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 22, 2023** *which reads as follows:*

"G.R. No. 254919 (*Augusto *R. Bergonio, Ramon T. Angeles, Marlon Dela Cruz Emocling, and Edmund E. Gonzaga v. DM Consunji, Inc., (DMCI)/Alfred R. Austria, S.C. Estolano Construction Corporation and Socorro Charito E. Estepa*).**—This Petition for Review on *Certiorari*[1] assails the November 29, 2019 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 153534 which modified the July 24, 2017 Decision[3] and the August 31, 2017 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-001789-17 which, in turn, affirmed the February 28, 2017 Decision[5] of the Labor Arbiter (LA). Also assailed in this Petition is the CA December 15, 2020 Resolution[6] which denied petitioners' Motion for Reconsideration.[7]

Factual Antecedents

The instant case stemmed from complaints for illegal dismissal, underpayment of salary/wages and overtime pay, non-payment of holiday pay, holiday premium, Service Incentive Leave, 13th Month Pay, and ECOLA, with claims for moral and exemplary damages and attorney's fees. The complaints were filed by petitioners Augusto R. Bergonio (Bergonio), Ramon T. Angeles (Angeles), Marlon Dela Cruz Emocling (Emocling), and Edmund E. Gonzaga

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* Also spelled as Agusto and Augosto in some parts of the records.

1 *Rollo*, pp. 3-25.

2 Id. at 1008-1029. Penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Apolinario D. Bruselas, Jr., and Louis P. Acosta.

3 Id. at 503-527. Penned by Commissioner Bernardo B. Julve, and concurred in by Commissioner Leonard Vinz O. Ignacio and Presiding Commissioner Grace M. Venus.

4 Id. at 535-539.

5 Id. at 392-402. Penned by Labor Arbiter Remedios Tirad-Capinig.

6 Id. at 1045-1046.

7 Id. at 1030-1042.

(Gonzaga) against respondents DM Consunji. Inc. (DMCI), S.C. Estolano Construction Corporation (SCECC), Alfred R. Austria (Austria), and Socorro Charito E. Estepa (Estepa).[8]

Petitioners alleged that on different dates, they were hired by DMCI as jointers and were assigned to different DMCI projects. Bergonio, Angeles, and Emocling were each paid a daily wage of PHP 470.00, while Gonzaga was paid a daily wage of PHP 450.00. Petitioners claimed that while they eventually attained regular employment status, DMCI arbitrarily transferred them to SCECC. Petitioners averred that SCECC is a labor-only contractor since it did not have engineers, architects or foremen who supervised their work, and that it did not possess, among others, equipment or machinery, a business permit, and space for its materials, and merely shared an office space with DMCI's employees' field office.[9]

DMCI and individual respondent Austria alleged that DMCI and the DMCI Project Developers, Inc. (DMCI-PDI) are real estate developers. Due to the magnitude of their projects, they engaged the services of SCECC for the supply, fabrication, delivery, and installation of drywall partitions and ceiling finishes. SCECC assigned foremen and supervisors, who, in turn, supervised and controlled the means and methods of SCECC personnel assigned to DMCI and DMCI-PDI projects. DMCI and Austria claimed that they do not have knowledge as to who among the petitioners have rendered work for DMCI and DMCI-PDI projects.[10]

For its part, respondent SCECC claimed that it is a legitimate contractor with substantial capital and equipment as evidenced by its Securities and Exchange Commission (SEC) Certificate of Incorporation, Articles of Incorporation, By-Laws, Financial Statement, and Contractors License. Pursuant to a Subcontract Agreement, DMCI and DMCI-PDI engaged the services of SCECC for various construction projects. SCECC, in turn, engaged the services of D&AH Gypsum Installation Work Services (D&AH) for the construction, installation, and partition of ceiling and drywalls. SCECC claimed that petitioners are actually employees of D&AH. When D&AH ceased operations, petitioners were transferred to R.G. Ligan Home Improvement Services (RG Ligan). They were later absorbed by RECANA Cornice and Ceiling Installation (RECANA). SCECC alleged that it was at this time that petitioners left their employment with RECANA without prior notice.[11]

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[8] Id. at 1009.
[9] Id. at 1010.
[10] Id. at 1011.
[11] Id. at 1012-1013.

Ruling of the Labor Arbiter

On February 28, 2017, the Labor Arbiter rendered a Decision,[12] the dispositive portion of which states:

> **WHEREFORE**, premises considered, judgment is hereby rendered, the instant complaint is **DISMISSED** for lack of merit. Notwithstanding, respondent **SC ESTOLANO CONSTRUCTION CORPORATION** is held liable to pay **FINANCIAL ASSISTANCE** to **COMPLAINANTS** the total amount of **SIXTY THOUSAND PESOS (P60,000.00)** equally divided among them, as aforestated,.
>
> **SO ORDERED.**[13] (Emphasis in the original)

The arbiter held that petitioners failed to prove the existence of an employer-employee relationship between them and DMCI, and that SCECC is a labor-only contractor. They also failed to substantiate their allegation that they were illegally dismissed from employment. As such, the arbiter denied their claims for reinstatement and backwages, moral and exemplary damages, and attorney's fees. However, for humanitarian considerations, the arbiter ordered SCECC to pay each of the petitioners PHP 15,000.00.[14]

Aggrieved, petitioners appealed to the NLRC. Respondent SCECC and individual respondent Estepa also filed their appeal citing grave abuse of discretion on the part of the LA in awarding financial assistance to petitioners.[15]

Ruling of the National Labor Relations Commission

In its July 24, 2017 Decision,[16] the NLRC denied the appeals of petitioners and respondents and affirmed the February 28, 2017 Decision of the arbiter. The dispositive portion of the Decision states:

> **WHEREFORE,** premises considered, the Appeals of both complainants and respondents are **DENIED.** The *Decision* of Labor Arbiter Remedios and Tirad-Capinig dated 28 February 2017 is hereby **AFFIRMED.** Respondents S.C. Estolano Construction Corporation is directed to pay complainants Fifteen Thousand Pesos (PhP15,000.00) each as financial assistance.
>
> **SO ORDERED.**[17] (Emphasis and italics in the original)

The NLRC agreed with the findings of the arbiter that petitioners failed to prove by substantial evidence that they were employees of DMCI, and the

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[12] Id. at 392-402.
[13] Id. at 402.
[14] Id.
[15] Id. at 512-513.
[16] Id. at 503-527.
[17] Id. at 526-527.

fact of their dismissal from service. It, however, held that SCECC is not a legitimate contractor since it did not comply with the substantial capital requirement under Department of Labor and Employment (DOLE) Department Order (DO) No. 18-A, Series of 2011 (DO 18-A).[18] Specifically, the NLRC found that SCECC's paid-up capital only amounted to PHP 312,500.00. SCECC also failed to provide evidence that it has investments in the form of tools, equipment, machineries, and work premises.[19]

Anent petitioners' real employer, the NLRC held that SCECC is the principal insofar as the projects for which the D&AH, RG Ligan, and RECANA were engaged. Being the principal, SCECC had the burden to prove that its subcontractors are considered legitimate and independent contractors. Since SCECC failed to prove that the said contractors are legitimate contractors under DO 18-A, SCECC, as principal, should be treated as an indirect employer of petitioners. This notwithstanding, the NLRC held that judgment cannot be rendered against DMCI-PDI, D&AH, RG Ligan, and RECANA as petitioners failed to implead them in their complaints.[20]

In the interest of substantial justice, the NLRC affirmed the award of financial assistance in favor of petitioners.[21]

Petitioners filed a Motion for Reconsideration[22] which was, however, denied in the August 31, 2017 Resolution[23] of the NLRC.

Ruling of the Court of Appeals

On November 29, 2019, the CA rendered its Decision,[24] the dispositive portion of which states:

> **ACCORDINGLY**, we **MODIFY** the Decision dated 24 July 2017 issued by the National Labor Relations Commission, Fourth Division, Quezon City, and rule as follows:
>
> 1) **ORDER** the respondent SCECC to pay the petitioner Ramon salary differential pay, computed from 04 April 2015 to 19 January 2016;
> 2) **ORDER** respondent SCECC to pay the petitioner Marlon salary differential pay, computed from 04 April 2015 to 19 July 2016;
> 3) **ORDER** the respondent SCECC to pay petitioner Edmund salary differential pay, computed from 04 October 2013 to 15 January 2014; and
> 4) **DELETE** the award of financial assistance.

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[18] The Rules Implementing Articles 106-109 of the Labor Code, as Amended (2011). Under Section 3(l) of the DO18-A, Substantial Capital "refers to paid-up capital stocks/shares of at least Three Million Pesos (P3,000,000.00) in the case of corporations, partnerships and cooperatives; in the case of single proprietorship, a net worth of at least Three Million Pesos (P3,000,000.00)."

[19] *Rollo*, pp. 217-520.

[20] Id. at 520-525.

[21] Id. at 536.

[22] Id. at 529-539.

[23] Id. at 535-539.

[24] Id. at 1008-1029.

All sums due to the petitioner Ramon, petitioner Marlon, and petitioner Edmund are subject to legal interest at the rate of 6% per annum, from the finality of this Decision [until] full payment.

SO ORDERED.[25] (Emphasis in the original)

The CA held that DMCI is not guilty of illegally dismissing petitioners from employment since there existed no employer-employee relationship between them. It also agreed with petitioners that SCECC is a labor-only contractor as it lacked the required substantial capital or investment under DO 18-A.[26]

Since the CA found that Angeles, Emocling, and Gonzaga were paid below the minimum wage rate under relevant wage orders, it held that petitioners are entitled to payment of their salary differentials. The CA, however, observed, that the principal who contracted out the services to SCECC was DMCI-PDI, and not DMCI, which is a separate juridical entity from DMCI-PDI. Since petitioners failed to implead DMCI-PDI in their respective complaints, the CA held that petitioners cannot recover salary differentials, damages, and other monetary claims from DMCI-PDI. As such, petitioners can only claim the amount of their salary differentials from SCECC.[27]

Meanwhile, the CA deleted the award of financial assistance in favor of petitioners since they were unable to prove the facts attendant to their dismissal.[28]

Petitioners filed a Motion for Reconsideration[29] but the same was denied by the CA in its December 15, 2020 Resolution.[30]

Hence, this Petition.

Issue

Petitioners raise the following issues:

I.

The Court of Appeals gravely erred in deleting the award of financial assistance which was judiciously and unanimously granted by the Labor Arbiter and the Commission based on the attendant circumstances of the case;

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[25] Id. at 1028.
[26] Id. at 1020-1024.
[27] Id. at 1024-1027.
[28] Id. at 1027.
[29] Id. at 1030-1042.
[30] Id. at 1045-1046.

II.

The Court of Appeals gravely erred in declaring that Petitioners were not illegally dismissed;

III.

The Court of Appeals gravely erred in dismissing Petitioners' monetary claims;

IV.

The Court of Appeals gravely erred in not awarding attorney's fees.[31]

The issues may be simplified as follows: (1) whether petitioners were validly dismissed from employment; and (2) whether petitioners are entitled to the award of financial assistance and other monetary claims.

Our Ruling

Preliminary Matters

The findings of the NLRC and the CA regarding the status of SCECC as a labor-only contractor has not been questioned by herein respondents. The parties do not also dispute the following findings of the CA: (1) that the subcontractors engaged by SCECC, namely, D&AH, RG Ligan, and RECANA, which were supposedly the direct employers of petitioners, are also engaged in labor-only contracting; (2) that SCECC, albeit a labor-only contractor, is the indirect employer of petitioners; and (3) that Angeles, Emocling, and Gonzaga are entitled to payment of differential pay.

Considering that respondents did not appeal the CA Decision, its ruling on these matters are deemed final as to the parties. It is an elementary rule that issues not raised on appeal are already final and cannot be disturbed.[32]

Petitioners failed to prove fact of dismissal

We agree with the findings of the CA that the principal, which contracted out services to SCECC, was DMCI-PDI as evidenced by the Subcontract Agreement[33] executed by and between DMCI-PDI and SCECC. On the contrary, petitioners failed to present evidence that would show that the principal, which engaged the services of SCECC for the projects to which petitioners had been respectively assigned, was DMCI, and not DMCI-PDI. There is no question at this point that DMCI and DMCI-PDI are separate and distinct corporations with different corporate personalities. Accordingly, with

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[31] Id. at 11-12.

[32] *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Tri Joint Venture*, 818 Phil. 27, 72 (2017).

[33] CA *rollo*, p. 146.

the findings that SCECC is a labor-only contractor, petitioners are considered employees of DMCI-PDI, as provided under Section 5[34] of DO 18-A.

Given the foregoing premises, the Court is not inclined to depart from the findings of the LA, NLRC, and the conclusion reached by the CA that petitioners failed to adduce substantial evidence to support their claims that they are employees of DMCI, and the fact of their dismissal from employment.

It is settled that before employers are burdened with the obligation to prove that they did not illegally dismiss their employees, fair evidentiary rule dictates that the fact of employment, and dismissal therefrom, must first be established by substantial evidence. In this regard, one who alleges a fact has the burden of proving it, and that proof should be clear, positive and convincing.[35] In the instant case, petitioners' bare allegations, *i.e.*, that they were employees of DMCI, and that the series of transfers from one contractor to another caused their dismissal from employment,[36] are far from sufficient proof for the Court to rule in their favor. Bare allegations, unsubstantiated by evidence, are not equivalent to proof. In other words, mere allegations are not evidence.[37]

Besides, the LA, NLRC and the CA are unanimous in their finding that petitioners were not able to discharge their burden of proving that they are employees of DMCI, and that the latter dismissed them from employment. These are questions of fact and it is settled that findings of fact of quasi-judicial agencies are accorded great respect, even finality, by this Court.[38] This proceeds from the general rule that this Court is not a trier of facts, as questions of fact are contextually for the labor tribunals to resolve. Moreover, they are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record, which is not the case in the present appeal.[39]

In the same vein, the LA, NLRC and the CA found petitioners' evidence insufficient to prove their entitlement to moral and exemplary damages, and

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[34] Section 5 of DO-18-A states:
Section 5. Trilateral relationship in contracting arrangements; Solidary liability. x x x
x x x x
In the event of any violation of any provision of the Labor Code, including the failure to pay wages, there exists a solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code and other social legislation, to the extent of the work performed under the employment contract.
However, the principal shall be deemed the direct employer of the contractor's employee in cases where there is a finding by a competent authority of labor-only contracting, or commission of prohibited activities as provided in Section 7, or a violation of either Section 8 or 9 hereof.

[35] *Noblejas v. Italian Maritime Academy Phils., Inc.*, 735 Phil. 713, 721 (2014).

[36] *Rollo*, p. 16.

[37] *Noblejas v. Italian Maritime Academy Phils., Inc.*, supra.

[38] *Distribution & Control Products, Inc. v. Santos*, 813 Phil. 423, 435 (2017).

[39] *Colegio De San Juan De Letran-Calamba v. Tardeo*, 738 Phil. 693, 703 (2014).

attorney's fees. Thus, We shall not disturb these factual findings as this Court is not a trier of facts in petitions for review on *certiorari*.

Petitioners also failed to prove by substantial evidence that they were not paid their overtime pay, holiday pay, and 13th month pay. As correctly found by the CA:

> [T]he petitioners did not allege nor did they adduce evidence to prove that [they] were entitled to such claims. They did not allege the dates and/or periods when they rendered such overtime work and/or holiday work as to entitle them to such claims.[40]

Petitioners further claim that they are entitled to the twin remedies of reinstatement and backwages. Well-settled is the rule that the award of reinstatement and backwages are granted only when there is a finding of illegal dismissal on the part of the employer. [41] However, as thoroughly discussed above, petitioners are not entitled to the same for the simple reason that DMCI is not their employer and, accordingly, never dismissed them from employment.

Petitioners are entitled to financial assistance

The only issue left for resolution is whether the CA erred in deleting the award of financial assistance previously awarded to petitioners by the arbiter and the NLRC.

We rule in the affirmative.

To be clear, both the arbiter and the NLRC held that, due to humanitarian considerations and in the interest of substantial justice, petitioners are each entitled to financial assistance in the amount of PHP 15,000.00. Considering that respondents did not question the award of the labor tribunals before the CA, the appellate court, in resolving petitioners' Petition for *Certiorari*, was limited to the issues raised therein, which necessarily did not include the issue of their entitlement to financial assistance.

Accordingly, the said award to petitioners is deemed final as to respondents. As mentioned above, issues not raised on appeal are already final and cannot be disturbed.[42]

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[40] *Rollo*, p. 1027.
[41] LABOR CODE, Art. 293. See also *ALPS Transportation v. Rodriguez*, 711 Phil. 122, 123 (2013).
[42] See *Wyeth Philippines, Inc. v. Construction Industry Arbitration Commission*, G.R. Nos. 220045-48, June 22, 2020.

SCECC is liable to pay award of monetary claims

As mentioned above, the findings that SCECC is a labor-only contractor leads to the ultimate conclusion that petitioners are considered employees of DMCI-PDI pursuant to Sec. 5 of DO 18-A, which provides, in part:

> Section 5. *Trilateral relationship in contracting arrangements; Solidary liability.* x x x
>
> x x x x
>
> However, the principal shall be deemed the direct employer of the contractor's employee in cases where there is a finding by a competent authority of labor-only contracting, or commission of prohibited activities as provided in Section 7, or a violation of either Section 8 or 9 hereof.

However, since DMCI-IPD was not impleaded as a party respondent in this case, judgment cannot be rendered against it. This notwithstanding, petitioners can claim their monetary awards from SCECC pursuant to the same section as mentioned above, which states that:

> [I]n the event of any violation of any provision of the Labor Code, including failure to pay wages, there exists a solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code and other social legislation, to the extent of the work performed under the employment contract.

Thus, in *San Miguel Foods, Inc. v. Rivera*,[43] We held that "a finding of the existence of a labor-only contracting would definitely give rise to: (1) the creation of an employer-employee relationship between the principal and the employees of the contractor or sub-contractor; and (2) the solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code."

Given the solidary liability of DMCI-IPD as principal employer, and SCEEC as labor-only contractor, petitioners may proceed against SCECC for payment of their monetary awards.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The November 29, 2019 Decision and the December 15, 2020 Resolution of the Court of Appeals in CA-G.R. No. SP No. 153534 are **AFFIRMED** with **MODIFICATION**. The award of financial assistance in favor of petitioners Augusto R. Bergonio, Ramon T. Angeles, Marlon Dela Cruz Emocling, and Edmund E. Gonzaga, as stated in the July 24, 2017 Decision of the National Labor Relations Commission, is **REINSTATED**.

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[43] 824 Phil. 961, 975 (2018).

The March 29, 2022 Letter of the Chief, Archives Section, Judicial Records Division, Court of Appeals, Manila, transmitting the *rollo* of CA-G.R. SP No. 153534 with 1134 useful pages, is **NOTED**.

Respondents S.C. Estolano Construction Corporation/Socorro Charito E. Estepa's compliance with the March 3, 2021 Resolution and reiterated in the March 9, 2022 Resolution requiring them to file comment on the petition is **DISPENSED WITH**.

SO ORDERED." ***Marquez, J., on official business.***

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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