



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **July 6, 2022** which reads as follows:*

“G.R. No. 244102 (*Meralco Industrial Engineering Services Corporation and Marc Ticman v. Angelito De Leon, Reyfrain G Palma, Stephen G. Palma, Jesus C. Garcia, Jr., and Felimon A. Milan*). — The instant Petition for Review¹ on *Certiorari*, filed under Rule 45 of the Rules of Court, seeks to reverse and set aside the Decision² dated 14 September 2018 and Resolution³ dated 17 December 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 144357. The CA reversed and set aside the Decision⁴ dated 28 August 2015 and Resolution⁵ dated 08 December 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000613-15, and reinstated with modification the Decision dated 29 December 2014 of the Labor Arbiter (LA).

Antecedents

Petitioner Meralco Industrial Engineering Services Corporation (MIESCOR), a wholly-owned subsidiary of Manila Electric Company (MERALCO), is primarily engaged in the business of engineering, construction, and rehabilitation. Between 2008 and 2011, it employed respondents Angelito De Leon (Angelito), Reyfrain G. Palma (Reyfrain), Stephen G. Palma (Stephen), Jesus C. Garcia, Jr., and Felimon A. Milan (respondents, collectively) for different positions. Respondents’ employment details are as follows:⁶

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¹ *Rollo*, pp. 29-44.

² *Id.* at 45-65; penned by Associate Justice Ronaldo Roberto B. Martin and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Myra V. Garcia-Fernandez.

³ *Id.* at 68-71; penned by Associate Justice Ronaldo Roberto B. Martin and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Myra V. Garcia-Fernandez.

⁴ No copy attached to the Petition.

⁵ No copy attached to the Petition.

⁶ *Rollo*, p. 47.

Respondents	Date Hired	Job Position	Daily Wage
Angelito De Leon	14 February 2008	Heavy Equipment Mechanic	₱550.00
Reyfrain G. Palma	13 November 2009	Foreman/Heavy Equipment Mechanic	₱850.00
Stephen G. Palma	16 June 2010	Heavy Equipment Mechanic	₱550.00
Jesus G. Garcia	2011	Heavy Equipment Mechanic/Lorry Truck Driver	₱380.00
Felimon A. Milan	01 January 2013	Vehicle Painter	₱380.00

On 31 March 2014, however, MIESCOR terminated the services of respondents, prompting the latter to file two labor cases against MIESCOR for illegal dismissal from their regular employment.⁷

Since the parties failed to settle amicably, the LA ordered the consolidation of the complaints and required the parties to file their respective position papers and evidence.⁸

According to respondents, MIESCOR made them sign employment agreements, stating that they were hired for a specific period to work on a project in Valenzuela City.⁹ As the said project did not finish on schedule, MIESCOR extended their employment and made them execute another set of project employment contracts.¹⁰ The truth, however, was that they were never assigned in Valenzuela and had no actual knowledge of an ongoing project there.¹¹ Instead, MIESCOR assigned them to Marikina City, where MIESCOR's Preventive Division of the Motor-Pool Department was located.¹²

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⁷ Id. at 48.

⁸ Id.

⁹ Id. at 47-48.

¹⁰ Id. at 48.

¹¹ Id.

¹² Id. at 47.

MIESCOR denied respondents' allegations. Allegedly, respondents were made fully aware when they were hired that they were being employed for a specific project and that their employment was co-terminous with the completion of the same. In their contract, respondents were initially hired until 31 March 2013, subject to further extension, if necessary.¹³ Once the said project ended, MIESCOR issued the respective clearances of respondents and submitted the required termination reports to the Department of Labor and Employment (DOLE). Thereafter, MIESCOR allowed respondents to accept other job offers. However, they opted to apply with MIESCOR for the following projects:¹⁴

Respondents	Date of Contract	Job Position	Project Site	Project Completion
Angelito De Leon	02 January 2013	LE & HE Mechanic	PLDT Valenzuela	21 March 2014
Reyfrain G. Palma	02 January 2013	Motorpool Foreman/ Crane Operator	MERALCO	27 December 2011
Stephen G. Palma	02 January 2013	HE/Hydraulic Mechanic	PLDT Quezon City	21 March 2014
Jesus G. Garcia	02 January 2013	Auto Painter/Helper	MERALCO	02 April 2014
Felimon A. Milan	02 January 2013	Auto Painter	PLDT Valenzuela	21 March 2014

Before the completion of the last phase of respondents' respective projects, MIESCOR issued a memorandum dated 21 March 2014, informing them of the expiration of their employment contracts. Out of the five respondents, respondents Angelito and Reyfrain refused to sign receipt of the memorandum. Later, MIESCOR issued the individual clearances of respondents, but only respondent Stephen acknowledged the same. Nevertheless, MIESCOR reported the termination to the DOLE.¹⁵

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¹³ Id. at 48-49.

¹⁴ Id. at 49-50 and 56-59.

¹⁵ Id. at 50.

Ruling of the LA

On 29 December 2014, the LA issued a Decision in favor of respondents, finding them to be regular employees of MIESCOR who were dismissed without just cause. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, complainants Angelito de Leon, Reyfrain Palma, Stephen Palma, Jesus Garcia, Jr., and Felimon Milan are hereby declared to have been illegally dismissed by respondent MIESCOR/MERALCO INDUSTRIAL ENGINEERING SERVICES CORP.

Accordingly, respondent company is ordered to pay complainants the total sum of One Million Forty-Nine Thousand Four Hundred Eighty Nine Pesos & 95/100 (P1,049,489.95) representing backwages, service incentive leave pay, 13th month pay and separation pay plus attorney's fees equivalent to 10% thereof.

All other claims are dismissed for lack of merit.

SO ORDERED.¹⁶

Ruling of the NLRC

On appeal, the NLRC reversed the LA, as it found the newly offered pieces of evidence by MIESCOR sufficient to prove that respondents were project employees, and thus validly terminated due to the expiration of their employment contracts.¹⁷ The dispositive portion of the NLRC judgment reads:

WHEREFORE, premises considered, respondent MIESCOR's appeal is GRANTED. The Decision of the Labor Arbiter Joanne G. Hernandez-Lazo dated 29 December 2014 is hereby REVERSED and SET ASIDE, and a new judgment is rendered decreeing complainants to be project employees of respondents. Accordingly, complainant's [sic] consolidated complaints for illegal dismissal and money claims are hereby DISMISSED for utter lack of merit.

SO ORDERED.¹⁸

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¹⁶ Id. at 51.

¹⁷ Id. at 54.

¹⁸ Id. at 51-52.

Respondents filed a Motion for Reconsideration but the NLRC denied the same. Hence, they went to the CA *via* a Petition for *Certiorari*.¹⁹

Ruling of the CA

Through the now assailed Decision, the CA reversed the NLRC Decision and reinstated with modification the LA ruling in favor of respondents. The dispositive portion of the assailed decision reads:

WHEREFORE, the foregoing [sic] considered, the present Petition for *Certiorari* is hereby **GRANTED**. The Decision dated 28 August 2015 and Resolution dated 08 December 2015 issued by the National Labor Relations Commission in NLRC LAC NO. 03-000613-15 is hereby **REVERSED and SET ASIDE**.

Accordingly, the decision of the Labor Arbiter is **REINSTATED** with **MODIFICATION**. The award for Separation Pay is **REMOVED**. Let the records of this case be **REMANDED** to the **Labor Arbiter** for proper computation of petitioners' Thirteenth (13th) Month Pay and Service Incentive Leave pay upon finality of this Decision.

IT IS SO ORDERED.²⁰

The CA ruled against MIESCOR since the latter failed to substantiate its allegation regarding the supposed existence of the projects with MERALCO, Philippine Long Distance Telephone Company (PLDT) Valenzuela, and PLDT Quezon City. The CA did not give probative value to the project completion reports and extensions of respondents' contracts submitted by MIESCOR, holding that the said pieces of evidence were insufficient to prove that actual projects with those establishments existed.²¹

Moreover, petitioner's own evidence showed that respondent Reyfrain remained on MIESCOR's payroll until 2014 though his employment supposedly ended in 2012.²² MIESCOR also continuously rehired him five times since the end of his first contract while the other respondents had been rehired four times.²³

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¹⁹ Id. at 52.

²⁰ Id. at 64.

²¹ Id. at 59.

²² Id. at 61.

²³ Id. at 56-58.

Accordingly, the CA agreed with the LA that respondents were regular employees of MIESCOR who were illegally and summarily dismissed on the pretext that their employment contract expired.²⁴

Finding respondents to be regular employees, the CA reinstated the LA's decision, ordering MIESCOR to pay the latter backwages, damages, 13th-month pay, service incentive leave pay, and attorney's fees. However, the CA deleted the LA's award of separation pay because there was no showing that reinstatement was no longer viable.²⁵

MIESCOR filed a Motion for Partial Reconsideration,²⁶ but the CA denied the same. Consequently, MIESCOR filed the instant petition.

Issues

1. Whether respondents were project employees or regular employees of MIESCOR; and
2. Whether respondents were validly terminated from employment.

Ruling of the Court

It bears to state at the outset that the issue of whether respondents were project employees or regular employees of MIESCOR is factual. The same applies to the issue of the legality of an employee's dismissal. This Court has long emphasized that it is not a trier of facts and does not recalibrate evidence adduced before the lower tribunals.²⁷ Its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts.²⁸ However, where the factual findings of the NLRC are

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²⁴ Id. at 60.

²⁵ Id. at 61-64.

²⁶ Id. at 72-79.

²⁷ See *Herma Shipyard, Inc. v. Oliveros*, 808 Phil. 668 (2017).

²⁸ See *Meralco Industrial Engineering Services Corp. v. National Labor Relations Commission*, 572 Phil. 94 (2008).

substantially different from the factual findings of the LA and the CA, as in this case, the Court has the discretion to re-evaluate the incongruent factual findings.²⁹

In this case, the central issue is whether the respondents were project employees of MIESCOR.

The Court answers in the negative.

As the CA aptly pointed out, respondents were not project employees of MIESCOR because the latter continuously rehired them for the same tasks which are of vital functions and indispensable to its usual business. The law and jurisprudence are clear that where an employee's contract had been continuously extended or renewed for the same position, with the same duties, and under the same employ without any interruption, then such employee is a regular employee. Continuous renewal is a scheme to prevent regularization.³⁰

Notably, MIESCOR argues that respondents cannot be regular employees based only on their repeated and consecutive rehiring. It argues that notwithstanding the said finding of the CA, respondents remain to be project employees because the respective employment contracts they voluntarily signed made them fully aware of their fixed period of employment.³¹

The Court is not persuaded.

In the relatively recent case of *Serrano v. Loxon Philippines, Inc.*³² (*Serrano*), the Court emphasized anew that to safeguard the rights of workers against the arbitrary use of the word *project* to prevent employees from attaining the status of regular employees, employers must not only prove that the duration and scope of the employment were specified at the time they were engaged, but also the existence of the project where the employee has been assigned. Prior to *Serrano*, the Court made a similar pronouncement in *Paragele v. GMA Network, Inc.*,³³ thus:

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²⁹ See *Pacific Metals Co., Ltd. v. Tamayo*, G.R. No. 226920, 05 December 2019 [Per J. Lazaro-Javier].

³⁰ See *Serrano v. Loxon Philippines, Inc.*, G.R. No. 249092, 30 September 2020 [Per J. Carandang].

³¹ *Rollo*, p. 36.

³² *Supra* note 30.

³³ G.R. No. 235315, 13 July 2020 [Per J. Leonen].

x x x [P]roject employment ultimately requires the existence of a project or an undertaking which could either be: (1) a particular job within the regular or usual business of the employer, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job not within the regular business of the company. **It is not enough that the employee is made aware of the duration and scope of employment at the time of engagement.** To rule otherwise would be to allow employers to easily circumvent an employee's right to security of tenure through the convenient artifice of communicating a duration or scope. [Emphases supplied.]

In the instant case, the facts show that MIESCOR miserably failed to prove the existence of the alleged projects with PLDT and MERALCO where respondents were supposedly assigned:

As early as the case with the LA, it was already petitioners's contention that they were never assigned in the places stated in their employment agreements and that they were all in one assignment location. This was never refuted by MIESCOR before the LA or the NLRC. Instead of proving that the projects do exist by showing contracts it entered into with [MERALCO] and PLDT Quezon City and Valenzuela, it merely showed several project completion reports and extension of petitioners' contracts. These pieces of documents, however, cannot be enough proof that a project did exist in the first place.³⁴

Pursuant to Section 2.2 (e) of DOLE Department Order No. 19,³⁵ Series of 1993, employers are required to submit a report of the termination of every employee to the nearest public employment office. The failure of the employer to file termination reports is an **indication** that the employee is **not a project employee**.

All the foregoing considered, the Court finds no reason to overturn the CA's finding that respondents are not project, but regular employees of MIESCOR.

As MIESCOR's regular employees, respondents are entitled to security of tenure under Article 294 of the Labor Code. Thus, MIESCOR may terminate their employment only for a just or authorized cause. Corollarily, it becomes incumbent upon MIESCOR to establish the existence of a just or authorized cause for dismissing respondents.³⁶ MIESCOR utterly failed to discharge this burden.

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³⁴ *Rollo*, p. 59.

³⁵ Guidelines Governing the Employment of Workers in the Construction Industry dated 01 April 1993.

³⁶ See *Inocentes v. R. Syjuco Construction, Inc.*, G.R. No. 237020, 29 July 2019.

There being no showing of a clear, valid and legal cause for the termination of respondents, they are thus illegally dismissed. As a necessary consequence of this ruling, respondents shall be entitled to reinstatement, full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time their compensation was withheld to the time of their actual reinstatement.³⁷ However, separation pay may be granted when reinstatement is no longer feasible because of strained relations between the parties and the possibility that new employees already hold the positions previously occupied by petitioners:³⁸

It is well-settled that when a person is illegally dismissed, he [or she] is entitled to reinstatement without loss of seniority rights and other privileges and to his [or her] full backwages. In the event, however, that reinstatement is no longer feasible, or if the employee decides not to be reinstated, the employer shall pay him [or her] separation pay in lieu of reinstatement. Such a rule is likewise observed in the case of a strained employer-employee relationship or when the work or position formerly held by the dismissed employee no longer exists. In sum, an illegally dismissed employee is entitled to: (1) either reinstatement if viable or separation pay if reinstatement is no longer viable, and (2) backwages.³⁹

The Court noticed from the quoted dispositive portion of the LA Decision that the LA awarded respondents backwages and separation pay. Subsequently, however, the CA deleted the award of separation pay without ordering respondents' reinstatement. The glaring omission in the CA's disposition would be unjust for respondents. Accordingly, the Court must order either the reinstatement of respondents or the payment of their separation pay.

It bears to note that MIESCOR did not attach a copy of the LA's Decision. Moreover, the CA peremptorily deleted the award of separation pay without discussion as to the propriety of said award. Nevertheless, considering that MIESCOR did not make any argument as to the feasibility of reinstating respondents to their former positions, the Court modifies the dispositive portion of the CA ruling to include an order for MIESCOR to reinstate respondents to their former position as a necessary consequence of their illegal dismissal.

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³⁷ See *Philippine Amusement and Gaming Corporation v. Angara*, 528 Phil. 861 (2006).

³⁸ *Supra* note 36.

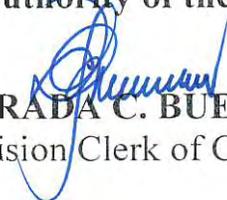
³⁹ See *F.F. Marine Corporation v. The National Labor Relations Commission*, 495 Phil. 140 (2005).

Finally, conformably with *Nacar v. Gallery Frames*,⁴⁰ the Court imposes legal interest of six percent (6%) *per annum* on the aggregate monetary award, reckoned from the finality of this Resolution until fully paid.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision dated 14 September 2018 and Resolution dated 17 December 2018 of the Court of Appeals in CA-G.R. SP No. 144357 are **AFFIRMED** with **MODIFICATION** in that respondents are hereby **ORDERED** to be **REINSTATED** to their former or similar positions, without loss of seniority rights and other privileges. Also, the aggregate monetary award in favor of respondents shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

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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AUG 15 2022

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⁴⁰ G.R. No. 189871, 716 Phil. 267, 281-283 (2013).

