as expressly admitted by the latter and MJMDC in the May 1994 Agreement.

It may not be amiss to state that jurisdiction over the instant controversy indeed belongs to the regular courts, the same being in the nature of an action for alleged breach of contractual obligation on the part of respondent-appellee. As squarely apparent from complainant-appellants Position Paper, his claims for compensation for services, 13th month pay, signing bonus and travel allowance against respondent-appellee are not based on the Labor Code but rather on the provisions of the May 1994 Agreement, while his claims for proceeds under Stock Purchase Agreement are based on the latter. A portion of the Position Paper of complainant-appellant bears perusal:

Under [the May 1994 Agreement] with respondent ABS-CBN, the latter contractually bound itself to pay complainant a signing bonus consisting of shares of stockswith FIVE HUNDRED THOUSAND PESOS (₱500,000.00).

Similarly, complainant is also entitled to be paid 13th month pay based on an amount not lower than the amount he was receiving prior to effectivity of (the) Agreement.

Under paragraph 9 of (the May 1994 Agreement), complainant is entitled to a commutable travel benefit amounting to at least One Hundred Fifty Thousand Pesos (₱150,000.00) per year.

Thus, it is precisely because of complainant-appellants own recognition of the fact that his contractual relations with ABS-CBN are founded on the New Civil Code, rather than the Labor Code, that instead of merely resigning from ABS-CBN, complainant-appellant served upon the latter a notice of rescission of Agreement with the station, per his letter dated April 1, 1996, which asserted that instead of referring to unpaid employee benefits, he is waiving and renouncing recovery of the remaining amount stipulated in paragraph 7 of the Agreement but reserves the right to such recovery of the other benefits under said Agreement. (Annex 3 of the respondent ABS-CBNs Motion to Dismiss dated July 10, 1996).

Evidently, it is precisely by reason of the alleged violation of the May 1994 Agreement and/or the Stock Purchase Agreement by respondent-appellee that complainant-appellant filed his complaint. Complainant-appellants claims being anchored on the alleged breach of contract on the part of respondent-appellee, the same can be resolved by reference to civil law and not to labor law. Consequently, they are within the realm of civil law and, thus, lie with the regular courts. As held in the case of Dai-Chi Electronics Manufacturing vs. Villarama, 238 SCRA 267, 21 November 1994, **an action for breach of contractual obligation is intrinsically a civil dispute**.[9] (Emphasis supplied)

The Court of Appeals ruled that the existence of an employer-employee relationship between SONZA and ABS-CBN is a factual question that is within the jurisdiction of the NLRC to resolve.[10] A special civil action for certiorari extends only to issues of want or excess of jurisdiction of the NLRC.[11] Such action cannot cover an inquiry into the correctness of the evaluation of the evidence which served as basis of the NLRCs conclusion.[12]The Court of Appeals added that it could not re-examine the parties evidence and substitute the factual findings of the NLRC with its own.[13]

The Issue

In assailing the decision of the Court of Appeals, SONZA contends that:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE NLRCS DECISION AND REFUSING TO FIND THAT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTED BETWEEN SONZA AND ABS-CBN, DESPITE THE WEIGHT OF CONTROLLING LAW, JURISPRUDENCE AND EVIDENCE TO SUPPORT SUCH A FINDING.[14]

The Courts Ruling

We affirm the assailed decision.

No convincing reason exists to warrant a reversal of the decision of the Court of Appeals affirming the NLRC ruling which upheld the Labor Arbiters dismissal of the case for lack of jurisdiction.

The present controversy is one of first impression. Although Philippine labor laws and jurisprudence define clearly the elements of an employer-employee relationship, this is the first time that the Court will resolve the nature of the relationship between a television and radio station and one of its talents. There is no case law stating that a radio and television program host is an employee of the broadcast station.

The instant case involves big names in the broadcast industry, namely Jose Jay Sonza, a known television and radio personality, and ABS-CBN, one of the biggest television and radio networks in the country.

SONZA contends that the Labor Arbiter has jurisdiction over the case because he was an employee of ABS-CBN. On the other hand, ABS-CBN insists that the Labor Arbiter has no jurisdiction because SONZA was an independent contractor.

Employee or Independent Contractor?

The existence of an employer-employee relationship is a question of fact. Appellate courts accord the factual findings of the Labor Arbiter and the NLRC not only respect but also finality when supported by substantial evidence.[15] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[16] A party cannot prove the absence of substantial evidence by simply pointing out that there is contrary evidence on record, direct or circumstantial. The Court does not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[17]

SONZA maintains that all essential elements of an employer-employee relationship are present in this case. Case law has consistently held that the elements of an employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employers power to control the employee on the means and methods by which the work is accomplished.[18] The last element, the so-called **control test**, is the most important element.[19]

A. Selection and Engagement of Employee

ABS-CBN engaged SONZAs services to co-host its television and radio programs because of SONZAs peculiar skills, talent and celebrity status. SONZA contends that the discretion used by respondent in specifically selecting and hiring complainant over other broadcasters of possibly similar experience and qualification as complainant belies respondents claim of independent contractorship.

Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees. The specific selection and hiring of SONZA, ***because of his unique skills, talent and celebrity status not possessed by ordinary employees***, is a circumstance indicative, but not conclusive, of an independent contractual relationship. If SONZA did not possess such unique skills, talent and celebrity status, ABS-CBN would not have entered into the Agreement with SONZA but would have hired him through its personnel department just like any other employee.

In any event, the method of selecting and engaging SONZA does not conclusively determine his status. We must consider all the circumstances of the relationship, with the control test being the most important element.

B. Payment of Wages

ABS-CBN directly paid SONZA his monthly talent fees with no part of his fees going to MJMDC. SONZA asserts that this mode of fee payment shows that he was an employee of ABS-CBN. SONZA also points out that ABS-CBN granted him benefits and privileges which he would not have enjoyed if he were truly the subject of a valid job contract.

All the talent fees and benefits paid to SONZA were the result of negotiations that led to the Agreement. If SONZA were ABS-CBNs employee, there would be no need for the parties to stipulate on benefits such as SSS, Medicare, x x x and 13th month pay[20] which the law automatically incorporates into every employer-employee contract.[21] Whatever benefits SONZA enjoyed arose from contract and not because of an employer-employee relationship.[22]

SONZAs talent fees, amounting to ₱317,000 monthly in the second and third year, are so huge and out of the ordinary that they indicate more an independent contractual relationship rather than an employer-employee relationship. ABS-CBN agreed to pay SONZA such huge talent fees precisely because of SONZAs unique skills, talent and celebrity status not possessed by ordinary employees. Obviously, SONZA acting alone possessed enough bargaining power to demand and receive such huge talent fees for his services. The power to bargain talent fees way above the salary scales of ordinary employees is a circumstance indicative, but not conclusive, of an independent contractual relationship.

The payment of talent fees directly to SONZA and not to MJMDC does not negate the status of SONZA as an independent contractor. The parties expressly agreed on such mode of payment. Under the Agreement, MJMDC is the AGENT of SONZA, to whom MJMDC would have to turn over any talent fee accruing under the Agreement.

C. Power of Dismissal

For violation of any provision of the Agreement, either party may terminate their relationship. SONZA failed to show that ABS-CBN could terminate his services on grounds other than breach of contract, such as retrenchment to prevent losses as provided under labor laws.[23]

During the life of the Agreement, ABS-CBN agreed to pay SONZAs talent fees as long as AGENT and Jay Sonza shall faithfully and completely perform each condition of this Agreement.[24] Even if it suffered severe business losses, ABS-CBN could not retrench SONZA because ABS-CBN remained obligated to pay SONZAs talent fees during the life of the Agreement. This circumstance indicates an independent contractual relationship between SONZA and ABS-CBN.

SONZA admits that even after ABS-CBN ceased broadcasting his programs, ABS-CBN still paid him his talent fees. Plainly, ABS-CBN adhered to its undertaking in the Agreement to continue paying SONZAs talent fees during the remaining life of the Agreement even if ABS-CBN cancelled SONZAs programs through no fault of SONZA.[25]

SONZA assails the Labor Arbiters interpretation of his rescission of the Agreement as an admission that he is not an employee of ABS-CBN. The Labor Arbiter stated that if it were true that complainant was really an employee, he would merely resign, instead. SONZA did actually resign from ABS-CBN but he also, as president of MJMDC, rescinded the Agreement. SONZAs letter clearly bears this out.[26] However, the manner by which SONZA terminated his relationship with ABS-CBN is immaterial. Whether SONZA

rescinded the Agreement or resigned from work does not determine his status as employee or independent contractor.

D. Power of Control

Since there is no local precedent on whether a radio and television program host is an employee or an independent contractor, we refer to foreign case law in analyzing the present case. The United States Court of Appeals, First Circuit, recently held in ***Alberty-Vlez v. Corporacin De Puerto Rico Para La Difusin Pblica (WIPR)***[27] that a television program host is an independent contractor. We quote the following findings of theU.S. court:

Several factors favor classifying Alberty as an independent contractor. **First, a television actress is a skilled position requiring talent and training not available on-the-job**. x x x In this regard, Alberty possesses a masters degree in public communications and journalism; is trained in dance, singing, and modeling; taught with the drama department at the University of Puerto Rico; and acted in several theater and television productions prior to her affiliation with Desde Mi Pueblo. **Second, Alberty provided the tools and instrumentalities necessary for her to perform**. Specifically, she provided, or obtained sponsors to provide, the costumes, jewelry, and other image-related supplies and services necessary for her appearance. Alberty disputes that this factor favors independent contractor status because WIPR provided the equipment necessary to tape the show. Albertys argument is misplaced. The equipment necessary for Alberty to conduct *her job* as host of Desde Mi Pueblo related to her appearance on the show. Others provided equipment for filming and producing the show, but these were not the primary tools that Alberty used to perform her particular function. If we accepted this argument, independent contractors could never work on collaborative projects because other individuals often provide the equipment required for different aspects of the collaboration. x x x

Third, WIPR could not assign Alberty work in addition to filming Desde Mi Pueblo. Albertys contracts with WIPR specifically provided that WIPR hired her professional services as Hostess for the Program Desde Mi Pueblo. There is no evidence that WIPR assigned Alberty tasks in addition to work related to these tapings. x x x[28] (Emphasis supplied)

Applying the **control test** to the present case, we find that SONZA is not an employee but an independent contractor. The control test is the **most important** test our courts apply in distinguishing an employee from an independent contractor.[29] This test is based on the extent of control the hirer exercises over a worker. The greater the supervision and control the hirer exercises, the more likely the worker is deemed an employee. The converse holds true as well the less control the hirer exercises, the more likely the worker is considered an independent contractor.[30]

First, SONZA contends that ABS-CBN exercised control over the means and methods of his work.

SONZAs argument is misplaced. ABS-CBN engaged SONZAs services specifically to co-host the Mel & Jay programs. ABS-CBN did not assign any other work to SONZA. To perform his work, SONZA only needed his skills and talent. How SONZA delivered his lines, appeared on television, and sounded on radio were outside ABS-CBNs control. SONZA did not have to render eight hours of work per day. The Agreement required SONZA to attend only rehearsals and tapings of the shows, as well as pre- and post-production staff meetings.[31] ABS-CBN could not dictate the contents of SONZAs script. However, the Agreement prohibited SONZA from criticizing in his shows ABS-CBN or its interests.[32] The clear implication is that SONZA had a free hand on what to say or discuss in his shows provided he did not attack ABS-CBN or its interests.

We find that ABS-CBN was not involved in the actual performance that produced the finished product of SONZAs work.[33] ABS-CBN did not instruct SONZA how to perform his job. ABS-CBN merely reserved the

right to modify the program format and airtime schedule for more effective programming.[34] ABS-CBNs sole concern was the quality of the shows and their standing in the ratings. Clearly, ABS-CBN did not exercise control over the means and methods of performance of SONZAs work.

SONZA claims that ABS-CBNs power not to broadcast his shows proves ABS-CBNs power over the means and methods of the performance of his work. Although ABS-CBN did have the option not to broadcast SONZAs show, ABS-CBN was still obligated to pay SONZAs talent fees. Thus, even if ABS-CBN was completely dissatisfied with the means and methods of SONZAs performance of his work, or even with the quality or product of his work, ABS-CBN could not dismiss or even discipline SONZA. All that ABS-CBN could do is not to broadcast SONZAs show but ABS-CBN must still pay his talent fees in full.[35]

Clearly, ABS-CBNs right not to broadcast SONZAs show, burdened as it was by the obligation to continue paying in full SONZAs talent fees, did not amount to control over the means and methods of the performance of SONZAs work. ABS-CBN could not terminate or discipline SONZA even if the means and methods of performance of his work - how he delivered his lines and appeared on television - did not meet ABS-CBNs approval. This proves that ABS-CBNs control was limited only to the result of SONZAs work, whether to broadcast the final product or not. In either case, ABS-CBN must still pay SONZAs talent fees in full until the expiry of the Agreement.

In ***Vaughan, et al. v. Warner, et al.***,[36] the United States Circuit Court of Appeals ruled that vaudeville performers were independent contractors although the management reserved the right to delete objectionable features in their shows. Since the management did not have control over the manner of performance of the skills of the artists, it could only control the result of the work by deleting objectionable features.[37]

SONZA further contends that ABS-CBN exercised control over his work by supplying all equipment and crew. No doubt, ABS-CBN supplied the equipment, crew and airtime needed to broadcast the Mel & Jay programs. However, the equipment, crew and airtime are not the tools and instrumentalities SONZA needed to perform his job. What SONZA principally needed were his talent or skills and the costumes necessary for his appearance.[38] Even though ABS-CBN provided SONZA with the place of work and the necessary equipment, SONZA was still an independent contractor since ABS-CBN did not supervise and control his work. ABS-CBNs sole concern was for SONZA to display his talent during the airing of the programs.[39]

A radio broadcast specialist who works under minimal supervision is an independent contractor.[40] SONZAs work as television and radio program host required special skills and talent, which SONZA admittedly possesses. The records do not show that ABS-CBN exercised any supervision and control over how SONZA utilized his skills and talent in his shows.

Second, SONZA urges us to rule that he was ABS-CBNs employee because ABS-CBN subjected him to its rules and standards of performance. SONZA claims that this indicates ABS-CBNs control not only [over] his manner of work but also the quality of his work.

The Agreement stipulates that SONZA shall abide with the rules and standards of performance **covering talents**[41] of ABS-CBN. The Agreement does not require SONZA to comply with the rules and standards of performance prescribed for employees of ABS-CBN. The code of conduct imposed on SONZA under the Agreement refers to the Television and Radio Code of the Kapisanan ng mga Broadcaster sa Pilipinas (KBP), which has been adopted by the COMPANY (ABS-CBN) as its Code of Ethics.[42] The KBP code applies to broadcasters, not to employees of radio and television stations. Broadcasters are not necessarily employees of radio and television stations. Clearly, the rules and standards of performance referred to in the Agreement are those applicable to talents and not to employees of ABS-CBN.

In any event, not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former.[43] In this case, SONZA failed to show that these rules controlled his performance. We find that these general rules are merely **guidelines** towards the achievement of the mutually desired

result, which are top-rating television and radio programs that comply with standards of the industry. We have ruled that:

Further, not every form of control that a party reserves to himself over the conduct of the other party in relation to the services being rendered may be accorded the effect of establishing an employer-employee relationship. The facts of this case fall squarely with the case of Insular Life Assurance Co., Ltd. vs. NLRC. In said case, we held that:

Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.[44]

The ***Vaughan*** case also held that one could still be an independent contractor although the hirer reserved certain supervision to insure the attainment of the desired result. The hirer, however, must not deprive the one hired from performing his services according to his own initiative.[45]

Lastly, SONZA insists that the exclusivity clause in the Agreement is the most extreme form of control which ABS-CBN exercised over him.

This argument is futile. Being an exclusive talent does not by itself mean that SONZA is an employee of ABS-CBN. Even an independent contractor can validly provide his services exclusively to the hiring party. In the broadcast industry, exclusivity is not necessarily the same as control.

The hiring of exclusive talents is a widespread and accepted practice in the entertainment industry.[46] This practice is not designed to control the means and methods of work of the talent, but simply to protect the investment of the broadcast station. The broadcast station normally spends substantial amounts of money, time and effort in building up its talents as well as the programs they appear in and thus expects that said talents remain exclusive with the station for a commensurate period of time.[47] Normally, a much higher fee is paid to talents who agree to work exclusively for a particular radio or television station. In short, the huge talent fees partially compensates for exclusivity, as in the present case.

MJMDC as Agent of SONZA

SONZA protests the Labor Arbiters finding that he is a talent of MJMDC, which contracted out his services to ABS-CBN. The Labor Arbiter ruled that as a talent of MJMDC, SONZA is not an employee of ABS-CBN. SONZA insists that MJMDC is a labor-only contractor and ABS-CBN is his employer.

In a labor-only contract, there are three parties involved: (1) the labor-only contractor; (2) the employee who is ostensibly under the employ of the labor-only contractor; and (3) the principal who is deemed the real employer. Under this scheme, **the labor-only contractor is the agent of the principal**. The law makes the principal responsible to the employees of the labor-only contractor as if the principal itself directly hired or employed the employees.[48] These circumstances are not present in this case.

There are essentially only two parties involved under the Agreement, namely, SONZA and ABS-CBN. MJMDC merely acted as SONZAs agent. The Agreement expressly states that MJMDC acted as the AGENT of SONZA. The records do not show that MJMDC acted as ABS-CBNs agent. MJMDC, which stands for Mel and Jay Management and Development Corporation, is a corporation organized and owned by SONZA and TIANGCO. The President and General Manager of MJMDC is SONZA himself. It is absurd to hold that MJMDC, which is owned, controlled, headed and managed by SONZA, acted as agent of ABS-CBN in

entering into the Agreement with SONZA, who himself is represented by MJMDC. That would make MJMDC the agent of both ABS-CBN and SONZA.

As SONZA admits, MJMDC is a management company devoted **exclusively** to managing the careers of SONZA and his broadcast partner, TIANGCO. MJMDC is not engaged in any other business, not even job contracting. MJMDC does not have any other function apart from acting as agent of SONZA or TIANGCO to promote their careers in the broadcast and television industry.[49]

Policy Instruction No. 40

SONZA argues that Policy Instruction No. 40 issued by then Minister of Labor Blas Ople on 8 January 1979finally settled the status of workers in the broadcast industry. Under this policy, the types of employees in the broadcast industry are the station and program employees.

Policy Instruction No. 40 is a mere executive issuance which does not have the force and effect of law.There is no legal presumption that Policy Instruction No. 40 determines SONZAs status. A mere executive issuance cannot exclude independent contractors from the class of service providers to the broadcast industry.The classification of workers in the broadcast industry into only two groups under Policy Instruction No. 40 is not binding on this Court, especially when the classification has no basis either in law or in fact.

Affidavits of ABS-CBNs Witnesses

SONZA also faults the Labor Arbiter for admitting the affidavits of Socorro Vidanes and Rolando Cruz without giving his counsel the opportunity to cross-examine these witnesses. SONZA brands these witnesses as incompetent to attest on the prevailing practice in the radio and television industry. SONZA views the affidavits of these witnesses as misleading and irrelevant.

While SONZA failed to cross-examine ABS-CBNs witnesses, he was never prevented from denying or refuting the allegations in the affidavits. The Labor Arbiter has the discretion whether to conduct a formal (trial-type) hearing after the submission of the position papers of the parties, thus:

Section 3. Submission of Position Papers/Memorandum

x x x

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latters direct testimony. x x x

Section 4. Determination of Necessity of Hearing. Immediately after the submission of the parties of their position papers/memorandum, the Labor Arbiter shall motu propio determine whether there is need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any from any party or witness.[50]

The Labor Arbiter can decide a case based solely on the position papers and the supporting documents without a formal trial.[51] The holding of a formal hearing or trial is something that the parties cannot demand as a matter of right.[52] If the Labor Arbiter is confident that he can rely on the documents before him, he cannot be faulted for not conducting a formal trial, unless under the particular circumstances of

the case, the documents alone are insufficient. The proceedings before a Labor Arbiter are non-litigious in nature. Subject to the requirements of due process, the technicalities of law and the rules obtaining in the courts of law do not strictly apply in proceedings before a Labor Arbiter.

Talents as Independent Contractors

ABS-CBN claims that there exists a prevailing practice in the broadcast and entertainment industries to treat talents like SONZA as independent contractors. SONZA argues that if such practice exists, it is void for violating the right of labor to security of tenure.

The right of labor to security of tenure as guaranteed in the Constitution[53] arises only if there is an employer-employee relationship under labor laws. Not every performance of services for a fee creates an employer-employee relationship. To hold that every person who renders services to another for a fee is an employee - to give meaning to the security of tenure clause - will lead to absurd results.

Individuals with special skills, expertise or talent enjoy the freedom to offer their services as independent contractors. The right to life and livelihood guarantees this freedom to contract as independent contractors. The right of labor to security of tenure cannot operate to deprive an individual, possessed with special skills, expertise and talent, of his right to contract as an independent contractor. An individual like an artist or talent has a right to render his services without any one controlling the means and methods by which he performs his art or craft. This Court will not interpret the right of labor to security of tenure to compel artists and talents to render their services only as employees. If radio and television program hosts can render their services only as employees, the station owners and managers can dictate to the radio and television hosts what they say in their shows. This is not conducive to freedom of the press.

Different Tax Treatment of Talents and Broadcasters

The National Internal Revenue Code (NIRC)[54] in relation to Republic Act No. 7716,[55] as amended by Republic Act No. 8241,[56] treats talents, television and radio broadcasters differently. Under the NIRC, these professionals are subject to the 10% value-added tax (VAT) on services they render. Exempted from the VAT are those under an employer-employee relationship.[57] This different tax treatment accorded to talents and broadcasters bolters our conclusion that they are independent contractors, provided all the basic elements of a contractual relationship are present as in this case.

Nature of SONZAs Claims

SONZA seeks the recovery of allegedly unpaid talent fees, 13th month pay, separation pay, service incentive leave, signing bonus, travel allowance, and amounts due under the Employee Stock Option Plan. We agree with the findings of the Labor Arbiter and the Court of Appeals that SONZAs claims are **all based on the May 1994 Agreement and stock option plan, and not on the Labor Code.** Clearly, the present case does not call for an application of the Labor Code provisions but an interpretation and implementation of the May 1994 Agreement. In effect, SONZAs cause of action is for breach of contract which is intrinsically a civil dispute cognizable by the regular courts.[58]

WHEREFORE, we DENY the petition. The assailed Decision of the Court of Appeals dated 26 March 1999in CA-G.R. SP No. 49190 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and *Azcuna, JJ.,* concur.

ARIEL L. DAVID, DOING BUSINESS UNDER THE NAME AND STYLE "YIELS HOG DEALER," PETITIONER, VS. JOHN G. MACASIO, *Respondent.*

D E C I S I O N

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] the challenge to the November 22, 2010 decision[2] and the January 31, 2011 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 116003. The CA decision annulled and set aside the May 26, 2010 decision[4] of the National Labor Relations Commission *(NLRC)*[5] which, in turn, affirmed the April 30, 2009 decision[6] of the Labor Arbiter *(LA)*. The LA's decision dismissed respondent John G. Macasio's monetary claims.

The Factual Antecedents

In January 2009, Macasio filed before the LA a complaint[7] against petitioner Ariel L. David, doing business under the name and style "Yiels Hog Dealer," for non-payment of **overtime pay, holiday pay** and **13th month pay.** He also claimed payment for **moral and exemplary damages** and **attorney's fees**. Macasio also claimed payment for **service incentive leave***(SIL)*.[8]

Macasio alleged[9] before the LA that he had been working as a butcher for David since January 6, 1995. Macasio claimed that David exercised effective control and supervision over his work, pointing out that David: (1) set the work day, reporting time and hogs to be chopped, as well as the manner by which he was to perform his work; (2) daily paid his salary of P700.00, which was increased from P600.00 in 2007, P500.00 in 2006 and P400.00 in 2005; and (3) approved and disapproved his leaves. Macasio added that David owned the hogs delivered for chopping, as well as the work tools and implements; the latter also rented the workplace. Macasio further claimed that David employs about twenty-five (25) butchers and delivery drivers.

In his defense,[10] David claimed that he started his hog dealer business in 2005 and that he only has ten employees. He alleged that he hired Macasio as a butcher or chopper on "*pakyaw*" or task basis who is, therefore, not entitled to overtime pay, holiday pay and 13th month pay pursuant to the provisions of the Implementing Rules and Regulations *(IRR)* of the Labor Code. David pointed out that Macasio: (1) usually starts his work at 10:00 p.m. and ends at 2:00 a.m. of the following day or earlier, depending on the volume of the delivered hogs; (2) received the fixed amount of P700.00 per engagement, regardless of the actual number of hours that he spent chopping the delivered hogs; and (3) was not engaged to report for work and, accordingly, did not receive any fee when no hogs were delivered.

Macasio disputed David's allegations.[11] He argued that, *first,* David did not start his business only in 2005. He pointed to the Certificate of Employment[12] that David issued in his favor which placed the date of his employment, albeit erroneously, in January 2000. *Second,* he reported for work every day which the payroll or time record could have easily proved had David submitted them in evidence.

Refuting Macasio's submissions,[13] David claims that Macasio was not his employee as he hired the latter on "*pakyaw"* or task basis. He also claimed that he issued the Certificate of Employment, upon Macasio's request, only for overseas employment purposes. He pointed to the "*Pinagsamang Sinumpaang Salaysay*,"[14] executed by Presbitero Solano and Christopher (Antonio Macasio's co-butchers), to corroborate his claims.

In the April 30, 2009 decision,[15] the LA dismissed Macasio's complaint for lack of merit. The LA gave

credence to David's claim that he engaged Macasio on "*pakyaw*" or task basis. The LA noted the following facts to support this finding: (1) Macasio received the fixed amount of P700.00 for every work done, regardless of the number of hours that he spent in completing the task and of the volume or number of hogs that he had to chop per engagement; (2) Macasio usually worked for only four hours, beginning from 10:00 p.m. up to 2:00 a.m. of the following day; and (3) the P700.00 fixed wage far exceeds the then prevailing daily minimum wage of P382.00. The LA added that the nature of David's business as hog dealer supports this "*pakyaw"* or task basis arrangement.

The LA concluded that as Macasio was engaged on "*pakyaw*" or task basis, he is not entitled to overtime, holiday, SIL and 13th month pay.

The NLRC's Ruling

In its May 26, 2010 decision,[16] the NLRC affirmed the LA ruling.[17] The NLRC observed that David did not require Macasio to observe an eight-hour work schedule to earn the fixed P700.00 wage; and that Macasio had been performing a non-time work, pointing out that Macasio was paid a fixed amount for the completion of the assigned task, irrespective of the time consumed in its performance. Since Macasio was paid by result and not in terms of the time that he spent in the workplace, Macasio is not covered by the Labor Standards laws on overtime, SIL and holiday pay, and 13th month pay under the Rules and Regulations Implementing the 13th month pay law.[18]

Macasio moved for reconsideration[19] but the NLRC denied his motion in its August 11, 2010 resolution,[20] prompting Macasio to elevate his case to the CA *via* a petition for *certiorari*.[21]

The CA's Ruling

In its November 22, 2010 decision,[22] the CA partly granted Macasio's *certiorari* petition and reversed the NLRC's ruling for having been rendered with grave abuse of discretion.

While the CA agreed with the LA and the NLRC that Macasio was a task basis employee, it nevertheless found Macasio entitled to his monetary claims following the doctrine laid down in*Serrano v. Severino Santos Transit.*[23] The CA explained that as a task basis employee, Macasio is excluded from the coverage of holiday, SIL and 13th month pay *only if* he is likewise a "field personnel." As defined by the Labor Code, a "field personnel" is one who performs the work away from the office or place of work and whose regular work hours cannot be determined with reasonable certainty. In Macasio's case, the elements that characterize a "field personnel" are evidently lacking as he had been working as a butcher at David's "Yiels Hog Dealer" business in Sta. Mesa, Manila under David's supervision and control, and for a fixed working schedule that starts at 10:00 p.m.

Accordingly, the CA awarded Macasio's claim for holiday, SIL and 13th month pay for three years, with 10% attorney's fees on the total monetary award. The CA, however, denied Macasio's claim for moral and exemplary damages for lack of basis.

David filed the present petition after the CA denied his motion for reconsideration[24] in the CA's January 31, 2011 resolution.[25]

The Petition

In this petition,[26] David maintains that Macasio's engagement was on a "*pakyaw*" or task basis. Hence, the latter is excluded from the coverage of holiday, SIL and 13th month pay.

David reiterates his submissions before the lower tribunals[27] and adds that he never had any control over

the manner by which Macasio performed his work and he simply looked on to the "end-result." He also contends that he never compelled Macasio to report for work and that under their arrangement, Macasio was at liberty to choose whether to report for work or not as other butchers could carry out his tasks. He points out that Solano and Antonio had, in fact, attested to their (David and Macasio's) established "*pakyawan*" arrangement that rendered a written contract unnecessary. In as much as Macasio is a task basis employee – who is paid the fixed amount of P700.00 per engagement regardless of the time consumed in the performance – David argues that Macasio is not entitled to the benefits he claims. Also, he posits that because he engaged Macasio on "*pakyaw*" or task basis then no employer-employee relationship exists between them.

Finally, David argues that factual findings of the LA, when affirmed by the NLRC, attain finality especially when, as in this case, they are supported by substantial evidence. Hence, David posits that the CA erred in reversing the labor tribunals' findings and granting the prayed monetary claims.

The Case for the Respondent

Macasio counters that he was not a task basis employee or a "field personnel" as David would have this Court believe.[28] He reiterates his arguments before the lower tribunals and adds that, contrary to David's position, the P700.00 fee that he was paid for each day that he reported for work does not indicate a "*pakyaw*" or task basis employment as this amount was paid daily, regardless of the number or pieces of hogs that he had to chop. Rather, it indicates a daily-wage method of payment and affirms his regular employment status. He points out that David did not allege or present any evidence as regards the quota or number of hogs that he had to chop as basis for the "*pakyaw*" or task basis payment; neither did David present the time record or payroll to prove that he worked for less than eight hours each day. Moreover, David did not present any contract to prove that his employment was on task basis. As David failed to prove the alleged task basis or "*pakyawan*" agreement, Macasio concludes that he was David's employee.

Procedurally, Macasio points out that David's submissions in the present petition raise purely factual issues that are not proper for a petition for review on *certiorari.* These issues – whether he (Macasio) was paid by result or on "*pakyaw*" basis; whether he was a "field personnel"; whether an employer-employee relationship existed between him and David; and whether David exercised control and supervision over his work – are all factual in nature and are, therefore, proscribed in a Rule 45 petition. He argues that the CA's factual findings bind this Court, absent a showing that such findings are not supported by the evidence or the CA's judgment was based on a misapprehension of facts. He adds that the issue of whether an employer-employee relationship existed between him and David had already been settled by the LA[29] and the NLRC[30] (as well as by the CA per Macasio's manifestation before this Court dated November 15, 2012),[31] in his favor, in the separate illegal case that he filed against David.

The Issue

The issue revolves around the proper application and interpretation of the labor law provisions on holiday, SIL and 13th month pay to a worker engaged on "*pakyaw*" or task basis. In the context of the Rule 65 petition before the CA, the issue is whether the CA correctly found the NLRC in grave abuse of discretion in ruling that Macasio is entitled to these labor standards benefits.

The Court's Ruling

We **partially grant** the petition.

Preliminary considerations: the Montoya ruling and the factual-issue-bar rule

In this Rule 45 petition for review on *certiorari* of the CA's decision rendered under a Rule 65 proceeding, this Court's power of review is limited to resolving matters pertaining to any perceived legal errors that the CA may have committed in issuing the assailed decision. This is in contrast with the review for jurisdictional errors, which we undertake in an original *certiorari*action. In reviewing the legal correctness of the CA decision, we examine the CA decision based on how it determined the presence or absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision on the merits of the case was correct.[32] In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[33]

Moreover, the Court's power in a Rule 45 petition limits us to a review of questions of law raised against the assailed CA decision.[34]

In this petition, David essentially asks the question – whether Macasio is entitled to holiday, SIL and 13th month pay. This one is a question of law. The determination of this question of law however is intertwined with the largely factual issue of whether Macasio falls within the rule on entitlement to these claims or within the exception. In either case, the resolution of this factual issue presupposes another factual matter, that is, the presence of an employer-employee relationship between David and Macasio.

In insisting before this Court that Macasio was not his employee, David argues that he engaged the latter on "*pakyaw*" or task basis. Very noticeably, David confuses engagement on "*pakyaw*" or task basis with the lack of employment relationship. Impliedly, David asserts that their "*pakyawan*" or task basis arrangement negates the existence of employment relationship.

At the outset, we reject this assertion of the petitioner. Engagement on "*pakyaw*" or task basis does not characterize the relationship that may exist between the parties, *i.e.,* whether one of employment or independent contractorship. Article 97(6) of the Labor Code defines wages as "xxx the **remuneration or earnings**, however designated, capable of being expressed in terms of money, **whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same**, which is **payable by an employer to an employee**under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered[.]"[35] In relation to Article 97(6), Article 101[36] of the Labor Code speaks of workers paid by results or those whose pay is calculated in terms of the quantity or quality of their work output which includes "*pakyaw*" work and other non-time work.

More importantly, by implicitly arguing that his engagement of Macasio on "*pakyaw*" or task basis negates employer-employee relationship, David would want the Court to engage on a factual appellate review of the entire case to determine the presence or existence of that relationship. This approach however is not authorized under a Rule 45 petition for review of the CA decision rendered under a Rule 65 proceeding.

First, the LA and the NLRC denied Macasio's claim *not* because of the absence of an employer-employee but because of its finding that since Macasio is paid on *pakyaw* or task basis, then he is not entitled to SIL, holiday and 13th month pay. *Second*, we consider it crucial, that in the separate illegal dismissal case Macasio filed with the LA, the LA, the NLRC and the CA uniformly found the existence of an employer-employee relationship.[37]

In other words, aside from being factual in nature, the existence of an employer-employee relationship is in fact a non-issue in this case. To reiterate, in deciding a Rule 45 petition for review of a labor decision rendered by the CA under 65, the narrow scope of inquiry is whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the NLRC. In concrete question form, "did the NLRC gravely abuse its discretion in denying Macasio's claims simply because he is paid on a non-time basis?"

At any rate, even if we indulge the petitioner, we find his claim that no employer-employee relationship

exists baseless. Employing the control test,[38] we find that such a relationship exist in the present case.

Even a factual review shows that
Macasio is David's employee

To determine the existence of an employer-employee relationship, four elements generally need to be considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. These elements or indicators comprise the so-called "four-fold" test of employment relationship. Macasio's relationship with David satisfies this test.

First, David engaged the services of Macasio, thus satisfying the element of "selection and engagement of the employee." David categorically confirmed this fact when, in his "*Sinumpaang Salaysay,*" he stated that "nag apply po siya sa akin at kinuha ko siya na chopper[.]"[39] Also, Solano and Antonio stated in their "*Pinagsamang Sinumpaang Salaysay*"[40]that "[k]ami po ay nagtratrabaho sa Yiels xxx na pag-aari ni Ariel David bilang butcher" and "kilala namin si xxx Macasio na isa ring butcher xxx ni xxx David at kasama namin siya sa aming trabaho."

Second, David paid Macasio's wages. Both David and Macasio categorically stated in their respective pleadings before the lower tribunals and even before this Court that the former had been paying the latter P700.00 each day after the latter had finished the day's task. Solano and Antonio also confirmed this fact of wage payment in their "*Pinagsamang Sinumpaang Salaysay.*"[41] This satisfies the element of "payment of wages."

Third, David had been setting the day and time when Macasio should report for work. This power to determine the work schedule obviously implies power of control. By having the power to control Macasio's work schedule, David could regulate Macasio's work and could even refuse to give him any assignment, thereby effectively dismissing him.

And *fourth*, David had the right and power to control and supervise Macasio's work as to the means and methods of performing it. In addition to setting the day and time when Macasio should report for work, the established facts show that David rents the place where Macasio had been performing his tasks. Moreover, Macasio would leave the workplace only after he had finished chopping all of the hog meats given to him for the day's task. Also, David would still engage Macasio's services and have him report for work even during the days when only few hogs were delivered for butchering.

Under this overall setup, all those working for David, including Macasio, could naturally be expected to observe certain rules and requirements and David would necessarily exercise some degree of control as the chopping of the hog meats would be subject to his specifications. Also, since Macasio performed his tasks at David's workplace, David could easily exercise control and supervision over the former. Accordingly, whether or not David actually exercised this right or power to control is beside the point as the law simply requires the existence of this power to control [4243] or, as in this case, the existence of the right and opportunity to control and supervise Macasio.[44]

In sum, the totality of the surrounding circumstances of the present case sufficiently points to an employer-employee relationship existing between David and Macasio.

Macasio is engaged on "pakyaw" or task basis

At this point, we note that all three tribunals – the LA, the NLRC and the CA – found that Macasio was engaged or paid on "*pakyaw*" or task basis. This factual finding binds the Court under the rule that factual findings of labor tribunals when supported by the established facts and in accord with the laws, especially

when affirmed by the CA, is binding on this Court.

A distinguishing characteristic of "*pakyaw*" or task basis engagement, as opposed to straight-hour wage payment, is the non-consideration of the time spent in working. In a task-basis work, the emphasis is on the task itself, in the sense that payment is reckoned in terms of completion of the work, not in terms of the number of time spent in the completion of work.[45]Once the work or task is completed, the worker receives a fixed amount as wage, without regard to the standard measurements of time generally used in pay computation.

In Macasio's case, the established facts show that he would usually start his work at 10:00 p.m. Thereafter, regardless of the total hours that he spent at the workplace or of the total number of the hogs assigned to him for chopping, Macasio would receive the fixed amount of P700.00 once he had completed his task. Clearly, these circumstances show a "*pakyaw*" or task basis engagement that all three tribunals uniformly found.

In sum, the existence of employment relationship between the parties is determined by applying the "four-fold" test; engagement on "*pakyaw*" or task basis does not determine the parties' relationship as it is simply a method of pay computation. Accordingly, Macasio is David's employee, albeit engaged on "*pakyaw*" or task basis.

As an employee of David paid on *pakyaw* or task basis, we now go to the core issue of whether Macasio is entitled to holiday, 13th month, and SIL pay.

On the issue of Macasio's entitlement to holiday, SIL and 13th month pay

The LA dismissed Macasio's claims pursuant to Article 94 of the Labor Code in relation to Section 1, Rule IV of the IRR of the Labor Code, and Article 95 of the Labor Code, as well as Presidential Decree (PD) No. 851. The NLRC, on the other hand, relied on Article 82 of the Labor Code and the Rules and Regulations Implementing PD No. 851. Uniformly, these provisions exempt workers paid on "*pakyaw*" or task basis from the coverage of holiday, SIL and 13th month pay.

In reversing the labor tribunals' rulings, the CA similarly relied on these provisions, as well as on Section 1, Rule V of the IRR of the Labor Code and the Court's ruling in *Serrano v. Severino Santos Transit*.[46] These labor law provisions, when read together with the Serrano ruling, exempt those engaged on "*pakyaw*" or task basis only if they qualify as "field personnel."

In other words, what we have before us is largely a question of law regarding the correct interpretation of these labor code provisions and the implementing rules; although, to conclude that the worker is exempted or covered depends on the facts and in this sense, is a question of fact: first, whether Macasio is a "field personnel"; and *second*, whether those engaged on "*pakyaw*" or task basis, but who are not "field personnel," are exempted from the coverage of holiday, SIL and 13th month pay.

To put our discussion within the perspective of a Rule 45 petition for review of a CA decision rendered under Rule 65 and framed in question form, the legal question is whether the CA correctly ruled that it was grave abuse of discretion on the part of the NLRC to deny Macasio's monetary claims simply because he is paid on a non-time basis without determining whether he is a field personnel or not.

To resolve these issues, we need to re-visit the provisions involved.

Provisions governing SIL and holiday pay

Article 82 of the Labor Code provides the *exclusions from the coverage* of Title I, Book III of the Labor Code - provisions governing working conditions and rest periods.

Art. 82. Coverage. — **The provisions of [Title I] shall apply** to employees in all establishments and undertakings whether for profit or not, **but not to** government employees, managerial employees, **field personnel**, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, **and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.**

xxxx

"*Field personnel*" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. [emphases and underscores ours]

Among the Title I provisions are the provisions on holiday pay (under Article 94 of the Labor Code) and SIL pay (under Article 95 of the Labor Code). Under Article 82, "field personnel" on one hand and "workers who are paid by results" on the other hand, *are not covered* by the Title I provisions. The wordings of Article 82 of the Labor Code additionally categorize workers "paid by results" and "field personnel" as separate and distinct types of employees who are exempted from the Title I provisions of the Labor Code.

The pertinent portion of Article 94 of the Labor Code and its corresponding provision in the IRR[47] reads:chanroblesvirtuallawlibrary

Art. 94. Right to holiday pay. (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than (10) workers[.] [emphasis ours]

xxxx

SECTION 1. Coverage. – This Rule shall apply to all employees except:

xxxx

(e) **Field personnel and other employees whose time and performance is unsupervised by the employer *including* those who are engaged on task or contract basis**, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof. [emphases ours]

On the other hand, Article 95 of the Labor Code and its corresponding provision in the IRR[48]pertinently provides:chanroblesvirtuallawlibrary

Art. 95. Right to service incentive. (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment. [emphases ours]

xxxx

Section 1. Coverage. – This rule shall apply to all employees except:

xxxx

(e) **Field personnel and other employees whose performance is unsupervised by the employer *including* those who are engaged on task or contract basis, purely commission basis**, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof. [emphasis ours]

Under these provisions, **the general rule** is that holiday and SIL pay provisions cover all employees. To be excluded from their coverage, an employee must be one of those that these provisions expressly exempt, strictly in accordance with the exemption.

Under the IRR, exemption from the coverage of holiday and SIL pay refer to "field personneland other employees whose time and performance is unsupervised by the employer including those who are engaged on task or contract basis[.]" Note that ***unlike Article 82 of the Labor Code***, the IRR on holiday and SIL pay do not exclude employees "engaged on task basis" as a separate and distinct category from employees classified as "field personnel." Rather, these employees are altogether merged into one classification of exempted employees.

Because of this difference, it may be argued that the Labor Code may be interpreted to mean that those who are engaged on task basis, per se, are excluded from the SIL and holiday payment since this is what the Labor Code provisions, in contrast with the IRR, strongly suggest. The arguable interpretation of this rule may be conceded to be within the discretion granted to the LA and NLRC as the quasi-judicial bodies with expertise on labor matters.

However, as early as 1987 in the case of *Cebu Institute of Technology v. Ople*[49] the phrase "those who are engaged on task or contract basis" in the rule has already been interpreted to mean as follows:chanroblesvirtuallawlibrary

[the phrase] should however, be related with "*field personnel*" applying the rule one*jusdem generis* that general and unlimited terms are restrained and limited by the particular terms that they follow xxx Clearly, petitioner's teaching personnel cannot be deemed field personnel which refers "to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. [Par. 3, Article 82, Labor Code of the Philippines]. Petitioner's claim that private respondents are not entitled to the service incentive leave benefit cannot therefore be sustained.

In short, the payment of an employee on task or *pakyaw* basis alone is insufficient to exclude one from the coverage of SIL and holiday pay. They are exempted from the coverage of Title I (including the holiday and SIL pay) only if they qualify as "field personnel." The IRR therefore validly qualifies and limits the general exclusion of "workers paid by results" found in Article 82 from the coverage of holiday and SIL pay. This is the only reasonable interpretation since the determination of excluded workers who are paid by results from the coverage of Title I is "determined by the Secretary of Labor in appropriate regulations."

The *Cebu Institute Technology* ruling was reiterated in 2005 in *Auto Bus Transport Systems, Inc., v. Bautista*:chanroblesvirtuallawlibrary

A careful perusal of said provisions of law will result in the conclusion that the grant of service incentive leave has been delimited by the Implementing Rules and Regulations of the Labor Code to apply only to those employees not explicitly excluded by Section 1 of Rule V. According to the Implementing Rules, Service Incentive Leave shall not apply to employees classified as "field personnel." The phrase "other

employees whose performance is unsupervised by the employer" must not be understood as a separate classification of employees to which service incentive leave shall not be granted. Rather, it serves as an amplification of the interpretation of the definition of field personnel under the Labor Code as those "whose actual hours of work in the field cannot be determined with reasonable certainty."

The same is true with respect to the phrase "*those who are engaged on task or contract basis, purely commission basis.*" Said phrase should be related with "field personnel," applying the rule on *ejusdem generis* that general and unlimited terms are restrained and limited by the particular terms that they follow.

The *Autobus* ruling was in turn the basis of *Serrano v. Santos Transit* which the CA cited in support of granting Macasio's petition.

In *Serrano*, the Court, applying the rule on *ejusdem generis*[50] declared that **"employees engaged on task or contract basis xxx are not automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel."**[51] The Court explained that the phrase "*including those who are engaged on task or contract basis, purely commission basis*" found in Section 1(d), Rule V of Book III of the IRR should not be understood as a separate classification of employees to which SIL shall not be granted. Rather, as with its preceding phrase - "other employees *whose performance is unsupervised by the employer*" - the phrase "*including those who are engaged on task or contract basis*" serves to amplify the interpretation of the Labor Code definition of "field personnel" as those "whose actual hours of work in the field cannot be determined with reasonable certainty."

In contrast and in clear departure from settled case law, the LA and the NLRC still interpreted the Labor Code provisions and the IRR as exempting an employee from the coverage of Title I of the Labor Code based simply and solely on the mode of payment of an employee. **The NLRC's utter disregard of this consistent jurisprudential ruling is a clear act of grave abuse of discretion**.[52] In other words, by dismissing Macasio's complaint without considering whether Macasio was a "field personnel" or not, the **NLRC proceeded based on a significantly incomplete consideration of the case**. This action clearly smacks of grave abuse of discretion.

Entitlement to holiday pay

Evidently, the *Serrano* ruling speaks only of SIL pay. However, if the LA and the NLRC had only taken counsel from Serrano and earlier cases, they would have correctly reached a similar conclusion regarding the payment of holiday pay since the rule exempting "field personnel" from the grant of holiday pay is identically worded with the rule exempting "field personnel" from the grant of SIL pay. To be clear, the phrase "*employees engaged on task or contract basis*" found in the IRR on both SIL pay and holiday pay should be read together with the exemption of "field personnel."

In short, in determining whether workers engaged on "*pakyaw*" or task basis" is entitled to holiday and SIL pay, the presence (or absence) of employer supervision as regards the worker's time and performance is the key: if the worker is simply engaged on *pakyaw* or task basis, then the **general rule** is that he is entitled to a holiday pay and SIL pay unless exempted from the exceptions specifically provided under Article 94 (holiday pay) and Article 95 (SIL pay) of the Labor Code. However, if the worker engaged on *pakyaw* or task basis also falls within the meaning of "field personnel" under the law, then he is not entitled to these monetary benefits.

Macasio does not fall under the classification of "field personnel"

Based on the definition of field personnel under Article 82, we agree with the CA that Macasio does not fall

under the definition of "field personnel." The CA's finding in this regard is supported by the established facts of this case: *first*, Macasio regularly performed his duties at David's principal place of business; *second*, his actual hours of work could be determined with reasonable certainty; and, *third*, David supervised his time and performance of duties. Since Macasio cannot be considered a "field personnel," then he is not exempted from the grant of holiday, SIL pay even as he was engaged on "*pakyaw*" or task basis.

Not being a "field personnel," we find the CA to be legally correct when it reversed the NLRC's ruling dismissing Macasio's complaint for holiday and SIL pay for having been rendered with grave abuse of discretion.

Entitlement to 13th month pay

With respect to the payment of 13th month pay however, we find that the CA legally erred in finding that the NLRC gravely abused its discretion in denying this benefit to Macasio.

The governing law on 13th month pay is PD No. 851.[53] As with holiday and SIL pay, 13thmonth pay benefits generally cover all employees; an employee must be one of those expressly enumerated to be exempted. Section 3 of the Rules and Regulations Implementing P.D. No. 851[54] enumerates the exemptions from the coverage of 13th month pay benefits. Under Section 3(e), "employers of those who are **paid on xxx task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance** thereof"[55] are exempted.

Note that unlike the IRR of the Labor Code on holiday and SIL pay, Section 3(e) of the Rules and Regulations Implementing PD No. 851 exempts employees "paid on task basis" without any reference to "field personnel." This could only mean that insofar as payment of the 13th month pay is concerned, the law did not intend to qualify the exemption from its coverage with the requirement that the task worker be a "field personnel" at the same time.

WHEREFORE, in light of these considerations, we hereby **PARTIALLY GRANT** the petition insofar as the payment of 13th month pay to respondent is concerned. In all other aspects, we**AFFIRM** the decision dated November 22, 2010 and the resolution dated January 31, 2011 of the Court of Appeals in CA-G.R. SP No. 116003.

SO ORDERED.

CITIBANK, N. A., *petitioners, vs.* COURT OF APPEALS (Third Division), AND CITIBANK INTEGRATED GUARDS LABOR ALLIANCE (CIGLA) SEGATUPAS/FSM LOCAL CHAPTER No. 1394, *respondents*.

D E C I S I O N

PARDO, *J.*:

The Case

The case before the Court is a petition for review on *certiorari* seeking to reverse and set aside the decision of the Court of Appeals[1] and its resolution denying reconsideration[2], ruling that it is the labor tribunal, not the regional trial court, thathas jurisdiction over the complaint for injunction and damages filed by petitioner with the regional trial court.

The Facts

In 1983, Citibank and El Toro Security Agency, Inc. (hereafter El Toro) entered into a contract for the latter to provide security and protective services to safeguard and protect the bank's premises, situated at 8741 Paseo de Roxas, Makati, Metro Manila. Under the contract, El Toro obligated itself to provide the services of security guards to safeguard and protect the premises and property of Citibank against theft, robbery or any other unlawful acts committed by any person or persons, and assumed responsibility for losses and/or damages that may be incurred by Citibank due to or as a result of the negligence of El Toro or any of its assigned personnel.[3]

Citibank renewed the security contract with El Toro yearly until 1990. On April 22, 1990, the contract between Citibank and El Toro expired.

On June 7, 1990, respondent Citibank Integrated Guards Labor Alliance-SEGA-TUPAS/FSM (hereafter CIGLA) filed with the National Conciliation and Mediation Board (NCMB) a request for preventive mediation citing Citibank as respondent therein giving as issues for preventive mediation the following:

a) Unfair labor practice;
b) Dismissal of union officers/members; and
c) Union busting.

On June 10, 1990, petitioner Citibank served on El Toro a written notice that the bank would not renew anymore the service agreement with the latter. Simultaneously, Citibank hired another security agency, the Golden Pyramid Security Agency, to render security services at Citibank's premises.

On the same date, June 10, 1990, respondent CIGLA filed a manifestation with the NCMB that it was converting its request for preventive mediation into a notice of strike for failure of the parties to reach a mutually acceptable settlement of the issues, which it followed with a supplemental notice of strike alleging as supplemental issue the mass dismissal of all union officers and members.

On June 11, 1990, security guards of El Toro who were replaced by guards of the Golden Pyramid Security Agency considered the non-renewal of El Toro's service agreement with Citibank as constituting a lockout and/or a mass dismissal. They threatened to go on strike against Citibank and picket its premises.

In fact, security guards formerly assigned to Citibank under the expired agreement loitered around and near the Citibank premises in large groups of from twenty (20) and at times fifty (50) persons.

On June 14, 1990, respondent CIGLA filed a notice of strike directed at the premises of the Citibank main office.

Faced with the prospect of disruption of its business operations, on June 5, 1990, petitioner Citibank filed with theRegional Trial Court, Makati, a complaint for injunction and damages.[4] The complaint sought to enjoin CIGLA and any person claiming membership therein from striking or otherwise disrupting the operations of the bank.

On June 18, 1990, respondent CIGLA filed with the trial court a motion to dismiss the complaint. The motion alleged that:

a) The Court had no jurisdiction, this being labor dispute.
b) The guards were employees of the bank.
c) There were pending cases/labor disputes between the guards and the bank at the different agencies of the Department of Labor and Employment (DOLE).
d) The bank was guilty of forum shopping in filing the complaint with the Regional Trial Court after submitting itself voluntarily to the jurisdiction of the different agencies of the DOLE.

By order dated August 19, 1990, the trial court denied respondent CIGLA's motion to dismiss. The relevant portion of the order reads as follows:

"Plaintiff in its Opposition alleged that jurisdiction of the court is determined by the allegations of the complaints.In the plaintiff's complaint there are allegations, which negate any employer-employee relationship between it and the CIGLA members; however the Court could not dismiss the case and lift the restraining order without first threshing out the same at the trial of the case.

The Court finding the grounds alleged in the defendant's motion well taken, the motion is hereby denied.

SO ORDERED."

In due time, respondent CIGLA filed with the trial court a motion for reconsideration of the above-mentioned order. On October 1, 1990, the trial court denied the motion.

Subsequently, respondent CIGLA filed with the trial court its answer to the complaint, and averred as special and affirmative defense lack of jurisdiction of the court over the subject matter of the case. Treating the averment as motion to dismiss, on April 27, 1991, the lower court issued an order denying the motion. The lower court stated:

"The Court noted in defendant's Memorandum of Authorities that they made no mention who among the parties - the plaintiff bank or the defendants union - paid their wages or salaries and who has the power to dismiss them.

Defendants also alleged that the complaint states no valid cause of action as plaintiff's allegations are purely anchored on conjectures and conclusions and not based on ultimate facts.

Plaintiff in its Opposition alleged that it is a well-settled rule, that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegation in the complaint itself. Plaintiff also alleged that the defendants disputed the jurisdiction of the court, the parties having employer-employee relationship; this mere allegation did not serve to automatically deprive the court of its jurisdiction duly conferred by the allegations of the complaint; in the opinion of the defendants, a labor dispute exists, the court is duty bound to find out if such circumstances really exist.

The Court weighing the evidence and jurisprudence in support of the respective contention of the parties, and finding that in the case at bar, plaintiff seeks to recover pecuniary damages, the Court gives more credence to the decisions cited by the plaintiff, hence the special and affirmative defenses alleged in the answer treated as a 'Motion to Dismiss' is hereby denied."

On May 24, 1991, respondent CIGLA filed with the Court of Appeals a petition for certiorari with preliminary injunction[5] assailing the validity of the proceedings had before the regional trial court.

After due proceedings, on March 31, 1992, the Court of Appeals promulgated its decision in CIGLA's favor, the dispositive portion of which states:

> "WHEREFORE, the Writ of Certiorari is GRANTED, and the proceedings before respondent Judge more particularly the challenged orders are declared null and void and respondent Judge is enjoined from taking any further action in Civil Case No. 90-1612 except for the purpose of dismissing it. Following, however, the disposition in San Miguel Corporation Employees Union vs. Bersamira, the status quo ante declaration of strike shall be observed pending the proceedings in the National Conciliation and Mediation Board, Department of Labor and Employment, National Capital Region (Annex A of Petition). No Costs.
>
> SO ORDERED."

On April 29, 1992, petitioner Citibank filed a motion for reconsideration of the decision. On February 12, 1993, the Court of Appeals denied the motion, finding that the arguments in the motion for reconsideration are but a rehash, if not a repetition, of the arguments in its comments, which had been considered by the Court in its decision.

Hence, the petitioner's recourse to this Court.

The Issue

The basic issue involved is whether it is the labor tribunal or the regional trial court that has jurisdiction over the subject matter of the complaint filed by Citibank with the trial court.

Petitioner's Submission

Petitioner Citibank contends that there is no employer-employee relationship between Citibank and the security guards represented by respondent CIGLA and that there is no "labor dispute" in the subject controversy. The security guards were employees of El Toro security agency, not of Citibank. Its service contract with Citibank had expired and not renewed.

The Court's Ruling

We sustain the petitioner's contention. This Court has held in many cases that "in determining the existence of an employer-employee relationship, the following elements are generally considered: 1) the selection and engagement of the employee; 2) the payment of wages; 3) the power of dismissal; and 4) the employer's power to control the employee withrespect to the means and methods by which the work is to be accomplished".[6] It has been decided also that the Labor Arbiter has no jurisdiction over a claim filed where no employer-employee relationship existed between a company and the security guards assigned to it by a security service contractor.[7] In this case, it was the security agency El Toro that recruited, hired and assigned the watchmen to their place of work. It was the security agency that was answerable to Citibank for the conduct of its guards.

The question arises. Is there a labor dispute between Citibank and the security guards, members of respondent CIGLA, regardless of whether they stand in the relation of employer and employees? Article 212, paragraph l of the Labor Code provides the definition of a "**labor dispute**". It "includes any controversy or matter concerning terms or conditions of employment or the association or representation

of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

If at all, the dispute between Citibank and El Toro security agency is one regarding the termination or non-renewal of the contract of services. This is a civil dispute[8]. El Toro was an independent contractor. Thus, no employer-employee relationship existed between Citibank and the security guard members of the union in the security agency who were assigned to secure the bank's premises and property. Hence, there was no labor dispute and no right to strike against the bank.

It is a basic rule of procedure that "jurisdiction of the court over the subject matter of the action is determined by the allegations of the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The jurisdiction of the court can not be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendant."[9] "What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted."[10]

In the complaint filed with the trial court, petitioner alleged that in 1983, it entered into a contract with El Toro, a security agency, for security and protection service. The parties renewed the contract yearly until April 22, 1990. Petitioner further alleged that from June 11, 1990, until the filing of the complaint, El Toro security guards formerly assigned to guard Citibank premises loitered around the bank's premises in large groups and threatened to stage a strike, which would hamper its operations and the normal conduct of its business and that the bank would suffer damages should a strike push through.

On the basis of the allegations of the complaint, it is safe to conclude that the dispute involved is a civil one, not a labor dispute.[11] Consequently, we rule that jurisdiction over the subject matter of the complaint lies with the regional trial court.

Relief

WHEREFORE, the Court hereby GRANTS the petition for review on certiorari. We REVERSE and SET ASIDE the decision of the Court of Appeals and its resolution denying reconsideration in CA-G. R. SP No. 25584, and REMAND the records of the case to the Regional Trial Court, Makati, for further proceedings in line with the ruling herein that jurisdictionover the subject matter of the complaint in Civil Case No. 90-1612, is vested therein.

No pronouncement as to costs.

SO ORDERED.

PHILIPPINE AIRLINES, INC., *petitioner, vs.*, NATIONAL LABOR RELATIONS COMMISSION, FERDINAND PINEDA and GODOFREDO CABLING, *respondents*.

D E C I S I O N

MARTINEZ, *J.*:

Can the National Labor Relations Commission (NLRC), even without a complaint for illegal dismissal filed before the labor arbiter, entertain an action for injunction and issue such writ enjoining petitioner Philippine Airlines, Inc. from enforcing its Orders of dismissal against private respondents, and ordering petitioner to reinstate the private respondents to their previous positions?

This is the pivotal issue presented before us in this petition for certiorari under Rule 65 of the Revised Rules of Court which seeks the nullification of the injunctive writ dated April 3,1995 issued by the NLRC and the Order denying petitioner's motion for reconsideration on the ground that the said Orders were issued in excess of jurisdiction.

Private respondents are flight stewards of the petitioner. Both were dismissed from the service for their alleged involvement in the April 3, 1993 currency smuggling in Hong Kong.

Aggrieved by said dismissal, private respondents filed with the NLRC a petition[1] for injunction praying that:

"I. Upon filing of this Petition, a temporary restraining order be issued, prohibiting respondents (petitioner herein) from effecting or enforcing the Decision dated Feb. 22, 1995, or to reinstate petitioners temporarily while a hearing on the propriety of the issuance of a writ of preliminary injunction is being undertaken;

"II. After hearing, a writ of preliminary mandatory injunction be issued ordering respondent to reinstate petitioners to their former positions pending the hearing of this case, or, prohibiting respondent from enforcing its Decision dated February 22,1995 while this case is pending adjudication;

"III. After hearing, that the writ of preliminary injunction as to the reliefs sought for be made permanent, that petitioners be awarded full backwages, moral damages of PHP 500,000.00 each and exemplary damages of PHP 500,000.00 each, attorneys fees equivalent to ten percent of whatever amount is awarded, and the costs of suit."

On April 3, 1995, the NLRC issued a temporary mandatory injunction[2] enjoining petitioner to cease and desist from enforcing its February 22, 1995 Memorandum of dismissal. In granting the writ, the NLRC considered the following facts, to wit:

x x x that almost two (2) years ago, i.e. on April 15, 1993, the petitioners were instructed to attend an investigation by respondents Security and Fraud Prevention Sub-Department regarding an April 3, 1993 incident in Hongkong at which Joseph Abaca, respondents Avionics Mechanic in Hongkong was intercepted by the Hongkong Airport Police at Gate 05 xxx the ramp area of the Kai Tak International Airport while xxx about to exit said gate carrying a xxx bag said to contain some 2.5 million pesos in Philippine Currencies. That at the Police Station, Mr. Abaca claimed that he just found said plastic bag at the Skybed Section of the arrival flight PR300/03 April 93, where petitioners served as flight stewards of said flight PR300; x x the petitioners sought a more detailed account of what this HKG incident is all about; but instead, the petitioners were administratively charged, a hearing on which did not push through until almost two (2) years after, i.e. on January 20, 1995 xxx where a confrontation between Mr. Abaca and petitioners herein was compulsorily arranged by the respondents disciplinary board at which hearing, Abaca was made to identify petitioners as co-conspirators; that despite the fact that the procedure of

identification adopted by respondents Disciplinary Board was anomalous as there was no one else in the line-up (which could not be called one) but petitioners xxx Joseph Abaca still had difficulty in identifying petitioner Pineda as his co-conspirator, and as to petitioner Cabling, he was implicated and pointed by Abaca only after respondents Atty. Cabatuando pressed the former to identify petitioner Cabling as co-conspirator; that with the hearing reset to January 25, 1995, Mr. Joseph Abaca finally gave exculpating statements to the board in that he cleared petitioners from any participation or from being the owners of the currencies, and at which hearing Mr. Joseph Abaca volunteered the information that the real owner of said money was one who frequented his headquarters in Hongkong to which information, the Disciplinary Board Chairman, Mr. Ismael Khan, opined for the need for another hearing to go to the bottom of the incident; that from said statement, it appeared that Mr. Joseph Abaca was the courier, and had another mechanic in Manila who hid the currency at the planes skybed for Abaca to retrieve in Hongkong, which findings of how the money was found was previously confirmed by Mr. Joseph Abaca himself when he was first investigated by the Hongkong authorities; that just as petitioners thought that they were already fully cleared of the charges, as they no longer received any summons/notices on the intended additional hearings mandated by the Disciplinary Board, they were surprised to receive on February 23, 1995 xxx a Memorandum dated February 22, 1995 terminating their services for alleged violation of respondents Code of Discipline effective immediately; that sometime xxx first week of March, 1995, petitioner Pineda received another Memorandum from respondent Mr. Juan Paraiso, advising him of his termination effective February 3, 1995, likewise for violation of respondents Code of Discipline; x x x"

In support of the issuance of the writ of temporary injunction, the NLRC adopted the view that: (1) private respondents cannot be validly dismissed on the strength of petitioner's Code of Discipline which was declared illegal by this Court in the case of PAL, Inc. vs. NLRC, (G.R. No. 85985), promulgated August 13, 1993, for the reason that it was formulated by the petitioner without the participation of its employees as required in R.A. 6715, amending Article 211 of the Labor Code; (2) the whimsical, baseless and premature dismissals of private respondents which "caused them grave and irreparable injury" is enjoinable as private respondents are left "with no speedy and adequate remedy at law'"except the issuance of a temporary mandatory injunction; (3) the NLRC is empowered under Article 218 (e) of the Labor Code not only to restrain any actual or threatened commission of any or all prohibited or unlawful acts but also to require the performance of a particular act in any labor dispute, which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party; and (4) the temporary mandatory power of the NLRC was recognized by this Court in the case of Chemo-Technicshe Mfg., Inc. Employees Union,DFA, et.al. vs. Chemo-Technische Mfg., Inc. [G.R. No. 107031, January 25,1993].

On May 4,1995, petitioner moved for reconsideration[3] arguing that the NLRC erred:

1. in granting a temporary injunction order when **it has no jurisdiction to issue an injunction or restraining order since this may be issued only under Article 218 of the Labor Code if the case involves or arises from labor disputes;**

2. in granting a temporary injunction order when the termination of private respondents have long been carried out;

3. ..in ordering the reinstatement of private respondents on the basis of their mere allegations, in violation of PAL's right to due process;

4. ..in arrogating unto itself management prerogative to discipline its employees and **divesting the labor arbiter of its original and exclusive jurisdiction over illegal dismissal cases;**

5. ..in suspending the effects of termination when such action is exclusively within the jurisdiction of the Secretary of Labor;

6. ..**in issuing the temporary injunction in the absence of any irreparable or substantial injury to both private respondents**.

On May 31,1995, the NLRC denied petitioner's motion for reconsideration, ruling:

The respondent (now petitioner), for one, cannot validly claim that we cannot exercise our injunctive power under Article 218 (e) of the Labor Code on the pretext that what we have here is not a labor dispute as long as it concedes that as defined by law, a(l) Labor Dispute includes any controversy or matter concerning terms or conditions of employment. . If security of tenure, which has been breached by respondent and which, precisely, is sought to be protected by our temporary mandatory injunction (the core of controversy in this case) is not a term or condition of employment, what then is?

x x x x x x x x x

Anent respondents second argument x x x, **Article 218 (e) of the Labor Code** x x x **empowered the Commission not only to issue a prohibitory injunction, but a mandatory (to require the performance) one as well. Besides, as earlier discussed, we already exercised (on August 23,1991) this temporary mandatory injunctive power in the case of Chemo-Technische Mfg., Inc. Employees Union-DFA et.al. vs. Chemo-Technishe Mfg., Inc., et. al. (supra) and effectively enjoined one (1) month old dismissals by Chemo-Technische and that our aforesaid mandatory exercise of injunctive power, when questioned through a petition for certiorari, was sustained by the Third Division of the Supreme court per its Resolution dated January 25,1993**.

x x x x x x x x x

Respondents fourth argument that petitioner's remedy for their dismissals is 'to file an illegal dismissal case against PAL which cases are within the original and exclusive jurisdiction of the Labor Arbiter' is ignorant. In requiring as a condition for the issuance of a 'temporary or permanent injunction'- '(4) That complainant has no adequate remedy at law;**' Article 218 (e) of the Labor Code clearly envisioned adequacy, and not plain availability of a remedy at law as an alternative bar to the issuance of an injunction. An illegal dismissal suit (which takes, on its expeditious side, three (3) years before it can be disposed of) while available as a remedy under Article 217 (a) of the Labor Code, is certainly not an 'adequate; remedy at law. Ergo, it cannot, as an alternative remedy, bar our exercise of that injunctive power given us by Article 218 (e) of the Code.**

xxx xxx xxx

Thus, Article 218 (e), as earlier discussed [which empowers this Commission 'to require the performance of a particular act' (such as our requiring respondent 'to cease and desist from enforcing' its whimsical memoranda of dismissals and 'instead to reinstate petitioners to their respective position held prior to their subject dismissals') in 'any labor dispute which, if not xxx performed forthwith, may cause grave and irreparable damage to any party'] stands as the sole 'adequate remedy at law' for petitioners here.

Finally, the respondent, in its sixth argument claims that even if its acts of dismissing petitioners 'may be great, still the same is capable of compensation', and that consequently, 'injunction need not be issued where adequate compensation at law could be obtained'. Actually, what respondent PAL argues here is that we need not interfere in its whimsical dismissals of petitioners as, after all, it can pay the latter its backwages. x x x

But just the same, we have to stress that Article 279 does not speak alone of backwages as an obtainable relief for illegal dismissal; that reinstatement as well is the concern of said law, enforceable when necessary, through Article 218 (e) of the Labor Code (without need of an illegal dismissal suit under Article

217 (a) of the Code) if such whimsical and capricious act of illegal dismissal will 'cause grave or irreparable injury to a party'. x x x " [4]

Hence, the present recourse.

Generally, injunction is a preservative remedy for the protection of one's substantive rights or interest. It is not a cause of action in itself but merely **a provisional remedy, an adjunct to a main suit**. It is resorted to onlywhen there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation. The application of the injunctive writ rests upon the existence of an emergency or of a special reason before the main case be regularly heard. The essential conditions for granting such temporary injunctive relief are that the complaint alleges facts which appear to be sufficient to constitute a proper basis for injunction and that on the entire showing from the contending parties, the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation.[5] Injunction is also a special equitable relief granted only in cases where there is no plain, adequate and complete remedy at law.[6]

In labor cases, Article 218 of the Labor Code empowers the NLRC-

"(e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act **in any labor dispute** which, if not restrained or performed forthwith,may cause grave or irreparable damage **to any party or render ineffectual any decision in favor of such party**; x x x." (Emphasis Ours)

Complementing the above-quoted provision, Sec. 1, Rule XI of the New Rules of Procedure of the NLRC, pertinently provides as follows:

"Section 1. *Injunction in Ordinary Labor Dispute*.-A preliminary injunction or a restraining order may be granted by the Commission through its divisions pursuant to the provisions of paragraph (e) of Article 218 of the Labor Code, as amended, when it is established on the bases of the sworn allegations in the petition that the acts complained of, **involving or arising from any labor dispute before the Commission,** which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party.

xxx xxx xxx

The **foregoing ancillary power** may be exercised by the Labor Arbiters only as an incident to the cases pending before them in order to preserve the rights of the parties during the pendency of the case, but excluding labor disputes involving strikes or lockout. [7] (Emphasis Ours)

From the foregoing provisions of law, the power of the NLRC to issue an injunctive writ originates from "**any labor dispute**" upon application by a party thereof, which application if not granted "may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party."

The term "labor dispute" is defined as "any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing, or arranging the terms and conditions of employment regardless of whether or not the disputants stand in the proximate relation of employers and employees."[8]

The term "controversy" is likewise defined as "a **litigated question**; **adversary proceeding in a court of law; a civil action or suit**, either at law or in equity; **a justiciable dispute.**"[9]

A "justiciable controversy" is "one involving an active antagonistic assertion of a legal right on one side and a denial thereof on the other concerning a real, and not a mere theoretical question or issue."[10]

Taking into account the foregoing definitions, it is an essential requirement that there must first be a labor dispute between the contending parties before the labor arbiter. In the present case, there is no

labor disputebetween the petitioner and private respondents as there has yet been no complaint for illegal dismissal filed with the labor arbiter by the private respondents against the petitioner.

The petition for injunction directly filed before the NLRC is in reality an action for illegal dismissal. This is clear from the allegations in the petition which prays for: reinstatement of private respondents; award of full backwages, moral and exemplary damages; and attorney's fees. As such, the petition should have been filed with the labor arbiter who has the original and exclusive jurisdiction to hear and decide the following cases involving all workers, whether agricultural or non-agricultural:

(1) Unfair labor practice;

(2) **Termination disputes;**

(3) **If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;**

(4) **Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;**

(5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

(6) Except claims for employees compensation, social security, medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P 5,000.00), whether or not accompanied with a claim for reinstatement.[11]

The jurisdiction conferred by the foregoing legal provision to the labor arbiter is both **original** and **exclusive**, meaning, no other officer or tribunal can take cognizance of, hear and decide any of the cases therein enumerated. The only exceptions are where the Secretary of Labor and Employment or the NLRC exercises the power of compulsory arbitration, or the parties agree to submit the matter to voluntary arbitration pursuant to Article 263 (g) of the Labor Code, the pertinent portions of which reads:

"(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

x x x x x x x x x "

On the other hand, the NLRC shall have exclusive **appellate** jurisdiction over all cases decided by labor arbiters as provided in Article 217(b) of the Labor Code. In short, the jurisdiction of the NLRC in illegal dismissal cases is appellate in nature and, therefore, it cannot entertain the private respondents' petition for injunction which challenges the dismissal orders of petitioner. Article 218(e) of the Labor Code does not provide blanket authority to the NLRC or any of its divisions to issue writs of injunction, considering that

Section 1 of Rule XI of the New Rules of Procedure of the NLRC makes injunction only an ancillary remedy in ordinary labor disputes"[12]

Thus, the NLRC exceeded its jurisdiction when it issued the assailed Order granting private respondents' petition for injunction and ordering the petitioner to reinstate private respondents.

The argument of the NLRC in its assailed Order that to file an illegal dismissal suit with the labor arbiter is not an "adequate" remedy since it takes three (3) years before it can be disposed of, is patently erroneous. An "adequate" remedy at law has been defined as one "that affords relief with reference to the matter in controversy, and which is appropriate to the particular circumstances of the case."[13] It is a remedy which is equally beneficial, speedy and sufficient which will promptly relieve the petitioner from the injurious effects of the acts complained of.[14]

Under the Labor Code, the ordinary and proper recourse of an illegally dismissed employee is to file a complaint for illegal dismissal with the labor arbiter.[15] In the case at bar, private respondents disregarded this rule and directly went to the NLRC through a petition for injunction praying that petitioner be enjoined from enforcing its dismissal orders. In *Lamb vs. Phipps*,[16] we ruled that if the remedy is specifically provided by law, it is presumed to be adequate. Moreover, the preliminary mandatory injunction prayed for by the private respondents in their petition before the NLRC can also be entertained by the labor arbiter who, as shown earlier, has the ancillary power to issue preliminary injunctions or restraining orders as an incident in the cases pending before him in order to preserve the rights of the parties during the pendency of the case.[17]

Furthermore, an examination of private respondents' petition for injunction reveals that it has no basis since there is no showing of any urgency or irreparable injury which the private respondents might suffer. An injury is considered irreparable if it is of such constant and frequent recurrence that no fair and reasonable redress can be had therefor in a court of law,[18] or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation. It is considered irreparable injury when it cannot be adequately compensated in damages due to the nature of the injury itself or the nature of the right or property injured or when there exists no certain pecuniary standard for the measurement of damages.[19]

In the case at bar, the alleged injury which private respondents stand to suffer by reason of their alleged illegal dismissal can be adequately compensated and therefore, there exists no "irreparable injury," as defined above which would necessitate the issuance of the injunction sought for. Article 279 of the Labor Code provides that an employee who is unjustly dismissed from employment shall be entitled to reinstatement, without loss of seniority rights and other privileges, and to the payment of full backwages, inclusive of allowances, and to otherbenefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The ruling of the NLRC that the Supreme Court upheld its power to issue temporary mandatory injunction orders in the case of Chemo-Technische Mfg., Inc. Employees Union-DFA, et.al. vs. Chemo-Technische Mfg., Inc. et.al., docketed as G.R. No. 107031, is misleading. As correctly argued by the petitioner, no such pronouncement was made by this Court in said case. On January 25,1993, we issued a Minute Resolution in the subject case stating as follows:

"Considering the allegations contained, the issues raised and the arguments adduced in the petition for certiorari , as well as the comments of both public and private respondents thereon, and the reply of the petitioners to private respondent's motion to dismiss the petition, the Court Resolved to DENY the same for being premature."

It is clear from the above resolution that we did not in anyway sustain the action of the NLRC in issuing such temporary mandatory injunction but rather we dismissed the petition as the NLRC had yet to rule upon the motion for reconsideration filed by peitioner. Thus, the minute resolution denying the petition for being prematurely filed.

Finally, an injunction, as an extraordinary remedy, is not favored in labor law considering that it generally has not proved to be an effective means of settling labor disputes.[20] It has been the policy of the State to encourage the parties to use the non-judicial process of negotiation and compromise, mediation and arbitration.[21] Thus, injunctions may be issued only in cases of extreme necessity based on legal grounds clearly established, after due consultations or hearing and when all efforts at conciliation are exhausted which factors, however, are clearly absent in the present case.

WHEREFORE, the petition is hereby GRANTED. The assailed Orders dated April 3,1995 and May 31,1995, issued by the National Labor Relations Commission (First Division), in NLRC NCR IC No. 000563-95, are hereby REVERSED and SET ASIDE.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and *Mendoza, JJ.,* concur.

JULIUS KAWACHI and GAYLE KAWACHI, Petitioners,
vs.
DOMINIE DEL QUERO and HON. JUDGE MANUEL R. TARO, Metropolitan Trial Court, Branch 43, Quezon City, Respondents.

D E C I S I O N

TINGA, *J.:*

This is a petition for review on certiorari under Rule 45 of the Rules of Civil Procedure, assailing two resolutions of the Regional Trial Court (RTC), Branch 226, Quezon City which affirmed the jurisdiction of the Metropolitan Trial Court (MeTC), Branch 42, Quezon City over private respondent's action for damages against petitioner.

The following factual antecedents are matters of record.*1ªvvphi1.nét*

In an Affidavit-Complaint dated 14 August 2002, private respondent Dominie Del Quero charged A/J Raymundo Pawnshop, Inc., Virgilio Kawachi and petitioner Julius Kawachi with illegal dismissal, non-execution of a contract of employment, violation of the minimum wage law, and non-payment of overtime pay. The complaint was filed before the National Labor Relations Commission (NLRC).[1]

The complaint essentially alleged that Virgilio Kawachi hired private respondent as a clerk of the pawnshop and that on certain occasions, she worked beyond the regular working hours but was not paid the corresponding overtime pay.

The complaint also narrated an incident on 10 August 2002, wherein petitioner Julius Kawachi scolded private respondent in front of many people about the way she treated the customers of the pawnshop and afterwards terminated private respondent's employment without affording her due process.

On 7 November 2002, private respondent Dominie Del Quero filed an action for damages against petitioners Julius Kawachi and Gayle Kawachi before the MeTC of Quezon City.[2] The complaint, which was docketed as Civil Case No. 29522, alleged the following:

> 2. That the Plaintiff was employed as a clerk in the pawnshop business office of the Defendants otherwise known as the A/J RAYMUNDO PAWNSHOP, INC. located (sic) and with principal office address at Unit A Virka Bldg. Edsa Corner Roosevelt[,] Quezon City, from May 27, 2002 to August 10, 2002;
>
> 3. That on August 10, 2002 at or about 11:30 AM, the Plaintiff was admonished by the Defendants Julius Kawachi and Gayle Kawachi who are acting as manager and assistant manager respectively of the pawnshop business and alternately accused her of having committed an act which she had not done and was scolded in a loud voice in front of many employees and customers in their offices;
>
> 4. That further for no apparent reason the Plaintiff was ordered to get out and leave the pawnshop office and was told to wait for her salary outside the office when she tried to explain that she had no fault in the complaint of the customer, (sic) [H]owever[,] her explanation fell on deaf ears;
>
> 5. That she was instantly dismissed from her job without due process;

6. That the incident happened in front of many people which caused the Plaintiff to suffer serious embarrassment and shame so that she could not do anything but cry because of the shameless way by which she was terminated from the service; x x x[3]

The complaint for damages specifically sought the recovery of moral damages, exemplary damages and attorney's fees.

Petitioners moved for the dismissal of the complaint on the grounds of lack of jurisdiction and forum-shopping or splitting causes of action. At first, the MeTC granted petitioners' motion and ordered the dismissal of the complaint for lack of jurisdiction in an Order dated 2 January 2003.[4] Upon private respondent's motion, the MeTC reconsidered and set aside the order of dismissal in an Order dated 3 March 2003.[5] It ruled that no causal connection appeared between private respondent's cause of action and the employer-employee relations between the parties. The MeTC also rejected petitioners' motion for reconsideration in an Order dated 22 April 2003.[6]

Thus, petitioners elevated the MeTC's aforesaid two orders to the RTC, Branch 226 of Quezon City, *via* a Petition for Certiorari (With Prayer for Temporary Restraining Order and/or Preliminary Injunction). After due hearing, the RTC declined petitioners' prayer for a temporary restraining order. For her part, private respondent filed a Motion to Dismiss Petition.

On 20 October 2003, the RTC issued the assailed Resolution, upholding the jurisdiction of the MeTC over private respondent's complaint for damages.[7]

The RTC held that private respondent's action for damages was based on the alleged tortious acts committed by her employers and did not seek any relief under the Labor Code. The RTC cited the pronouncement in *Medina, et al. v. Hon. Castro-Bartolome*, *etc., et al.*[8] where the Court held that the employee's action for damages based on the slanderous remarks uttered by the employer was within the regular courts' jurisdiction since the complaint did not allege any unfair labor practice on the part of the employer.

On 29 March 2004, the RTC denied petitioners' motion for reconsideration.[9] Hence, the instant petition for review on certiorari, raising the sole issue of jurisdiction over private respondent's complaint for damages.

Petitioners argue that the NLRC has jurisdiction over the action for damages because the alleged injury is work-related. They also contend that private respondent should not be allowed to split her causes of action by filing the action for damages separately from the labor case.

Private respondent maintains that there is no causal connection between her cause of action and the employer-employee relations of the parties.

The petition is meritorious.

The jurisdictional controversy of the sort presented in this case has long been settled by this Court.

Article 217(a) of the Labor Code, as amended, clearly bestows upon the Labor Arbiter original and exclusive jurisdiction over claims for damages arising from employer-employee relations —in other words, the Labor Arbiter has jurisdiction to award not only the reliefs provided by labor laws, but also damages governed by the Civil Code.[10]

In the 1999 case of *San Miguel Corporation v. Etcuban,*[11] the Court noted what was then the current trend, and still is, to refer worker-employer controversies to labor courts, unless unmistakably provided by the law to be otherwise. Because of the trend, the Court noted further, jurisprudence has developed the "reasonable causal connection rule." Under this rule, if there is a reasonable causal connection between

the claim asserted and the employer-employee relations, then the case is within the jurisdiction of our labor courts. In the absence of such nexus, it is the regular courts that have jurisdiction.[12]

In *San Miguel Corporation*,[13] the Court upheld the labor arbiter's jurisdiction over the employees' separate action for damages, which also sought the nullification of the so-called "contract of termination" and noted that the allegations in the complaint were so carefully formulated as to avoid a semblance of employer-employee relations.

In said case, the employees of San Miguel Corporation (SMC) availed of the "Retrenchment to Prevent Loss Program." After their inclusion in the retrenchment program, the employees were given their termination letters and separation pay. In return, the employees executed "receipt and release" documents in favor of the company. Subsequently, the employees learned that the company was never in financial distress and was engaged in hiring new employees. Thus, they filed a complaint

before the NLRC for the declaration of nullity of the retrenchment program and prayed for reinstatement, backwages and damages. After the labor arbiter dismissed the complaint, the employees filed an action for damages before the RTC, alleging the deception employed upon them by SMC which led to their separation from the company. They sought the declaration of nullity of their so-called collective "contract of termination" and the recovery of actual and compensatory damages, moral damages, exemplary damages, and attorney's fees.

The Court held that the employees' claim for damages was intertwined with their having been separated from their employment without just cause and, consequently, had a reasonable causal connection with their employer-employee relations with petitioner. The Court explained in this manner:

x x x First, their claim for damages is grounded on their having been deceived into serving their employment due to SMC's concocted financial distress and fraudulent retrenchment program—a clear case of illegal dismissal. Second, a comparison of respondents' complaint for the declaration of nullity of the retrenchment program before the labor arbiter and the complaint for the declaration of nullity of their "contract of termination" before the RTC reveals that the allegations and prayer of the former are almost identical with those of the latter except that the prayer for reinstatement was no longer included and the claim for backwages and other benefits was replaced with a claim for actual damages. These are telltale signs that respondents' claim for damages is intertwined with their having been separated from their employment without just cause and, consequently, has a reasonable causal connection with their employer-employee relations with SMC. Accordingly, it cannot be denied that respondents' claim falls under the jurisdiction of the labor arbiter as provided in paragraph 4 of Article 217.[14]

The "reasonable causal connection rule" emerged in the 1987 case of *Primero v. Intermediate Appellate Court*,[15]where the Court recognized the jurisdiction of the labor arbiters over claims for damages in connection with termination of employment, thus:

It is clear that the question of the legality of the *act of dismissal* is intimately related to the issue of the legality of *the manner by which that act of dismissal was performed*. But while the Labor Code treats of the nature of, and the remedy available as

regards the first – the employee's separation from employment – it does not at all deal with the second – the manner of that separation – which is governed exclusively by the Civil Code. In addressing the first issue, the Labor Arbiter applies the Labor Code; in addressing the second, the Civil Code. And this appears to be the plain and patent intendment of the law. For apart from the reliefs expressly set out in the Labor Code flowing from illegal dismissal from employment, no other *damages* may be awarded to an illegally dismissed employee other than those specified by the Civil Code. Hence, the fact that the issue—of whether or not moral or other damages were suffered by an employee and in the affirmative, the amount

that should properly be awarded to him in the circumstances—is determined under the provisions of the Civil Code and not the Labor Code, obviously was not meant to create a cause of action independent of that for illegal dismissal and thus place the matter beyond the Labor Arbiter's jurisdiction.[16]

In the instant case, the allegations in private respondent's complaint for damages show that her injury was the offshoot of petitioners' immediate harsh reaction as her administrative superiors to the supposedly sloppy manner by which she had discharged her duties.

Petitioners' reaction culminated in private respondent's dismissal from work in the very same incident. The incident on 10 August 2002 alleged in the complaint for damages was similarly narrated in private respondent's Affidavit-Complaint supporting her action for illegal dismissal before the NLRC. Clearly, the alleged injury is directly related to the employer-employee relations of the parties.

Where the employer-employee relationship is merely incidental and the cause of action proceeds from a different source of obligation, the Court has not hesitated to uphold the jurisdiction of the regular

courts. Where the damages claimed for were based on tort, malicious prosecution, or breach of contract, as when the claimant seeks to recover a debt from a former employee or seeks liquidated damages in the enforcement of a prior employment contract,[17] the jurisdiction of regular courts was upheld. The scenario that obtains in this case is obviously different. The allegations in private respondent's complaint unmistakably relate to the manner of her alleged illegal dismissal.

For a single cause of action, the dismissed employee cannot be allowed to sue in two forums: one, before the labor arbiter for reinstatement and recovery of back wages or for separation pay, upon the theory that the dismissal was illegal; and two, before a court of justice for recovery of moral and other damages, upon the theory that the

manner of dismissal was unduly injurious or tortious. Suing in the manner described is known as "splitting a cause of action," a practice engendering multiplicity of actions. It is considered procedurally unsound and obnoxious to the orderly administration of justice.[18]

In the instant case, the NLRC has jurisdiction over private respondent's complaint for illegal dismissal and damages arising therefrom. She cannot be allowed to file a separate or independent civil action for damages where the alleged injury has a reasonable connection to her termination from employment. Consequently, the action for damages filed before the MeTC must be dismissed.

WHEREFORE, the petition for review on certiorari is GRANTED. The two Resolutions dated 20 October 2003 and 29 March 2004 of the Regional Trial Court, Branch 226, Quezon City are REVERSED and SET ASIDE. Costs against private respondent.

SO ORDERED.

DANTE O. TINGA
Associate Justice

PHILIPPINE NATIONAL BANK, *petitioner, vs*. FLORENCE O. CABANSAG, *respondent.*

D E C I S I O N

PANGANIBAN, *J.*:

The Court reiterates the basic policy that all Filipino workers, whether employed locally or overseas, enjoy the protective mantle of Philippine labor and social legislations. Our labor statutes may not be rendered ineffective by laws or judgments promulgated, or stipulations agreed upon, in a foreign country.

The Case

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the July 16, 2002 Decision[2] and the January 29, 2003 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 68403. The assailed Decision dismissed the CA Petition (filed by herein petitioner), which had sought to reverse the National Labor Relations Commission (NLRC)s June 29, 2001 Resolution,[4] affirming Labor Arbiter Joel S. Lustrias January 18, 2000 Decision.[5]

The assailed CA Resolution denied herein petitioners Motion for Reconsideration.

The Facts

The facts are narrated by the Court of Appeals as follows:

In late 1998, [herein Respondent Florence Cabansag] arrived in Singapore as a tourist. She applied for employment, with the Singapore Branch of the Philippine National Bank, a private banking corporation organized and existing under the laws of the Philippines, with principal offices at the PNB Financial Center, Roxas Boulevard, Manila. At the time, the Singapore PNB Branch was under the helm of Ruben C. Tobias, a lawyer, as General Manager, with the rank of Vice-President of the Bank. At the time, too, the Branch Office had two (2) types of employees: (a) expatriates or the regular employees, hired in Manila and assigned abroad including Singapore, and (b) locally (direct) hired. She applied for employment as Branch Credit Officer, at a total monthly package of $SG4,500.00, effective upon assumption of duties after approval. Ruben C. Tobias found her eminently qualified and wrote on October 26, 1998, a letter to the President of the Bank in Manila, recommending the appointment of Florence O. Cabansag, for the position.

x x x x x x x x x

The President of the Bank was impressed with the credentials of Florence O. Cabansag that he approved the recommendation of Ruben C. Tobias. She then filed an Application, with the Ministry of Manpower of the Government of Singapore, for the issuance of an Employment Pass as an employee of the Singapore PNB Branch. Her application was approved for a period of two (2) years.

On December 7, 1998, Ruben C. Tobias wrote a letter to Florence O. Cabansag offering her a temporary appointment, as Credit Officer, at a basic salary of Singapore Dollars 4,500.00, a month and, upon her successful completion of her probation to be determined solely, by the Bank, she may be extended at the discretion of the Bank, a permanent appointment and that her temporary appointment was subject to the following terms and conditions:

1. You will be on probation for a period of three (3) consecutive months from the date of your assumption of duty.

2. You will observe the Banks rules and regulations and those that may be adopted from time to time.

3. You will keep in strictest confidence all matters related to transactions between the Bank and its clients.

4. You will devote your full time during business hours in promoting the business and interest of the Bank.

5. You will not, without prior written consent of the Bank, be employed in anyway for any purpose whatsoever outside business hours by any person, firm or company.

6. Termination of your employment with the Bank may be made by either party after notice of one (1) day in writing during probation, one month notice upon confirmation or the equivalent of one (1) days or months salary in lieu of notice.

Florence O. Cabansag accepted the position and assumed office. In the meantime, the Philippine Embassy in Singapore processed the employment contract of Florence O. Cabansag and, on March 8, 1999, she was issued by the Philippine Overseas Employment Administration, an Overseas Employment Certificate, certifying that she was a bona fide contract worker for Singapore.

x x x x x x x x x

Barely three (3) months in office, Florence O. Cabansag submitted to Ruben C. Tobias, on March 9, 1999, her initialPerformance Report. Ruben C. Tobias was so impressed with the Report that he made a notation and, on said Report:GOOD WORK. However, in the evening of April 14, 1999, while Florence O. Cabansag was in the flat, which she and Cecilia Aquino, the Assistant Vice-President and Deputy General Manager of the Branch and Rosanna Sarmiento, the Chief Dealer of the said Branch, rented, she was told by the two (2) that Ruben C. Tobias has asked them to tell Florence O. Cabansag to resign from her job. Florence O. Cabansag was perplexed at the sudden turn of events and the runabout way Ruben C. Tobias procured her resignation from the Bank. The next day, Florence O. Cabansag talked to Ruben C. Tobias and inquired if what Cecilia Aquino and Rosanna Sarmiento had told her was true. Ruben C. Tobias confirmed the veracity of the information, with the explanation that her resignation was imperative as a cost-cutting measure of the Bank. Ruben C. Tobias, likewise, told Florence O. Cabansag that the PNB Singapore Branch will be sold or transformed into a remittance office and that, in either way, Florence O. Cabansag had to resign from her employment. The more Florence O. Cabansag was perplexed. She then asked Ruben C. Tobias that she be furnished with a Formal Advice from the PNB Head Office in Manila. However, Ruben C. Tobias flatly refused. Florence O. Cabansag did not submit any letter of resignation.

On April 16, 1999, Ruben C. Tobias again summoned Florence O. Cabansag to his office and demanded that she submit her letter of resignation, with the pretext that he needed a Chinese-speaking Credit Officer to penetrate the local market, with the information that a Chinese-speaking Credit Officer had already been hired and will be reporting for work soon. She was warned that, unless she submitted her letter of resignation, her employment record will be blemished with the notationDISMISSED spread thereon. Without giving any definitive answer, Florence O. Cabansag asked Ruben C. Tobias that she be given sufficient time to look for another job. Ruben C. Tobias told her that she should be out of her employment by May 15, 1999.

However, on April 19, 1999, Ruben C. Tobias again summoned Florence O. Cabansag and adamantly ordered her to submit her letter of resignation. She refused. On April 20, 1999, she received a letter from Ruben C. Tobias terminating her employment with the Bank.

x x x x x x x x x

On January 18, 2000, the Labor Arbiter rendered judgment in favor of the Complainant and against the Respondents, the decretal portion of which reads as follows:

WHEREFORE, considering the foregoing premises, judgment is hereby rendered finding respondents guilty of Illegal dismissal and devoid of due process, and are hereby ordered:

1. To reinstate complainant to her former or substantially equivalent position without loss of seniority rights, benefits and privileges;

2. Solidarily liable to pay complainant as follows:

   a) To pay complainant her backwages from 16 April 1999 up to her actual reinstatement. Her backwages as of the date of the promulgation of this decision amounted to SGD 40,500.00 or its equivalent in Philippine Currency at the time of payment;

   b) Mid-year bonus in the amount of SGD 2,250.00 or its equivalent in Philippine Currency at the time of payment;

   c) Allowance for Sunday banking in the amount of SGD 120.00 or its equivalent in Philippine Currency at the time of payment;

   d) Monetary equivalent of leave credits earned on Sunday banking in the amount of SGD 1,557.67 or its equivalent in Philippine Currency at the time of payment;

   e) Monetary equivalent of unused sick leave benefits in the amount of SGD 1,150.60 or its equivalent in Philippine Currency at the time of payment.

   f) Monetary equivalent of unused vacation leave benefits in the amount of SGD 319.85 or its equivalent in Philippine Currency at the time of payment.

   g) 13th month pay in the amount of SGD 4,500.00 or its equivalent in Philippine Currency at the time of payment;

3. Solidarily to pay complainant actual damages in the amount of SGD 1,978.00 or its equivalent in Philippine Currency at the time of payment, and moral damages in the amount of PhP 200,000.00, exemplary damages in the amount of PhP 100,000.00;

4. To pay complainant the amount of SGD 5,039.81 or its equivalent in Philippine Currency at the time of payment, representing attorneys fees.

SO ORDERED. [6] [Emphasis in the original.]

PNB appealed the labor arbiters Decision to the NLRC. In a Resolution dated June 29, 2001, the Commission affirmed that Decision, but reduced the moral damages to ₱100,000 and the exemplary damages to₱50,000. In a subsequent Resolution, the NLRC denied PNBs Motion for Reconsideration.

Ruling of the Court of Appeals

In disposing of the Petition for *Certiorari*, the CA noted that petitioner bank had failed to adduce in evidence the Singaporean law supposedly governing the latters employment Contract with respondent. The appellate court found that the Contract had actually been processed by the Philippine Embassy in

Singapore and approved by the Philippine Overseas Employment Administration (POEA), which then used that Contract as a basis for issuing an Overseas Employment Certificate in favor of respondent.

According to the CA, even though respondent secured an employment pass from the Singapore Ministry of Employment, she did not thereby waive Philippine labor laws, or the jurisdiction of the labor arbiter or the NLRC over her Complaint for illegal dismissal. In so doing, neither did she submit herself solely to the Ministry of Manpower of Singapores jurisdiction over disputes arising from her employment. The appellate court further noted that a cursory reading of the Ministrys letter will readily show that no such waiver or submission is stated or implied.

Finally, the CA held that petitioner had failed to establish a just cause for the dismissal of respondent. The bank had also failed to give her sufficient notice and an opportunity to be heard and to defend herself. The CA ruled that she was consequently entitled to reinstatement and back wages, computed from the time of her dismissal up to the time of her reinstatement.

Hence, this Petition.[7]

Issues

Petitioner submits the following issues for our consideration:

1. Whether or not the arbitration branch of the NLRC in the National Capital Region has jurisdiction over the instant controversy;

2. Whether or not the arbitration of the NLRC in the National Capital Region is the most convenient venue or forum to hear and decide the instant controversy; and

3. Whether or not the respondent was illegally dismissed, and therefore, entitled to recover moral and exemplary damages and attorneys fees.[8]

In addition, respondent assails, in her Comment,[9] the propriety of Rule 45 as the procedural mode for seeking a review of the CA Decision affirming the NLRC Resolution. Such issue deserves scant consideration. Respondent miscomprehends the Courts discourse in *St. Martin Funeral Home v. NLRC,*[10] which has indeed affirmed that the proper mode of review of NLRC decisions, resolutions or orders is by a special civil action for*certiorari* under Rule 65 of the Rules of Court. The Supreme Court and the Court of Appeals have *concurrentoriginal* jurisdiction over such petitions for *certiorari*. Thus, in observance of the doctrine on the hierarchy of courts, these petitions should be initially filed with the CA.[11]

Rightly, the bank elevated the NLRC Resolution to the CA by way of a Petition for *Certiorari*. In seeking a review by this Court of the CA Decision -- on questions of jurisdiction, venue and validity of employment termination -- petitioner is likewise correct in invoking Rule 45.[12]

It is true, however, that in a petition for review on *certiorari*, the scope of the Supreme Courts judicial review of decisions of the Court of Appeals is generally confined only to errors of law. It does not extend to questions of fact. This doctrine applies with greater force in labor cases. Factual questions are for the labor tribunals to resolve.[13] In the present case, the labor arbiter and the NLRC have already determined the factual issues. Their findings, which are supported by substantial evidence, were affirmed by the CA. Thus, they are entitled to great respect and are rendered conclusive upon this Court, absent a clear showing of palpable error or arbitrary disregard of evidence.[14]

The Courts Ruling

The Petition has no merit.

First Issue:
Jurisdiction

The jurisdiction of labor arbiters and the NLRC is specified in Article 217 of the Labor Code as follows:

ART. 217. Jurisdiction of Labor Arbiters and the Commission. (a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. Termination disputes;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wage, rates of pay, hours of work and other terms and conditions of employment

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount of exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

x x x x x x x x x.

More specifically, Section 10 of RA 8042 reads in part:

SECTION 10. *Money Claims.* Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

x x x x x x x x x

Based on the foregoing provisions, labor arbiters clearly have *original and exclusive* jurisdiction over claims arising from employer-employee relations, including *termination disputes* involving *all* workers, among whom are overseas Filipino workers (OFW).[15]

We are not unmindful of the fact that respondent was directly hired, while on a tourist status in Singapore, by the PNB branch in that city state. Prior to employing respondent, petitioner had to obtain an employment pass for her from the Singapore Ministry of Manpower. Securing the pass was a regulatory requirement pursuant to the immigration regulations of that country.[16]

Similarly, the Philippine government requires non-Filipinos working in the country to first obtain a local work permit in order to be legally employed here. That permit, however, does not automatically mean that the non-citizen is thereby bound by local laws only, as averred by petitioner. It does not at all imply a waiver of ones national laws on labor. Absent any clear and convincing evidence to the contrary, such permit simply means that its holder has a legal status as a worker in the issuing country.

Noteworthy is the fact that respondent likewise applied for and secured an Overseas Employment Certificate from the POEA through the Philippine Embassy in Singapore. The Certificate, issued on March 8, 1999, declared her a bona fide contract worker for Singapore. Under Philippine law, this document authorized her working status in a foreign country and entitled her to all benefits and processes under our statutes. Thus, even assuming *arguendo* that she was considered at the start of her employment as a direct hire governed by and subject to the laws, common practices and customs prevailing in Singapore[17] she subsequently became a contract worker or an OFW who was covered by Philippine labor laws and policies upon certification by the POEA. At the time her employment was illegally terminated, she already possessed the POEA employment Certificate.

Moreover, petitioner admits that it is a Philippine corporation doing business through a branch office in Singapore.[18] Significantly, respondents employment by the Singapore branch office had to be approved by Benjamin P. Palma Gil,[19] the president of the bank whose principal offices were in Manila. This circumstance militates against petitioners contention that respondent was locally hired; and totally governed by and subject to the laws, common practices and customs of Singapore, not of the Philippines. Instead, with more reason does this fact reinforce the presumption that respondent falls under the legal definition of *migrant worker*, in this case one deployed in Singapore. Hence, petitioner cannot escape the application of Philippine laws or the jurisdiction of the NLRC and the labor arbiter.

In any event, we recall the following policy pronouncement of the Court in *Royal Crown Internationale v. NLRC*:[20]

x x x. Whether employed locally or overseas, all Filipino workers enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic public policy of the State to afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. For the State assures the basic rights of all workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work [Article 3 of the Labor Code of the Philippines; *See also* Section 18, Article II and Section 3, Article XIII, 1987 Constitution]. This ruling is likewise rendered imperative by Article 17 of the Civil Code which states that laws which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determination or conventions agreed upon in a foreign country.

Second Issue:
Proper Venue

Section 1(a) of Rule IV of the NLRC Rules of Procedure reads:

Section 1. Venue (a) All cases which Labor Arbiters have authority to hear and decide may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant/petitioner; Provided, however that cases of Overseas Filipino Worker (OFW) shall be filed before the Regional Arbitration Branch where the complainant resides or where the principal office of the respondent/employer is situated, at the option of the complainant.

For purposes of venue, workplace shall be understood as the place or locality where the employee is regularly assigned when the cause of action arose. It shall include the place where the employee is

supposed to report back after a temporary detail, assignment or travel. In the case of field employees, as well as ambulant or itinerant workers, their workplace is where they are regularly assigned, or where they are supposed to regularly receive their salaries/wages or work instructions from, and report the results of their assignment to their employers.

Under the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042), a *migrant worker* refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a legal resident; to be used interchangeably with overseas Filipino worker.[21] Undeniably, respondent was employed by petitioner in its branch office in Singapore. Admittedly, she is a Filipino and not a legal resident of that state. She thus falls within the category of migrant worker or overseas Filipino worker.

As such, it is her option to choose the venue of her Complaint against petitioner for illegal dismissal. The law gives her two choices: (1) at the Regional Arbitration Branch (RAB) where she resides or (2) at the RAB where the principal office of her employer is situated. Since her dismissal by petitioner, respondent has returned to the Philippines -- specifically to her residence at Filinvest II, Quezon City. Thus, in filing her Complaint before the RAB office in Quezon City, she has made a valid choice of proper venue.

Third Issue:
Illegal Dismissal

The appellate court was correct in holding that respondent was already a regular employee at the time of her dismissal, because her three-month probationary period of employment had already ended. This ruling is in accordance with Article 281 of the Labor Code: An employee who is allowed to work after a probationary period shall be considered a regular employee. Indeed, petitioner recognized respondent as such at the time it dismissed her, by giving her one months salary in lieu of a one-month notice, consistent with provision No. 6 of her employment Contract.

Notice and Hearing
Not Complied With

As a regular employee, respondent was entitled to all rights, benefits and privileges provided under our labor laws. One of her fundamental rights is that she may not be dismissed without due process of law. The twin requirements of notice and hearing constitute the essential elements of procedural due process, and neither of these elements can be eliminated without running afoul of the constitutional guarantee.[22]

In dismissing employees, the employer must furnish them two written notices: 1) one to apprise them of the particular acts or omissions for which their dismissal is sought; and 2) the other to inform them of the decision to dismiss them. As to the requirement of a hearing, its essence lies simply in the opportunity to be heard.[23]

The evidence in this case is crystal-clear. Respondent was not notified of the specific act or omission for which her dismissal was being sought. Neither was she given any chance to be heard, as required by law. At any rate, even if she were given the opportunity to be heard, she could not have defended herself effectively, for she knew no cause to answer to.

All that petitioner tendered to respondent was a notice of her employment termination effective the very same day, together with the equivalent of a one-month pay. This Court has already held that nothing in the law gives an employer the option to substitute the required prior notice and opportunity to be heard with the mere payment of 30 days salary.[24]

Well-settled is the rule that the employer shall be sanctioned for noncompliance with the requirements of, or for failure to observe, due process that must be observed in dismissing an employee.[25]

No Valid Cause for Dismissal

Moreover, Articles 282,[26] 283[27] and 284[28] of the Labor Code provide the valid grounds or causes for an employees dismissal. The employer has the burden of proving that it was done for any of those just or authorized causes. The failure to discharge this burden means that the dismissal was not justified, and that the employee is entitled to reinstatement and back wages.[29]

Notably, petitioner has not asserted any of the grounds provided by law as a valid reason for terminating the employment of respondent. It merely insists that her dismissal was validly effected pursuant to the provisions of her employment Contract, which she had voluntarily agreed to be bound to.

Truly, the contracting parties may establish such stipulations, clauses, terms and conditions as they want, and their agreement would have the force of law between them. However, petitioner overlooks the qualification that those terms and conditions agreed upon must not be contrary to law, morals, customs, public policy or public order.[30] As explained earlier, the employment Contract between petitioner and respondent is governed by Philippine labor laws. Hence, the stipulations, clauses, and terms and conditions of the Contract must not contravene our labor law provisions.

Moreover, a contract of employment is imbued with public interest. The Court has time and time again reminded parties that they are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.[31] Also, while a contract is the law between the parties, the provisions of positive law that regulate such contracts are deemed included and shall limit and govern the relations between the parties.[32]

Basic in our jurisprudence is the principle that when there is no showing of any clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal.[33]

Awards for Damages Justified

Finally, moral damages are recoverable when the dismissal of an employee is attended by bad faith or constitutes an act oppressive to labor or is done in a manner contrary to morals, good customs or public policy.[34] Awards for moral and exemplary damages would be proper if the employee was harassed and arbitrarily dismissed by the employer.[35]

In affirming the awards of moral and exemplary damages, we quote with approval the following ratiocination of the labor arbiter:

The records also show that [respondents] dismissal was effected by [petitioners] capricious and high-handed manner, anti-social and oppressive, fraudulent and in bad faith, and contrary to morals, good customs and public policy. Bad faith and fraud are shown in the acts committed by [petitioners] before, during and after [respondents] dismissal in addition to the manner by which she was dismissed. First, [respondent] was pressured to resign for two different and contradictory reasons, namely, cost-cutting and the need for a Chinese[-]speaking credit officer, for which no written advice was given despite complainants request. Such wavering stance or vacillating position indicates bad faith and a dishonest purpose. Second, she was employed on account of her qualifications, experience and readiness for the position of credit officer and pressured to resign a month after she was commended for her good work.

Third, the demand for [respondents] instant resignation on 19 April 1999 to give way to her replacement who was allegedly reporting soonest, is whimsical, fraudulent and in bad faith, because on 16 April 1999 she was given a period of [sic] until 15 May 1999 within which to leave. Fourth, the pressures made on her to resign were highly oppressive, anti-social and caused her absolute torture, as [petitioners] disregarded her situation as an overseas worker away from home and family, with no prospect for another job. She was not even provided with a return trip fare. Fifth, the notice of termination is an utter manifestation of bad faith and whim as it totally disregards [respondents] right to security of tenure and due process. Such notice together with the demands for [respondents] resignation contravenes the fundamental guarantee and public policy of the Philippine government on security of tenure.

[Respondent] likewise established that as a proximate result of her dismissal and prior demands for resignation, she suffered and continues to suffer mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock and social humiliation. Her standing in the social and business community as well as prospects for employment with other entities have been adversely affected by her dismissal. [Petitioners] are thus liable for moral damages under Article 2217 of the Civil Code.

x x x x x x x x x

[Petitioners] likewise acted in a wanton, oppressive or malevolent manner in terminating [respondents] employment and are therefore liable for exemplary damages. This should served [sic] as protection to other employees of [petitioner] company, and by way of example or correction for the public good so that persons similarly minded as [petitioners] would be deterred from committing the same acts.[36]

The Court also affirms the award of attorneys fees. It is settled that when an action is instituted for the recovery of wages, or when employees are forced to litigate and consequently incur expenses to protect their rights and interests, the grant of attorneys fees is legally justifiable.[37]

WHEREFORE, the Petition is *DENIED* and the assailed Decision and Resolution *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and *Garcia, JJ.,* concur.

THE MANILA HOTEL CORP. AND MANILA HOTEL INTL. LTD., petitioners,
vs.
NATIONAL LABOR RELATIONS COMMISSION, ARBITER CEFERINA J. DIOSANA AND MARCELO G. SANTOS, respondents.

PARDO, *J.*:

The case before the Court is a petition for certiorari[1] to annul the following orders of the National Labor Relations Commission (hereinafter referred to as "NLRC") for having been issued without or with excess jurisdiction and with grave abuse of discretion:[2]

> (1) *Order of May 31, 1993*.[3] Reversing and setting aside its earlier resolution of August 28, 1992.[4] The questioned order declared that the NLRC, not the Philippine Overseas Employment Administration (hereinafter referred to as "POEA"), had jurisdiction over private respondent's complaint;
>
> (2) *Decision of December 15, 1994*.[5] Directing petitioners to jointly and severally pay private respondent twelve thousand and six hundred dollars (US$ 12,600.00) representing salaries for the unexpired portion of his contract; three thousand six hundred dollars (US$3,600.00) as extra four months salary for the two (2) year period of his contract, three thousand six hundred dollars (US$3,600.00) as "14th month pay" or a total of nineteen thousand and eight hundred dollars (US$19,800.00) or its peso equivalent and attorney's fees amounting to ten percent (10%) of the total award; and
>
> (3) *Order of March 30, 1995*.[6] Denying the motion for reconsideration of the petitioners.

In May, 1988, private respondent Marcelo Santos (hereinafter referred to as "Santos") was an overseas worker employed as a printer at the Mazoon Printing Press, Sultanate of Oman. Subsequently, in June 1988, he was directly hired by the Palace Hotel, Beijing, People's Republic of China and later terminated due to retrenchment.

Petitioners are the Manila Hotel Corporation (hereinafter referred to as "MHC") and the Manila Hotel International Company, Limited (hereinafter referred to as "MHICL").

When the case was filed in 1990, MHC was still a government-owned and controlled corporation duly organized and existing under the laws of the Philippines.

MHICL is a corporation duly organized and existing under the laws of Hong Kong.[7] MHC is an "incorporator" of MHICL, owning 50% of its capital stock.[8]

By virtue of a "management agreement"[9] with the Palace Hotel (Wang Fu Company Limited), MHICL[10] trained the personnel and staff of the Palace Hotel at Beijing, China.

Now the facts.

During his employment with the Mazoon Printing Press in the Sultanate of Oman, respondent Santos received a letter dated May 2, 1988 from Mr. Gerhard R. Shmidt, General Manager, Palace Hotel, Beijing, China. Mr. Schmidt informed respondent Santos that he was recommended by one Nestor Buenio, a friend of his.

Mr. Shmidt offered respondent Santos the same position as printer, but with a higher monthly salary and increased benefits. The position was slated to open on October 1, 1988.[11]

On May 8, 1988, respondent Santos wrote to Mr. Shmidt and signified his acceptance of the offer.

On May 19, 1988, the Palace Hotel Manager, Mr. Hans J. Henk mailed a ready to sign employment contract to respondent Santos. Mr. Henk advised respondent Santos that if the contract was acceptable, to return the same to Mr. Henk in Manila, together with his passport and two additional pictures for his visa to China.

On May 30, 1988, respondent Santos resigned from the Mazoon Printing Press, effective June 30, 1988, under the pretext that he was needed at home to help with the family's piggery and poultry business.

On June 4, 1988, respondent Santos wrote the Palace Hotel and acknowledged Mr. Henk's letter. Respondent Santos enclosed four (4) signed copies of the employment contract (dated June 4, 1988) and notified them that he was going to arrive in Manila during the first week of July 1988.

The employment contract of June 4, 1988 stated that his employment would commence September 1, 1988 for a period of two years.[12] It provided for a monthly salary of nine hundred dollars (US$900.00) net of taxes, payable fourteen (14) times a year.[13]

On June 30, 1988, respondent Santos was deemed resigned from the Mazoon Printing Press.

On July 1, 1988, respondent Santos arrived in Manila.

On November 5, 1988, respondent Santos left for Beijing, China. He started to work at the Palace Hotel.[14]

Subsequently, respondent Santos signed an amended "employment agreement" with the Palace Hotel, effective November 5, 1988. In the contract, Mr. Shmidt represented the Palace Hotel. The Vice President (Operations and Development) of petitioner MHICL Miguel D. Cergueda signed the employment agreement under the word "noted".

From June 8 to 29, 1989, respondent Santos was in the Philippines on vacation leave. He returned to China and reassumed his post on July 17, 1989.

On July 22, 1989, Mr. Shmidt's Executive Secretary, a certain Joanna suggested in a handwritten note that respondent Santos be given one (1) month notice of his release from employment.

On August 10, 1989, the Palace Hotel informed respondent Santos by letter signed by Mr. Shmidt that his employment at the Palace Hotel print shop would be terminated due to business reverses brought about by the political upheaval in China.[15] We quote the letter:[16]

> "After the unfortunate happenings in China and especially Beijing (referring to Tiannamen Square incidents), our business has been severely affected. To reduce expenses, we will not open/operate printshop for the time being.
>
> "We sincerely regret that a decision like this has to be made, but rest assured this does in no way reflect your past performance which we found up to our expectations."
>
> "Should a turnaround in the business happen, we will contact you directly and give you priority on future assignment."

On September 5, 1989, the Palace Hotel terminated the employment of respondent Santos and paid all benefits due him, including his plane fare back to the Philippines.

On October 3, 1989, respondent Santos was repatriated to the Philippines.

On October 24, 1989, respondent Santos, through his lawyer, Atty. Ednave wrote Mr. Shmidt, demanding full compensation pursuant to the employment agreement.

On November 11, 1989, Mr. Shmidt replied, to wit:[17]

> His service with the Palace Hotel, Beijing was not abruptly terminated but we followed the one-month notice clause and Mr. Santos received all benefits due him.
>
> "For your information the Print Shop at the Palace Hotel is still not operational and with a low business outlook, retrenchment in various departments of the hotel is going on which is a normal management practice to control costs.
>
> "When going through the latest performance ratings, please also be advised that his performance was below average and a Chinese National who is doing his job now shows a better approach.
>
> "In closing, when Mr. Santos received the letter of notice, he hardly showed up for work but still enjoyed free accommodation/laundry/meals up to the day of his departure."

On February 20, 1990, respondent Santos filed a complaint for illegal dismissal with the Arbitration Branch, National Capital Region, National Labor Relations Commission (NLRC). He prayed for an award of nineteen thousand nine hundred and twenty three dollars (US$19,923.00) as actual damages, forty thousand pesos (P40,000.00) as exemplary damages and attorney's fees equivalent to 20% of the damages prayed for. The complaint named MHC, MHICL, the Palace Hotel and Mr. Shmidt as respondents.

The Palace Hotel and Mr. Shmidt were not served with summons and neither participated in the proceedings before the Labor Arbiter.[18]

On June 27, 1991, Labor Arbiter Ceferina J. Diosana, decided the case against petitioners, thus:[19]

> "WHEREFORE, judgment is hereby rendered:
>
> "1. directing all the respondents to pay complainant jointly and severally;
>
> "a) $20,820 US dollars or its equivalent in Philippine currency as unearned salaries;
>
> "b) P50,000.00 as moral damages;
>
> "c) P40,000.00 as exemplary damages; and
>
> "d) Ten (10) percent of the total award as attorney's fees.
>
> "SO ORDERED."

On July 23, 1991, petitioners appealed to the NLRC, arguing that the POEA, not the NLRC had jurisdiction over the case.

On August 28, 1992, the NLRC promulgated a resolution, stating:[20]

"WHEREFORE, let the appealed Decision be, as it is hereby, declared null and void for want of jurisdiction. Complainant is hereby enjoined to file his complaint with the POEA.

"SO ORDERED."

On September 18, 1992, respondent Santos moved for reconsideration of the afore-quoted resolution. He argued that the case was not cognizable by the POEA as he was not an "overseas contract worker."[21]

On May 31, 1993, the NLRC granted the motion and reversed itself. The NLRC directed Labor Arbiter Emerson Tumanon to hear the case on the question of whether private respondent was retrenched or dismissed.[22]

On January 13, 1994, Labor Arbiter Tumanon completed the proceedings based on the testimonial and documentary evidence presented to and heard by him.[23]

Subsequently, Labor Arbiter Tumanon was re-assigned as trial Arbiter of the National Capital Region, Arbitration Branch, and the case was transferred to Labor Arbiter Jose G. de Vera.[24]

On November 25, 1994, Labor Arbiter de Vera submitted his report.[25] He found that respondent Santos was illegally dismissed from employment and recommended that he be paid actual damages equivalent to his salaries for the unexpired portion of his contract.[26]

On December 15, 1994, the NLRC ruled in favor of private respondent, to wit:[27]

"WHEREFORE, finding that the report and recommendations of Arbiter de Vera are supported by substantial evidence, judgment is hereby rendered, directing the respondents to jointly and severally pay complainant the following computed contractual benefits: (1) US$12,600.00 as salaries for the unexpired portion of the parties' contract; (2) US$3,600.00 as extra four (4) months salary for the two (2) years period (sic) of the parties' contract; (3) US$3,600.00 as "14th month pay" for the aforesaid two (2) years contract stipulated by the parties or a total of US$19,800.00 or its peso equivalent, plus (4) attorney's fees of 10% of complainant's total award.

"SO ORDERED."

On February 2, 1995, petitioners filed a motion for reconsideration arguing that Labor Arbiter de Vera's recommendation had no basis in law and in fact.[28]

On March 30, 1995, the NLRC denied the motion for reconsideration.[29]

Hence, this petition.[30]

On October 9, 1995, petitioners filed with this Court an urgent motion for the issuance of a temporary restraining order and/or writ of preliminary injunction and a motion for the annulment of the entry of judgment of the NLRC dated July 31, 1995.[31]

On November 20, 1995, the Court denied petitioner's urgent motion. The Court required respondents to file their respective comments, without giving due course to the petition.[32]

On March 8, 1996, the Solicitor General filed a manifestation stating that after going over the petition and its annexes, they can not defend and sustain the position taken by the NLRC in its assailed decision and orders. The Solicitor General prayed that he be excused from filing a comment on behalf of the NLRC[33]

On April 30,1996, private respondent Santos filed his comment.[34]

On June 26, 1996, the Court granted the manifestation of the Solicitor General and required the NLRC to file its own comment to the petition.[35]

On January 7, 1997, the NLRC filed its comment.

The petition is meritorious.

I. Forum Non-Conveniens

The NLRC was a seriously inconvenient forum.

We note that the main aspects of the case transpired in two foreign jurisdictions and the case involves purely foreign elements. The only link that the Philippines has with the case is that respondent Santos is a Filipino citizen. The Palace Hotel and MHICL are foreign corporations. Not all cases involving our citizens can be tried here.

The employment contract. — Respondent Santos was hired directly by the Palace Hotel, a foreign employer, through correspondence sent to the Sultanate of Oman, where respondent Santos was then employed. He was hired without the intervention of the POEA or any authorized recruitment agency of the government.[36]

Under the rule of *forum non conveniens*, a Philippine court or agency may assume jurisdiction over the case if it chooses to do so *provided*: (1) that the Philippine court is one to which the parties may conveniently resort to; (2) that the Philippine court is in a position to make an intelligent decision as to the law and the facts; and (3) that the Philippine court has or is likely to have power to enforce its decision.[37] The conditions are unavailing in the case at bar.

Not Convenient. — We fail to see how the NLRC is a convenient forum given that all the incidents of the case — from the time of recruitment, to employment to dismissal occurred outside the Philippines. The inconvenience is compounded by the fact that the proper defendants, the Palace Hotel and MHICL are not nationals of the Philippines. Neither .are they "doing business in the Philippines." Likewise, the main witnesses, Mr. Shmidt and Mr. Henk are non-residents of the Philippines.

No power to determine applicable law. — Neither can an intelligent decision be made as to the law governing the employment contract as such was perfected in foreign soil. This calls to fore the application of the principle of lex loci contractus (the law of the place where the contract was made).[38]

The employment contract was not perfected in the Philippines. Respondent Santos signified his acceptance by writing a letter while he was in the Republic of Oman. This letter was sent to the Palace Hotel in the People's Republic of China.

No power to determine the facts. — Neither can the NLRC determine the facts surrounding the alleged illegal dismissal as all acts complained of took place in Beijing, People's Republic of China. The NLRC was not in a position to determine whether the Tiannamen Square incident truly adversely affected operations of the Palace Hotel as to justify respondent Santos' retrenchment.

Principle of effectiveness, no power to execute decision. — Even assuming that a proper decision could be reached by the NLRC, such would not have any binding effect against the employer, the Palace Hotel. The Palace Hotel is a corporation incorporated under the laws of China and was not even served with summons. Jurisdiction over its person was not acquired.

This is not to say that Philippine courts and agencies have no power to solve controversies involving foreign employers. Neither are we saying that we do not have power over an employment contract

executed in a foreign country. *If Santos were an "overseas contract worker", a Philippine forum, specifically the POEA, not the NLRC, would protect him*.[39] He is not an "overseas contract worker" a fact which he admits with conviction.[40]

Even assuming that the NLRC was the proper forum, even on the merits, the NLRC's decision cannot be sustained.

II. MHC Not Liable

Even if we assume two things: (1) that the NLRC had jurisdiction over the case, and (2) that MHICL was liable for Santos' retrenchment, still MHC, as a separate and distinct juridical entity cannot be held liable.

True, MHC is an incorporator of MHICL and owns fifty percent (50%) of its capital stock. However, this is not enough to pierce the veil of corporate fiction between MHICL and MHC.

Piercing the veil of corporate entity is an equitable remedy. It is resorted to when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend a crime. 41 It is done only when a corporation is a mere alter ego or business conduit of a person or another corporation.

In *Traders Royal Bank v. Court of Appeals*,[42] we held that "the mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself a sufficient reason for disregarding the fiction of separate corporate personalities."

The tests in determining whether the corporate veil may be pierced are: *First*, the defendant must have control or complete domination of the other corporation's finances, policy and business practices with regard to the transaction attacked. There must be proof that the other corporation had no separate mind, will or existence with respect the act complained of. *Second*, control must be used by the defendant to commit fraud or wrong. *Third*, the aforesaid control or breach of duty must be the proximate cause of the injury or loss complained of. The absence of any of the elements prevents the piercing of the corporate veil.[43]

It is basic that a corporation has a personality separate and distinct from those composing it as well as from that of any other legal entity to which it may be related.[44] Clear and convincing evidence is needed to pierce the veil of corporate fiction.[45] In this case, we find no evidence to show that MHICL and MHC are one and the same entity.

III. MHICL not Liable

Respondent Santos predicates MHICL's liability on the fact that MHICL "signed" his employment contract with the Palace Hotel. This fact fails to persuade us.

First, we note that the Vice President (Operations and Development) of MHICL, Miguel D. Cergueda signed the employment contract as a mere witness. He merely signed under the word "noted".

When one "notes" a contract, one is not expressing his agreement or approval, as a party would.[46] In *Sichangco v. Board of Commissioners of Immigration*,[47] the Court recognized that the term "noted" means that the person so noting has merely taken cognizance of the existence of an act or declaration, without exercising a judicious deliberation or rendering a decision on the matter.

Mr. Cergueda merely signed the "witnessing part" of the document. The "witnessing part" of the document is that which, "in a deed or other formal instrument is that part *which comes after the recitals*, or where there are no recitals, *after the parties* (*emphasis ours*)."[48] As opposed to a party to a contract, a witness is simply one who, "being present, personally sees or perceives a thing; a beholder, a spectator, or

eyewitness."[49] One who "notes" something just makes a "brief written statement"[50] a memorandum or observation.

Second, and more importantly, there was no existing employer-employee relationship between Santos and MHICL. In determining the existence of an employer-employee relationship, the following elements are considered:[51]

> "(1) the selection and engagement of the employee;
>
> "(2) the payment of wages;
>
> "(3) the power to dismiss; and
>
> "(4) the power to control employee's conduct."

MHICL did not have and did not exercise any of the aforementioned powers. It did *not* select respondent Santos as an employee for the Palace Hotel. He was referred to the Palace Hotel by his friend, Nestor Buenio. MHICL did not engage respondent Santos to work. The terms of employment were negotiated and finalized through correspondence between respondent Santos, Mr. Schmidt and Mr. Henk, who were officers and representatives of the Palace Hotel and not MHICL. Neither did respondent Santos adduce any proof that MHICL had the power to control his conduct. Finally, it was the Palace Hotel, through Mr. Schmidt and *not* MHICL that terminated respondent Santos' services.

Neither is there evidence to suggest that MHICL was a "labor-only contractor."[52] There is no proof that MHICL "supplied" respondent Santos or even referred him for employment to the Palace Hotel.

Likewise, there is no evidence to show that the Palace Hotel and MHICL are one and the same entity. The fact that the Palace Hotel is a member of the "Manila Hotel Group" is not enough to pierce the corporate veil between MHICL and the Palace Hotel.

IV. Grave Abuse of Discretion

Considering that the NLRC was *forum non-conveniens* and considering further that no employer-employee relationship existed between MHICL, MHC and respondent Santos, Labor Arbiter Ceferina J. Diosana clearly had no jurisdiction over respondent's claim in NLRC NCR Case No. 00-02-01058-90.

Labor Arbiters have exclusive and original jurisdiction only over the following:[53]

> "1. Unfair labor practice cases;
>
> "2. Termination disputes;
>
> "3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
>
> "4. Claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations;
>
> "5. Cases arising from any violation of Article 264 of this Code, including questions involving legality of strikes and lockouts; and
>
> "6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic

or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement."

In all these cases, an employer-employee relationship is an indispensable jurisdictional requirement.

The jurisdiction of labor arbiters and the NLRC under Article 217 of the Labor Code is limited to disputes arising from an employer-employee relationship which can be resolved by reference to the Labor Code, or other labor statutes, or their collective bargaining agreements.[54]

"To determine which body has jurisdiction over the present controversy, we rely on the sound judicial principle that jurisdiction over the subject matter is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein."[55]

The lack of jurisdiction of the Labor Arbiter was obvious from the allegations of the complaint. His failure to dismiss the case amounts to grave abuse of discretion.[56]

V. The Fallo

WHEREFORE, the Court hereby GRANTS the petition for certiorari and ANNULS the orders and resolutions of the National Labor Relations Commission dated May 31, 1993, December 15, 1994 and March 30, 1995 in NLRC NCR CA No. 002101-91 (NLRC NCR Case No. 00-02-01058-90).

No costs.

SO ORDERED.

Davide, Jr., C .J ., Puno, Kapunan, Pardo and Ynares-Santiago, JJ ., concur.

PASTOR DIONISIO V. AUSTRIA, *petitioner, vs*. HON. NATIONAL LABOR RELATIONS COMMISSION (Fourth Division), CEBU CITY, CENTRAL PHILIPPINE UNION MISSION CORPORATION OF THE SEVENTH-DAY ADVENTIST, ELDER HECTOR V. GAYARES, PASTORS REUBEN MORALDE, OSCAR L. ALOLOR, WILLIAM U. DONATO, JOEL WALES, ELY SACAY, GIDEON BUHAT, ISACHAR GARSULA, ELISEO DOBLE, PROFIRIO BALACY, DAVID RODRIGO, LORETO MAYPA, MR. RUFO GASAPO, MR. EUFRONIO IBESATE, MRS. TESSIE BALACY, MR. ZOSIMO KARA-AN, and MR. ELEUTERIO LOBITANA, *respondents*.

D E C I S I O N

KAPUNAN, *J.*:

Subject to the instant petition for *certiorari* under Rule 65 of the Rules of Court is the Resolution[1] of public respondent National Labor Relations Commission (the NLRC), rendered on 23 January 1996, in NLRC Case No. V-0120-93, entitled Pastor Dionisio V. Austria *vs*. Central Philippine Union Mission Corporation of Seventh Day Adventists, *et. al*., which dismissed the case for illegal dismissal filed by the petitioner against private respondents for lack of jurisdiction.

Private Respondent Central Philippine Union Mission Corporation of the Seventh-Day Adventists (hereinafter referred to as the SDA) is a religious corporation duly organized and existing under Philippine law and is represented in this case by the other private respondents, officers of the SDA. Petitioner, on the other hand, was a Pastor of the SDA until 31 October1991, when his services were terminated.

The records show that petitioner Pastor Dionisio V. Austria worked with the SDA for twenty eight (28) years from 1963 to 1991.[2] He began his work with the SDA on 15 July 1963 as a literature evangelist, selling literature of the SDA over the island of Negros. From then on, petitioner worked his way up the ladder and got promoted several times. In January, 1968, petitioner became the Assistant Publishing Director in the West Visayan Mission of the SDA. In July, 1972, he was elevated to the position of Pastor in the West Visayan Mission covering the island of Panay, and the provinces of Romblon and Guimaras. Petitioner held the same position up to 1988. Finally, in 1989, petitioner was promoted as District Pastor of the Negros Mission of the SDA and was assigned at Sagay, Balintawak and Toboso, Negros Occidental, with twelve (12) churches under his jurisdiction. In January, 1991, petitioner was transferred to Bacolod City. He held the position of district pastor until his services were terminated on 31 October 1991.

On various occasions from August up to October, 1991, petitioner received several communications[3] from Mr. Eufronio Ibesate, the treasurer of the Negros Mission asking him to admit accountability and responsibility for the church tithes and offerings collected by his wife, Mrs. Thelma Austria, in his district which amounted to P15,078.10, and to remit the same to the Negros Mission.

In his written explanation dated 11 October 1991,[4] petitioner reasoned out that he should not be made accountable for the unremitted collections since it was private respondents Pastor Gideon Buhat and Mr. Eufronio Ibesate who authorized his wife to collect the tithes and offerings since he was very sick to do the collecting at that time.

Thereafter, on 16 October 1991, at around 7:30 a.m., petitioner went to the office of Pastor Buhat, the president of the Negros Mission. During said call, petitioner tried to persuade Pastor Buhat to convene the Executive Committee for the purpose of settling the dispute between him and the private respondent, Pastor David Rodrigo. The dispute between Pastor Rodrigo and petitioner arose from an incident in which petitioner assisted his friend, Danny Diamada, to collect from Pastor Rodrigo the unpaid balance for the repair of the latters motor vehicle which he failed to pay to Diamada.[5] Due to the assistance of petitioner in collecting Pastor Rodrigos debt, the latter harbored ill-feelings against petitioner. When news reached petitioner that Pastor Rodrigo was about to file a complaint against him with the Negros Mission, he immediately proceeded to the office of Pastor Buhat on the date abovementioned and asked the latter to convene the Executive Committee. Pastor Buhat denied the request of petitioner since some committee

members were out of town and there was no quorum. Thereafter, the two exchanged heated arguments. Petitioner then left the office of Pastor Buhat. While on his way out, petitioner overheard Pastor Buhat saying, Pastor daw inisog na ina iya (Pastor you are talking tough).[6] Irked by such remark, petitioner returned to the office of Pastor Buhat, and tried to overturn the latters table, though unsuccessfully, since it was heavy. Thereafter, petitioner banged the attache case of Pastor Buhat on the table, scattered the books in his office, and threw the phone.[7] Fortunately, private respondents Pastors Yonilo Leopoldo and Claudio Montao were around and they pacified both Pastor Buhat and petitioner.

On 17 October 1991, petitioner received a letter[8] inviting him and his wife to attend the Executive Committee meeting at the Negros Mission Conference Room on 21 October 1991, at nine in the morning. To be discussed in the meeting were the non-remittance of church collection and the events that transpired on 16 October 1991. A fact-finding committee was created to investigate petitioner. For two (2) days, from October 21 and 22, the fact-finding committee conducted an investigation of petitioner. Sensing that the result of the investigation might be one-sided, petitioner immediately wrote Pastor Rueben Moralde, president of the SDA and chairman of the fact-finding committee, requesting that certain members of the fact-finding committee be excluded in the investigation and resolution of the case.[9] Out of the six (6) members requested to inhibit themselves from the investigation and decision-making, only two (2) were actually excluded, namely: Pastor Buhat and Pastor Rodrigo. Subsequently, on 29 October 1991, petitioner received a letter of dismissal[10] citing misappropriation of denominational funds, willful breach of trust, serious misconduct, gross and habitual neglect of duties, and commission of an offense against the person of employers duly authorized representative, as grounds for the termination of his services.

Reacting against the adverse decision of the SDA, petitioner filed a complaint[11] on 14 November 1991, before the Labor Arbiter for illegal dismissal against the SDA and its officers and prayed for reinstatement with backwages and benefits, moral and exemplary damages and other labor law benefits.

On 15 February 1993, Labor Arbiter Cesar D. Sideo rendered a decision in favor of petitioner, the dispositive portion of which reads thus:

WHEREFORE, PREMISES CONSIDERED, respondents CENTRAL PHILIPPINE UNION MISSION CORPORATION OF THE SEVENTH-DAY ADVENTISTS (CPUMCSDA) and its officers, respondents herein, are hereby ordered to immediately reinstate complainant Pastor Dionisio Austria to his former position as Pastor of Brgy. Taculing, Progreso and Banago, Bacolod City, without loss of seniority and other rights and backwages in the amount of ONE HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED THIRTY PESOS (₱115,830.00) without deductions and qualificatioons.

Respondent CPUMCSDA is further ordered to pay complainant the following:

A. 13th month pay - P21,060.00

B. Allowance - P 4,770.83

C. Service Incentive
Leave Pay - P 3,461.85

D. Moral Damages - P50,000.00

E. Exemplary
Damages - P25,000.00

F. Attorneys Fee - P22,012.27

SO ORDERED.[12]

The SDA, through its officers, appealed the decision of the Labor Arbiter to the National Labor Relations Commission, Fourth Division, Cebu City. In a decision, dated 26 August 1994, the NLRC vacated the findings of the Labor Arbiter. The decretal portion of the NLRC decision states:

WHEREFORE, the Decision appealed from is hereby VACATED and a new one ENTERED dismissing this case for want of merit.

SO ORDERED.[13]

Petitioner filed a motion for reconsideration of the above-named decision. On 18 July 1995, the NLRC issued a Resolution reversing its original decision. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, Our decision dated August 26, 1994 is VACATED and the decision of the Labor Arbiter dated February 15, 1993 is REINSTATED.

SO ORDERED.[14]

In view of the reversal of the original decision of the NLRC, the SDA filed a motion for reconsideration of the above resolution. Notable in the motion for reconsideration filed by private respondents is their invocation, for the first time on appeal, that the Labor Arbiter has no jurisdiction over the complaint filed by petitioner due to the constitutional provision on the separation of church and state since the case allegedly involved and ecclesiastical affair to which the State cannot interfere.

The NLRC, without ruling on the merits of the case, reversed itself once again, sustained the argument posed by private respondents and, accordingly, dismissed the complaint of petitioner. The dispositive portion of the NLRC resolution dated 23 January 1996, subject of the present petition, is as follows:

WHEREFORE, in view of all the foregoing, the instant motion for reconsideration is hereby granted. Accordingly, this case is hereby DISMISSED for lack of jurisdiction.

ARSENIO Z. LOCSIN,
Petitioner,

- versus -

NISSAN CAR LEASE PHILS., INC. and LUIS BANSON,
Respondents.

G.R. No. 185567

Present:

[*] CARPIO, *J.*,
[**] NACHURA,
[***] BRION, *Acting Chairperson*,
[****] MENDOZA, and
SERENO, *JJ.*

Promulgated:
October 20, 2010

x----------x

D E C I S I O N

BRION, *J.*:

Through a petition for review on *certiorari,*[1] petitioner Arsenio Z. Locsin (*Locsin*) seeks the reversal of the Decision[2] of the Court of Appeals (*CA*) dated August 28, 2008,[3] in *Arsenio Z. Locsin v. Nissan Car Lease Phils., Inc. and Luis Banson,* docketed as CA-G.R. SP No. 103720 and the Resolution dated December 9, 2008,[4] denying Locsins Motion for Reconsideration. The assailed ruling of the CA reversed and set aside the Decision[5] of the Hon. Labor Arbiter Thelma Concepcion (*Labor Arbiter Concepcion*) which denied Nissan Lease Phils. Inc.s (*NCLPI*) and Luis T. Bansons (*Banson*) Motion to Dismiss.

THE FACTUAL ANTECEDENTS

On January 1, 1992, Locsin was elected Executive Vice President and Treasurer (*EVP/Treasurer*) of NCLPI. As EVP/Treasurer, his duties and responsibilities included: (1) the management of the finances of the company; (2) carrying out the directions of the President and/or the Board of Directors regarding financial management; and (3) the preparation of financial reports to advise the officers and directors of the financial condition of NCLPI.[6] Locsin held this position for 13 years, having been re-elected every year since 1992, until January 21, 2005, when he was nominated and elected Chairman of NCLPIs Board of Directors.[7]

On August 5, 2005, a little over seven (7) months after his election as Chairman of the Board, the NCLPI Board held a special meeting at the Manila Polo Club. One of the items of the agenda was the election of a new set of officers. Unfortunately, Locsin was neither re-elected Chairman nor reinstated to his previous position as EVP/Treasurer.[8]

Aggrieved, on June 19, 2007, Locsin filed a complaint for illegal dismissal with prayer for reinstatement, payment of backwages, damages and attorneys fees before the Labor Arbiter against NCLPI and Banson, who was then President of NCLPI.[9]

The Compulsory Arbitration Proceedings before the Labor Arbiter.

On July 11, 2007, instead of filing their position paper, NCLPI and Banson filed a Motion to Dismiss,[10] on the ground that the Labor Arbiter did not have jurisdiction over the case since the issue of Locsins removal as EVP/Treasurer involves an intra-corporate dispute.

On August 16, 2007, Locsin submitted his opposition to the motion to dismiss, maintaining his position that he is an employee of NCLPI.

On March 10, 2008, Labor Arbiter Concepcion issued an Order denying the Motion to Dismiss, holding that her office acquired jurisdiction to arbitrate and/or decide the instant complaint finding extant in the case an employer-employee relationship.[11]

NCLPI, on June 3, 2008, elevated the case to the CA through a Petition for *Certiorari* under Rule 65 of the Rules of Court.[12] NCLPI raised the issue on whether the Labor Arbiter committed grave abuse of discretion by denying the Motion to Dismiss and holding that her office had jurisdiction over the dispute.

The CA Decision - Locsin was a corporate officer; the issue of his removal as EVP/Treasurer is an intra-corporate dispute under the RTCs jurisdiction.

On August 28, 2008,[13] the CA reversed and set aside the Labor Arbiters Order denying the Motion to Dismiss and ruled that Locsin was a corporate officer.

Citing PD 902-A, the CA defined corporate officers as those officers of a corporation who are given that character either by the Corporation Code or by the corporations by-laws. In this regard, the CA held:

> Scrutinizing the records, We hold that petitioners successfully discharged their *onus* of establishing that private respondent was a corporate officer who held the position of Executive Vice-President/Treasurer as provided in the by-laws of petitioner corporation and that he held such position by virtue of election by the Board of Directors.
>
> That private respondent is a corporate officer cannot be disputed. The position of Executive Vice-President/Treasurer is specifically included in the roster of officers provided for by the (Amended) By-Laws of petitioner corporation, his duties and responsibilities, as well as compensation as such officer are likewise set forth therein.[14]

Article 280 of the Labor Code, the receipt of salaries by Locsin, SSS deductions on that salary, and the element of control in the performance of work duties indicia used by the Labor Arbiter to conclude that Locsin was a regular employee were held inapplicable by the CA.[15] The CA noted the Labor Arbiters failure to address the fact that the position of EVP/Treasurer is specifically enumerated as an office in the corporations by-laws.[16]

Further, the CA pointed out Locsins failure to state any circumstance by which NCLPI engaged his services as a corporate officer that would make him an employee. The CA found, in this regard, that Locsins assumption and retention as EVP/Treasurer was based on his election and subsequent re-elections from 1992 until 2005. Further, he performed only those functions that were specifically set forth in the By-Laws or required of him by the Board of Directors.[17]

With respect to the suit Locsin filed with the Labor Arbiter, the CA held that:

> Private respondent, in belatedly filing this suit before the Labor Arbiter, questioned the legality of his dismissal **but in essence, he raises the issue of whether or not the Board of Directors had the authority to remove him from the corporate office to which he was elected pursuant to the By-Laws of the petitioner corporation**. Indeed, had private respondent been an ordinary employee, an election conducted by the Board of Directors would not have been necessary to remove him as Executive Vice-

> President/Treasurer.However, in an obvious attempt to preclude the application of settled jurisprudence that corporate officers whose position is provided in the by-laws, their election, removal or dismissal is subject to Section 5 of P.D. No. 902-A (now R.A. No. 8799), private respondent would even claim in his Position Paper, that since his responsibilities were akin to that of the companys Executive Vice-President/Treasurer, he was hired under the pretext that he was being elected into said post.[18] [Emphasis supplied.]

As a consequence, the CA concluded that Locsin does not have any recourse with the Labor Arbiter or the NLRC since the removal of a corporate officer, whether elected or appointed, is an intra-corporate controversy over which the NLRC has no jurisdiction.[19] Instead, according to the CA, Locsins complaint for illegal dismissal should have been filed in the Regional Trial Court (*RTC)*, pursuant to Rule 6 of the Interim Rules of Procedure Governing Intra-Corporate Controversies.[20]

Finally, the CA addressed Locsins invocation of Article 4 of the Labor Code. Dismissing the application of the provision, the CA cited Dean Cesar Villanueva of the Ateneo School of Law, as follows:

> x x x the **non-coverage of corporate officers from the security of tenure clause under the Constitution is now well-established principle** by numerous decisions upholding such doctrine under the aegis of the 1987 Constitution in the face of contemporary decisions of the same Supreme Court likewise confirming that security of tenure covers all employees or workers including managerial employees.[21]

THE PETITIONERS ARGUMENTS

Failing to obtain a reconsideration of the CAs decision, Locsin filed the present petition on January 28, 2009, raising the following procedural and substantive issues:

(1) Whether the CA has original jurisdiction to review decision of the Labor Arbiter under Rule 65?

(2) Whether he is a regular employee of NCLPI under the definition of Article 280 of the Labor Code? and

(3) Whether Locsins position as Executive Vice-President/Treasurer makes him a corporate officer thereby excluding him from the coverage of the Labor Code?

Procedurally, Locsin essentially submits that NCLPI wrongfully filed a petition for *certiorari* before the CA, as the latters remedy is to proceed with the arbitration, and to appeal to the NLRC after the Labor Arbiter shall have ruled on the merits of the case. Locsin cites, in this regard, Rule V, Section 6 of the Revised Rules of the National Labor Relations Commission (*NLRC Rules*), which provides that a denial of a motion to dismiss by the Labor Arbiter is not subject to an appeal. Locsin also argues that even if the Labor Arbiter committed grave abuse of discretion in denying the NCLPI motion, a special civil action for*certiorari*, filed with the CA was not the appropriate remedy, since this was a breach of the doctrine of exhaustion of administrative remedies.

Substantively, Locsin submits that he is a regular employee of NCLPI since - as he argued before the Labor Arbiter and the CA - his relationship with the company meets the four-fold test.

First, Locsin contends that NCLPI had the power to engage his services as EVP/Treasurer. *Second,*he received regular wages from NCLPI, from which his SSS and Philhealth contributions, as well as his withholding taxes were deducted. *Third,* NCLPI had the power to terminate his employment.[22] *Lastly,*Nissan had control over the manner of the performance of his functions as EVP/Treasurer, as shown by the 13 years of faithful execution of his job, which he carried out in accordance

with the standards and expectations set by NCLPI.[23] Further, Locsin maintains that even after his election as Chairman, he essentially performed the functions of EVP/Treasurer handling the financial and administrative operations of the Corporation thus making him a regular employee.[24]

Under these claimed facts, Locsin concludes that the Labor Arbiter and the NLRC not the RTC (as NCLPI posits) has jurisdiction to decide the controversy. Parenthetically, Locsin clarifies that he does not dispute the validity of his election as Chairman of the Board on January 1, 2005. Instead, he theorizes that he never lost his position as EVP/Treasurer having continuously performed the functions appurtenant thereto.[25] Thus, he questions his unceremonious removal as EVP/Treasurer during the August 5, 2005 special Board meeting.

THE RESPONDENTS ARGUMENTS

It its April 17, 2009 Comment,[26] Nissan prays for the denial of the petition for lack of merit. Nissan submits that the CA correctly ruled that the Labor Arbiter does not have jurisdiction over Locsins complaint for illegal dismissal. In support, Nissan maintains that Locsin is a corporate officer and not an employee. In addressing the procedural defect Locsin raised, Nissan brushes the issue aside, stating that (1) this issue was belatedly raised in the Motion for Reconsideration, and that (2) in any case, Rule VI, Section 2(1) of the NLRC does not apply since only *appealable* decisions, resolutions and orders are covered under the rule.

THE COURTS RULING

We resolve to deny the petition for lack of merit.

At the outset, we stress that there are two (2) important considerations in the final determination of this case. On the one hand, Locsin raises a procedural issue that, if proven correct, will require the Court to dismiss the instant petition for using an improper remedy. On the other hand, there is the substantive issue that will be disregarded if a strict implementation of the rules of procedure is upheld.
Prefatorily, we agree with Locsins submission that the NCLPI incorrectly elevated the Labor Arbiters denial of the Motion to Dismiss to the CA. Locsin is correct in positing that the denial of a motion to dismiss is unappealable. As a general rule, an aggrieved partys proper recourse to the denial is to file his position paper, interpose the grounds relied upon in the motion to dismiss before the labor arbiter, and actively participate in the proceedings. Thereafter, the labor arbiters decision can be appealed to the NLRC, not to the CA.

As a rule, we strictly adhere to the rules of procedure and do everything we can, to the point of penalizing violators, to encourage respect for these rules. We take exception to this general rule, however, when a strict implementation of these rules would cause substantial injustice to the parties.

We see it appropriate to apply the exception to this case for the reasons discussed below; hence, we are compelled to go beyond procedure and rule on the merits of the case. In the context of this case, we see sufficient justification to rule on the employer-employee relationship issue raised by NCLPI, even though the Labor Arbiters interlocutory order was *incorrectly* brought to the CA under Rule 65.

The NLRC Rules are clear: the denial by the labor arbiter of the motion to dismiss is not appealable because the denial is merely an interlocutory order.

In *Metro Drug v. Metro Drug Employees,*[27] we definitively stated that the denial of a motion to dismiss by a labor arbiter is not immediately appealable.[28]

We similarly ruled in *Texon Manufacturing v. Millena,*[29] in *Sime Darby Employees Association v. National Labor Relations Commission*[30] and in *Westmont Pharmaceuticals v. Samaniego.*[31] In *Texon,* we specifically said:

> The Order of the Labor Arbiter denying petitioners motion to dismiss is interlocutory. It is well-settled that a **denial of a motion to dismiss a complaint is an interlocutory order** and hence, **cannot be appealed**, until a final judgment on the merits of the case is rendered. [Emphasis supplied.][32]

and indicated the appropriate recourse in *Metro Drug*, as follows:[33]

> x x x The NLRC rule proscribing appeal from a denial of a motion to dismiss is similar to the general rule observed in civil procedure that an order denying a motion to dismiss is interlocutory and, hence, not appealable until final judgment or order is rendered [1 Feria and Noche, Civil Procedure Annotated 453(2001 ed.)]. The remedy of the aggrieved party in case of denial of the motion to dismiss is to **file an answer and interpose, as a defense or defenses, the ground or grounds relied upon in the motion to dismiss, proceed to trial and, in case of adverse judgment, to elevate the entire case by appeal in due course**[*Mendoza v. Court of Appeals*, G.R. No. 81909, September 5, 1991, 201 SCRA 343]. In order to avail of the extraordinary writ of *certiorari,* it is incumbent upon petitioner to establish that the denial of the motion to dismiss was tainted with grave abuse of discretion. [*Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, G.R. No. 115104, October 12, 1998, 297 SCRA 602]

In so citing *Feria* and *Noche*, the Court was referring to Sec. 1 (b), Rule 41 of the Rules of Court, which specifically enumerates **interlocutory orders** as one of the court actions that cannot be appealed. In the same rule, as amended by A.M. No. 07-7-12-SC, the aggrieved party is allowed to file an appropriate special civil action under Rule 65. The latter rule, however, also contains limitations for its application, clearly outlined in its Section 1 which provides:

> Section 1. Petition for certiorari.
>
> When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law,** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

In the labor law setting, a plain, speedy and adequate remedy is still open to the aggrieved party when a labor arbiter denies a motion to dismiss. This is Article 223 of Presidential Decree No. 442, as amended (*Labor Code*),[34] which states:

> ART. 223. *APPEAL*
>
> Decisions, awards, or orders of the Labor Arbiter are final and executory unless **appealed to the Commission by any or both parties within ten (10) calendar days**

from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is **prima facie evidence of abuse of discretion** on the part of the Labor Arbiter; x x x [Emphasis supplied.]

Pursuant to this Article, we held in *Metro Drug* (citing *Air Services Cooperative, et al. v. Court of Appeals*[35]) that the NLRC is clothed with sufficient authority to correct any claimed erroneous assumption of jurisdiction by labor arbiters:

> In *Air Services Cooperative, et al. v. The Court of Appeals, et al*., a case where the jurisdiction of the labor arbiter was put in issue and was assailed through a petition for *certiorari,* prohibition and annulment of judgment before a regional trial court, this Court had the opportunity to expound on the nature of appeal as embodied in Article 223 of the Labor Code, thus:
>
> > x x x Also, while the title of the Article 223 seems to provide only for the remedy of appeal as that term is understood in procedural law and as distinguished from the office of certiorari, nonetheless, a closer reading thereof reveals that it is not as limited as understood by the petitioners x x x.
> >
> > **Abuse of discretion is admittedly within the ambit of certiorari and its grant of review thereof to the NLRC** indicates the lawmakers intention to broaden the meaning of appeal as that term is used in the Code. For this reason, **petitioners cannot argue now that the NLRC is devoid of any corrective power to rectify a supposed erroneous assumption of jurisdiction by the Labor Arbiter** x x x. [*Air Services Cooperative, et al. v. The Court of Appeals, et al*. G.R. No. 118693, 23 July 1998, 293 SCRA 101]
>
> Since the legislature had clothed the NLRC with the appellate authority to correct a claimed erroneous assumption of jurisdiction on the part of the labor arbiter a case of grave abuse of discretion - the **remedy availed of by petitioner in this case is patently erroneous as recourse in this case is lodged**, under the law, **with the NLRC**.

In *Metro Drug,* as in the present case, the defect imputed through the NCLPI Motion to Dismiss is the labor arbiters lack of jurisdiction since Locsin is alleged to be a corporate officer, not an employee. Parallelisms between the two cases is undeniable, as they are similar on the following points: (1) in *Metro Drug,* as in this case, the Labor Arbiter issued an Order denying the Motion to Dismiss by one of the parties; (2) the basis of the Motion to Dismiss is also the alleged lack of jurisdiction by the Labor Arbiter to settle the dispute; and (3) dissatisfied with the Order of the Labor Arbiter, the aggrieved party likewise elevated the case to the CA *via* Rule 65.

The similarities end there, however. Unlike in the present case, the CA denied the petition for*certiorari* and the subsequent Motion for Reconsideration in *Metro Drug*; the CA correctly found that the proper appellate mechanism was an appeal to the NLRC and not a petition for *certiorari* under Rule 65. In the present case, the CA took a different position despite our clear ruling in *Metro Drug*, and allowed, not only the use of Rule 65, but also ruled on the merits.

From this perspective, the CA clearly erred in the application of the procedural rules by disregarding the relevant provisions of the NLRC Rules, as well as the requirements for a petition for certiorari under

the Rules of Court. To reiterate, the proper action of an aggrieved party faced with the labor arbiters denial of his motion to dismiss is to submit his position paper and raise therein the supposed lack of jurisdiction. The aggrieved party cannot immediately appeal the denial since it is an interlocutory order; the appropriate remedial recourse is the procedure outlined in Article 223 of the Labor Code, not a petition for *certiorari* under Rule 65.

A strict implementation of the NLRC Rules and the Rules of Court would cause injustice to the parties because the Labor Arbiter clearly has no jurisdiction over the present intra-corporate dispute.

Our ruling in *Mejillano v. Lucillo*[36] stands for the proposition that we should strictly apply the rules of procedure. We said:

> Time and again, we have ruled that procedural rules do not exist for the convenience of the litigants. Rules of Procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. **Procedural rules were established primarily to provide order to and enhance the efficiency of our judicial system**. [Emphasis supplied.]

An exception to this rule is our ruling in *Lazaro v. Court of Appeals*[37] where we held that the strict enforcement of the rules of procedure may be relaxed in *exceptionally meritorious cases*:

> x x x **Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights.** Like all rules, **they are required to be followed *except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed***. The Court reiterates that rules of procedure, especially those prescribing the time within which certain acts must be done, "have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. x x x The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice x x x. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions." Indeed, in no uncertain terms, the Court held that the said rules **may be relaxed only in exceptionally meritorious cases.** [Emphasis supplied.]

Whether a case involves an *exceptionally meritorious* circumstance can be tested under the guidelines we established in *Sanchez v. Court of Appeals*,[38] as follows:

> Aside from **matters of life, liberty, honor or property** which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower courts findings of fact, the other elements that should be considered are the following: (a) **the existence of special or compelling circumstances**, (b) the **merits of the case**, (c) a **cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules**, (d) a **lack of any showing that the review sought is merely frivolous and dilator**y, and (e) the **other party will not be unjustly prejudiced thereby**. [Emphasis supplied.]

Under these standards, we hold that exceptional circumstances exist in the present case to merit the relaxation of the applicable rules of procedure.

Due to existing exceptional circumstances, the ruling on the merits that Locsin is an officer and not an employee of Nissan must take precedence over procedural considerations.

We arrived at the conclusion that we should go beyond the procedural rules and immediately take a look at the intrinsic merits of the case based on several considerations.

First, the parties have sufficiently ventilated their positions on the disputed employer-employee relationship and have, in fact, submitted the matter for the CAs consideration.

Second, the CA correctly ruled that no employer-employee relationship exists between Locsin and Nissan.

Locsin was undeniably Chairman and President, and was elected to these positions by the Nissan board pursuant to its By-laws.[39] As such, he was a corporate officer, not an employee. The CA reached this conclusion by relying on the submitted facts and on Presidential Decree 902-A, which defines corporate officers as those officers of a corporation who are given that character either by the Corporation Code or by the corporations by-laws. Likewise, Section 25 of Batas Pambansa Blg. 69, or the Corporation Code of the Philippines (*Corporation Code*) provides that corporate officers are the **president**, secretary,**treasurer** and such **other officers as may be provided for in the by-laws**.

Third. Even as Executive Vice-President/Treasurer, Locsin already acted as a corporate officer because the position of Executive Vice-President/Treasurer is provided for in Nissans By-Laws. Article IV, Section 4 of these By-Laws specifically provides for this position, as follows:

ARTICLE IV

Officers

> Section 1. Election and Appointment The Board of Directors at their first meeting, annually thereafter, shall elect as officers of the Corporation a Chairman of the Board, a President, **an Executive Vice-President/Treasurer**, a Vice-President/General Manager and a Corporate Secretary. The other Senior Operating Officers of the Corporation shall be appointed by the Board upon the recommendation of the President.
>
> x x x x
>
> Section 4. Executive Vice-President/Treasurer The Executive Vice-President/Treasurer shall have such powers and perform such duties as are prescribed by these By-Laws, and as may be required of him by the Board of Directors. As the concurrent Treasurer of the Corporation, he shall have the charge of the funds, securities, receipts, and disbursements of the Corporation. He shall deposit, or cause to be deposited, the credit of the Corporation in such banks or trust companies, or with such banks of other depositories, as the Board of Directors may from time to time designate. He shall tender to the President or to the Board of Directors whenever required an account of the financial condition of the corporation and of all his transactions as Treasurer. As soon as practicable after the close of each fiscal year, he shall make and submit to the Board of Directors a like report of such fiscal year. He shall keep correct books of account of all the business and transactions of the Corporation.

In *Okol v. Slimmers World International*,[40] citing *Tabang v. National Labor Relations Commission*,[41] we held that

> x x x an office is **created by the charter of the corporation and the officer is elected by the directors or stockholders**. On the other hand, an employee usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee. [Emphasis supplied.]

In this case, Locsin was **elected** by the NCLPI Board, in accordance with the **Amended By-Laws**of the corporation. The following factual determination by the CA is elucidating:

> More important, private respondent failed to state any such circumstance by which the petitioner corporation engaged his services as corporate officer that would make him an employee. In the first place, the Vice-President/Treasurer was *elected* on an annual basis as provided in the By-Laws, and no duties and responsibilities were stated by private respondent which he discharged while occupying said position *other than those specifically set forth in the By-Laws or required of him by the Board of Directors.* The unrebutted fact remains that private respondent held the position of Executive Vice-President/Treasurer of petitioner corporation, a position provided for in the latters by-laws, by virtue of election by the Board of Directors, and has functioned as such Executive Vice-President/Treasurer pursuant to the provisions of the said By-Laws.Private respondent knew very well that he was simply not re-elected to the said position during the August 5, 2005 board meeting, but he had objected to the election of a new set of officers held at the time upon the advice of his lawyer that he cannot be terminated or replaced as Executive Vice-President/Treasurer as he had attained tenurial security.[42]

We fully agree with this factual determination which we find to be sufficiently supported by evidence. We likewise rule, based on law and established jurisprudence, that **Locsin**, at the time of his severance from NCLPI, was the latters **corporate officer.**

a. <u>The Question of Jurisdiction</u>

Given Locsins status as a corporate officer, the RTC, not the Labor Arbiter or the NLRC, has jurisdiction to hear the legality of the termination of his relationship with Nissan. As we also held in *Okol,*a corporate officers dismissal from service is an intra-corporate dispute:

> In a number of cases [*Estrada v. National Labor Relations Commission*, G.R. No. 106722, 4 October 1996, 262 SCRA 709; *Lozon v. National Labor Relations Commission,* 310 Phil. 1 (1995); *Espino v. National Labor Relations Commission*, 310 Phil. 61 (1995); *Fortune Cement Corporation v. National Labor Relations Commission*, G.R. No. 79762, 24 January 1991, 193 SCRA 258], we have held that a **corporate officers dismissal is always a corporate act**, or an **intra-corporate controversy** which arises between a stockholder and a corporation.[43] [Emphasis supplied.]

so that the RTC should exercise jurisdiction based on the following legal reasoning:

> Prior to its amendment, Section 5(c) of Presidential Decree No. 902-A (PD 902-A) provided that intra-corporate disputes fall within the jurisdiction of the Securities and Exchange Commission (SEC):

> Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:
>
> x x x x
>
> c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

Subsection 5.2, Section 5 of Republic Act No. 8799, which took effect on 8 August 2000, transferred to regional trial courts the SECs jurisdiction over all cases listed in Section 5 of PD 902-A:

> 5.2. The Commissions jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate **Regional Trial Court**. [Emphasis supplied.]

b. Precedence of Substantive Merits; Primacy of Element of Jurisdiction

Based on the above jurisdictional considerations, we would be forced to remand the case to the Labor Arbiter for further proceedings if we were to dismiss the petition outright due to the wrongful use of Rule 65.[44] We cannot close our eyes, however, to the factual and legal reality, established by evidence already on record, that Locsin is a corporate officer whose termination of relationship is outside a labor arbiters jurisdiction to rule upon.

Under these circumstances, **we have to give precedence to the merits of the case, and primacy to the element of jurisdiction. Jurisdiction is the power to hear and rule on a case and is the threshold element that must exist before any quasi-judicial officer can act. In the context of the present case, the Labor Arbiter does not have jurisdiction over the termination dispute Locsin brought, and should not be allowed to continue to act on the case after the absence of jurisdiction has become obvious, based on the records and the law.** In more practical terms, a contrary ruling will only cause substantial delay and inconvenience as well as unnecessary expenses, to the point of injustice, to the parties. This conclusion, of course, does not go into the merits of termination of relationship and is without prejudice to the filing of an intra-corporate dispute on this point before the appropriate RTC.

WHEREFORE, we **DISMISS** the petitioners petition for review on *certiorari*, and **AFFIRM** the Decision of the Court of Appeals, in CA-G.R. SP No. 103720, promulgated on August 28, 2008, as well as its Resolution of December 9, 2008, which reversed and set aside the March 10, 2008 Order of Labor Arbiter Concepcion in NLRC NCR Case No. 00-06-06165-07. This Decision is without prejudice to petitioner Locsins available recourse for relief through the appropriate remedy in the proper forum.

No pronouncement as to costs.

RURAL BANK OF CORON (PALAWAN), INC., EMPIRE COLD STORAGE AND DEVELOPMENT CORPORATION, CITIZENS DEVELOPMENT INCOPRORATED, CARIDAD B. GARCIA, SANDRA G. ESCAT, LORNA GARCIA, and OLGA G. ESCAT, petitioners,
vs.
ANNALISA CORTES, respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

In 1987, Virgilio Garcia, "founder" of petitioner corporations (the corporations), hired the then still single Annalisa Cortes (respondent) as clerk of the Rural Bank of Coron (Manila Office).

After Virgilio died, his son Victor took over the management of the corporations.

Anita Cortes (Anita), the wife of Victor Garcia, was also involved in the management of the corporations. Respondent later married Anita's brother Eduardo Cortes.

Anita soon assumed the position of Vice President of petitioner Citizens Development Incorporated (CDI) and practically controlled the financial operations of almost all of the other corporations in the course of which she allowed some of her relatives and in-laws, including respondent, to hold several key sensitive positions thereat.

Respondent later became the Financial Assistant, Personnel Officer and Corporate Secretary of The Rural Bank of Coron, Personnel Officer of CDI, and also Personnel Officer and Disbursing Officer of The Empire Cold Storage Development Corporation (ECSDC). She simultaneously received salaries from these corporations.

On examination of the financial books of the corporations by petitioner Sandra Garcia Escat, a daughter of Virgilio Garcia who was previously residing in Spain, she found out that respondent was involved in several anomalies,[1] drawing petitioners to terminate respondent's services on November 23, 1998 in petitioner corporations.[2]

By letter of November 25, 1998[3] addressed to individual petitioners Caridad B. Garcia (widow of Virgilio Garcia), Sandra G. Escat, and Olga G. Escat (another daughter of Virgilio Garcia), respondent's counsel conveyed respondent's willingness to abide by the decision to terminate her but reminded them that she was entitled to separation pay equivalent to 11 months salary as well as to the other benefits provided by law in her favor.

Respondent's counsel thus demanded the payment of respondent's unpaid salary for the months of October and November 1998, separation pay equivalent to 12 months salary,[4] 13th month pay and other benefits.

As the demand remained unheeded, respondent filed a complaint[5] for illegal dismissal and non-payment of salaries and other benefits, docketed as NLRC-NCR Case No. 00-05-05738-99.

Petitioners moved for the dismissal of the complaint on the ground of lack of jurisdiction, contending that the case was an intra-corporate controversy involving the removal of a corporate officer, respondent being the Corporate Secretary of the Rural Bank of Coron, Inc., hence, cognizable by the Securities and Exchange Commission (SEC) pursuant to Section 5 of PD 902-A.[6]

In resolving the issue of jurisdiction, the Labor Arbiter noted as follows:

> It is to be noted that complainant, aside from her being Corporate Secretary of Rural Bank of Coron,**complainant was likewise appointed as Financial Assistant & Personnel Officer of all respondents herein**, whose services w[ere] terminated on 23 November 1998, hence, the instant complaint.
>
> Verily, **a Financial Assistant & Personnel Officer is not a Corporate Officer of the [petitioners'] corporation**, thus, pursuant to Article 217 of the Labor Code, as amended, the instant case falls within the ambit of original and exclusive jurisdiction of this Office.[7] (Emphasis and underscoring supplied).

Eventually, the Labor Arbiter found for respondent, computing the monetary award due her as follows:

Backwages	P658,000.00
13th Month Pay for 1998, 1999 & 2000	63,000.00
	P721,000.00
Separation Pay	315,000.00
Unpaid Salary	25,900.00
Attorney's fees	106,190.00
	P1,168,090.00

Thus, the Labor Arbiter, by Decision of July 18, 2001, disposed:

> WHEREFORE, in view of all the foregoing, respondents are hereby ordered to jointly and severally pay complainant the total amount of ONE MILLION ONE HUNDRED SIXTY-EIGHT THOUSAND NINETY (₱1,168,090.00) PESOS as discussed above.[8]

On August 13, 2001, the tenth or last day of the period of appeal,[9] petitioners filed a *Notice of Appeal and Motion for Reduction of Bond*[10] to which they attached a *Memorandum on Appeal*.[11] In their *Motion for Reduction of Bond*, petitioners alleged that the corporations were under financial distress and the Rural Bank of Coron was under receivership. They thus prayed that the amount of bond be substantially reduced, preferably to one half thereof or even lower.[12]

By Resolution of October 16, 2001[13], the National Labor Relations Commission (NLRC), while noting that petitioners timely filed the appeal, held that the same was not accompanied by an appeal bond, a mandatory requirement under Article 223[14] of the Labor Code and Section 6, Rule VI of the NLRC New Rules of Procedure. It also noted that the *Motion for Reduction of Bond* was "premised on self-serving allegations." It accordingly dismissed the appeal.

Petitioners' Motion for Reconsideration[15] was denied by the NLRC by November 26, 2001 Resolution,[16] hence, they filed a Petition for Certiorari[17] before the Court of Appeals.

By Decision dated May 26, 2004[18], the appellate court dismissed the petition for lack of merit. Petitioners' motion for reconsideration was also denied by Resolution of August 13, 2004.[19]

Hence, this petition,[20] petitioners faulting the appellate court for:

I

> . . . FAIL[URE] TO RULE THAT THE NLRC'S RULE OF PROCEDURE WHICH PROVIDES FOR THE POSTING OF A BOND AS A CONDITION PRECEDENT FOR PERFECTING AN APPEAL AS A CONDITION PRECEDENT FOR PERFECTING AN APPEAL IS CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE.

II

> . . . DISMISS[ING] PETITIONERS['] PETITION FOR [CERTIORARI] BASED ON TECHNICALITY AND FAIL[URE] TO DECIDE THE SAME BASED ON ITS MERIT.

III

> . . . DISMISSING PETITIONERS' PETITION FOR CERTIORARI FROM THE DECISION OF THE NLRC FOR NON-PERFECTION THEREOF.

IV

> . . . DISMISSING PETITIONERS' PETITION FOR [CERTIORARI] FROM THE DECISION OF THE NLRC WITHOUT RESOLVING THE CASE BASED ON ITS MERITS.

V

> . . . FAIL[URE] TO DECLARE THAT INDIVIDUAL PETITIONERS ARE NOT SOLIDARY LIABLE TO PAY THE RESPONDENT FOR HER MONETARY CLAIM IN VIEW OF THE ABSENCE OF ANY EVIDENCE SHOWING THAT THEY WERE MOTIVATED BY ILL-WILL OR MALICE IN SEVERING HER EMPLOYMENT.

VI

> . . . FAIL[URE] TO RESOLVE THE ISSUE OF JURISDICTION.[21]

While, indeed, respondent was the Corporate Secretary of the Rural Bank of Coron, she was also its Financial Assistant and the Personnel Officer of the two other petitioner corporations.[22]

Mainland Construction Co., Inc. v. Movilla[23] instructs that a corporation can engage its corporate officers to perform services under a circumstance which would make them employees.[24]

The Labor Arbiter has thus jurisdiction over respondent's complaint.

On the first three assigned errors which bear on whether petitioners' appeal before the NLRC was perfected:

As before the Court of Appeals, petitioners cite *Cosico, Jr. v. NLRC[25]* and *Taberrah v. NLRC[26]* in support of their contention that their appeal before the NLRC was perfected. As correctly ruled by the Court of Appeals, however, the cited cases are not in point.

> … The appellant in *Taberrah* filed a motion to fix appeal bond instead of posting an appeal bond; and the Supreme Court relaxed the requirement considering that the labor arbiter's decision did not contain a computation of the monetary award. In *Cosico,* the appeal bond posted was of insufficient amount but the Supreme Court ruled that provisions of the Labor Code on requiring a

bond on appeal involving monetary awards must be given liberal interpretation in line with the desired objective of resolving controversies on their merits. Herein**, no appeal bond, whether sufficient or not, was ever filed by the petitioners.**[27] (Italics in the original; emphasis and underscoring supplied)

Petitioners additionally cite *Star Angel Handicraft v. NLRC[28]* to support their position that there is a distinction between the filing of an appeal within the reglementary period and its perfection. In the parallel case of *Computer Innovations Center v. National Labor Relations Commission*,[29] this Court hesitated to reiterate the doctrine in *Star Angel* in this wise:

> Petitioners invoke the aforementioned holding in *Star Angel* that there is a distinction between the filing of an appeal within the reglementary period and its perfection, and that the appeal may be perfected after the said reglementary period. Indeed, *Star Angel* held that the filing of a motion for reduction of appeal bond necessarily stays the reglementary period for appeal. However, in this case, the motion for reduction of appeal bond, which was incorporated in the appeal memorandum, was filed only on the tenth or final day of the reglementary period. Under such circumstance, **the motion for reduction of appeal bond can no longer be deemed to have stayed the appeal, and the petitioner faces the risk, as had happened in this case, of summary dismissal of the appeal for non-perfection.**
>
> Moreover, the reference in *Star Angel* to the distinction between the period to file the appeal and to perfect the appeal has been pointedly made only once by this Court in *Gensoli v. NLRC* thus, it has not acquired the sheen of venerability reserved for repeatedly-cited cases. The distinction, if any, is not particularly evident or material in the Labor Code; hence, the reluctance of the Court to adopt such doctrine. Moreover, **the present provision in the NLRC Rules of Procedure,** that "the filing of a motion to reduce bond shall not stop the running of the period to perfect appeal" **flatly contradicts the notion expressed in *Star Angel* that there is a distinction between the filing an appeal and perfecting an appeal.**
>
> Ultimately, the disposition of *Star Angel* was premised on the ruling that a motion for reduction of the appeal bond necessarily stays the period for perfecting the appeal, and that the employer cannot be expected to perfect the appeal by posting the proper bond until such time the said motion for reduction is resolved. **The unduly stretched-out distinction between the period to file an appeal and to perfect an appeal was not material to the resolution of *Star Angel*, and this could be properly considered as *obiter dictum.***[30](Italics in the original; emphasis and underscoring supplied)

The appellate court did not thus err in dismissing the petition before it. And contrary to petitioners' assertion, the appellate court dismissed its petition not "on a mere technicality." For the non-posting of an appeal bond within the reglementary period divests the NLRC of its jurisdiction to entertain the appeal. Thus, in the same case of *Computer Innovations Center*, this Court held:

> Petitioners also characterize the appeal bond requirement as a technical rule, and that the dismissal of an appeal on purely technical grounds is frowned upon. However, **Article 223, which prescribes the appeal bond requirement, is a rule of jurisdiction and not of procedure.** There is a little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities. It must be emphasized that there is no inherent right to an appeal in a labor case, as it arises solely from grant of statute, namely the Labor Code.
>
> We have indeed held that the **requirement for posting the surety bond** is not merely procedural but**jurisdictional** and cannot be trifled with. Non-compliance with such legal requirements is fatal

and has the effect of rendering the judgment final and executory. The petitioners cannot be allowed to seek refuge in a liberal application of rules for their act of negligence.[31] (Emphasis and underscoring supplied)

It bears emphasis that all that is required to perfect the appeal is the posting of a bond to ensure that the award is eventually paid should the appeal be dismissed. Petitioners should thus have posted a bond, even if it were only partial, but they did not. No relaxation of the Rule may thus be considered.[32]

In the case at bar, petitioner did not post a **full** or **partial** appeal bond within the prescribed period, thus, no appeal was perfected from the decision of the Labor Arbiter. For this reason, the decision sought to be appealed to the NLRC had become final and executory and therefore immutable. Clearly then, the NLRC has no authority to entertain the appeal, much less to reverse the decision of the Labor Arbiter. Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceeding held for that purpose.[33] (Emphasis and underscoring supplied)

As the decision of the Labor Arbiter had become final and executory, a discussion of the fourth and fifth assigned errors is no longer necessary.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Quisumbing, J., Chairperson, Carpio, Tinga, and Velasco, Jr., JJ., concur.

PEOPLES BROADCASTING SERVICE (BOMBO RADYO PHILS., INC.), Petitioner, - versus - **THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, THE REGIONAL DIRECTOR, DOLE REGION VII, and JANDELEON JUEZAN,** Respondents.	**G.R. No. 179652** Present: CORONA, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO,* ABAD, VILLARAMA, JR., PEREZ, MENDOZA, SERENO, REYES, and PERLAS-BERNABE, *JJ*. Promulgated: March 6, 2012

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R E S O L U T I O N

VELASCO, JR., *J.*:

In a Petition for Certiorari under Rule 65, petitioner Peoples Broadcasting Service, Inc. (Bombo Radyo Phils., Inc.) questioned the Decision and Resolution of the Court of Appeals (CA) dated October 26, 2006 and June 26, 2007, respectively, in C.A. G.R. CEB-SP No. 00855.

Private respondent Jandeleon Juezan filed a complaint against petitioner with the Department of Labor and Employment (DOLE) Regional Office No. VII, Cebu City, for illegal deduction, nonpayment of service incentive leave, 13th month pay, premium pay for holiday and rest day and illegal diminution of benefits, delayed payment of wages and noncoverage of SSS, PAG-IBIG and Philhealth.[1] After the conduct of summary investigations, and after the parties submitted their position papers, the DOLE Regional Director found that private respondent was an employee of petitioner, and was entitled to his money claims.[2] Petitioner sought reconsideration of the Directors Order, but failed. The Acting DOLE Secretary dismissed petitioners appeal on the ground that petitioner submitted a Deed of Assignment of Bank Deposit instead of posting a cash or surety bond. When the matter was brought before the CA, where petitioner claimed that it had been denied due process, it was held that petitioner was accorded due process as it had been given the opportunity to be heard, and that the DOLE Secretary had jurisdiction over the matter, as the jurisdictional limitation imposed by Article 129 of the Labor Code on the power of the DOLE Secretary under Art. 128(b) of the Code had been repealed by Republic Act No. (RA) 7730.[3]

In the Decision of this Court, the CA Decision was reversed and set aside, and the complaint against petitioner was dismissed. The dispositive portion of the Decision reads as follows:

WHEREFORE, the petition is **GRANTED**. The Decision dated 26 October 2006 and the Resolution dated 26 June 2007 of the Court of Appeals in C.A. G.R. CEB-SP No. 00855 are **REVERSED** and **SET ASIDE.** The Order of the then Acting Secretary of the Department of Labor and Employment dated 27 January 2005 denying petitioners appeal, and the Orders of the Director, DOLE Regional Office No. VII, dated 24 May 2004 and 27 February 2004, respectively, are **ANNULLED.** The complaint against petitioner is **DISMISSED**.[4]

The Court found that there was no employer-employee relationship between petitioner and private respondent. It was held that while the DOLE may make a determination of the existence of an employer-employee relationship, this function could not be co-extensive with the visitorial and enforcement power provided in Art. 128(b) of the Labor Code, as amended by RA 7730. The National Labor Relations Commission (NLRC) was held to be the primary agency in determining the existence of an employer-employee relationship. This was the interpretation of the Court of the clause in cases where the relationship of employer-employee still exists in Art. 128(b).[5]

From this Decision, the Public Attorneys Office (PAO) filed a Motion for Clarification of Decision (with Leave of Court). The PAO sought to clarify as to when the visitorial and enforcement power of the DOLE be not considered as co-extensive with the power to determine the existence of an employer-employee relationship.[6] In its Comment,[7] the DOLE sought clarification as well, as to the extent of its visitorial and enforcement power under the Labor Code, as amended.

The Court treated the Motion for Clarification as a second motion for reconsideration, granting said motion and reinstating the petition.[8] It is apparent that there is a need to delineate the jurisdiction of the DOLE Secretary vis--vis that of the NLRC.

Under Art. 129 of the Labor Code, the power of the DOLE and its duly authorized hearing officers to hear and decide any matter involving the recovery of wages and other monetary claims and benefits was qualified by the proviso that the complaint not include a claim for reinstatement, or that the aggregate money claims not exceed PhP 5,000. RA 7730, or an *Act Further Strengthening the Visitorial and Enforcement Powers of the Secretary of Labor*, did away with the PhP 5,000 limitation, allowing the DOLE Secretary to exercise its visitorial and enforcement power for claims beyond PhP 5,000. The only qualification to this expanded power of the DOLE was only that there still be an existing employer-employee relationship.

It is conceded that if there is no employer-employee relationship, whether it has been terminated or it has not existed from the start, the DOLE has no jurisdiction. Under Art. 128(b) of the Labor Code, as amended by RA 7730, the first sentence reads, Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. It is clear and beyond debate that an employer-employee relationship must exist for the exercise of the visitorial and enforcement power of the DOLE. The question now arises, may the DOLE make a determination of whether or not an employer-employee relationship exists, and if so, to what extent?

The first portion of the question must be answered in the affirmative.

The prior decision of this Court in the present case accepts such answer, but places a limitation upon the power of the DOLE, that is, the determination of the existence of an employer-employee relationship cannot be co-extensive with the visitorial and enforcement power of the DOLE. But even in conceding the power of the DOLE to determine the existence of an employer-employee relationship, the

Court held that the determination of the existence of an employer-employee relationship is still primarily within the power of the NLRC, that any finding by the DOLE is merely preliminary.

This conclusion must be revisited.

No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship. No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. The law did not say that the DOLE would first seek the NLRCs determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship be disputed, the DOLE would refer the matter to the NLRC. The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128(b) of the Labor Code, as amended by RA 7730.

The DOLE, in determining the existence of an employer-employee relationship, has a ready set of guidelines to follow, the same guide the courts themselves use. The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employers power to control the employees conduct.[9] The use of this test is not solely limited to the NLRC. The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC.

The determination of the existence of an employer-employee relationship by the DOLE must be respected. The expanded visitorial and enforcement power of the DOLE granted by RA 7730 would be rendered nugatory if the alleged employer could, by the simple expedient of disputing the employer-employee relationship, force the referral of the matter to the NLRC. The Court issued the declaration that at least a *prima facie* showing of the absence of an employer-employee relationship be made to oust the DOLE of jurisdiction. But it is precisely the DOLE that will be faced with that evidence, and it is the DOLE that will weigh it, to see if the same does successfully refute the existence of an employer-employee relationship.

If the DOLE makes a finding that there is an existing employer-employee relationship, it takes cognizance of the matter, to the exclusion of the NLRC. The DOLE would have no jurisdiction only if the employer-employee relationship has already been terminated, or it appears, upon review, that no employer-employee relationship existed in the first place.

The Court, in limiting the power of the DOLE, gave the rationale that such limitation would eliminate the prospect of competing conclusions between the DOLE and the NLRC. The prospect of competing conclusions could just as well have been eliminated by according respect to the DOLE findings, to the exclusion of the NLRC, and this We believe is the more prudent course of action to take.

This is not to say that the determination by the DOLE is beyond question or review. Suffice it to say, there are judicial remedies such as a petition for certiorari under Rule 65 that may be availed of, should a party wish to dispute the findings of the DOLE.

It must also be remembered that the power of the DOLE to determine the existence of an employer-employee relationship need not necessarily result in an affirmative finding. The DOLE may well make the determination that no employer-employee relationship exists, thus divesting itself of jurisdiction over the case. It must not be precluded from being able to reach its own conclusions, not by the parties, and certainly not by this Court.

Under Art. 128(b) of the Labor Code, as amended by RA 7730, the DOLE is fully empowered to make a determination as to the existence of an employer-employee relationship in the exercise of its visitorial and enforcement power, subject to judicial review, not review by the NLRC.

There is a view that despite Art. 128(b) of the Labor Code, as amended by RA 7730, there is still a threshold amount set by Arts. 129 and 217 of the Labor Code when money claims are involved, i.e., that if it is for PhP 5,000 and below, the jurisdiction is with the regional director of the DOLE, under Art. 129, and if the amount involved exceeds PhP 5,000, the jurisdiction is with the labor arbiter, under Art. 217.The view states that despite the wording of Art. 128(b), this would only apply in the course of regular inspections undertaken by the DOLE, as differentiated from cases under Arts. 129 and 217, which originate from complaints. There are several cases, however, where the Court has ruled that Art. 128(b) has been amended to expand the powers of the DOLE Secretary and his duly authorized representatives by RA 7730. In these cases, the Court resolved that the DOLE had the jurisdiction, despite the amount of the money claims involved. Furthermore, in these cases, the inspection held by the DOLE regional director was prompted specifically by a complaint. Therefore, the initiation of a case through a complaint does not divest the DOLE Secretary or his duly authorized representative of jurisdiction under Art. 128(b).

To recapitulate, if a complaint is brought before the DOLE to give effect to the labor standards provisions of the Labor Code or other labor legislation, and there is a finding by the DOLE that there is an existing employer-employee relationship, the DOLE exercises jurisdiction to the exclusion of the NLRC.If the DOLE finds that there is no employer-employee relationship, the jurisdiction is properly with the NLRC. If a complaint is filed with the DOLE, and it is accompanied by a claim for reinstatement, the jurisdiction is properly with the Labor Arbiter, under Art. 217(3) of the Labor Code, which provides that the Labor Arbiter has original and exclusive jurisdiction over those cases involving wages, rates of pay, hours of work, and other terms and conditions of employment, if accompanied by a claim for reinstatement. If a complaint is filed with the NLRC, and there is still an existing employer-employee relationship, the jurisdiction is properly with the DOLE. The findings of the DOLE, however, may still be questioned through a petition for certiorari under Rule 65 of the Rules of Court.

In the present case, the finding of the DOLE Regional Director that there was an employer-employee relationship has been subjected to review by this Court, with the finding being that there was no employer-employee relationship between petitioner and private respondent, based on the evidence presented. Private respondent presented self-serving allegations as well as self-defeating evidence.[10]The findings of the Regional Director were not based on substantial evidence, and private respondent failed to prove the existence of an employer-employee relationship. The DOLE had no jurisdiction over the case, as there was no employer-employee relationship present. Thus, the dismissal of the complaint against petitioner is proper.

WHEREFORE, the Decision of this Court in G.R. No. 179652 is hereby **AFFIRMED**, with the**MODIFICATION** that in the exercise of the DOLEs visitorial and enforcement power, the Labor Secretary or the latters authorized representative shall have the power to determine the existence of an employer-employee relationship, to the exclusion of the NLRC.

SO ORDERED.