



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 255974 (*Blue Chips Human Resource and Manpower, Inc., petitioner vs. Josemyr P. Reyes, Marvin A. Castillo, Jezebel D. Ramirez, Rosanna S. Mabilangan, Jenalyn A. Anlap, Arlene A. Redeña, and Aljon M. Llames, respondents); G.R. No. 256231 (*Josemyr P. Reyes, Marvin A. Castillo, Jezebel D. Ramirez, Rosanna S. Mabilangan, Jenalyn A. Anlap, and Arlene A. Redeña, petitioners vs. Sagara Metro Plastics Industrial Corp.,** Blue Chips Human Resource and Manpower, Inc./Masafumi Inoue***/Joaquin SB. Chipeco III/Ernesto C. Bihis, respondents).***

By these consolidated Petitions for Review on *Certiorari*,¹ petitioners in both cases respectively seek to reverse and set aside the September 2, 2020 Decision² and February 26, 2021 Resolution³ of the Court of Appeals (*CA*) in CA-G.R. SP No. 158376 and CA-G.R. SP No. 158583. The *CA* affirmed the September 25, 2018 Resolution⁴ of the National Labor Relations Commission (*NLRC*) in *NLRC* LAC No. 04-001453-17 which, in turn, affirmed the January 24, 2017

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* Also referred to as “Blue Chips Human Resources and Manpower, Inc.” in some parts of the *rollo* (see *rollo* [G.R. No. 256231], p. 573).

** Also referred to as “Sagara Metro Plastic Industrial Corp.” in some parts of the *rollo* (see *rollo* [G.R. No. 256231], p. 15).

*** Also referred to as “Masafumi Inque” in some parts of the *rollo* (see *rollo* [G.R. No. 256231], p. 257).

¹ *Rollo* (G.R. No. 255974), pp. 11-50 and *rollo* (G.R. No. 256231), pp. 15-56.

² *Id.* (G.R. No. 256231) at 646-658; penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Ruben Reynaldo G. Roxas and Florencio Mallanao Mamauag, Jr., concurring.

³ *Id.* at 691-692.

⁴ *Id.* at 623-640.

Decision⁵ of the Labor Arbiter (*LA*) dismissing the complaint filed by Josemyr P. Reyes (*Reyes*), Marvin A. Castillo (*Castillo*), Jezebel D. Ramirez (*Ramirez*), Rosanna S. Mabilangan (*Mabilangan*), Jenalyn A. Anlap (*Anlap*), Arlene A. Redeña (*Redeña*; collectively, *petitioners*), and Aljon M. Llames⁶ (*Llames*) against Sagara Metro Plastics Industrial Corp. (*SMPIC*), Blue Chips Human Resource and Manpower, Inc. (*Blue Chips*), *SMPIC* President Masafumi Inoue (*Inoue*), *Blue Chips* President Joaquin SB. Chipeco III (*Chipeco*), and *Blue Chips* Manager Ernesto C. Bihis (*Bihis*).

Antecedents

Blue Chips is a domestic corporation duly registered with the Department of Labor and Employment (*DOLE*) as a legitimate job contractor from March 4, 2014 to March 3, 2017, under *DOLE* Department Order (*DO*) No. 18-A, Series of 2011 (*DO No. 18-A*).⁷ Meanwhile, *SMPIC* is a domestic corporation engaged in the manufacture and export of various plastic parts and tubes for automotive wiring harnesses and nonautomotive applications and fabrication of molding tires. *SMPIC* and *Blue Chips* entered into a job contracting agreement from March 16, 2015 to March 15, 2016, wherein the latter agreed to perform various support and auxiliary services for the former. To meet its contractual obligations with *SMPIC*, *Blue Chips* hired petitioners and *Llames* for a contract term; as payment, *SMPIC* would pay *Blue Chips* the stipulated administrative service fee on a bi-monthly basis. On March 14, 2016, *Blue Chips* issued a “Notice of End of Contract”⁸ to each of the petitioners and *Llames*, and, subsequently, terminated their employment on March 16, 2016, on the basis that their contracts with *Blue Chips* had ended.⁹

Thereafter, petitioners and *Llames* filed a complaint with the *LA* for illegal dismissal, regularization, nonpayment of service incentive leave pay and 13th month pay; and claimed damages and attorney’s fees against *SMPIC*, *Inoue*, *Blue Chips*, *Chipeco*, and *Bihis*.¹⁰

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⁵ *Id.* at 523-529.

⁶ Aljon M. Llames is not one of the petitioners in G.R. No. 256231.

⁷ *DOLE* recently issued *DO* No. 174 (2017), defining permissible job contracting in Section 8.

⁸ *Rollo* (G.R. No. 256231), pp. 420-426.

⁹ *Id.* at 648-649.

¹⁰ *Id.* at 647.

In their position paper before the LA, petitioners and Llames alleged that they were employed at SMPIC as production operators since 2015; and that Ramirez, Mabilangan, and Llames used to be in SMPIC's payroll, as evidenced by their payslips and daily time records, but they were later transferred to the payroll of Blue Chips. They also alleged that Reyes, Castillo, Anlap, and Redefña worked as production operators at SMPIC under Blue Chips, but that on March 16, 2016, they were dismissed from employment because the contract between Blue Chips and SMPIC had ended. They accused Blue Chips of being a labor-only contractor on the following grounds: (1) the machines they used in the performance of their duties were owned by SMPIC; (2) they were issued identification cards by Blue Chips and SMPIC; (3) that before working at SMPIC, they were given an orientation by the human resources supervisor and line leader and trainer of SMPIC; (4) they were given a copy of SMPIC's policies; (5) their hourly production were recorded and checked by SMPIC's employees; (6) SMPIC prepared their work schedule and approved their overtime; and (7) on May 11, 2016, a representative from the DOLE inspected SMPIC and determined that Blue Chips was engaged in labor-only contracting. Thus, they concluded that they should be considered regular employees of SMPIC.¹¹

Meanwhile, in Blue Chips' position paper to the LA, it presented evidence to support its legitimacy as a job contractor and alleged that it was the true employer of petitioners and Llames. Blue Chips also alleged that petitioners and Llames were not illegally dismissed because their employment was coterminous with the service contract between Blue Chips and SMPIC.¹²

SMPIC and its president also submitted a position paper to the LA supporting Blue Chips' statement that it was a legitimate job contractor and that petitioners and Llames were its employees.¹³

The LA Ruling

In its Decision dated January 24, 2017, the LA dismissed the complaint for lack of merit, stating that Blue Chips is a legitimate job contractor, and that petitioners' and Llames' employment contracts show that they were employed on a temporary basis as production helpers which is allowed under DOLE DO No. 10, Series of 2010.¹⁴ The dispositive portion reads:

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¹¹ Id. at 647-648.

¹² Id. at 648-649.

¹³ Id. at 649.

¹⁴ Also cited as DO No. 10, Series of 1997 in the NLRC Decision (see *rollo* [G.R. No. 256231], p. 579).

WHEREFORE, the complaint is DISMISSED for lack of merit.

SO ORDERED.¹⁵

Aggrieved, petitioners and Llames appealed to the NLRC.

The NLRC Ruling

In its July 9, 2018 Decision,¹⁶ the NLRC modified the decision of the LA. The dispositive portion thereof reads:

WHEREFORE, the Decision of the Office of the Labor Arbiter dated 24 January 2017 is hereby **AFFIRMED WITH MODIFICATION**. We declare that:

1. Complainants Anlap, Castillo, Mabilangan, Ramirez, Redeña and Reyes were illegally dismissed from their regular employment with respondent Blue Chips Human [Resource] and Manpower, Inc. As such, said respondent is hereby ordered to reinstate the said complainants without loss of seniority rights and other privileges, and pay their full backwages from the time of their dismissal on 16 March 2016 up to their reinstatement; and
2. Complainant Llames was illegally dismissed from his regular employment with respondent Sagara Metro [Plastics] Industrial Corp. Accordingly, said respondent is hereby ordered to reinstate complainant Llames without loss of seniority rights and other privileges, and pay his full backwages from the time of his dismissal on 16 March 2016 up to his reinstatement.

The other portions of the said Decision of the Office of the Labor Arbiter not affected by the above modifications, which include the trilateral relationship among the parties and the denial of the other claims of the complainants hereby **STAND**.

SO ORDERED.¹⁷

The NLRC stated that SMPIC and Blue Chips entered into a valid job contracting agreement and that Blue Chips is a legitimate job contractor in accordance with DO No. 18-A. The NLRC also stated that while petitioners (Llames was hired before the said job contracting agreement) were employees of Blue Chips, their employment was not coterminous with the contract between SMPIC

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¹⁵ *Rollo* (G.R. No. 256231), p. 529.

¹⁶ *Id.* at 573-593.

¹⁷ *Id.* at 591-592.

and Blue Chips because they were made to sign their employment contracts after they had already started working with Blue Chips. Thus, Blue Chips could then only dismiss them for a valid cause and in compliance with procedural due process. The NLRC stated that petitioners were illegally dismissed by their employer, Blue Chips.

Petitioners and Llames, and Blue Chips filed their respective motions for reconsideration of the NLRC decision, while SMPIC filed a motion for partial reconsideration. On September 25, 2018, the NLRC issued a Resolution¹⁸ modifying its previous decision, the dispositive portion of which reads:

WHEREFORE, the motion of the complainants is hereby **DENIED** for lack of merit. On the other hand, the motion of Sagara Metro [Plastics] Industrial Corporation and Inoue, as well as that of respondent Blue Chips Human Resources and Manpower Inc. are hereby **PARTLY GRANTED**.

Accordingly, the Decision of the Commission dated 9 July 2018 is hereby **MODIFIED** as follows:

1. Complainant Llames is hereby declared illegally dismissed from his regular employment at respondent Blue Chips Human [Resource] and Manpower, Inc.
2. Respondent Blue Chips Human [Resource] and Manpower, Inc. is hereby ordered to reinstate complainant Llames without loss of seniority rights and other privileges, and to pay his full backwages from the time of his dismissal on 16 March 2016 up to his reinstatement.
3. Upon utilization of the applicable wage orders issued by the Regional Tripartite Wages and Productivity Board for Region IV-A, complainants Anlap, Castillo, Mabilangan, Ramirez, Redefia, Reyes and Llames are each entitled to the tentatively recomputed backwages in the reduced amount of Two Hundred Seventy Two Thousand Five Hundred Ninety Pesos and 86/100 (Php 272,590.86).

The other portions of the said decisions of the Commission not affected by the foregoing modifications hereby **STAND**.

SO ORDERED.¹⁹

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¹⁸ Id. at 623-640.

¹⁹ Id. at 638-639.

The NLRC resolution modified its previous decision, taking into account that SMPIC could not have employed Llames because, at that time, he was employed at Universal Robina Corporation; and that Llames, as well as petitioners, became regular employees of Blue Chips when they signed their employment contracts after they had started working for Blue Chips. Petitioners and Llames were, thus, illegally dismissed by Blue Chips because “expiration of service agreement” is neither a just nor an authorized cause under the Labor Code of the Philippines (*Labor Code*).

Aggrieved, petitioners and Blue Chips filed before the CA their respective petitions for *certiorari* under Rule 65 of the Rules of Court.

The CA Ruling

In its September 2, 2020 Decision, the CA dismissed the petitions for *certiorari* and affirmed the resolution of the NLRC. The dispositive portion of the decision reads:

WHEREFORE, the petition of Blue Chips Human Resource [and Manpower,] Inc. in CA-G.R. SP No. 158376 is **DISMISSED**. The petition of Josemyr P. Reyes, Marvin A. Castillo, Jezebel D. Ramirez, Rosanna Mabilangan, Jenalyn A. Anlap, Aljon M. Llames²⁰ and Arlene A. Redeña in CA-G.R. SP No. 158583 is also **DISMISSED**. The resolution of the National Labor Relations Commission dated September 25, 2018, in NLRC LAC No. 04-001453-17 is **AFFIRMED**.

SO ORDERED.²¹

The CA held that Blue Chips is a legitimate labor contractor. The CA also held that petitioners are Blue Chips’ regular employees; therefore, their employment could not be considered coterminous with the job contracting agreement. Considering that petitioners started working with Blue Chips before they signed their respective contracts with the latter, the CA held that petitioners were not bound by the coterminous service contract agreement between SMPIC and Blue Chips. Thus, their dismissal from employment was illegal, as termination of the said service contract agreement is not a ground included in the just and authorized causes of termination of employment under the Labor Code.

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²⁰ The name of Aljon M. Llames was included in the CA decision as one of the complainants, but he was not actually one of the petitioners therein.

²¹ *Rollo* (G.R. No. 256231), p. 657.

The CA denied petitioners' and Blue Chips' respective motions for reconsideration in its February 26, 2021 Resolution.

Hence, these instant appeals by *certiorari* under Rule 45 of the Rules of Court filed by petitioners and Blue Chips. The issues raised by petitioners are summarized as follows:

I.

WHETHER THE CA GRAVELY ERRED IN RULING THAT BLUE CHIPS IS A LEGITIMATE JOB CONTRACTOR AND PETITIONERS ANLAP, CASTILLO, MABILANGAN, RAMIREZ, REDEÑA, AND REYES, ARE NOT EMPLOYEES OF THE PRINCIPAL SMPIC.

II.

WHETHER THE CA GRAVELY ERRED IN RULING THAT PETITIONERS WERE ILLEGALLY DISMISSED.

Petitioners argue that the CA did not properly apply the law and misappreciated the evidence in ruling that Blue Chips was a legitimate job contractor, as the totality of the facts and circumstances were not considered, and that elements of labor-only contracting were present in this case. They insist that they are employees of SMPIC as the latter and Blue Chips are doing prohibited labor-only contracting. They also argue the following: (1) that Mabilangan attained regular status under Article 280 of the Labor Code, being directly hired and doing necessary work for the business of SMPIC, but was transferred to Blue Chips after five months; (2) that the DOLE's findings during an inspection that SMPIC and Blue Chips were engaged in prohibited labor-only contracting is conclusive upon the NLRC and the CA;²² (3) that the CA disregarded SMPIC's violation of Section 7 of DO No. 18-A; (4) that the CA disregarded that the contract between SMPIC and Blue Chips failed to specify the services independently implemented by Blue Chips other than pure supply of manpower, in violation of Sec. 3(j) of DO No. 18-A; (5) lack of substantial capital by Blue Chips contrary to the net financial contracting capacity formula provided in DO No. 18-A; (6) absence of proof of ownership of tools, equipment, and machineries on the part of Blue Chips; (7) that petitioners' jobs are directly related to SMPIC's manufacturing business; (8) that SMPIC exercised control over petitioners' jobs; (9) that as mere agent, Blue Chips cannot legally impose sanctions

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²² Id. at 26.

against petitioners; (10) that SMPIC is the real employer from which petitioners enjoy security of tenure and protection against illegal dismissal; and (11) that, assuming *arguendo* Blue Chips is their employer, contract expiration is not a valid ground for dismissal.

On the other hand, Blue Chips argues that the records show that there is neither positive nor overt act of dismissal committed against petitioners. The alleged completion of service contract of petitioners did not result in dismissal; rather, petitioners were placed on “standby status” until the next service contract. In the meantime, Blue Chips insists that the rule of “no work, no pay” would apply. Blue Chips states that this situation would be analogous to a project employee whose work is coterminous with project completion. Hence, while work was terminated, their status of employment was not.

The Court’s Ruling

The September 2, 2020 Decision and February 26, 2021 Resolution of the CA are affirmed with modification as to the awards of damages.

Procedural Matters

The issues raised by petitioners and Blue Chips are questions of fact which are not the proper subjects of a petition for review under Rule 45 of the Rules of Court, inasmuch as the Court is being asked to review the factual findings of the LA, the NLRC, and the CA. Under Sec. 1, Rule 45 of the Rules of Court, a petition for review on *certiorari* shall raise only questions of law which must be distinctly set forth. This doctrine applies with greater force in labor cases, for questions of fact are for the labor tribunals to resolve.²³ The Court, not being a trier of facts, will not review the factual findings of the lower tribunals as these are generally binding and conclusive. It has been held that parties praying for this Court to review the factual findings of the CA must demonstrate and prove that the case clearly falls under the recognized exceptions to the rule. However, none of the exceptions apply to the case at bar. Even if it were otherwise, the Court still finds no cogent reason to depart from the findings of the LA, the NLRC, and the CA.

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²³ *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*, 788 Phil. 385, 401 (2016).

Substantive Matters

Even on the substantive matters, the petitions lack merit. The resolution of the first issue hinges on the determination of whether Blue Chips is a labor-only contractor or a legitimate job contractor.

Art. 106 of the Labor Code²⁴ defines “labor-only contracting” as an arrangement where a person, “does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer.”

Similarly, Sec. 5 of DOLE DO No. 18-02, Series of 2002 (*DO No. 18-02*) expounds the definition, to wit:

Section 5. *Prohibition against labor-only contracting.* Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work or service for a principal, and any of the following elements are present:

- i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
- ii) [T]he contractor does not exercise the right to control over the performance of the work of the contractual employee.²⁵

In *Acevedo v. Advanstar Company, Inc.*,²⁶ the Court defined the considerations for legitimate job contracting or subcontracting and held that the following conditions should concur:

(a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

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²⁴ Presidential Decree No. 442 (1974), as amended.

²⁵ Section 5 of DOLE DO No. 18-02 (2002), entitled, “Rules Implementing Articles 106 to 109 of the Labor Code, as Amended.”

²⁶ 511 Phil. 279 (2005).

(b) The contractor or subcontractor has substantial capital or investment; and

(c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.²⁷

From the foregoing, it is clear that job contracting is not absolutely prohibited. An employer is allowed to farm out the performance or completion of a specific job, work, or service, within a definite or specified period. In summary, for job contracting to be legal, the following must concur: (1) a person must have substantial capital or investment in the form of tools, equipment, machineries, and work premises; (2) workers recruited and placed by such person should not perform activities which are usually necessary or desirable to the operation of the company or directly related to the principal business of such employer within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; and (3) the contractor should exercise the right to control the performance of the work of the employee.

To elucidate further, Sec. 5 of DO No. 18-02 provides what constitutes “substantial capital or investment” and “right of control,” viz.:

“Substantial capital or investment” refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job work or service contracted out.

The “right to control” shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.²⁸

To support its position that it is engaged in legitimate job contracting, Blue Chips offered as evidence its Certificate of Registration²⁹ from DOLE, being duly registered as a legitimate job

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²⁷ Id. at 290.

²⁸ DOLE DO No. 18-02 (2002), Section 5, paragraphs (3) and (4).

²⁹ *Rollo* (G.R. No. 255974), p. 252.

contractor from March 4, 2014 to March 3, 2017, under DO No. 18-A. In *Consolidated Building Maintenance, Inc. v. Asprec, Jr.*,³⁰ the existence of a DOLE certificate of registration in favor of a contractor is a strong badge of legitimacy in favor of the contractor. It is also presumed to have been issued in the regular performance of official duty.³¹ While this may not be conclusive evidence of the status of Blue Chips as a legitimate job contractor, such registration prevents the legal presumption of it being a mere labor-only contractor from arising.

Additionally, Blue Chips was compliant with general labor standards prescribed by law having passed its compliance inspection conducted by DOLE on June 24, 2015.³² From the evidence, it is also clear that it was running an independent business from SMPIC, as it had provided different services to corporations in different fields, such as the SM Group of Companies, Yazaki-Torres Manufacturing, Inc., and Makiling Realty Sales and Development Corporation. Blue Chips had also remitted petitioners' respective Social Security System, Philippine Health Insurance Corporation, and Home Development Mutual Fund contributions.³³

Second, all lower courts and tribunals found that Blue Chips had substantial capital, even though there was no proof of investment in the form of tools, equipment, machineries, etc. Notably, the law and DO No. 18-A do not require both substantial capital and investment in the form of tools, equipment, machineries, etc. This is clear from the use of the conjunction "or." If the intention was to require the contractor to prove that he has both capital and the requisite investment, then the conjunction "and" should have been used.³⁴

Finally, the control over the employees' performance of the work is, as the Court has ruled in some cases, usually manifested through the power to hire, fire, and pay the contractor's employees; the power to discipline the employees and impose the corresponding penalty; and more importantly, the actual supervision of the employees' performance.³⁵ In this case, Blue Chips was able to control the manner by which petitioners accomplished their work by implementing policies relative to attendance, leave, and overtime

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³⁰ 832 Phil. 630 (2018).

³¹ *Mago v. Sun Power Manufacturing Limited*, 824 Phil. 464, 477 (2018).

³² *Rollo* (G.R. No. 256231), p. 648.

³³ *Id.*

³⁴ *Mago v. Sun Power Manufacturing Limited*, supra note 31 at 479-480.

³⁵ *Id.* at 481.

work. Petitioners even acknowledged such by filing the required forms and seeking approval for overtime from Blue Chips' authorized officers. Petitioners also admitted that Blue Chips representatives would come to the SMPIC office to give them their payslips, check their attendance, and coordinate with SMPIC on how many staff of Blue Chips would be assigned to SMPIC.

With the foregoing, Blue Chips is a legitimate labor contractor and SMPIC cannot be treated as the employer of petitioners. Blue Chips exercised control over petitioners, had substantial capital, and carried a business independent from SMPIC. Being a legitimate contractor, an employer-employee relationship undoubtedly exists between Blue Chips and petitioners. Even with the application of the four-fold test to determine the existence of an employer-employee relationship, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control,³⁶ all point to Blue Chips as being petitioners' employer.

Nevertheless, the Court affirms the finding of the CA that petitioners were Blue Chips' regular employees and that they were illegally dismissed from their employment. Sec. 9 of DO No. 18-A provides:

Section 9. Required contracts under these Rules.

(a) Employment contract between the contractor and its employee. Notwithstanding any oral or written stipulations to the contrary, the contract between the contractor and its employee shall be governed by the provisions of Articles 279 and 280 of the Labor Code, as amended. It shall include the following terms and conditions:

- i. The specific description of the job, work or service to be performed by the employee;
- ii. The place of work and terms and conditions of employment, including a statement of the wage rate applicable to the individual employee; and
- iii. The term or duration of employment that must be co-extensive with the Service Agreement or with the specific phase of work for which the employee is engaged.

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³⁶ *South East International Rattan, Inc. v. Coming*, 729 Phil. 298, 306 (2014).

The contractor shall inform the employee of the foregoing terms and conditions of employment in writing on or before the first day of his/her employment.³⁷

Before petitioners signed their respective employment contracts with Blue Chips, they had already been working for and reporting to Blue Chips. Considering such, the Court agrees with the CA that their period of employment was not bound by the coterminous job contracting agreement between Blue Chips and SMPIC. Petitioners then attained, under Art. 295 of the Labor Code, regular status as employees of Blue Chips. Thus, their dismissal from employment by Blue Chips on the ground that their service contract had ended is illegal, as such ground is not included in the just and authorized causes of termination of employment under the Labor Code.

Blue Chips failed to show any just or authorized cause under the Labor Code to justify the termination of services of petitioners. Also, apart from notifying that their services had already been terminated, Blue Chips failed to comply with the rudimentary requirement of notifying petitioners regarding the acts or omissions which led to the termination of their services, as well as giving them ample opportunity to contest the legality of their dismissal. Having failed to establish compliance with the requirements of termination of employment under the Labor Code, petitioners' dismissal is tainted with illegality.

Blue Chips' argument – that it had no intention of dismissing petitioners and that it did not commit any positive and overt act of dismissal – is utterly devoid of merit. The evidence clearly demonstrates that Blue Chips terminated the employment of petitioners. In its pleadings, Blue Chips admits the termination of petitioners' employment by virtue of an "expiration of contract," arguing that fixed-term employees can be validly dismissed without just and authorized cause upon the expiration of the term of the contract under which they were engaged.³⁸ Further, in the notice of end of contract they sent to petitioners, it clearly states the following: "This is to inform you that our contract with Sagara Metro [Plastics] Industrial Corp. will end on March 15, 2016, thus; your employment contract with Blue Chips Human Resource [and] Manpower, Inc. will also end on the same date."³⁹ Glaringly, Blue Chips terminated the employment of petitioners without just or authorized cause.

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³⁷ Section 9(a) of DOLE DO No. 18-A (2011), entitled, "Rules Implementing Articles 106 to 109 of the Labor Code, as Amended."

³⁸ *Rollo* (G.R. No. 256231), pp. 386 and 490.

³⁹ *Id.* at 420-426.

Monetary awards

Blue Chips being a legitimate job contractor and petitioners having been illegally dismissed, petitioners are, thus, entitled to reinstatement and payment of full backwages. However, the Court finds that reinstatement in this case would not be feasible. In their Prayer,⁴⁰ petitioners specifically sought for reinstatement to SMPIC. Yet, as thoroughly discussed, SMPIC is not their employer; rather, it is Blue Chips. Further, it would not serve the best interests of the parties if petitioners are reemployed by Blue Chips considering that they do not consider Blue Chips as their legitimate employer; and that more than six years have passed since they were illegally dismissed from their employment.

The accepted doctrine is that separation pay may be availed in lieu of reinstatement if reinstatement is no longer practical or in the best interests of the parties. Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated.⁴¹ The general prayer provided by petitioners in their petition and the evidence presented regarding the incompatibility of reinstating petitioners to Blue Chips would justify the grant of separation pay in lieu of reinstatement.⁴² Thus, petitioners must be awarded separation pay in lieu of reinstatement equivalent to one month salary for every year of service.⁴³

With respect to the award of attorney's fees, Art. 111 of the Labor Code states that attorney's fees equivalent to 10% of the amount of wages recovered may be assessed on the culpable party.⁴⁴ Indeed, where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees.⁴⁵ Considering that petitioners were clearly compelled to litigate to enforce what was rightfully due them, the Court grants an award of attorney's fees equivalent to 10% of the monetary award.

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⁴⁰ Id. at 49.

⁴¹ *Golden Ace Builders v. Talde*, 634 Phil. 364, 370 (2010).

⁴² See *Philippine Journalist, Inc. v. Vicencio, Jr.*, G.R. No. 201023, June 3, 2013; see also *Prince Transport, Inc. v. Garcia*, 654 Phil. 296, 314 (2011).

⁴³ *Teletech Customer Care Management Philippines, Inc. v. Gerona, Jr.*, G.R. No. 219166, November 10, 2021.

⁴⁴ *Monsanto Philippines, Inc. v. National Labor Relations Commission*, G.R. Nos. 230609-10, August 27, 2020.

⁴⁵ *Teodoro v. Teekay Shipping Philippines, Inc.*, G.R. No. 244721, February 5, 2020, 931 SCRA 425, 441-442.

Finally, applying the guidelines in *Nacar v. Gallery Frames*,⁴⁶ and in line with prevailing jurisprudence, all monetary awards due to petitioners shall earn legal interest at the rate of 6% *per annum* from finality of this Resolution until fully paid.⁴⁷

WHEREFORE, the September 2, 2020 Decision and February 26, 2021 Resolution of the Court of Appeals in CA-G.R. SP No. 158376 and CA-G.R. SP No. 158583 are hereby **AFFIRMED** with **MODIFICATION** in that Blue Chips Human Resource and Manpower, Inc. is hereby **ORDERED** to **PAY** Josemyr P. Reyes, Marvin A. Castillo, Jezebel D. Ramirez, Rosanna S. Mabilangan, Jenalyn A. Anlap, and Arlene A. Redefña the following:



- a. Full backwages, inclusive of allowances and all other benefits, from the time they were illegally dismissed on March 16, 2016 until finality of this Resolution;
- b. Separation pay in lieu of reinstatement equivalent to one month salary for every year of service; and
- c. Attorney's fees equivalent to 10% of the total monetary award.

The total monetary award shall earn legal interest at 6% *per annum*, computed from the finality of this Resolution until full satisfaction thereof.

These cases are **REMANDED** to the Labor Arbiter for the proper computation and execution of the awards.

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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⁴⁶ 716 Phil. 267 (2013).

⁴⁷ See *Jerzon Manpower and Trading, Inc. v. Nato*, G.R. No. 230211, October 6, 2021; *Teodoro v. Teekay Shipping Philippines, Inc.*, supra at 442.



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