Republic of the Philippines
Supreme Court
Manila

# FIRST DIVISION

# N O T I C E

Sirs/Mesdames:

*Please take notice that the Court's First Division issued a Resolution dated* **October 19, 2022** *which reads as follows:*

**"G.R. No. 226259** ***(Angelina P. Santos, Elizabeth C. Perez, Ma. Thelma S. Farro, Merlita R. Dela Vega, Criselda M. Gangoso, Norma V. Paguio and Estela O. Rapada vs. Bicol Apparel Corporation and/or Gilda Rosca, Joy Rosca, Mario Cris and Mar Rosca).*** — Before the Court is a Petition for Review on *Certiorari*,[1] under Rule 45 of the Rules of Court, assailing the May 24, 2013 Decision[2] and the February 24, 2014 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. S.P. No. 120701, denying the monetary claims of Angelina P. Santos, Elizabeth C. Perez, Ma. Thelma S. Farro, Merlita R. Dela Vega, Criselda M. Gangoso, Norma V. Paguio and Estela O. Rapada *(petitioners)* against Bicol Apparel Corporation *(Bicol Apparel)* and/or Gilda Rosca, Joy Rosca, Mario Cris, and Mar Rosca (collectively, *respondents)*.

## Antecedents

Petitioners were employed by Bicol Apparel, a domestic corporation engaged in garment manufacturing, under the following circumstances:[4]

| Name | Position | Daily Rate | Year Employed |
|---|---|---|---|
| Santos, Angelina P. | Sewer | ₱260.00/8 hrs. | 1991 |
| Perez, Elizabeth C. | Sewer | ₱192.00/8 hrs. | 2002 |
| Farro, Ma. Thelma S. | Sewer | ₱192.00/8 hrs. | 2002 |

[1] *Rollo*, pp. 46-63.
[2] Id. at 65-74; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales.
[3] Id. at 76-77.
[4] Id. at 49-50.

- over – eighteen (18) pages ...

| | | | |
|---|---|---|---|
| Dela Vega, Merlita R. | Sewer/Sample Maker | ₱210.00/8 hrs. | 1991 |
| Gangoso, Criselda M. | Line Leader | ₱200.00/8 hrs. | 1994 |
| Paguio, Norma V. | QC | ₱180.00/8 hrs. | 1991 |
| Rapada, Estela O. | Sample QC | ₱150.00/8 hrs. | 1994 |

On November 10, 2009, petitioners filed a complaint before the Labor Arbiter *(LA)*, claiming underpayment of wages, nonpayment of overtime pay, holiday pay, service incentive leave pay, 13th month pay, and separation pay. They further alleged that they were dismissed in 2009, except for Norma Paguio *(Norma)*, whose employment was terminated in 2008.[5]

Petitioners averred that they were underpaid and had not received their statutory benefits since the start of their employment. To prove their allegations, petitioners, except for Norma and Merlita Dela Vega, submitted copies of their identification cards and pay slips.[6]

On the other hand, respondents countered that petitioners failed to present proof that they were entitled to their monetary claims, and at any rate, their claims are already barred by the three-year prescription period under Article 291[7] of the Labor Code. They also maintained that petitioners were neither illegally dismissed nor terminated for an authorized cause. Despite serious business losses, Bicol Apparel opted not to close its operations and instead, entered into an Agreement[8] with petitioners on November 15, 2006 and December 4, 2008, which effectively turned petitioners into its industrial partners.[9]

**Ruling of the LA**

On May 14, 2010, the LA rendered a Decision[10] in favor of respondents and dismissed the complaint for lack of jurisdiction.[11] The LA opined that the employer-employee relationship between the parties ceased

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[5] Id. at 66.
[6] Id.
[7] Now Article 306 of the Labor Code pursuant to Department of Labor and Employment, Department Advisory No. 1, Series of 2015, entitled "Renumbering of the Labor Code of the Philippines, as Amended." Approved: July 21, 2015.
[8] *Rollo*, pp. 67-68.
[9] Id.
[10] Id. at 79-85; penned by Labor Arbiter Gaudencio P. Demaisip, Jr.
[11] Id. at 85. The dispositive portion of the Decision reads:
"IN VIEW OF THE FOREGOING, the instant case is DISMISSED for lack of jurisdiction.
SO ORDERED."

to exist when they agreed to enter into a business partnership in 2006. As for the monetary claims for the years 2003 until 2006, the LA ruled that the same had already prescribed when the complaint was filed on November 10, 2009.[12]

## Ruling of the NLRC

On appeal, the National Labor Relations Commission *(NLRC)* promulgated its February 9, 2011 Decision[13] affirming the earlier findings of the LA and similarly concluded that petitioners' monetary claims had already prescribed. It likewise noted that petitioners failed to refute the Agreement, and that it was only on appeal that they denied having consented to the same. Lastly, it held that petitioners' failure to present payslips covering the years 2006 to 2009 only showed that they were no longer employees of Bicol Apparel during said period.[14]

Petitioners filed a motion for reconsideration, but the same was denied by the NLRC in its May 11, 2011 Resolution.[15] Dissatisfied, petitioners filed a petition for *certiorari* before the CA.

## Ruling of the CA

In the now assailed May 24, 2013 Decision, the CA affirmed the NLRC and disposed the petition for *certiorari* in the following manner:

> **WHEREFORE**, premises considered, the instant Petition is **DENIED**. The Decision dated February 9, 2011 and the Resolution dated May 11, 2011 of the National Labor Relations Commission in NLRC NCR Case No. 11-15538-09 (NLRC LAC No. 09-002098-10) are hereby **AFFIRMED**.
>
> **SO ORDERED**.[16]

The CA, however, disagreed with the LA and the NLRC as regards the absence of an employer-employee relationship between petitioners and respondents. It held that a partnership was not established because based on

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[12] Id. at 82-85.
[13] Id. at 87-93; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.
[14] Id. at 91-92.
[15] Id. at 95-96.
[16] Id. at 74.

the Agreement, instead of sharing in the profits, petitioners received "salaries" while control was still being exercised by Bicol Apparel.[17]

Regardless of its finding on the existence of an employer-employee relationship, the CA declared that petitioners' claims are barred by prescription. It held that petitioners may only demand benefits allegedly withheld from them within three years before the filing of their complaint on November 10, 2009. Further, the CA observed that petitioners were able to present their payslips for the years 1999 to 2004 only, and failed to adduce proof that they were employed by respondents during the lifetime of the Agreement. This is in contrast with the evidence submitted by Bicol Apparel consisting of payrolls which showed that petitioners had only worked until 2006.[18]

Finally, the CA denied the claim for separation pay due to the failure of petitioners to prove that they were dismissed in 2009, or in the case of Norma, in 2008.[19]

Petitioners filed their motion for reconsideration, but the CA denied the same *via* its Resolution dated February 24, 2014. Hence, this appeal.

**Issue**

Petitioners attribute the lone error of holding that their monetary claims are already barred by prescription against the CA. They argue that the CA should not have considered the self-serving claim of Bicol Apparel that they ceased to become its employees upon entering the Agreement on November 15, 2006 and December 4, 2008. They insist that they cannot be expected to present proof of their employment after 2006 because Bicol Apparel used the Agreement as a ploy to defeat their right to security of tenure. As such, they were not given payslips, and Bicol Apparel did not remit and pay their Social Security System, PhilHealth and Pag-ibig contributions after 2006.[20]

In refutation, respondents maintain that the LA and the NLRC had ruled correctly that they had no jurisdiction over the complaint because of the absence of an employer-employee relationship. They argue that even if the control test were to be applied, the same would still reveal that such

[17] Id. at 70-71.
[18] Id. at 72-73.
[19] Id. at 74.
[20] Id. at 59-60.

relationship did not exist. Respondents stress that Bicol Apparel did not exercise control over petitioners who, as industrial partners, had taken over the operations of its plant.[21]

Respondents further point out the procedural misstep committed by petitioners when they failed to submit a verified appeal pursuant to Section 4 of the New Rules of Procedure of the NLRC. They claim that petitioners' failure to verify their appeal is fatal, and did not toll the running of the prescriptive period to file such appeal. They submit that petitioners' appeal before the NLRC was not perfected.[22]

**Ruling of the Court**

The Court **DENIES** the petition.

*Verification is merely a formal requirement.*

Before resolving the petition on its merits, the Court shall first address the procedural matter raised by Bicol Apparel that petitioners filed a defective verification.

It is a settled rule that verification is merely a formal, not a jurisdictional requirement.[23] Courts may relax procedural rules, if needed, so as not to unjustly deprive a litigant the chance to present his or her case on the merits.[24] Noncompliance with verification or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.[25]

Thus, it is erroneous for Bicol Apparel to maintain that petitioners' appeal before the NLRC suffered a fatal defect for not complying with the rule on verification. As mentioned, verification does not affect the jurisdiction of the NLRC. It also bears emphasizing that labor cases have

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[21] Id. at 249-250.
[22] Id. at 251-252.
[23] *Joven v. Spouses Tulio*, G.R. No. 204567, August 4, 2021; *Eagle Clarc Shipping Philippines, Inc. v. National Labor Relations Commission (Fourth Division)*, G.R. No. 245370, July 13, 2020.
[24] *Eagle Clarc Shipping Philippines, Inc. v. National Labor Relations Commission (Fourth Division)*, id.
[25] *Altres v. Empleo*, 594 Phil. 246, 261 (2008).

never been strictly bound by technicalities of form and procedure[26] in order to serve the ends of substantial justice.

Having resolved the procedural issue, the Court shall now confront the substantive aspects of this petition.

*Claims for wage differentials, overtime pay, holiday pay, 13th month pay, and service incentive leave pay are already barred by prescription; no basis to award separation pay*

The CA, the NLRC and the LA similarly held that petitioners' monetary claims had already prescribed. The CA explained that Bicol Apparel's evidence proved that petitioners had been its employees only until the year 2006. Hence, when they filed their complaint on November 10, 2009, their monetary claims were already time-barred.

The Court agrees.

To recall, petitioners claim (1) wage differentials, (2) overtime pay, (3) holiday pay, (4) service incentive leave pay, and (5) 13th month pay. In addition, they assert their right to be paid separation benefits due to their dismissal from employment.

Notably, petitioners only sought payment for unpaid labor standard benefits. They did not question or assail the termination of their employment by Bicol Apparel. This was made clear by the LA in his decision noting that:

> The Complaint dated November 10, 2009 of the complainants did not raise the cause of action for illegal dismissal. Hence, this Office has no jurisdiction to entertain said matter.
>
> Also, the Amended Complaint dated December 8, 2000 did not allege illegal dismissal as a cause of action.
>
> Complainants, in their complaint of November 10, 2000, set forth solely labor standards claims.[27]

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[26] *Pacific Royal Basic Foods, Inc. v. Noche*, G.R. No. 202392, October 4, 2021.
[27] *Rollo*, p. 81.

In this regard, it is imperative to be precise with petitioners' cause of action in view of the different prescriptive periods provided for money claims arising from an employer-employee relationship and illegal termination. In the former, the prescriptive period is three years, while the action for illegal dismissal, which may include related monetary claims, prescribes in four years:

> Article 291 [of the Labor Code] covers claims for overtime pay, holiday pay, service incentive leave pay, bonuses, salary differentials, and illegal deductions by an employer. It also covers money claims arising from seafarer contracts.
>
> The provision, however, does not cover "money claims" consequent to an illegal dismissal such as backwages. It also does not cover claims for damages due to illegal dismissal. These claims are governed by Article 1146 of the Civil Code of the Philippines, x x x
>
> x x x x
>
> This four-year prescriptive period applies to claims for backwages, not the three-year prescriptive period under Article 291 of the Labor Code. A claim for backwages, according to this court, may be a money claim "by reason of its practical effect." Legally, however, an award of backwages "is merely one of the reliefs which an illegally dismissed employee prays the labor arbiter and the NLRC to render in his favor as a consequence of the unlawful act committed by the employer." Though it results "in the enrichment of the individual [illegally dismissed], the award of backwages is not in redress of a private right, but, rather, is in the nature of a command upon the employer to make public reparation for his violation of the Labor Code."
>
> Actions for damages due to illegal dismissal are likewise actions "upon an injury to the rights of the plaintiff." Article 1146 of the Civil Code of the Philippines, therefore, governs these actions.
>
> x x x x
>
> Applying these principles in this case, we agree that Arriola's claims for unpaid salaries have prescribed. Arriola filed his complaint three years and one day from the time he was allegedly dismissed and deprived of his salaries. Since a claim for unpaid salaries arises from employer-employee relations, Article 291 of the Labor Code applies. Arriola's claim for unpaid salaries was filed beyond the three-year prescriptive period.
>
> However, we find that Arriola's claims for backwages, damages, and attorney's fees arising from his claim of illegal dismissal have not yet prescribed when he filed his complaint with the Regional Arbitration

> Branch for the National Capital Region of the National Labor Relations Commission. As discussed, the prescriptive period for filing an illegal dismissal complaint is four years from the time the cause of action accrued. Since an award of backwages is merely consequent to a declaration of illegal dismissal, a claim for backwages likewise prescribes in four years.
>
> The four-year prescriptive period under Article 1146 also applies to actions for damages due to illegal dismissal since such actions are based on an injury to the rights of the person dismissed.[28] (Citations omitted)

Accordingly, petitioners' claims for wage differentials, overtime pay, holiday pay, 13th month pay, and accrued service incentive leave pay are subject to the three-year prescriptive period under Art. 306[29] of the Labor Code which reads:

> ARTICLE 306. *Money Claims*. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

As to when the cause of action accrues, the Court elucidated in *Philippine Long Distance Telephone Company v. Pingol*[30] that the same shall be reckoned from the day the action may be brought or when the claim starts as a legal possibility.[31] The Court further cited therein the circumstances which may validly interrupt the running of the prescription period, thus:

> The Labor Code has no specific provision on when a claim for illegal dismissal or a monetary claim accrues. Thus, the general law on prescription applies. Article 1150 of the Civil Code states:
>
> > Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted **from the day they may be brought**. [Emphasis in the original]
>
> ***The day the action may be brought* is the day a claim starts as a legal possibility.** In the present case, January 1, 2000 was the date that respondent Pingol was not allowed to perform his usual and regular job as a maintenance technician. Respondent Pingol cited the same date of dismissal in his complaint before the LA. As, thus, correctly ruled by the LA, the complaint filed had already prescribed.

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[28] *Arriola v. Pilipino Star Ngayon, Inc.*, 741 Phil. 171, 180-184 (2014).
[29] Formerly Article 291.
[30] 644 Phil. 675 (2010).
[31] Id. at 684.

> Respondent claims that between 2001 and 2003, he made follow-ups with PLDT management regarding his benefits. This, to his mind, tolled the running of the prescriptive period.
>
> The rule in this regard is covered by Article 1155 of the Civil Code. Its applicability in labor cases was upheld in the case of *International Broadcasting Corporation v. Panganiban* where it was written:
>
> > Like other causes of action, the prescriptive period for money claims is subject to interruption, and in the absence of an equivalent Labor Code provision for determining whether the said period may be interrupted, *Article 1155 of the Civil Code* may be applied, to wit:
> >
> > ART. 1155. The prescription of actions is interrupted when they are filed before the Court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.
> >
> > **Thus, the prescription of an action is interrupted by (a) the filing of an action, (b) a written extrajudicial demand by the creditor, and (c) a written acknowledgment of the debt by the debtor.**
>
> In this case, respondent Pingol never made any written extrajudicial demand. Neither did petitioner make any written acknowledgment of its alleged obligation. Thus, the claimed "follow-ups" could not have validly tolled the running of the prescriptive period. It is worthy to note that respondent never presented any proof to substantiate his allegation of follow-ups.[32] (Emphases supplied; italics in the original)

In sum, the three-year prescriptive period to file the complaint for money claims arising from an employer-employee relationship shall commence from the time that the claim becomes a legal possibility, or when the claim was unlawfully withheld by the employer. The three-year period may be interrupted when (1) a complaint is filed, (2) a written extrajudicial demand is made, or (3) the employer makes a written acknowledgment of its debt.

Hence, the Court is now confronted with the following questions: (1) when did petitioners' money claims become a legal possibility; and (2) was there an interruption of the three-year prescriptive period to claim the unpaid monetary benefits?

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[32] Id. at 684-685.

For the unpaid wage differentials, overtime pay, and holiday pay, petitioners' cause of action accrued the day after they received their respective wages, since that is when the claim had ripened into a legal possibility. As for the 13th month pay, the cause of action for payment ripens every 25th of December, since Presidential Decree *(P.D.)* No. 851, as amended, provides that it shall be paid not later than December 24 of every year.[33]

In *Auto Bus Transport Systems, Inc. v. Bautista*,[34] the Court laid down a simple rule to determine whether the employee's claims for payment of labor standard benefits have not yet expired. It held:

> [I]n cases of nonpayment of allowances and other monetary benefits, if it is established that the benefits being claimed have been withheld from the employee for a period longer than three (3) years, the amount pertaining to the period beyond the three-year prescriptive period is therefore barred by prescription. **The amount that can only be demanded by the aggrieved employee shall be limited to the amount of the benefits withheld *within* three (3) years before the filing of the complaint.**[35] (Emphasis supplied)

Following this simplified rule, petitioners may only be entitled to monetary claims that accrued within three years before they filed their complaint on November 10, 2009. The Court likewise notes that petitioners neither alleged nor indicated that they made extrajudicial written demands to Bicol Apparel to pay the subject money claims. The records also do not show that Bicol Apparel acknowledged any unpaid obligations in favor of petitioners. For this reason, there was no interruption in the running of the three-year period, such that when petitioners filed their complaint on November 10, 2009, their claims for wage differential, overtime pay, holiday pay, and 13th month pay, covering the period from the beginning of their employment until 2006, are already barred by prescription under Art. 306 of the Labor Code.

As for the year 2006, respondents submitted the last payrolls to prove that Bicol Apparel engaged the services of petitioners only until 2006, *viz.*:

| | |
|---|---|
| Norma V. Paguio | January 2006 |
| Merlita R. Dela Vega | June 2006 |
| Angelina P. Santos | June 2006 |

[33] Section 1, P.D. No. 851, entitled "Requiring All Employers to Pay Their Employees a 13th-Month Pay," as amended. Enacted on December 16, 1975 and effective on December 16, 1976.
[34] 497 Phil. 863 (2005).
[35] Id. at 876.

| | |
|---|---|
| Ma. Thelma S. Farro | June 2006 |
| Criselda M. Gangoso | June 2006 |
| Estela O. Rapada | June 2006[36] |

On the other hand, petitioners were not able to present evidence, apart from their bare allegations, to substantiate their money claims for 2006.

Thus, as between the conflicting claims of petitioners and respondents, We concur with the CA that petitioners' plain allegations cannot be considered proof that they were underpaid.[37] Based on the payrolls submitted by respondents, petitioners' cause of action accrued after they received their last pay, *i.e.*, February 2006 for Norma, and July 2006 for the rest of petitioners. Clearly, their claims for wage differentials, holiday pay and overtime pay had already expired when they filed their complaint in November 2009.

However, the claims for 13th month pay for 2006 and service incentive leave pay require a separate discussion.

For the 13th month pay, it bears repeating that under Sec. 1 of P.D. No. 851, as amended, all employees shall be paid the said benefit not later than December 24 of every year. It would therefore appear that petitioners' cause of action in relation to their 13th month pay in 2006 accrued only on December 25 of that year. However, their entitlement to the said benefit depends on the propriety of their claims for service incentive leaves, as well as separation pay, which they alleged to have been based on their dismissal from employment.

As regards service incentive leave pay, the commencement of the three-year prescription period differs from the other monetary benefits.

Service incentive leave has been described as "a curious animal in relation to other benefits" because the employees may choose to either avail of the leave credit or commute it to its monetary equivalent if not exhausted at the end of the year. If the employees did not use or convert the service incentive leaves, they are entitled upon their resignation or separation from work to the monetary equivalent of their accrued service incentive leave.[38]

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[36] *Rollo*, p. 73.
[37] Id.
[38] *Auto Bus Transport Systems Inc. v. Bautista*, supra at 876.

As such, the three-year prescriptive period for service incentive leave commences, not at the end of the year when the employee becomes entitled to the commutation of his service incentive leave, but from the time *when the employer refuses to pay its monetary equivalent after demand of commutation or upon termination of the employee's services*, as the case may be.[39]

As previously mentioned, petitioners failed to allege that they had made previous demands to Bicol Apparel for payment of their claims. Hence, the commencement of the prescription period shall be reckoned from the time the employer-employee relationship is severed.

The problem now arises as to when the service incentive leave shall accrue in view of petitioners' averment that their services were terminated sometime in 2009, and 2008 in the case of Norma. Respondents, on the other hand, assert that petitioners last worked in January and June 2006 based on the last payrolls, and thereafter became their industrial partners thru an Agreement executed on November 15, 2006 and December 4, 2008.

Adding to the complication was the CA ruling striking down the Agreement and holding that a partnership was not validly created between the parties. In so holding, the CA declared that an employer-employee relationship still existed between the parties, but as pointed out by petitioners, the CA failed to rule on their money claims covering the lifetime of the Agreement and, instead, generally denied the same on the ground of prescription.[40]

Hence, the question on when the employer-employee relationship between the parties ended remains unresolved. It bears repeating that this matter should have a definite resolution as it affects petitioners' entitlement to 13th month pay for the year 2006, as well as monetization of their accrued service incentive leaves and separation pay.

Interestingly, respondents did not refute the allegation that petitioners once became the employees of Bicol Apparel. They only insist that such relationship no longer existed when they executed the Agreement in the latter part of 2006 and 2008. They also averred that petitioners were neither illegally dismissed nor their services terminated for an authorized cause. Finally, respondents maintained that despite serious losses, Bicol Apparel

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[39] Id. at 877.
[40] *Rollo*, pp. 54-57.

decided not to close its operations, but instead entered into the Agreement.[41] On the other hand, petitioners deny having entered into such Agreement,[42] and simply accepted that their services had been terminated by asserting their right to separation pay.

While petitioners did not raise any issue regarding their separation from employment, the rule on burden of proof in termination cases finds application. The Court finds the rule relevant in view of petitioners' objective to simply collect separation benefits. It must be remembered that separation pay is granted only to a dismissed employee and its basis depends on the cause of the dismissal.[43]

In termination of employment, it is incumbent upon the employees to first establish the fact of their dismissal since if there is no dismissal, then there can be no question as to the legality or illegality thereof. Thereafter, the burden is shifted to the employer to prove that the dismissal was legal.[44] However, the fact of dismissal, if disputed, must be duly proven by the complainant.[45]

In here, the Court fails to see any allegation from petitioners regarding the fact of their dismissal. Aside from their bare statement that they were dismissed sometime in 2008 and 2009, they did not make any averments as to how or why respondents terminated their employment. As such, there was nothing for respondents to specifically refute, and therefore no basis for the Court to believe that the employer-employee relationship was severed against their will.

For this reason, the Court rejects the claim for separation benefits. Petitioners are not entitled to separation pay as there was no indication that they had been illegally terminated or that they were terminated based on an authorized cause.

The CA found that based on the payrolls submitted by Bicol Apparel, its last engagement with petitioners was in January 2006 and June 2006. The Court deems these dates to be the periods that petitioners received their last pay. Hence, together with their other monetary claims, their entitlement to 13th month pay for the year 2006, as well their accrued service incentive leaves, had also prescribed.

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[41] Id. at 68 and 89.
[42] Id. at 70.
[43] See *Security Bank Savings Corp. v. Singson*, 780 Phil. 860, 870 (2016).
[44] *Lagamayo v. Cullinan Group, Inc.*, G.R. No. 227718, November 11, 2021.
[45] *Guinto v. Sto. Niño Long-Zeny Consignee*, G.R. No. 250987, March 29, 2022.

*Employer-employee relationship no longer existed during the lifetime of the Agreement*

As regards the Agreement, the Court concurs with the CA that the same did not validly create a partnership.

The existence of a partnership is established when it is shown that: (1) two or more persons bind themselves to contribute money, property, or industry to a common fund; and (2) they intend to divide the profits among themselves.[46] In order to constitute a partnership *inter sese* there must be: (a) an intent to form the same; (b) generally participating in both profits and losses; (c) and such a community of interest, as far as third persons are concerned enables each party to make contract, manage the business, and dispose of the whole property.[47]

Pertinent portions of the subject Agreement read:

> We, BICOL APPAREL CORPORATION located at Phase 2, Block 3 agree to turn over running the production to the employees of BICOL APPAREL CORPORATION under the management of MISS MARISSA RAMOS with the following conditions:
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> 1. Employees have 100% control over the production.
>
> 2. Employees will be allowed to get sub-contract from any company they choose.
>
> 3. Employees will be responsible in paying electricity bill only. Rentals of building and machines will be paid by BICOL APPAREL CORPORATION and will not be charged to the employees.
>
> 4. BICOL APPAREL CORPORATION will assist only on salary should there be delay on employees collection but will be considered as a loan.
>
> 5. Employees will pay 100% of loan amount once they collect payment from their principal.

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[46] *Dusol v. Lazo*, G.R. No. 200555, January 20, 2021; *Santiago v. Garcia*, G.R. No. 228356, March 9, 2020, 934 SCRA 641, 646-647.

[47] *Pascual v. Commissioner of Internal Revenue*, 248 Phil. 788, 796 (1988); Concurring Opinion of Associate Justice Angelo Bautista in *Evangelista v. Collector of Internal Revenue*, 102 Phil. 140, 151 (1957).

6. Employees are not allowed to take out any items from the factory without prior approval.

7. BICOL APPAREL CORPORATION should give (3) three months advance notice should this agreement need to be terminated.

8. Employees are allowed to use BICOL APPAREL CORPORATION name in getting outside work but only for this purpose would they be allowed. This is only to make it easier for the employees to get sub-contract work since BICOL APPAREL has established already its name.

9. Mrs. Marissa Ramos will sign all sub-contract work taken and BICOL APPAREL CORPORATION will not be responsible for damages, losses that may arise.[48]

A simple perusal of the Agreement would reveal that the parties did not intend to enter into a partnership. The CA had correctly observed that the contract indicated that petitioners would be compensated by way of "salaries."[49] There was no stipulation on how the profits were to be distributed among the parties. Hence, there was no valid partnership agreement between the parties.

There being no partnership, the Court now proceeds to determine whether an employer-employee relationship existed between the parties by virtue of the Agreement. The CA believed the latter existed and that Bicol Apparel exercised control because the Agreement (1) allowed only Marissa Ramos to enter into sub-contracting arrangements, and (2) prohibited the employees (petitioners) from taking out any items without its approval.

The CA erred in this regard.

Under the four-fold test, the employer-employee relationship is determined if the following are present: a) the selection and engagement of the employee; b) the payment of wages; c) the power of dismissal; and d) the

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[48] *Rollo*, pp. 89-90.

[49] Article 1769(4)(b) of the Civil Code reads:

Art. 1769. In determining whether a partnership exists, these rules shall apply:

x x x x

(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

x x x x

(b) As wages of an employee or rent to a landlord;

x x x x

power to control the employee's conduct, or the so-called "control test." Here, the "control test" is the most important and crucial among the four tests.[50] Under the control test, an employer-employee relationship exists if the "employer" has reserved the right to control the "employee" not only as to the result of the work done but also as to the means and methods by which the same is to be accomplished. Otherwise, no such relationship exists.[51]

Contrary to the findings of the CA, the stipulations in the Agreement failed to show the element of control. Apparent from the instrument that Bicol Apparel had completely vested on the employees all decisions concerning production, thereby negating the power of control by an employer. Even more telling is the fact that the employees were allowed to get subcontracts outside of Bicol Apparel, and to even use its name to procure outside work. This clearly indicates that Bicol Apparel was not the employees' sole source of livelihood as they were free to look for other "employers" or principals who would be willing to provide them with work. There was likewise no indication that Bicol Apparel supervised the performance of their work, and did not even lay down any policy to be observed by the employees during its operations.

The prohibition against employees to take out items outside of the establishment without prior approval cannot be construed as an indicium of control. It had no bearing on the means and methods by which work should be accomplished by the employees. The Court deems that it is only natural for Bicol Apparel to lay down such regulation considering that it allowed petitioners to work inside its premises and use its equipment, regardless of whether such work would redound to Bicol Apparel's benefit.

These stipulations, coupled with the failure of petitioners to establish how control was exercised by respondents, do not confirm an employer-employee relationship. As such, the LA and the NLRC had no jurisdiction over the monetary claims of petitioners during the lifetime of the Agreement.

Petitioners however urge the Court to adopt a liberal approach considering that there was doubt on the evidence presented by the parties. They argue that they should not be burdened to present evidence of their employment, considering that the Agreement was void.

The Court is not convinced.

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[50] *Maricalum Mining Corp. v. Florentino*, 836 Phil. 655, 696 (2018).
[51] *Martinez v. Magnolia Poultry Processing Plant*, G.R. Nos. 231579 & 231636, June 16, 2021.

The liberal view adopted by the Court in labor cases does not relieve the employees of their burden to prove employer-employee relationship. In *Valencia v. Classique Vinyl Products Corporation*,[52] the Court emphasized that the employee, as the party asserting the affirmative, has the burden of establishing his claim by substantial evidence, *viz.*:

> It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, 'the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.' 'The burden of proof rests upon the party who asserts the affirmative of an issue.' Since it is Valencia here who is claiming to be an employee of Classique Vinyl, it is thus incumbent upon him to proffer evidence to prove the existence of employer-employee relationship between them. He "needs to show by substantial evidence that he was indeed an employee of the company against which he claims illegal dismissal." Corollary, the burden to prove the elements of an employer-employee relationship, *viz.*: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control, lies upon Valencia.
>
> Indeed, there is no hard and fast rule designed to establish the afore-mentioned elements of employer-employee relationship. "Any competent and relevant evidence to prove the relationship may be admitted." In this case, however, Valencia failed to present competent evidence, documentary or otherwise, to support his claimed employer-employee relationship between him and Classique Vinyl. All he advanced were mere factual assertions unsupported by proof.[53]

Clearly, petitioners, as the ones claiming the relationship, have the burden to prove the elements of an employer-employee relationship.[54] It bears emphasizing that the Court did not declare the Agreement void, but merely held that it did not create a partnership. Hence, it is still incumbent for petitioners to establish that they remained as employees during the lifetime of the Agreement, considering that the instrument itself did not indicate that the element of control was vested upon Bicol Apparel.

Finally, it bears stressing that the policy of liberal approach only applies when there is doubt on the evidence, but not when evidence is lacking as in this case.

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[52] 804 Phil. 492 (2017).
[53] Id. at 504-505.
[54] See *Atienza v. Saluta*, G.R. No. 233413, June 17, 2019, 904 SCRA 320, 335.

**WHEREFORE**, the Court **DENIES** the petition and **AFFIRMS** the May 24, 2013 Decision and the February 24, 2014 Resolution of the Court of Appeals in CA-G.R. S.P. No. 120701.

**SO ORDERED."**

**By authority of the Court:**

**LIBRADA C. BUENA**
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**
Deputy Division Clerk of Court
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