8

Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

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

"G.R. No. 247879 (Vibal Company / Virtualidad, Inc., Gaspar Vibal and Esther Vibal, *Petitioners*, vs. April Grace C. Morquin, *Respondent*). – Before the Court is a Petition for Review on *Certiorari*[1] filed by Vibal Company/Virtualidad, Inc. (Vibal), Gaspar Vibal, and Esther Vibal (collectively, petitioners) seeking to set aside the Decision[2] and the Resolution[3] dated September 21, 2018 and June 14, 2019, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 154020. The CA affirmed the Decision[4] dated August 31, 2017 and Resolution[5] dated October 25, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 06-002116-17 that declared respondent April Grace C. Morquin (respondent) to have been illegally dismissed and awarded her separation pay plus backwages.[6]

- over – eleven (11) pages ...

111-A

---

1 *Rollo*, pp. 36-71.

2 Id. at 15-29. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Franchito N. Diamante and Edwin D. Sorongon.

3 Id. at 31-34. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Franchito N. Diamante and Edwin D. Sorongon.

4 Id. at 136-146. Penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro.

5 Id. at 148-150. Penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro.

6 Id. at 145.

The Antecedents

On September 2, 2015, Vibal employed respondent as a Staff Writer for the *Science and Technology Digest (S&T Digest)* Magazine,[7] one of Vibal's publications under the SD Publications Department. Initially, Vibal hired respondent on a contractual basis. On February 2, 2016, respondent became a probationary employee.[8] On June 24, 2016, Michelle Cristobal (Cristobal), the Vibal Managing Editor, told respondent that the latter had to undergo a written examination for her regularization. Cristobal assured her that the exam was just a formality. Respondent thereafter took the exam.[9]

On August 9, 2016, Christopher Datol (Datol), the Human Resource (HR) Manager, informed Cristobal that respondent received a failing mark on the exam, and as a consequence, the latter can no longer continue with her employment.[10] However, when respondent requested for the results of the examination, she found out that her score did not match with the number of checks in her paper. Due to the discrepancy, respondent underwent another exam on August 12, 2016.[11]

On August 23, 2016, Datol told Cristobal that respondent again failed the exam.[12] On even date, they sent respondent a Notice of Retrenchment[13] informing respondent that her employment had become redundant as a result of the termination of Vibal's textbook project with the Department of Education (DepEd); and that her employment shall be terminated effective September 23, 2016.[14]

The receipt of the notice prompted respondent to file a complaint for illegal dismissal with prayer for payment of separation pay, moral and exemplary damages, and attorney's fees against petitioners.[15]

- over -

---

7 Id. at 25.
8 Id. at 17.
9 Id. at 17-18.
10 Id.
11 Id. at 18.
12 Id.
13 Id. at 177.
14 Id. at 18.
15 Id. at 94; see also Position Paper, id. at 219-225.

In her complaint, respondent alleged, among others, that the reason cited by petitioners in the notice of retrenchment, particularly that the textbook project had already ended, should not affect her because she was not even assigned to the Textbook Department but to the *S&T Digest* Magazine.[16]

For their part, petitioners alleged that they suffered a severe decline in the sales of their magazines for the school year 2015-2016 with the termination of their textbook project with the DepEd. In an attempt to sustain their business operations, they introduced digital editors and senior high school magazines but were eventually stopped in order to prevent further losses. Ultimately, they decided to reduce their staff writers from nineteen to eight.[17] To determine who among the employees should be retained, they conducted an on-the-spot written examination for their staff writers.[18] In the examination, respondent received a total score of 77% which placed her among the employees who attained low ratings.[19] Thereafter, they conducted another comprehensive examination in August 2016; but respondent received a failing score of 58.5%.[20] Hence, they decided to terminate respondent's services.[21]

Petitioners further alleged that they duly informed respondent and the Department of Labor and Employment (DOLE) of the redundancy program[22] and offered to pay respondent separation pay of one month for every year of service. Thus, they insist that respondent was validly dismissed.[23]

The Ruling of the Labor Arbiter (LA)

In the Decision[24] dated April 20, 2017, the LA ruled that respondent was validly dismissed due to redundancy, *viz.*:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents VIBAL GROUP, INC. and VIRTUALIDAD, INC., to jointly and severally pay [respondent] the following:

- over -

111-A

---

16 Id. at 18.
17 Id.
18 Id. at 19.
19 Id. at 174.
20 Id. at 176.
21 Id. at 19.
22 Id. at 177-178.
23 Id. at 19.
24 Id. at 256-267. Penned by Labor Arbiter Marita V. Padolina.

1) Separation Pay in the amount of ₱17,000.00;
2) 13th Month Pay in the amount of ₱13,642.50;

All other claims are dismissed for want of merit.

SO ORDERED.[25]

The LA held that: (1) the decrease in the volume of petitioners' business brought about by the termination of their textbook project constitutes a valid ground to implement the redundancy program and (2) the results of respondent's exams show that petitioners employed fair and reasonable criteria in declaring her position as redundant.[26] Nonetheless, the LA awarded respondent separation pay and 13th month pay on the ground that petitioners have not yet paid her the same.[27]

Aggrieved, respondent appealed to the NLRC.[28]

The Ruling of the NLRC

In the Decision[29] dated August 31, 2017, the NLRC granted respondent's appeal, and thus, declared her illegally dismissed. It awarded her separation pay plus backwages from the time she was illegally dismissed up to the finality of the decision:

> WHEREFORE, premises considered, the appeal is hereby GRANTED, and the Labor Arbiter's decision is SET ASIDE. Complainant April Grace C. Morquin is declared illegally dismissed. Respondent Vibal Group, Inc./Virtualidad, Inc. is hereby ordered to pay complainant separation pay equivalent to one month pay for every year of service, plus full backwages computed from the time she was illegally dismissed. Both awards shall be computed until finality of this Decision.
>
> SO ORDERED.[30]

In so ruling, the NLRC ratiocinated that petitioners failed to substantially comply with the requirement of notice to the DOLE. In particular, petitioners filed the notice dated July 18, 2016 to the

---

[25] Id. at 266.
[26] Id. at 263-265.
[27] Id. at 266.
[28] Id. at 141.
[29] Id. at 136-146.
[30] Id. at 145-146.

DOLE (DOLE Notice)[31] before they conducted the exams on August 2, 2016 and August 12, 2016. Thus, it is evident that they had not yet determined the employees who would be affected by the redundancy at the time they filed the DOLE Notice. Moreover, the NLRC held that the DOLE Notice did not contain the details necessary to effect a redundancy program.[32]

Petitioners moved for a reconsideration, but the NLRC denied it in its Resolution[33] dated October 25, 2017.

Undaunted, petitioners filed a petition for *certiorari* before the CA.[34]

The Ruling of the CA

On September 21, 2018, the CA, in the assailed Decision,[35] dismissed the petition for *certiorari* for lack of merit. It ratiocinated that because petitioners alleged that the surplus of employees resulted from the over-hiring of workers and the termination of the textbook project with the DepEd, redundancy should have been limited only to the employees working on the textbook project. It further held that respondent's position as staff writer for the *S&T Digest* Magazine cannot be considered redundant because she was the *lone staff writer* for *S&T Digest* Magazine.[36] Lastly, the CA held that all monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this decision until full payment.[37]

Petitioners moved for reconsideration, but the CA denied it in the assailed Resolution.[38]

Hence, the petition.[39]

- over -
111-A

---

31 Petitioners sent the Notice to DOLE twice, on June 30, 2016 and on July 18, 2016; id. at 212 - 213.
32 Id. at 143.
33 Id. at 148-150. Penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro.
34 Id. at 95-129.
35 Id. at 15-29.
36 Id. at 27-28.
37 Id. at 28.
38 Id. at 31-34.
39 Id. at 36-71.

Petitioners insist that the DOLE Notice sufficiently complied with the notice requirement for a valid termination of employment due to redundancy;[40] and that the CA improperly disregarded evidence on record which shows that Vibal exercised utmost good faith in implementing its redundancy program.[41]

The Issue

The issue to be resolved is whether respondent was legally dismissed on the ground of redundancy.

The Court's Ruling

The petition is denied for lack of merit.

At the outset, it bears stressing that the Court is not a trier of facts such that it generally does not entertain questions of fact in a petition for review on *certiorari*.[42] However, due to the conflicting factual findings of the LA, on one hand, and of the NLRC and the CA, on the other, the Court is constrained to review these findings in order to write an end to the controversy.

Moreover, "in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether [in a petition for *certiorari,*] the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision."[43]

There is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not supported by substantial evidence, *i.e.,* that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[44] Such grave abuse of discretion on the part of the NLRC warrants the grant of the extraordinary remedy of *certiorari*.[45]

Taking into account these legal parameters, the Court finds that the decision and resolution of the NLRC, as affirmed by the CA, are well supported by substantial evidence, applicable law, and jurisprudence.

- over -
111-A

---

[40] Id. at 47-48 and 506.
[41] Id. at 50.
[42] *Every Nation Language Institute (ENLI) and Ralph Martin Ligon, v. Maria Minellie Dela Cruz*, G.R. No. 225100, February 19, 2020
[43] *Slord Development Corp. v. Noya*, G.R. No. 232687, February 4, 2019.
[44] *Ace Navigation Co. v. Garcia*, G.R. 760 Phil. 924 (2015); *Mercado v. AMA Computer College-Parañaque City, Inc.*, 632 Phil. 228 (2010).
[45] Id.

Under Article 298 (formerly 283) of the Labor Code, redundancy is recognized as an authorized cause for dismissal, *viz.*:

> Article 298. [283] *Closure of Establishment and Reduction of Personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis supplied)

Redundancy exists where the services of an employee are more than what is reasonably demanded by the actual requirements of the enterprise.[46] As a rule, a declaration of redundancy is ultimately a management prerogative, and the employer is not obligated to keep in its payroll more employees than are needed for its day-to-day operations. Nonetheless, it is well settled that management, in the exercise of its prerogative, must not violate the law or declare redundancy without sufficient basis.[47]

The following are the requirements for a valid redundancy program: (a) written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (b) payment of separation pay equivalent to at least one (1) month pay for every year of service; (c) good faith in abolishing the redundant positions; and (d) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished,[48] taking into consideration such factors as (i) preferred status; (ii) efficiency; and (iii) seniority, among others.[49]

- over -

111-A

---

[46] *Acosta v. Matiere SAS*, G.R. No. 232870, June 3, 2019.

[47] *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*, 809 Phil. 106, 123 (2017).

[48] *HCL Technologies Philippines, Inc. v. Guarin, Jr.*, G.R. No. 246793, March 18, 2021.

[49] *Acosta v. Matiere SAS*, supra.

As correctly ruled by the CA, petitioners failed to comply with all of the foregoing requisites.

To begin with, while petitioners did serve a written notice[50] on both respondent and the DOLE at least one (1) month before the intended date of termination, the DOLE Notice merely stated petitioners' decision to implement a redundancy program. It failed to contain the necessary details necessary to effect the redundancy program, such as the reasons for finding certain positions as redundant, the name of the employees to be terminated, and the actual date of termination.[51]

The Court's ruling in *Caltex (Phils.), Inc. v. NLRC*,[52] is instructive on the matter:

> Petitioner's insistence that its written notice of redundancy program per its October 1996 letter addressed to DOLE is a substantial compliance with the notice requirement, *is not persuasive since the said letter merely stated its plan of implementing a redundancy program but did not contain the details necessary to effect the program such as the reason for finding certain portions as redundant, the name of the employees to be terminated and the actual date of termination* x x x.[53] (Italics supplied)

Aside from its failure to comply with the notice requirement, petitioners likewise failed to prove that it acted with good faith in abolishing the redundant positions and that it employed fair and reasonable criteria in its redundancy program.

To establish good faith, it is not enough for a company to merely declare that the said position has become redundant.[54] Petitioners must provide substantial proof that the services of the employees are in excess of what is required by the company.[55]

To support their contention, petitioners presented a Sales Report[56] for the years 2015 and 2016 showing that they have suffered a 50% loss in their net sales, along with various affidavits[57] executed

- over -

111-A

---

50 *Rollo*, pp. 177-178.
51 See id. at 23-24.
52 562 Phil. 167 (2007).
53 Id. at 185.
54 *Asufrin, Jr. v. San Miguel Corp.*, 469 Phil. 237, 244-245 (2004).
55 *Coca-Cola Femsa Philippines v. Macapagal*, G.R. No. 232669, July 29, 2019.
56 *Rollo*, p. 483
57 See Affidavit of Jerald S. Marinas (National Sales Manager), id. at 201-202; Affidavit of Maricel T. Villas (Controller), id. at 203-204; and Affidavit of Michelle C. Cajullis (Managing Editor), id. at 205-206.

by several of their officers. Unfortunately, the sales report and the affidavits, other than being self-serving, failed to show how respondent's position as a staff writer had become superfluous. Notably, petitioners merely alleged that they suffered a considerable decline when the DepEd textbook project was terminated which led to their decision to terminate respondent's services on the ground of redundancy. Petitioners, however, failed to show proof that its textbook project with DepEd was actually terminated.[58] Besides, assuming *arguendo* that the DepEd textbook project was terminated, petitioners still failed to show how the termination of the textbook project affected respondent's position considering that respondent worked for Vibal's magazine publication, and not for the textbook project.[59]

Similarly, petitioners failed to convincingly show that fair and reasonable criteria were indeed employed in ascertaining what positions are to be abolished. Considering that petitioners claimed that the redundancy emanated from the termination of the textbook project and that the positions of those employees who were hired for the DepEd project had become redundant, respondent should not have even been considered as one of the employees whose positions have become redundant because she was not even a part of the textbook project.[60]

Petitioners, as employer, bear the burden of proving the factual and legal basis for the dismissal of its employees on the ground of redundancy.[61] Its failure to do so would necessarily lead to a judgment of illegal dismissal,[62] as in this case.

In sum, there is substantial evidence to support the findings of the NLRC that respondent was illegally dismissed. The CA did not err in finding no grave abuse of discretion on the part of the NLRC. Thus, the Court finds no compelling reason to depart from the findings of the CA

Considering the NLRC's finding that reinstatement is not feasible,[63] the Court sustains the award of separation pay equivalent to one month pay for every year of service.

- over -

111-A

---

[58] See id. at 25.
[59] See id. at 26.
[60] See id. at 27.
[61] *Lopez Sugar Corp. v. Franco*, 497 Phil. 806, 818 (2005)
[62] See *Acosta v. Matiere SAS*, supra note 46.
[63] *Rollo*, p. 145.

The Court also sustains the award of backwages pursuant to Article 294[64] of the Labor Code which substantially provides that illegally dismissed employees are entitled to full backwages, inclusive of allowances and other benefits, computed from the time of their illegal termination up to the finality of the decision.

The Court, however, modifies the CA decision in that respondent, for having been compelled to litigate, is likewise entitled to reasonable attorney's fees at the rate of 10% of the total monetary award pursuant to Article 2208[65] of the Civil Code.

The total judgment award shall be subject to interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until its full satisfaction.

WHEREFORE, the petition is **DENIED.** The Decision dated September 21, 2018 and the Resolution dated June 14, 2019 of the Court of Appeals in CA-G.R. SP No. 154020 are hereby **AFFIRMED** with **MODIFICATION** in that Vibal Company / Virtualidad, Inc., Gaspar Vibal and Esther Vibal are **ORDERED** to pay April Grace C. Morquin attorney's fees equivalent to 10% of the total monetary award.

The total judgment award shall be subject to interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until its full satisfaction.

The case is **REMANDED** to the Labor Arbiter for a detailed computation of the amounts due to April Grace C. Morquin, which must be paid without delay, and for the immediate execution of the Resolution.

- over -

111-A

---

[64] Art. 294. *Security of Tenure.*— In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[65] Article 2208 of the Civil Code provides:
Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
x x x x
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
x x x x

SO ORDERED." ***Gaerlan, J.****, on official leave.*

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
111-A
JUL 28 2022

SYCIP SALAZAR HERNANDEZ
& GATMAITAN
Counsel for Petitioners
4th Floor, SyCipLaw Center
105 Paseo de Roxas, 1200 Makati City

Court of Appeals (x)
1000 Manila
CA-G.R. SP No. 154020)

Ms. April Grace C. Morquin
Respondent
4266 D. Diam Street, Gen. T. De Leon
1440 Valenzuela City

NATIONAL LABOR RELATIONS
COMMISSION
8/F, PPSTA Building, Banawe Street
1100 Quezon City
(NLRC LAC No. 06-002116-17)

The Labor Arbiter
NATIONAL LABOR RELATIONS
COMMISSION
8/F, PPSTA Building, Banawe Street
1100 Quezon City
(NLRC NCR Case No. 00-11-14312-2016)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court

UR