



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **August 8, 2022** which reads as follows:*

“G.R. No. 256847 (Dante D. Ala-Al, petitioner, v. Quezon Independent Contracting and Allied Services and Irene L. Adante-Owner/Superstar Coconut Products Co., Inc. and Paul T. Licup-Owner, respondents). — The Court resolves to:

1. **GRANT** the motion¹ of the Public Attorney’s Office (PAO) for an extension on thirty (30) days from the expiration of the reglementary period, within which to file a Petition for Review on *Certiorari*;² and

2. **NOTE** the Manifestation³ dated May 12, 2022 of the PAO, stating that petitioner submitted a letter, with BDO Postal Money Order (PMO) Check No. 0800091590 as replacement for the stale BDO PMO Check No. 0800084442 *via* courier on May 12, 2022; with attached copies thereof.

Assailed in this Petition for Review on *Certiorari* is the Decision⁴ dated August 27, 2020 and the Resolution⁵ dated February 9, 2021 of the Court of Appeals (CA) in CA-G.R. SP No. 09237-MIN, which affirmed the Decision⁶ dated October 3, 2018 of the National Labor Relations Commission (NLRC), which ruled that petitioner Dante D. Ala-Al (Ala-Al) was not constructively dismissed.

¹ *Rollo*, pp. 3–4.

² Dated April 29, 2021; *id.* at 14–25.

³ *Id.* at 192–195.

⁴ *Id.* at 32–42. Penned by Associate Justice Loida S. Posadas-Kahulugan and concurred in by Associate Justices Edgardo T. Lloren and Richard D. Mordeno.

⁵ *Id.* at 53–55.

⁶ *Id.* at 79–87. Penned by Commissioner Elbert C. Restauero and concurred in by Presiding Commissioner Bario-Rod M. Talon and Commissioner Rosario L. Bernardo-Sagadal.

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The Facts

This case stemmed from a complaint⁷ for Illegal Dismissal with Money Claims, filed by Ala-Al against private respondents Quezon Independent Contracting and Allied Services (QICAS) and its president, Irene L. Adante (Adante; collectively, private respondents) and Superstar Coconut Products Co., Inc. (Superstar) and its owner, Paul T. Licup.

QICAS, a single proprietorship engaged in job contracting⁸ employed Ala-Al sometime in May 2009.⁹ In line with the Service Contract Agreement¹⁰ between QICAS and Superstar, a corporation engaged in exporting dessicated coconut and other coconut meat products, Ala-Al was assigned to the latter as a sealer of dessicated coconut meat to be processed for export to other countries.¹¹

Ala-Al alleged that on July 21, 2017, he failed to assist in the loading and unloading of dessicated coconut meat the whole morning due to severe headache and muscle pain on his shoulders. When Ala-Al reported to his regular shift in the afternoon, he was allegedly prevented by his immediate supervisor, Santi Barsomo (Barsomo) from doing so. Ala-Al reported the incident to QICAS but the latter expressed that they cannot interfere with Superstar's decision.¹²

For private respondents' part, they averred that on the said date, Ala-Al was requested to work as a loader as there were no other available workers at that time to load the dessicated coconuts. Ala-Al refused to comply, asserting that his job was only as a sealer in the production section. An altercation thereafter ensued between Ala-Al and Barsomo. Ala-Al then stormed out of the company premises and never returned.¹³

Ala-Al thereafter filed a complaint for Illegal Dismissal but resorted to a compromise agreement¹⁴ wherein QICAS agreed that Ala-Al would be accepted back to his former position as a sealer in Superstar. However, Ala-Al was allegedly prevented from entering Superstar's premises when he attempted to go back to work on August 16, 2017.¹⁵ Ala-Al then filed the instant complaint.

⁷ Id. at 106–107.

⁸ Id. at 126.

⁹ See id. at 124.

¹⁰ See id. at 126.

¹¹ See id. at 33 and 124.

¹² See id. at 33 and 125.

¹³ See id. at 33–34 and 126.

¹⁴ Id. at 105.

¹⁵ See id. at 34 and 125.

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On the other hand, Superstar avers that no employer-employee relationship exists between the company and Ala-Al. It only engaged QICAS' services to provide the company's personnel requirements.¹⁶ Superstar added that it was no longer comfortable assigning Ala-Al in the production section; fearing that the latter might sabotage the production process as a consequence of his animosity with QICAS. In compliance with Superstar's request, QICAS transferred Ala-Al to another section as shell hauler and sent him a letter¹⁷ dated September 4, 2017 with respect to the same. QICAS insists that Ala-Al was not illegally dismissed considering that his transfer as shell hauler was an exercise of its management prerogative in view of Superstar's request.¹⁸

The LA Ruling

In a Decision¹⁹ dated February 28, 2018, the Labor Arbiter (LA) held that: (a) no employer-employee relationship exists between Superstar and Ala-Al based on the absence of element of control that Superstar has over Ala-Al. Instead, Ala-Al was an employee of QICAS, which has the burden to prove that there was indeed no illegal dismissal; (b) Superstar's refusal to reinstate Ala-Al to his former position placed the latter on 'off-detail' or floating status, which made QICAS duty-bound to reassign Ala-Al to a new assignment within three (3) months pursuant to Article 286 of the Labor Code²⁰ and case law; and (c) three (3) months, starting from the time Superstar refused to honor the settlement entered by Ala-Al and QICAS on July 21, 2019 has lapsed without Ala-Al being given a new assignment; thus, Ala-al was constructively dismissed by QICAS. Accordingly, Ala-Al was awarded a separation pay of ₱66,400.00.²¹

QICAS and Adante thereafter filed a Notice of Appeal²² and a Memorandum of Appeal,²³ averring that there was no constructive dismissal as Ala-Al's reassignment neither decreased his salary or rank nor was it motivated by bad faith, prejudice, disdain or discrimination.²⁴ Instead, said transfer was reasonable considering that it was Superstar that specifically requested for the same to protect their interest.²⁵ Moreover, contrary to the LA's findings, Ala-Al was never put on a 'floating status' or 'off-detailed', considering that he was already given a new assignment after the mediation

¹⁶ See *id.* at 127-128.

¹⁷ Not attached to the *rollo*.

¹⁸ See *rollo*, pp. 127-128.

¹⁹ *Id.* at 124-133. Penned by Labor Arbiter Franico C. Maskariño.

²⁰ Entitled 'A DECREE INSTITUTING A LABOR CODE THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE' (May 1, 1974).

²¹ See *rollo*, pp. 128-133.

²² *Id.* at 134-135.

²³ *Id.* at 136-150.

²⁴ See *id.* at 143.

²⁵ See *id.* at 144.

proceedings. It was Ala-Al who opted not to work as he insisted that he be reassigned back to his former position. Therefore, there was no refusal or failure on QICAS' part to reinstate or give Ala-Al a work assignment.²⁶

The NLRC Ruling

In a Decision²⁷ dated October 3, 2018, the NLRC granted the appeal and accordingly, reversed and set aside the LA Decision. It held that Ala-Al was not constructively dismissed as his transfer to another department is reasonable and justified, considering that Superstar's operation involves manufacturing of food products. Moreover, said transfer did not result in a demotion in rank, or a decrease in salaries, benefits or other privileges. Ala-Al's appointment, except for his new work assignment, remained the same.²⁸ The NLRC likewise ruled that Ala-Al was never placed on off-detail status as Ala-Al was already requested to report back to work to Superstar right after the mediation proceedings. After being informed of his reassignment as shell hauler, Ala-Al neither reported to Superstar nor to QICAS. Instead of informing QICAS that he was displeased with his reassignment, Ala-Al immediately lodged a complaint for Illegal Dismissal. Despite said filing, QICAS sent letters to Ala-Al on separate dates requiring him to report back to work, but to no avail.²⁹ Lastly, even granting that Ala-Al was put on off-detail status, Ala-Al's filing of the complaint on August 23, 2017, barely seven (7) days from his attempt to go back to work with Superstar on August 16, 2017 does not meet the required three (3) months of being in an off-detail status³⁰ under Section 13 of Department Order No. 174.³¹

Ala-Al then filed a motion for reconsideration,³² but the same was denied by the NLRC in a Resolution³³ dated December 12, 2018.

Undeterred, Ala-Al filed a Petition for *Certiorari*³⁴ before the CA.

The CA Ruling

In a Decision³⁵ dated August 27, 2020, the CA affirmed the NLRC ruling, holding that the NLRC did not commit grave abuse of discretion in

²⁶ See *id.* at 144–145.

²⁷ *Id.* at 79–87.

²⁸ See *id.* at 83.

²⁹ See *id.* at 84–85.

³⁰ See *id.* at 85–86.

³¹ Entitled 'RULES IMPLEMENTING ARTICLES 106 TO 109 OF THE LABOR CODE, AS AMENDED,' (March 16, 2017).

³² *Rollo*, pp. 88–92.

³³ *Id.* at 94–95. Penned by Commissioner Elbert C. Restauero and concurred in by Presiding Commissioner Bario-Rod M. Talon and Commissioner Rosario L. Bernardo-Sagadal.

³⁴ Dated March 8, 2019; *id.* at 61–74.

³⁵ *Id.* at 32–42.

reversing the LA's Decision. Similar to the NLRC's findings, the CA held that Ala-Al's transfer was justified because of the risk that he may pose to Superstar's operations if he would be retained as a sealer. This finding is then coupled with the fact that there was no demotion in Ala-Al's rank or diminution of his salary, privileges or other benefits, a fact which Ala-Al did not assail. Further, the CA agreed with the NLRC's finding that Ala-Al was not put on floating status as he was given a new assignment; rather it was Ala-Al who refused to accept the position as it was not the same as his previous work assignment.³⁶

Aggrieved, Ala-Al moved for reconsideration,³⁷ which was however, denied in a Resolution³⁸ dated February 9, 2021. Hence, the instant petition.

The Issue Before the Court

The issue before the Court is whether or not the CA erred in ruling that the NLRC did not gravely abuse its discretion in finding that Ala-Al was not constructively dismissed.

The Court's Ruling

The petition is not meritorious.

'Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA's Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision.'³⁹

'Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.'⁴⁰

³⁶ See *id.* at 41-42.

³⁷ *Id.* at 44-47.

³⁸ *Id.* at 53-55.

³⁹ *University of Santo Tomas v. Samahang Manggagawa ng University of Santo Tomas*, 809 Phil. 212, 219-220 (2017), citing *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 187 (2016).

⁴⁰ *UST v. Samahang Manggagawa ng UST*, *id.* at 220.

‘In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC’s ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.’⁴¹

Guided by the foregoing considerations, the Court finds that the CA correctly ruled that the NLRC did not gravely abuse its discretion in holding that Ala-Al was not constructively dismissed, as the latter tribunal’s findings are supported by the evidence on record as well as settled legal principles of labor law.

As part of its management prerogative, an employer has the inherent right to regulate, according to its own discretion and judgment, all aspects of employment, including its employees’ work assignments.⁴² In cases for transfer of employees, the Court has laid down the following guidelines:

(a) a transfer is a movement from one position to another of equivalent rank, level or salary without break in the service or a lateral movement from one position to another of equivalent rank or salary; (b) the employer has the inherent right to transfer or reassign an employee for legitimate business purposes; (c) a transfer becomes unlawful where it is motivated by discrimination or bad faith or is effected as a form of punishment or is a demotion without sufficient cause; (d) the employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee.⁴³

Accordingly, the NLRC correctly held that Ala-Al’s transfer as shell hauler in Superstar does not amount to constructive dismissal based on the following reasons: *first*, said position is equivalent to Ala-Al’s previous rank and salary, and there was no diminution in his benefits and privileges, which was evidenced by QICAS’ letter dated September 4, 2017 stating that Ala-Al’s appointment letter remains unchanged;⁴⁴ *second*, the transfer was based on Superstar’s request, with which QICAS has an existing Service Contract Agreement. QICAS found it prudent to transfer Ala-Al as shell hauler in view of Superstar’s concern that the animosity between QICAS and Ala-Al would have an effect on how the latter would handle his job as sealer, which has access to dessicated coconut meat to be processed for export to other countries; thus Ala-Al’s transfer was for a legitimate business purpose;⁴⁵ and *lastly*, there was no showing that the same was motivated by discrimination

⁴¹ Id.

⁴² See *Automatic Appliances, Inc. v. Deguidoy*, G.R. No. 228088, December 4, 2019.

⁴³ Id., citing *Rural Bank of Cantilan, Inc. v. Julve*, 545 Phil. 619, 625 (2007) and *Peckson v. Robinsons Supermarket Corporation*, 713 Phil. 471, 481 (2013).

⁴⁴ See *rollo*, pp. 82–83.

⁴⁵ See *id.* at 82.

or bad faith, or a form of punishment. Ala-Al has not shown any evidence how his new work as shell hauler may be inconvenient or detrimental to him in terms of working conditions.

Relatedly, the Court agrees with the concurrent findings of both the NLRC and the CA that Ala-Al was not put on off-detail status. Ala-Al was assigned by QICAS to another position as shell hauler, as evidenced by the letters that QICAS sent to Ala-Al, informing him of the change in his assignment and demanding him to report to work. This was never disputed by Ala-Al. On the contrary, it was Ala-Al who refused to go back to work at Superstar, insisting that he should be reassigned to his former position as a sealer.

While the Court concurs with the CA that Ala-Al was not illegally dismissed, the Court notes that the records of this case are bereft of any indication that Ala-Al's absence from work was deliberate, unjustified, and with a clear intent to sever his employment relationship with QICAS; thus, Ala-Al has not abandoned his work.⁴⁶

In this case, Ala-Al's refusal to go back to work was in view of his demand for QICAS to honor their compromise agreement wherein it was agreed that Ala-Al will be accepted back to his former position as a sealer in Superstar. Ala-Al's absence from work was therefore not unjustified. Ala-Al's demand that he be reassigned to his former position as a sealer, and thereafter, filing a case alleging that he is constructively dismissed negate his intention to sever his employment with QICAS. Moreover, Ala-Al's prayer that he be paid separation pay instead of reinstatement is not a manifestation of his lack of intention to work.⁴⁷

In sum, since Ala-Al was not constructively dismissed and he never abandoned his job, it is only proper for him to report back to work and for QICAS to reinstate him as a shell hauler or to assign him to a substantially-equivalent position in its stead. In this regard, jurisprudence provides that in instances where there was neither dismissal by the employer nor abandonment by the employee, the proper remedy is to reinstate the employee to his former position, but without the award of backwages.⁴⁸

FOR THESE REASONS, the petition is **DENIED**. The Decision dated August 27, 2020 and the Resolution dated February 9, 2021 of the Court of Appeals in CA-G.R. SP No. 09237-MIN are hereby **AFFIRMED with MODIFICATION**. Private respondents Quezon Independent Contracting

⁴⁶ See *Tan Brothers Corporation of Basilan City v. Escudero*, 713 Phil. 392, 401-402 (2013).

⁴⁷ See *Macahilig v. NLRC*, 563 Phil. 683, 693 (2007).

⁴⁸ See *Mallo v. Southeast Asian College, Inc.*, 771 Phil. 410, 422 (2015), citing *MZR Industries v. Colambot*, 716 Phil. 617, 628 (2013).

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and Allied Services and its president, Irene L. Adante are hereby directed to REINSTATE petitioner Dante D. Ala-Al to his former position or a substantially-equivalent one in its stead, but without the award of backwages.

SO ORDERED.” (Lopez, M., J., on official leave).

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court ^{19m}₁₂₅
25 JAN 2023

*PUBLIC ATTORNEY'S OFFICE (reg)
Special and Appealed Cases Division
Department of Justice
BJS Bldg., Tiano Brothers St., cor. San Agustin St.
Cagayan de Oro City

*DELOS REYES IROG AND ASSOCIATES (reg)
Counsel for Respondent
Rm. 406, B Web Jet Building
64 Quezon Avenue corner BMA Avenue
Quezon City

*LUMBATAN CABADING LAYOG & PINTO
LAW OFFICES (reg)
Counsel for Respondent
Door G-10, Genesis 88 Building
Eco West Drive, Ecoland, Davao City

NATIONAL LABOR RELATIONS
COMMISSION (reg)
PPSTA Building, Banawe Street
corner Quezon Boulevard
1100 Quezon City
(NLRC Case No. MAC-04-015420-18)
(RAB XI-08-00753-17)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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OFFICE OF THE CHIEF ATTORNEY (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (reg)
Cagayan de Oro City
CA-G.R. SP No. 09237-MIN

*with copy of CA Decision dated August 27, 2022
Please notify the Court of any change in your address.
GR256847. 08/08/2022(143)URES