



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 15, 2022** which reads as follows:*

“G.R. No. 259178 (Richard M. Libranda, petitioner v. Ishida Philippines Grating, Inc., Takuya S. Kawamura, RCVJ, Inc., and Recto Cantimbuhan, respondents). — This is a Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision² dated September 6, 2021 and the Resolution³ dated February 17, 2022 of the Court of Appeals (CA) in CA-G.R. SP No. 164713, which dismissed the *certiorari* petition⁴ filed by petitioner Richard M. Libranda (petitioner) and found no grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in issuing its Decision⁵ dated September 10, 2019 and Resolution⁶ dated November 29, 2019 in LER No. 06-144-19, affirming the Labor Arbiter’s (LA) Order⁷ dated May 23, 2019 in NLRC Case No. RAB-IV-07-01028-12-C, which computed petitioner’s accrued salaries, inclusive of eight percent (8%) attorney’s fees, from July 15, 2017 up to January 5, 2018 only.

The Facts

The instant case is an offshoot of a complaint⁸ for Illegal Dismissal and Money Claims with Prayer for Reinstatement, filed by petitioner against private respondents Ishida Philippines Grating, Inc. (Ishida), RCVJ, Inc. (RCVJ), and their Presidents, Takuya S. Kawamura (Kawamura) and Recto Cantimbuhan (Cantimbuhan), respectively (collectively, private respondents), before the NLRC Regional Arbitration Board No. IV, Calamba City.⁹

¹ Dated March 10, 2022; *rollo*, pp. 3–28.

² *Id.* at 31–49. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Maria Elisa Sempio Diy and Carlito B. Calpatura.

³ *Id.* at 51.

⁴ Titled ‘Petition for *Certiorari*’ dated February 18, 2020; *id.* at 144–159.

⁵ Not attached to the *rollo*.

⁶ Not attached to the *rollo*.

⁷ *Rollo*, pp. 115–116. Issued by Labor Arbiter Melchisedek A. Guan.

⁸ Not attached to the *rollo*.

⁹ See *rollo*, p. 32.

The case was elevated to this Court *via* a Rule 45 petition in G.R. Nos. 222671 and 222713.¹⁰ In Our Resolutions¹¹ dated June 6, 2016 and September 19, 2016, We held that petitioner was illegally dismissed from employment, and declared Ishida to be the direct employer of petitioner since RCVJ, with which he had a contract of employment, was found to be a labor-only contractor. Accordingly, We affirmed the CA ruling, which reinstated the LA's decision directing (a) Ishida and Kawamura to immediately reinstate petitioner to his former position as regular employee without loss of seniority rights and other privileges, and (b) private respondents to jointly and severally pay him backwages reckoned from his dismissal on August 26, 2011 up to his actual reinstatement, unpaid service incentive leave pay, and attorney's fees. The same became final on June 5, 2017.¹² Thereafter, the case went back to the LA for execution proceedings.

The LA Ruling

On August 17, 2017, the LA issued a Writ of Execution¹³ commanding the NLRC Sheriff to collect from private respondents the amount of ₱693,687.31, representing the total monetary judgment award to petitioner, as well as execution and deposit fees. After the Sheriff reported that a manager's check equivalent to the monetary award had been duly deposited with the NLRC Cashier, the LA directed the release thereof to petitioner in an Order dated January 3, 2018.¹⁴

On January 5, 2018, petitioner received from Ishida a notice to report for work dated December 20, 2017,¹⁵ giving him 24 hours from receipt to return to work. On January 6, 2018, he reported at the Ishida premises and had a meeting with Kawamura and his wife. He never returned after that.¹⁶

However, on January 28, 2018, petitioner filed with the LA a Manifestation with Motion to Update the Computation of the Accrued Backwages of Complainant¹⁷ (motion for re-computation), alleging that he was not admitted back to work on January 6, 2018 when he conferred with Kawamura and his wife, Ishida's President and Human Resource Manager, respectively, and was, instead, required to first apply for employment and submit pre-employment requirements. Hence, he prayed for re-computation of his backwages from July 14, 2017¹⁸ until actual reinstatement.

¹⁰ See *id.* at 36.

¹¹ Not attached to the *rollo*. See pertinent portion in the CA Decision, *id.* at 36.

¹² See *id.*

¹³ Not attached to the *rollo*.

¹⁴ See *id.* at 36-37.

¹⁵ *Id.* at 38 and 95.

¹⁶ See *id.* at 44-45.

¹⁷ Dated January 12, 2018; *id.* at 91-94.

¹⁸ That is, the entry of judgment; see *id.* at 115. July 15, 2017 per his reply to private respondents' comments to his motion for re-computation; see *id.* at 107.

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Private respondents filed their respective comments,¹⁹ opposing the motion for re-computation. Ishida claimed that it had complied with the order for reinstatement but petitioner unjustifiably refused to be reinstated back to work with his failure to comply with the required documents and procedures; corollarily, RCVJ countered that petitioner is only entitled to backwages until January 5, 2018.²⁰

In his reply²¹ to private respondents' comments, petitioner maintained that Ishida had not yet reinstated him to his former position, hence, he cannot be deemed to have abandoned his employment. Accordingly, he prayed for the issuance of an Alias Writ of Execution directing his reinstatement to his employment with Ishida and payment of backwages from July 15, 2017 until actual reinstatement.²²

In an Order²³ dated May 23, 2019, the LA partly granted petitioner's motion for re-computation and computed accrued salaries, inclusive of eight percent (8%) attorney's fees, from July 15, 2017 up to January 5, 2018 only considering its finding that he refused to comply with the notice to report for work. Accordingly, it directed the issuance of an Updated Writ of Execution for the computed amount of ₱62,399.22.²⁴

On July 2, 2019, Ishida manifested that it had consigned with the NLRC Cashier the amount of ₱62,399.22, together with the deposit fee.²⁵

Meanwhile, petitioner filed before the NLRC a Petition (Under Rule XII, The 2011 NLRC Rules of Procedure [Extra Ordinary Remedies])²⁶ (verified petition) assailing the LA's Order²⁷ dated May 23, 2019. He averred that he did not refuse to be reinstated by Ishida, but was being made a probationary employee instead of being reinstated as a regular employee in accordance with the final decision, and that there is no valid reason not to reinstate him because he had never abandoned his work.²⁸

For its part, Ishida countered that petitioner: (a) has no records with the company, and it was merely logical and necessary to require him to submit the usual employment requirements; and (b) agreed to submit the documents

¹⁹ Id. at 97-100 and 101-102.

²⁰ See id. at 39, 98, and 101.

²¹ Id. at 105-108.

²² See id. at 107.

²³ Id. at 115-116.

²⁴ See id. at 116.

²⁵ See id. at 40 and 140.

²⁶ Dated June 27, 2019; id. at 117-127.

²⁷ Id. at 115-116.

²⁸ See id. at 122 and 124-125.

but never reported back to submit the same. Accordingly, his failure to report for work amounts to abandonment of his employment.²⁹

The NLRC Ruling

In a Decision³⁰ dated September 10, 2019, the NLRC dismissed the verified petition and sustained the LA's Order. It noted that: (a) Ishida's directive for petitioner to submit pre-employment requirements was reasonable considering that it had no records/documents pertinent to the latter's employment; (b) there was no evidence that the pre-employment requirements would be used as basis for petitioner's probationary employment; and (c) petitioner's claim that he was to be reinstated as a probationary employee was speculative as he never returned to the Ishida premises after January 6, 2018.³¹

Petitioner's motion for reconsideration was denied in a Resolution³² dated November 29, 2019, prompting him to file a *certiorari* petition before the CA.

The CA Ruling

In a Decision³³ dated September 6, 2021, the CA dismissed the petition, finding no grave abuse of discretion on the part of the NLRC in issuing its assailed ruling. It agreed with the NLRC's observations that: (a) the pre-employment documents Ishida required petitioner to submit were not only reasonable but a matter of common sense and office procedure, and not for purposes of pre-qualification but for the creation of his record with the company; (b) there was no appointment paper from Ishida designating petitioner as a mere probationary employee; (c) there was no showing that the pre-employment requirements would be used as basis for petitioner's probationary employment; and (d) petitioner never returned to Ishida to report for work or submit the pre-employment requirements after January 6, 2018.³⁴ It further noted that the pre-employment documents required to be submitted were all necessary in the payment of petitioner's salaries and the proper remittance of deductions with the concerned government agencies, which includes the relevant Social Security System, Bureau of Internal Revenue, Pag-IBIG, and PhilHealth membership information, documentation, and IDs.³⁵

²⁹ See *id.* at 129-133.

³⁰ Not attached to the *rollo*.

³¹ See *rollo*, pp. 40, 43, and 47-48.

³² Not attached to the *rollo*.

³³ *Rollo*, pp. 31-49.

³⁴ See *id.* at 47-48.

³⁵ See *id.* at 46.

Petitioner's motion for reconsideration³⁶ was denied in a Resolution³⁷ dated February 17, 2022; hence, the instant petition, averring that he did not refuse his reinstatement or abandon his work, and praying for reinstatement to his former position as regular employee and payment of full backwages until actual reinstatement.

The Issues Before the Court

The core issues for the Court's resolution are whether or not petitioner: (a) refused his reinstatement or abandoned his work; and (b) should be reinstated and paid his full backwages until actual reinstatement.

The Court's Ruling

The petition is partly meritorious.

The Court finds that petitioner neither refused his reinstatement nor abandoned his work.

While the Court finds that the CA correctly sustained the NLRC's observations that the pre-employment documents Ishida required petitioner to submit were not for purposes of pre-qualification but for the creation of his records with the company in view of the final decision declaring Ishida as the direct employer, petitioner cannot be deemed to have refused his reinstatement or effectively abandoned his work.

'Abandonment, as a cause for dismissal, is a form of neglect of duty characterized by the deliberate and unjustified refusal of an employee to resume his employment.'³⁸ For abandonment to exist, two requisites must concur, *i.e.*: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by overt acts.³⁹ The intent to discontinue the employment must be shown by a clear proof that it was deliberate and unjustified.⁴⁰

In this case, there was no showing of deliberate and unjustified intent on petitioner's part to abandon his employment. It is well to stress that **mere**

³⁶ *Id.* at 52-58.

³⁷ *Id.* at 51.

³⁸ See *FLB Construction v. Trinidad*, G.R. No. 194931, October 6, 2021.

³⁹ As cited in *Pacific Ocean Manning, Inc. v. Castillo*, G.R. No. 230527, June 14, 2021, see *Trigo v. The Results Companies*, G.R. No. 248408 (Notice), September 8, 2020.

⁴⁰ *FLB Construction v. Trinidad*, *supra* note 38.

absence or failure to report for work, even after notice to return, is not tantamount to abandonment.⁴¹ However, aside from petitioner's absence from work, respondents failed to present proof of any overt conduct on his part clearly manifesting a desire to end his employment. While petitioner never returned to Ishida with the required pre-employment requirements after January 6, 2018, his subsequent actions bespeak of the mistaken belief that his reinstatement was being made conditional upon the submission of such pre-employment requirements or his employment was being downgraded to a probationary, one contrary to the final decision in the case. This can be clearly inferred from the pleadings he submitted before the labor tribunals⁴² and the CA,⁴³ which actively sought his reinstatement. Settled is the rule that the inclusion of a prayer for reinstatement as a relief is inconsistent with abandonment of employment,⁴⁴ thus, effectively negating any suggestion of abandonment.

Consequently, since petitioner was *neither* being downgraded from a regular to a probationary employee tantamount to a dismissal *nor* did he abandon his employment, he should be ordered to return to his position without loss of seniority rights and for Ishida to accept him back without any backwages,⁴⁵ under the principle of 'no work, no pay'.⁴⁶ Time and again, the Court has held that where the parties failed to prove the presence of either the dismissal of the employee or the abandonment of his work, the remedy is to reinstate such employee without payment of backwages,⁴⁷ *i.e.*, the employee may go back to his work and the employer must then accept him because the employment relationship between them was never actually severed. Since there was no dismissal, there can be no backwages because backwages are only available to unjustly dismissed employees since its purpose is to allow the employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. Thus, the burden of economic loss is not rightfully shifted to the employer, and each party must bear his own loss.⁴⁸ Accordingly, aside from petitioner's accrued salaries up to January 5, 2018 or the date he received the notice to report for work, as correctly computed by the LA in its Order dated May 23, 2019, he is not entitled to any backwages.

Finally, it must be clarified that **prior submission of the required pre-employment documents is not a precondition to Ishida's acceptance of petitioner back to work.** To reiterate, they were required not for purposes of pre-qualification but merely for the creation of his records with the company. As such, the said documents may be submitted even after he had reported and

⁴¹ See *Samillano v. Valdez Security and Investigation Agency, Inc.*, G.R. No. 239396, June 23, 2020.

⁴² Notably, his Reply to private respondents' Comments to his motion for recomputation (see *rollo*, pp. 105–108.), and his verified petition (id. at 117–127).

⁴³ Id. at 144–159.

⁴⁴ *Samillano v. Valdez Security and Investigation Agency, Inc.*, supra note 41.

⁴⁵ *Trigo v. The Results Companies*, supra note 39.

⁴⁶ See *Yap v. Giant Eagle Security Services, Inc.*, G.R. No. 246241 (Notice), August 28, 2019.

⁴⁷ *Samillano v. Valdez Security and Investigation Agency, Inc.*, supra note 41.

⁴⁸ See *Rodriguez v. Sintron Systems, Inc.*, G.R. No. 240254, July 24, 2019.

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been accepted back for work, albeit, within a reasonable time, in order not to protract the necessary remittance and reportorial requirements with the appropriate government agencies.

FOR THESE REASONS, the petition is **PARTLY GRANTED**. The Decision dated September 6, 2021 and the Resolution dated February 17, 2022 of the Court of Appeals in CA-G.R. SP No. 164713 are hereby **AFFIRMED with MODIFICATION**. Accordingly, private respondents Ishida Philippines Grating, Inc. and Takuya S. Kawamura are **ORDERED** to accept petitioner Richard M. Libranda to his former position, without payment of backwages, within a period of thirty (30) days from the date of finality of this Resolution, and petitioner is **DIRECTED** to report for work within ten (10) days from the receipt of notice from respondents; otherwise, he shall be deemed to have abandoned his employment with Ishida.

Public respondents National Labor Relations Commission (Second Division) and Labor Arbiter Melchisedek A. Guan are dropped as party respondents, pursuant to Section 4(a), Rule 45 of the Rules of Court.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court ^{mm} 1/25
25 JAN 2023

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*with copy of CA Decision dated September 6, 2021
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