Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **September 28, 2022 Part I**, *which reads as follows:*

"**G.R. No. 227369** ***(Miko's Bar/Esman Lang-Ayan and Ester Lang-Ayan vs. Nadia L. Cabigas and Erwin Elarmo).***— This Petition for Review on *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary or Permanent Injunction[1] under Rule 45 of the Rules of Court, filed by petitioners Miko's Bar/Esman Lang-Ayan (Esmar) and Ester Lang-Ayan (Ester), denounces the Resolutions[2] dated 11 March 2016 and 8 August 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 144106, which dismissed the *Certiorari* petition assailing the unanimous ruling of the National Labor Relations Commission (NLRC) and the Labor Arbiter (LA). The NLRC and the LA found respondents Nadia L. Cabigas (Nadia) and Erwin Elarmo (Erwin) illegally dismissed from their employment and awarded them their backwages, separation pay, salary differentials, and rest day premiums.

ANTECEDENTS

In their Complaint for illegal dismissal and money claims, respondents recounted that Nadia was employed by Miko's Bar/Esman Lang-Ayan and Ester Lang-Ayan (Ester) as an entertainer sometime in 2011. She resigned shortly thereafter. However, on 15 October 2013, petitioners re-employed her as a floor manager. On the same day, petitioners also engaged Erwin, Nadia's live-in partner, as a disc jockey.[3]

Nadia's main task was to assist customers in sitting with the bar's entertainers. She worked from 7:30 p.m. until 4:30 a.m. of the next day. According to her, petitioners promised to pay her a salary of ₱150.00 per night plus a commission of ₱5.00 for every lady's drink ordered. On the other hand, as a disc jockey, Erwin played music for the entertainers to

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[1] *Rollo*, pp. 15-43.

[2] Id. at 75-87 and 89. Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) with the concurrence of Associate Justices Edwin D. Sorongon and Melchor Q. C. Sadang.

[3] Id. at 48.

dance to. He was likewise assured of a salary in the amount of ₱100.00 per night plus ₱3.00 commission for every lady's drink ordered. However, both respondents claimed that they were usually only paid ₱50.00 each. They received their pay every closing time from the cashier who was tasked to list their names in the logbook and the amount they received after each night of work.[4]

On 25 July 2014, while respondents were working, Ester asked Nadia if she received a text message from her. Nadia answered in the negative. Angrily, Ester told her and Erwin not to report for work anymore. When Nadia asked why, Ester responded with, "*Nagmamaang-maangan ka pa! Pina-raid mo yung pwesto ko!*" Nadia tried to explain but Ester refused to hear her out. Left with no choice, respondents went home. The following day, they still went to their workplace, but Ester refused to accept them.[5]

After the incident, Nadia discovered that Ester became angry at her for reporting to the authorities that the bar was employing minors. Nadia averred that this was the reason why she and Erwin were dismissed from employment.[6]

Remonstrating against such averment, petitioners avouched that the management of the bar did not terminate respondents' employment; rather, they voluntarily left. Besides, petitioners asserted that Nadia was not an employee of the bar but an independent contractor who brought in girls to work as entertainers and acted as their floor manager. Petitioners also contended that Nadia was not paid a fixed salary, but that she was compensated on a commission basis, depending on the drinks that her girls ordered.[7]

On 30 April 2015, the Acting Executive LA Monroe C. Tabingan rendered a Decision[8] declaring that respondents were illegally dismissed from employment and awarded them their money claims, consisting of backwages, separation pay, night shift differential, salary differential, rest day premiums, and attorney's fees.[9] Using the four-fold test, the LA concluded that respondents were petitioners' employees. The LA found substantial evidence that petitioners had the power to hire, dismiss, pay wages, and control respondents' employment,[10] and accented that under Article 138 of the Labor Code, any woman permitted to work in a bar under

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4 Id. at 48-49.
5 Id. at 49-50.
6 Id. at 50.
7 Id.
8 Id. at 48-54.
9 Id. at 53-54.
10 Id. at 51-52.

the control or supervision of the owner for a substantial period of time shall be considered an employee.[11]

Further, the LA likewise found credence in respondents' claim of illegal dismissal since they were not informed of any of the grounds for their dismissal from employment. Also, no notice of termination was sent to them.[12] Lastly, the LA justified the monetary claims awarded to respondents since proof was wanting that they were paid the salaries and other benefits due them.[13]

Aggrieved, petitioners filed an appeal with the NLRC which was, however, denied in the Decision[14] dated 30 October 2015. The NLRC agreed with the LA that respondents were petitioners' employees. In justifying this finding, the NLRC pointed out that Ester fixed respondents' wages, required them to report for work at a definite time, and monitored the conduct of their work every night.[15] The NLRC likewise concurred with the LA's ruling that respondents were illegally dismissed from employment. Disputing petitioners' claim that respondents abandoned their work, the NLRC explicated that the elements of abandonment were absent in the case. A charge of abandonment is inconsistent with the immediate filing of a complaint for illegal dismissal.[16]

Petitioners filed a motion for reconsideration, which was rejected by the NLRC in the Resolution[17] dated 28 December 2015.

Ascribing grave abuse of discretion on the NLRC, petitioners filed a *certiorari* petition with the CA. However, in the assailed *Resolutions*,[18] the CA dismissed the petition and the subsequent motion for reconsideration thereof. The CA echoed the findings of the NLRC and the LA, ingeminating that factual findings of labor tribunals are afforded respect and even finality, by the Courts.[19]

The CA likewise denied petitioners' motion for reconsideration.

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[11] Id. at 52.
[12] Id.
[13] Id. at 53.
[14] Id. at 57-69.
[15] Id. at 66.
[16] Id. at 66-67.
[17] Id. at 71-73.
[18] Id. at 75-87 and 89. Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) with the concurrence of Associate Justices Edwin D. Sorongon and Melchor Q. C. Sadang.
[19] Id. at 87.

Disputing the unanimous rulings of the NLRC and the LA, as affirmed by the CA, petitioners interpose the instant Petition,[20] claiming that respondents were never dismissed from employment[21] and that there was no employer-employee relationship existing between them.[22]

In their Comment,[23] respondents stress that the labor tribunals and the CA did not err in ruling in their favor.

THE COURT'S RULING

The Petition is unmeritorious.

In Rule 45 petitions filed before the Court assailing the decisions of the CA arising from labor cases brought before it, the Court is mindful that the mode of review undertaken by the CA is through a special civil action for *certiorari*. This being so, the CA's power to review the NLRC's findings is confined only to jurisdictional errors committed by the latter, whose decision may only be set aside if it committed grave abuse of discretion amounting to lack or excess of jurisdiction.[24] This limitation greatly affects the scope of the Court's review in the present Rule 45 petition. In the case of *The Heritage Hotel vs. Sio*,[25] citing *Montoya vs. Transmed Manila Corp.*,[26] the Court accentuated the need to view the assailed CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion by the NLRC, as opposed to whether the NLRC decision was correct on the case's merits.[27]

Further, it is aphoristic that the factual findings of the NLRC are accorded respect and even finality by the Court when they coincide with those of the LA and are supported by substantial evidence.[28]

Applying the foregoing legal parameters, the Court finds that the CA was correct in finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC when it ruled that respondents, as employees of petitioners, were illegally dismissed from employment and in ordering the award of their monetary claims.

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[20] Id. at 15-43.
[21] Id. at 26.
[22] Id. at 27.
[23] Id. at 111-122.
[24] See *Site for Eyes, Inc. v. Dr. Daming*, G.R. No. 241814, 20 June 2021.
[25] G.R. No. 217896, 26 June 2019, 906 SCRA 167-184.
[26] 613 Phil. 696-713 (2009).
[27] Supra note 24.
[28] See *Iso, Jr. v. Salcon Power Corp.*, G.R. No. 219059, 12 February 2020.

Apropos the matter of determining the existence of employer-employee relationship, the Court has time and again applied the four-fold test, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. Of these criteria, the so-called "control test" is generally regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under this test, an employer-employee relationship is said to exist where the person for whom the services are performed reserves the right to control not only the end result but also the manner and means utilized to achieve the same.[29]

An evaluation of respondents' working arrangements shows that they were petitioners' employees. As found by the LA and the NLRC, Ester hired Nadia first in 2011 and again in 2013. Ester was the one who fixed respondents' compensation and commission. She likewise terminated their employment after Nadia purportedly reported the bar's engagement of minor entertainers. Most importantly, during their employment, respondents were required to report for work at a definite time and to record their attendance every night. Ester monitored their work throughout the evening. It was also undisputed that respondents performed other functions necessary in the furtherance of the bar's business.[30] Additionally, Article 138[31] of the Labor Code provides that any woman permitted to work in any nightclub under the effective control or supervision of the employer, for a substantial period of time, shall be considered an employee of such establishment. Thus, there can be no quibbling that respondents were petitioners' employees.

Anent the charge of illegal dismissal, the Court agrees with the NLRC and the LA that respondents were illegally dismissed from employment. In determining whether an employee's dismissal is legal, the inquiry focuses on whether the dismissal violated his right to substantial and procedural due process. An employee's right not to be dismissed without just or authorized cause as provided by law, is covered by his right to substantial due process. Compliance with procedure provided in the Labor Code, on the other hand, constitutes the procedural due process right of an employee.[32]

In the case at bench, petitioners unceremoniously terminated the employment of respondents by preventing them from reporting for work.

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[29] See *Paragele, et al. vs. GMA Network, Inc.*, G.R. No. 235315, 13 July 2020.

[30] *Rollo*, p. 66.

[31] Art. 138. Classification of certain women workers. Any woman who is permitted or suffered to work, with or without compensation, in any night club, cocktail lounge, massage clinic, bar or similar establishments under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor and Employment, shall be considered as an employee of such establishment for purposes of labor and social legislation.

[32] *Distribution & Control Products, Inc./Tiamsic vs. Santos*, 813 Phil. 423, 432 (2017).

Despite their willingness to continue working, petitioners were adamant. A perusal of the case evinces Ester's resentment as she suspected that Nadia reported to authorities the bar's irregular activities, such as employing minor entertainers. Nevertheless, this does not fall under any of the just and authorized causes for the termination of an employee's employment. Further, respondents were never given the opportunity to be heard through the twin-notice rule. The employer is required to give the charged employee at least two written notices before termination. One of the written notices must inform the employee of the particular acts that may cause his or her dismissal. The other notice must inform the employee of the employer's decision.[33]

Lastly, with respect to the prayer for the issuance of a Temporary Restraining Order and/or Preliminary or Permanent Injunction, the Court finds no necessity to belabor on the said relief since the main Petition has been found to be unmeritorious.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The *Resolutions* dated 11 March 2016 and 8 August 2016 of the Court of Appeals in CA-G.R. SP No. 144106 are **AFFIRMED.**

SO ORDERED."

By authority of the Court:

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Division Clerk of Court

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[33] See *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 426 (2014).

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