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 31, 2022** *which reads as follows*:

"G.R. No. 217758 (*ABS-CBN Corporation v. Rezlyn T. Salud, Elizer Mark Julian, and Victor U. Andal*). - This Court resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court filed by ABS-CBN Corporation (*ABS-CBN*) seeking to reverse and set aside the Decision[2] dated August 27, 2014 and the Resolution[3] dated March 30, 2015 of the Court of Appeals (*CA*) in CA-G.R. SP No. 127061. The CA earlier affirmed the Decision[4] dated May 31, 2012 of the National Labor Relations Commission (*NLRC*) partially granting the Decision[5] dated April 25, 2011 of the Labor Arbiter (*LA*), and ruling that respondents Rezlyn T. Salud (*Salud*), Elizer Mark Julian (*Julian*), and Victor Andal (*Andal*) are regular employees of ABS-CBN, and awarding them 13th month pay, service incentive leave pay, holiday pay, special day premium and attorney's fees, and deleting the award of backwages and reinstatement to Salud.

In 1997, Salud and Andal were employed as reporters of ABS-CBN Laoag Regional Network Group under periodic employment contracts for the program TV Patrol Ilocos.[6] On the other hand, Julian started to work with ABS-CBN in May 1, 2002, and later on hired as camera-editor/audio-editor under periodic or successive employment contracts.[7]

Sometime in April 2009, Salud, Julian, and Andal, along with Simonette C. Soriano (*Soriano*) and Ellen N. Lagat (*Lagat*) filed before the Department of Labor and Employment (*DOLE*) Regional Office No. 1 a complaint for inspection against ABS-CBN Laoag, seeking regularization and payment of monetary benefits, docketed as RAB-I-09-1166-10 (LC) (*inspection case*).[8]

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1 *Rollo*, Vol. I, pp. 10-80.
2 Penned by Associate Justice Pedro B. Corales, with Associate Justices Sesinando E. Villion and Florito S. Macalino; *rollo*, Vol. III, pp. 1200-1215.
3 *Id.* at 1244-1245.
4 *Rollo*, Vol. II, pp. 779-794.
5 *Id.* at 714-735.
6 *Rollo*, Vol. III, p. 1201.
7 *Id.*
8 *Id.*

Andal and Salud later resigned from their employment on August 14, 2009[9] and December 14, 2009,[10] respectively.

The employment contracts of Julian, Soriano, and Lagat were not renewed after their expiration on December 31, 2009.[11]

On January 5, 2010, Julian, Soriano, and Lagat filed complaints for illegal dismissal with damages against ABS-CBN, docketed as NLRC Case No. RAB-I-01-1019-10(LC) (*illegal dismissal case*).[12]

In the Decision[13] dated September 30, 2010, Labor Arbiter Ma. Lourdes Baricaua (*LA Baricaua*) resolved the illegal dismissal case finding that Julian was illegally dismissed and ordering ABS-CBN to pay his backwages, separation pay, 13th month pay, and attorneys' fees. [14] On the other hand, the complaints of Soriano and Lagat were dismissed for failure to prosecute.[15]

Subsequent to this, ABS-CBN filed in the inspection case a Motion to Dismiss dated October 23, 2010,[16] alleging that Julian committed forum shopping by filing the complaint for illegal dismissal.[17]

In an Order[18] dated January 5, 2011, Executive Labor Arbiter Irenardo R. Rimando (*ELA Rimando*) dismissed the inspection case with respect to Julian on the basis of *res judicata*.[19]

In a Decision[20] dated April 25, 2011, in the inspection case, ELA Rimando ruled that Salud and Andal were regular employees of ABS-CBN and found that they were entitled to special day premiums, service incentive leave pay, and 13th month pay, and additionally ordering reinstatement and backwages for Salud.[21] As to Julian, the said decision reiterated that his case "should not be resolved by two different arbiters."[22]

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9 *Rollo*, Vol. I, p. 96.
10 *Id.* at 95.
11 *Rollo*, Vol. III, p. 1202.
12 *Id.*
13 *Rollo*, Vol. I, pp. 330-338.
14 *Id.* at 337.
15 *Id.*
16 *Id.* at 248.
17 *Rollo*, Vol. III, p. 1202.
18 *Rollo*, Vol. II, pp. 690-693.
19 *Rollo*, Vol. III, pp. 1202-1203.
20 *Rollo*, Vol. II, pp. 714-735.
21 *Id.* at 730-734.
22 *Id.* at 723.

In a Decision[23] dated May 31, 2012, the NLRC resolved Julian's appeal of the Order dated January 5, 2011 and ABS-CBN's appeal of the Decision dated April 25, 2011 in the inspection case. The NLRC granted Julian's appeal, reversing the dismissal of the complaint and awarding Julian 13th month pay, service incentive leave pay, holiday pay, special day premium and attorney's fees.[24] Likewise, the NLRC partially granted ABS-CBN's appeal by deleting the award of backwages and granting reinstatement to Salud, but affirmed the rest of the awards as to her.[25] Further, the NLRC affirmed the awards as to Andal.[26]

ABS-CBN's motion for reconsideration was denied by the NLRC in the Resolution dated July 31, 2012.[27]

ABS-CBN filed a Petition for *Certiorari*[28] dated October 15, 2012 under Rule 65 of the Rules of Court, before the CA questioning the Decision dated May 31, 2012 and the Resolution dated July 31, 2012 of the NLRC. In essence, ABS-CBN's position was that Salud, Andal and Julian were not regular employees, and further, that Julian committed forum shopping by filing a complaint for illegal dismissal case during the pendency of an inspection case.[29]

In the Decision[30] dated August 27, 2014, the CA denied ABS-CBN's petition for *certiorari* for lack of merit, ruling that Salud, Julian, and Andal are regular employees of ABS-CBN. The CA likewise ruled that ABS-CBN's reliance on the case of *Sonza v. ABS-CBN Broadcasting Corporation*,[31] is misplaced, and that *Dumpit-Murillo v. Court of Appeals*,[32] was the more applicable case. As to the issue of forum shopping, the CA ruled that Julian did not commit such.[33]

A motion for reconsideration was subsequently denied.

Aggrieved, ABS-CBN filed before this Court the instant Petition.

On November 27, 2015, respondents Julian and Andal filed their Comment/Opposition (To the Petition for Review on *Certiorari*).[34] On September 8, 2016, counsel for respondent Salud filed its Manifestation and

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23 *Id.* at 779-794.
24 *Id.* at 792-793.
25 *Id.* at 793.
26 *Id.*
27 *Id.* at 854.
28 *Id.* at 857-918.
29 *Id.* at 887-888.
30 *Rollo*, Vol. III, pp. 1200-1215.
31 475 Phil. 539 (2004).
32 551 Phil. 725 (2007).
33 *Rollo*, Vol. I, pp. 38-50.
34 *Rollo*, Vol. III, p. 1254.

Compliance adopting the Comment of the other respondents for respondent Salud.[35] ABS-CBN, on the other hand, filed its Reply (To Respondent's Comment on the Petition for Review on *Certiorari*) on April 5, 2017.[36]

The issues brought forth in the petition are as follows:

1) Whether or not the CA erred in ruling that the NLRC did not commit grave abuse of discretion in ruling that Julian did not commit forum shopping; and
2) Whether or not the CA erred in ruling that the NLRC did not commit grave abuse of discretion in declaring that Salud, Julian, and Andal were employees of ABS-CBN.

We deny the petition.

To recall, the instant petition is a petition for review on *certiorari* under Rule 45 assailing the CA Decision and Resolution which denied the petition for *certiorari* under Rule 65. Jurisprudence is settled that in these cases, generally only questions of law may be entertained.[37] Thus, in labor cases, a petition for review for certiorari under Rule 45 "is limited to reviewing whether the Court of Appeals correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the [NLRC]."[38]

Particularly in labor cases, grave abuse of discretion on the part of the NLRC exists in the following instances:

> x x x In labor disputes, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions reached are not supported by substantial evidence or are in total disregard of evidence material to or even decisive of the controversy; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.[39]

None of these instances is present in the instant case. Hence, the instant petition must be denied.

Respondent Julian did not commit forum shopping in filing a complaint for illegal dismissal while an Inspection Case was pending

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35 *Id.* at 1284.
36 *Id.* at 1305.
37 *ABS-CBN Broadcasting Corporation v. Tajanlangit*, G.R. No. 219508 (Formerly UDK No. 15345, September 14, 2021.
38 *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014).
39 *E. Ganzon, Inc. v. Ando*, 806 Phil. 58, 65 (2017).

Preliminarily, this Court rejects petitioner's argument that respondent Julian committed forum shopping.

Petitioner contends that respondent Julian committed forum shopping when he filed a complaint for illegal dismissal during the pendency of the inspection case, claiming that the two proceedings "are technically premised on the same/similar cause of action," that is, the employment relationship between petitioner and respondents.[40] Petitioner further contends that the illegal dismissal case and the inspection case "both ultimately seek the same relief and result."[41] Moreover, petitioner claims that the elements of *litis pendentia* are present.[42]

In this regard, the ruling of the NLRC, as affirmed by the CA, that no forum shopping was committed, should be upheld. As succinctly stated in the CA Decision, there are no identity of cause of action between the inspection case and illegal dismissal case, as the inspection case involves violation of labor standards provisions, while the illegal dismissal case involves propriety of termination of employment.[43] Moreover, at the time the inspection case was initiated, the employment of Julian was not yet terminated by petitioner and, thus, he logically filed the illegal dismissal complaint after his dismissal.[44] As reiterated by the CA, "[t]he law itself provides for two separate remedies for different causes of action, thus, it cannot be said that Julian deliberately filed the inspection and illegal dismissal cases to ensure a favorable judgment."[45]

Further, to support its conclusion that no forum shopping was committed, the CA correctly cited the case of *Consolidated Broadcasting Corporation v. Oberio*[46] where this Court ruled that parties who file a complaint for violation of labor standard laws who subsequently file a complaint for illegal dismissal cannot be considered to be engaging in forum shopping as the law itself provides two separate remedies for distinct causes of action:

> x x x **The causes of action in these two complaints are different**, *i.e.*, one for violation of labor standard laws, and the other, for illegal dismissal, but the entitlement of respondents to the reliefs prayed for hinges on the same issue of the existence of an employer-employee relationship. While the decision on the said issue by one tribunal may operate as res judicata on the other, **dismissal of the present illegal dismissal case on the ground of forum shopping, would work injustice to respondents because it is the law itself which provides for two separate remedies for their distinct causes of action.**

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40 *Rollo*, Vol. I, p. 45.
41 *Id.* at 47.
42 *Id.* at 48.
43 *Rollo*, Vol. III, pp. 1208-1209.
44 *Id.* at 1209.
45 *Id.*
46 551 Phil. 802 (2007).

> Under Article 217 of the Labor Code, termination cases fall under the jurisdiction of Labor Arbiters. Whereas, Article 128 of the same Code vests the Secretary of Labor or his duly authorized representatives with the power to inspect the employer's records to determine and compel compliance with labor standard laws. The exercise of the said power by the Secretary or his duly authorized representatives is exclusive to cases where employer-employee relationship still exists. **Thus, in cases where the complaint for violation of labor standard laws preceded the termination of the employee and the filing of the illegal dismissal case, it would not be in consonance with justice to charge the complainants with engaging in forum shopping when the remedy available to them at the time their causes of action arose was to file separate cases before different *fora*.** x x x[47] (Emphasis and underscoring supplied)

In stark contrast, petitioner cites general doctrines on forum shopping that do not involve the two actions at bar[48] and, thus, are insufficient to rebut the categorical statement in *Consolidated Broadcasting Corporation v. Oberio*.[49]

Hence, the charge of forum shopping against respondent Julian is unmeritorious.

Respondents are employees of ABS-CBN under the four-fold test

In contending that Salud, Julian, and Andal are not its employees, petitioner faults the NLRC and, subsequently, the CA for supposedly misapplying Article 280 of the Labor Code (now Article 295, as renumbered) and the "control test,"[50] and supposedly disregarding the ruling of this Court in *Sonza*.[51]

However, an analysis of its arguments fails to show grave abuse of discretion on the part of the NLRC in issuing its rulings thereon.

Petitioner contends that the CA used Article 280 of the Labor Code in determining the existence of an employer-employee relationship between petitioner and respondents.[52] However, a reading of the CA Decision would show that Article 280 was not used as the basis of whether Salud, Julian, and Andal were employees of petitioner, but whether they were regular employees (as opposed to casual employees).[53]

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47 *Id.* at 811-812.
48 *Rollo*, Vol. I, pp. 46-56.
49 *Supra* note 46.
50 *Rollo*, Vol. I, pp. 57-65.
51 *Id.* at 66-72.
52 *Id.* at 59.
53 *Rollo*, Vol. III, pp. 1213-1215.

Further, petitioner contends that the CA misapplied the "control test," asserting that petitioner did not control the manner of performing the tasks of respondents and, thus, no employer-employee relationship exists between them.[54] It claims that its control exercised over respondents was "limited to the imposition of general guidelines on conduct and performance which aim to uphold the Company's standards" and that "[t]hey did not relate to the means and methods by which they performed or discharged their respective tasks."[55]

This Court agrees with the findings of the CA, affirming the NLRC and the LA on the existence of an employer-employee relationship on the basis of the four-fold test, which includes the "control test":

> In this case, both ELA Rimando and the NLRC correctly found that Salud, Andal and Julian were employees of ABS-CBN. There is no dispute as to the presence of the element of selection and engagement of the employee and payment of wages. Definitely, ABS- CBN hired and paid the wages of Julian, Salud and Andal as audioman/cameraman/editor and reporters. The power of dismissal and control were also evident in the following circumstances: (1) Salud, Andal and Julian were handled by supervisors who monitored their works and ensured that the same were acceptable or conformed with the network standards, otherwise, they would be meted a penalty as what had happened to Julian who was issued a written warning when there was an "audio discrepancy" in the "VO report" he edited; (2) their assignments and schedules of deployment were dictated by the network as shown in the February 11, 2009 Memorandum of ABS-CBN Laoag Manager addressed to Julian requiring him to explain why he was declining his work assignment in the Pamulinawen Coverage; and (3) as alleged in this petition, their works were subject to editing and review. These indubitably reveal a certain degree of supervision and control over private respondents' works and belie ABS-CBN's claim that they were independent contractors.[56] (Citations omitted)

To recall, the determination of the existence of an employer-employee relationship is a question of fact.[57] Verily, in labor disputes, when the CA confirms the factual findings of the LA and the NLRC, as in this case, "the same are accorded respect and finality, and are binding upon this Court."[58] This Court sees no reason to depart from these findings.

Sonza is not applicable to the instant case

Petitioner contends that *Sonza* applies in this case, and that respondents are its "talents" and are not independent contractors and, thus, not employees

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54 *Rollo*, Vol. I, pp. 60-64.
55 *Id.* at 61-62.
56 *Rollo*, Vol. III, pp. 1210-1211.
57 *Atok Big Wedge Co., Inc. v. Gison*, 670 Phil. 615, 626 (2011).
58 *Nippon Express Philippines Corporation v. Daguiso*, G.R. No. 217970, June 17, 2020.

of petitioner.[59] Particularly, petitioner claims that the following circumstances are similar in *Sonza* and in the present case:

> 1) That respondents were free to produce their own news report, and they freely determined the subject, whom to interview, and the questions to be asked;
> 2) That ABS-CBN paid their talent fees according to the rate agreement between them;
> 3) That the parties negotiated the rate based on their skill;
> 4) That ABS-CBN considered Andal and Salud as independent contractors like Sonza.[60]

Moreover, petitioner claims that the CA disregarded its own ruling in *Jalog v. NLRC*,[61] (*Jalog*) where VTR and camera operators and drivers of petitioner were considered as independent contractors and, thus, not employees.[62] Petitioner claims that since *Jalog* is more recent than *Dumpit-Murillo,* the former shall prevail over the latter. [63]

However, several cases decided by this Court totally render irrelevant the disquisitions of petitioner.

As to the applicability of *Sonza,* the position of the CA that the said case does not apply here has been recently confirmed by this Court in *ABS-CBN Broadcasting Corporation v. Tajanlangit*,[64] (*Tajanlangit*) where this Court ruled that there is no need to belabor the argument on the applicability of *Sonza*, which refers to a talent with a certain level of status, as distinguished from regular employees of ABS-CBN who are likewise the subject of the instant case:

> There is no need to belabor the foregoing argument, since the same has also been adequately addressed in *Del Rosario* where this Court ruled as follows:
>
> > Parenthetically, the main distinction between a talent and a regular employee in the broadcast industry was explained in the landmark case of *Sonza v. ABS-CBN Broadcasting Corp.* (*Sonza*).
> >
> > In *Sonza*, Jose Sonza (Sonza) was a talent who was engaged on the basis of his expertise in his craft. His possession of unique skills and celebrity status gave him the distinct privilege to bargain with ABS-CBN's officials on the terms of his agreement with the latter. These negotiations

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59 *Rollo*, Vol. I, p. 67.
60 *Id.*
61 CA Decision docketed as CA-G.R. SP Nos. 110334 and 042763-05.
62 *Rollo*, Vol. I, p. 67.
63 *Id.* at 68.
64 G.R. No. 219508, September 14, 2021.

> resulted to a hefty talent fee. Also, the payment of his salaries did not depend on the amount of work he performed or the number of times he reported for duty, but was based solely on the terms of the agreement. More than this, ABS-CBN was duty-bound to continue paying him his talent fees during the lifetime of the agreement, regardless of any business losses it may suffer, and even if it ceased airing his programs.
>
> More importantly, ABS-CBN was bereft of any power to terminate or discipline Sonza, even if the means and methods of the performance of his work did not meet its approval. Similarly, ABS-CBN did not control his work schedule, or regulate the manner in which he "delivered his lines appeared on television, and sounded on radio," or had any say over the contents of his script. The only instruction given by ABS-CBN was a simple warning that Sonza should refrain from criticizing ABS-CBN and its interests. In short, Sonza enjoyed an untrammeled artistic creativity on the contents and delivery of his lines and spiels.
>
> In stark contrast, the workers here were hired through ABS-CBN's Human Resources Department. Their engagement did not involve a negotiation with ABS-CBN's high-level officials. They did not possess any peculiar skills or talents or a well-nigh celebrity status that would have given them the power to negotiate the terms of their employment. In fact, their only choice over their engagement was limited to either accepting or rejecting the standard terms of employment prepared by ABS-CBN. In the same manner, they received a basic salary and were granted benefits such as SSS, Medicare, and 13th month pay benefits customarily given to regular employees.
>
> Equally telling, the workers did not enjoy the same level of impunity granted to Sonza. It bears stressing that an independent contractor is endowed with a certain level of skill and talent that is not available on-the-job. Obviously, the workers do not hold this level of distinction.[65]

Notably, *Tajanlangit* and *Del Rosario v. ABS-CBN Broadcasting Corporation*[66] involved camera operators of ABS-CBN, similar to the position of respondent Julian. Further, *Dumpit-Murillo* involved a newscaster and co-anchor of ABS-CBN, which is similar to the position of respondents Salud and Andal who are reporters. In these cases, this Court has ruled that *Sonza* is not applicable and, thus, they are regular employees of ABS-CBN. In this regard, we affirm the findings of the CA and the NLRC that the degree of control exercised by ABS-CBN on the respondents and lack of engagement based on a person's unique skills, expertise, or talent, are consistent with respondents being its employees, instead of being independent contractors.

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65 *ABS-CBN Broadcasting Corporation v. Tajanlangit, supra.*

66 G.R. No. 202481, September 8, 2020.

The Jalog CA Decision is not applicable to the instant case

As to the applicability of *Jalog*, as argued by ABS-CBN in the current petition, suffice it to state that decisions of lower courts only have a persuasive effect at most, and as such, are not binding upon this court.[67] Further, even as *Jalog* was affirmed by this Court through minute resolutions, we are again guided by this Court's ruling in *Tajanlangit*, citing *Del Rosario*, which again involved the same argument proffered by ABS-CBN. In the said case, this Court reiterates that *Jalog* is not applicable:

> As in *Del Rosario*, petitioner turns to the ruling of the CA in *Jalog, et al. v. NLRC*, which has been affirmed by this Court through minute resolutions in its attempt to impute error in the CA for disregarding its ruling therein. However, this Court believes that the case of *Del Rosario* should already put an end to this particular controversy:
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> > ABS-CBN argues that the ruling in *Jalog* applies. In *Jalog*, the CA Former Seventh Division ruled that the cameramen and the other workers of its Engineering Department are talents and not its regular employees. This ruling was affirmed by the Court through a Minute Resolution dated October 5, 2011.
> >
> > This contention does not hold water.
> >
> > Essentially, the phrase *stare decisis et non quieta movere* literally means "stand by the decisions and disturb not what is settled." This legal concept ordains that for the sake of certainty, a conclusion reached in one case should be applied to those that follow, if the facts are substantially the same, even though the parties may be different. Simply stated, like cases ought to be decided alike. Accordingly, "where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue." However, the CA's decision in *Jalog* was affirmed by the Court through a minute resolution. The binding nature of a minute resolution and its ability to establish a lasting judicial precedent have already been settled in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*. There, the Court explained that a minute resolution constitutes *res judicata* only insofar as it involves the "same subject matter and the same issues concerning the same parties."
> >
> > However, it will not set a binding precedent "if other parties or another subject matter (even with the same parties and issues) is involved." Thus, the ruling in *Jalog*, which

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67 *United Coconut Planters Bank v. Spouses Uy*, 823 Phil. 284, 294-295 (2018).

involves different litigants, may not be applied to the parties in the instant petition.[68]

As *Jalog* is not binding upon this Court for the instant case, We find that the CA did not commit any error to warrant the reversal of its findings that are likewise consistent with that of the NLRC, who, in turn, cannot be considered to have gravely abused its discretion in issuing its rulings.

As the CA's rulings were issued accordance with prevailing law and jurisprudence, it cannot be said to have erred in finding no grave abuse of discretion on the part of the NLRC and affirming the latter's ruling. Hence, the instant petition cannot prosper.

FOR THESE REASONS, the petition is **DENIED** for lack of merit. The Decision dated August 27, 2014 and the Resolution dated March 30, 2015 of the Court of Appeals in CA-G.R. SP No. 127061 are **AFFIRMED**.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
20 FEB 2023

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[68] *ABS-CBN Broadcasting Corporation v. Tajanlangit, supra* note 64.