Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 18, 2023**, *which reads as follows:*

"G.R. Nos. 223604-05 (*Italit Construction and Development Corporation and Ramon R. Pastor v. Rodel Quitevis, Rodrigo Borromeo, Reynaldo Carlos, Robert Alconcel, Reynaldo Crispin, Enrico Dulo, Niño Estacio, Felipe Lantano, Gilbert Manata, Julie Resurrecion,*[1] *and Florie Rosima, Ronald M. Capulong, Herbert A. Paran, Benjamin Serna, and Rexy M. Rapsing*). – Before this Court is a Petition for Review on *Certiorari*[2] that seeks the annulment of the Decision dated October 19, 2015 of the Court of Appeals (CA) 8th Division[3] (and its Resolution[4] dated February 23, 2016 on petitioner's Motion for Reconsideration) *vis-à-vis* the consolidated original Petitions for *Certiorari* in CA-G.R. SP Nos. 137883 and 137968.

First, a discussion on the long train of facts in order to trace the case's journey back to this Court a second time around.

On August 14, 2001, 82 complainants instituted National Labor Relations Commission-National Capital Region (NLRC-NCR) Case No. 30-08-03628-01 against petitioner Italit Construction and Development Corporation (Italit), alleging their illegal dismissal on August 4, 2001, and praying for their regularization and/or reinstatement, plus their full benefits and backwages in accordance with law.

Italit is a Filipino corporation (headed by Ramon R. Pastor as company president) engaged in the business of manufacturing pipes—specifically the supply of high-quality polyvinyl chloride steel and polyethylene pipes and fittings to local and foreign clients based on their purchase order specifications. The 82 complainants, as stated in their Position Paper[5] before the NLRC-NCR Arbitration Branch, were allegedly hired to perform various tasks for petitioner that were usually necessary and desirable to petitioner's

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1 Resurreccion in some parts of the *rollo*.
2 *Rollo*, pp. 17-62.
3 Id. at 765-777; penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao (now a Member of this Court) and Carmelita S. Manahan, concurring.
4 Id. at 825-827.
5 Id. at 75-94.

usual trade or business. However, despite their long and uninterrupted service, petitioner refused to consider them as regular employees, and denied them the appropriate benefits under the law. They also allege that starting July 27, 2001, they were required to sign a document evincing their status as non-regular employees, having no objection to be terminated anytime by petitioner.[6] In alleged retaliation for their refusal to sign the said document, all but 16 of the complainants were dismissed from work, which prompted the institution of the case. During the pendency of the NLRC-NCR Arbitration Branch proceedings, 42 were reinstated, but they pursued with the case in order to avail of their full benefits and full backwages.

In their Position Paper,[7] petitioner counters that their pipe-manufacturing business is based on the specifications of clients' purchase orders, which correspond to specific project/job orders, and not to continuous production like other factories and manufacturing firms. The 82 complainants, according to petitioner, were hired as project employees to work as either production or maintenance helpers to augment its existing workforce in order to meet production deadlines in relation to specific projects. Once these projects/job orders were completed, petitioner alleges that they were duly reported to the Department of Labor and Employment (DOLE) *via* the filing of establishment termination reports. Moreover, due to the allegedly considerable decrease in demand for petitioner's pipes at the time, it was forced to undertake measures to downsize its operations.

Attached to petitioner's Position Paper are two important sets of documents: (1) copies of only four project employment contracts,[8] *i.e.*, that of Ernesto Acovera, Renato Gorospe, Rexy Rapsing, and Ricky Salcedo, that cover their employment for the period of March 1 to May 31, 2000 for various enumerated clients; and (2) a copy of petitioner's Establishment Termination Report[9] filed with the DOLE-NCR Office on August 6, 2001, which states that 86 temporary workers were laid off due to the cause of project completion (effective July 16, 2001), and a lack of raw materials. With regard to the latter report, no specifics were mentioned with regard to which of petitioner's projects (or job orders) were completed. Notably, the four complainants previously mentioned also appear in the attached list of affected workers, as noted in the complainants' Reply to Petitioner's Position Paper.[10] Additionally, petitioner emphasized in its Reply[11] and Rejoinder[12] that its pertinent finance and accounting records were stolen on September 15, 2001,[13] which allegedly meant that the documentary evidence to substantiate

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[6] Id. at 79.
[7] Id. at 95-113.
[8] Id. at 104-107.
[9] Id. at 108-113.
[10] Id. at 123-130.
[11] Id. at 114-119.
[12] Id. at 131-134.
[13] Id. at 118 and 122.

the complainants' money claims would be impossible, and that their own human resource officer and other employees executed sworn statements as to their personal knowledge that complainants were really just temporary project employees.

On September 10, 2002, Labor Arbiter Renaldo O. Hernandez promulgated his Decision[14] on the case, to wit:

> WHEREFORE, premises considered, judgment is entered DECLARING that all of herein complainants became regular employees by force and operation of law and that the 25[15] forenamed individual complainants were illegally dismissed on 04 August 2001 in their legally acquired employment status as regular employees thus, ORDERING respondent company:
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> 1) to reinstate said 25 forenamed complainants Felipe Lantano, Robert Alconcel, Edward Esguerra, Erol Abendan, Allan Ison, Alejandro Esguerra, Percival Quinzon, Fidel Nullaga, Nino Estacio, Larry Aban, Julie Resurreccion, Florie Rosima, Mario Estanislao, Ernesto Acovera, Reynaldo Crispin, Ricky Salcedo, Renato Gorospe, Jonathan Arevalo, Kim Lumbes, Rodrigo Borromeo, Reynaldo Carlos, Enrico Dulo, Jay Camacho, Julius Camacho, and Gilbert Manata to their former positions without loss of seniority rights and other privileges and to pay their full back wages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time their compensation were withheld up to the time of their actual reinstatement;
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> 2) to pay the complainants their wage differentials due to underpayment of the minimum wage and their unpaid 13th month pay and 5[-] day SILP accruing within the 3[-]year prescriptive period from August 13, [1998] to August 14, 2001, as discussed above;
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> 3) to pay 10% of the total award as attorney's fees.
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> which [sic] award, is attached in the herein computation by the NCR Computation & Examination Unit.
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> All other claims of complainants are dismissed for lack of merit.
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> SO ORDERED.[16]

The Labor Arbiter's overall determination that petitioner failed to substantiate its claim of mere project employment status to characterize complainants' engagement hinged precisely on the two sets of attachments to petitioner's Position Paper: the alleged project employment contracts covering the time period of March to May 2000 of Messrs. Acovera, Gorospe, Rapsing, and Salcedo were belied by the fact that they were part of the dismissal *en*

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[14] Id. at 163-179.
[15] These were the original complainants who were dismissed and not rehired along with the 42 others.
[16] *Rollo*, pp. 178-179.

masse in August 2001, as evidenced by the presence of their names in petitioner's establishment termination report to DOLE-NCR. This was proof that in actuality, all complainants were continuously re-hired by petitioner for its usual and regular business of making industry-grade steel pipes. Also, the fact that petitioner's financial and accounting records *vis-à-vis* the complainants' wages were allegedly lost was of no moment, since the Labor Arbiter was able to determine the actual minimum wage for NCR over the years covering the various periods of complainants' engagement with petitioner.

Petitioner filed its Memorandum of Appeal[17] with the NLRC, while 16 complainants filed a Partial Appeal[18] on grounds of inadvertent omission of their names from the Labor Arbiter Decision's computation. During the pendency of proceedings, nine complainants executed affidavits of desistance from the case, as manifested by petitioner.[19]

On January 30, 2004, the NLRC 2nd Division promulgated its Decision[20] in NLRC NCR 30-08-03628-01 (CA No. 033509-02), which modified and effectively *reversed* the Labor Arbiter's Decision, to wit:

> WHEREFORE, premises considered, the 10 September 2002 Decision of Labor Arbiter Renaldo O. Hernandez is hereby MODIFIED.
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> SO ORDERED.[21]

The NLRC found the record bereft of any evidence to substantiate the complainants' contention that petitioner continuously engaged their services and labor. Indeed, the burden of proving otherwise was with petitioner. However, it was determined that the burden had shifted to the complainants due to the NLRC's inclination to give credence and more weight to the few project employment contracts presented by petitioner, and the fact that petitioner's relevant financial and accounting records could no longer be constituted. The NLRC faulted the complainants for their inability to even show copies of their pay slips, which is confirmed by the fact that their Position Paper really had no attachments. The NLRC also noted that two more complainants executed affidavits of desistance from the case, and that Robert Alconcel is in truth and fact Modesto Quitevis.

A verified Motion for Partial Reconsideration[22] was filed by five complainants, namely: Gilbert Manata, Sonny Coronado, Junar Caccam, Anacleto Caccam, and Ederlino Cruz. Said motion, however, does not state

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[17] Id. at 180-194.
[18] Id. at 236-239.
[19] Id. at 240-250.
[20] Id. at 251-264.
[21] Id. at 263.
[22] Id. at 265-271.

their names at the start right after the caption. Additionally, the substance of the motion is a reiteration of the arguments in complainants' general Reply to Petitioner's Position Paper before the Labor Arbiter. The NLRC 2nd Division, in a Resolution[23] promulgated on July 23, 2004, denied the said Motion for lack of merit.

In a sudden turn of events, however, 78 of the original complainants filed an original Petition for *Certiorari*[24] with the CA on the basis of the NLRC's denial of the Motion for Partial Reconsideration of the five abovementioned complainants. Alleging grave abuse of discretion on the part of the NLRC, and reiterating their arguments below, the 78 complainants prayed for the annulment of the NLRC Decision dated January 30, 2004, and for the reinstatement of the Labor Arbiter's Decision dated September 10, 2002.

Despite the fact that only five of the 78 complainants were the parties who verified the Motion for Partial Reconsideration before the NLRC, the CA 12th Division seems to have glossed over this fact, and considered the pleading as filed by all complainants when it granted their petition in its Decision[25] dated May 24, 2006 in CA-G.R. SP No. 86866. The dispositive portion of the Decision reads:

> **WHEREFORE**, the petition for certiorari is hereby **GRANTED**. The decision of the NLRC is **SET ASIDE** and the decision of the labor arbiter in favor of the 78 petitioners is **REINSTATED** with **MODIFICATION** that the sixteen (16) complainants previously excluded from the computation are hereby included in the award made by the labor arbiter.
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> **SO ORDERED.**[26] (Emphases in the original)

Petitioner filed its Motion for Reconsideration[27] *vis-à-vis* the said Decision of the CA in due course, further manifesting that an additional two complainants executed affidavits of desistance, and that 10 complainants executed release waivers and quitclaims relative to the case. Unexpectedly, the CA remanded the case to the NLRC-NCR Arbitration Branch in a Resolution dated January 29, 2007—a copy of which is not attached to the record, but is duly pleaded in the Petition for Review on *Certiorari*[28] filed before this Court by 80 complainants, and docketed as G.R. No. 179123. Complainants duly filed their Partial Motion for Reconsideration *vis-à-vis* the Resolution ordering the remand, but the same was denied in a Resolution

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[23] Id. at 272-273.
[24] Id. at 274-299.
[25] Id. at 300-315; penned by Associate Justice Mariflor P. Punzalan-Castillo with Associate Justices Elvi John S. Asuncion and Noel G. Tijam (now a retired Member of this Court), concurring.
[26] Id. at 314-315.
[27] Id. at 316-324.
[28] Id. at 340-363.

dated August 6, 2007—a copy of which is also not attached to the record, but is also duly pleaded in complainants' Rule 45 Petition.

Before this Court in G.R. No. 179123, the 80 complainants prayed that the remand of the case to the NLRC-NCR Arbitration Branch be limited only to eight of the complainants, and that the findings relative to the remaining complainants be held as final. The Court's First Division, however, denied complainants' Petition for Review on *Certiorari* on September 9, 2009 "for failure to sufficiently show that the CA committed any reversible error in the challenged resolutions to warrant the exercise of this Court's discretionary appellate jurisdiction."[29] Despite complainants' filing of a Motion for Reconsideration[30] relative to this denial, the case's remand proceeded in earnest.

On September 24, 2013, Executive Labor Arbiter Fatima Jambaro-Franco promulgated her Decision[31] that dismissed the entire complaint for illegal dismissal for lack of merit, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit.
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> SO ORDERED.[32]

Complainants duly filed their Notice of Appeal with Memorandum on Appeal,[33] which prompted the NLRC 2nd Division to modify the Executive Labor Arbiter's ruling in a Decision[34] dated April 30, 2014. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED, insofar as our order for complainants-appellants Robert Alconcel, who is in truth and in fact Modesto Quitevis, Rodrigo Borromeo, Reynaldo Carlos, Reynaldo Crispin, Enrico Dulo, Niño Estacio, Felipe Lantino, Gilbert Manata, Julie Resurreccion and Florie Rosima, to be considered as regular employees; that they have been illegally dismissed on August 4, 2001, without valid cause and, therefore, ordered to be reinstated to their former positions and also to be awarded their full backwages.
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> All other monetary claims are hereby denied for lack of merit.
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> The NLRC's Computation and Examination Unit is hereby directed to compute the money award as discussed above, which will form part of this Decision.

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[29] Id.at 366.
[30] Id. at 367-374.
[31] Id. at 377-388; docketed as NLRC-NCR Case No. 30-08-03628-01 R.
[32] Id. at 388.
[33] Id. at 389-414.
[34] Id. at 415-429; docketed as NLRC-CA No. 033509-02 (RA-12-13).

SO ORDERED.[35]

Petitioner filed a Motion for Partial Reconsideration[36] of the NLRC's new Decision, which raised for the first time its opposition to the first original Petition for *Certiorari* filed by complainants in CA-G.R. SP No. 86866 on the ground of the lack of verification of 73 complainants, *vis-à-vis* the Motion for Partial Reconsideration of the first NLRC Decision dated January 30, 2004. Petitioner also questioned the inclusion of Rodel Quitevis in the NLRC's computation, despite the fact that his name actually appears in the list of affected employees in petitioner's August 2001 establishment termination report. Petitioner also alleged that Rodrigo Borromeo, Robert Alconcel, and Florie Rosima did not sign the verification page of the Notice of Appeal with Memorandum on appeal from the Executive Labor Arbiter's Decision, but were still included in the NLRC's computation.

Two groups of complainants filed their respective motions for reconsideration relative to the new NLRC Decision. Jonathan Cariaga, Johnson Angelo, Marlon Labucay, Pascual Tapanan, Oliver Elejorde, Manuel Ogot, Mario Panglao, and Manuel Bulantao filed a Motion for Partial Reconsideration[37] in order to claim wage differentials and their regularization, while Ronald Capulong, Benjamin Serna, Herbert Paran, and Rexy Rapsing filed their Very Respectful Motion for Reconsideration[38] in order to further claim separation pay and moral and exemplary damages from petitioner.

The NLRC Special 2nd Division, in a Resolution[39] dated August 14, 2014, denied all motions for reconsideration filed by the parties for failure to show patent or palpable errors warranting reconsideration, *viz.*:

> WHEREFORE, in view of the foregoing premises, both Motions for Reconsideration are hereby DENIED for lack of merit.
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> No further Motion of [a] similar nature shall be entertained.
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> SO ORDERED.[40]

It was petitioner's turn then to elevate the matter to the CA. In its original Petition for *Certiorari*[41] docketed as CA-G.R. SP No. 137883, petitioner raised again its position that the first NLRC Decision dated January 30, 2004 should have been considered final and executory as to the 73 complainants who failed to join and verify the subsequent Motion for Partial Reconsideration filed by only five complainants. This meant that the 10 (or

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[35] Id. at 428-429.
[36] Id. at 433-453.
[37] Id. at 459-465.
[38] Id. at 466-469.
[39] Id. at 454-458 and 476-479.
[40] Id. at 457.
[41] Id. at 480-508.

11) remaining complainants had no legal standing and personality anymore *vis-à-vis* the proceedings since 2004, due to the fact that they were not parties to the said Motion for Partial Reconsideration. Petitioner duly pleaded its objection to all previous rulings below that classified all complainants as regularized workers, and the inclusion of Rodel Quitevis in the NLRC's computation despite not being mentioned in the dispositive portion of the second NLRC Decision.

Still disinclined to give up at this point, Messrs. Capulong, Paran, Serna, and Rapsing filed their own original Petition for *Certiorari*[42] before the CA that raised anew the ground of their Very Respectful Motion for Reconsideration. Their petition was docketed as CA-G.R. SP No. 137968, and was consolidated with CA-G.R. SP No. 137883 as ordered by the Resolution[43] dated June 22, 2015 of the CA 9th Division.

On October 19, 2015, the CA 8th Division promulgated its Decision[44] on the two consolidated petitions, which denied the petition in CA-G.R. SP No. 137883, and granted the one in CA-G.R. SP No. 137968, effectively affirming the second NLRC Decision dated April 30, 2014 with the attendant modification in favor of Messrs. Capulong, *et al.* The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the petition in CA-GR SP No. 137883 is ***DENIED*** while on one hand, the petition in CA-GR SP No. 137968 is ***GRANTED***. Accordingly, the April 30, 2014 Decision and August 14, 2014 Resolution of the National Labor Relations Commission, Second Division in NLCR-NCR 30-08-03628-01 (CA No. 033509-02 [RA-12-13]) are hereby ***AFFIRMED*** with the modification in [*sic*] that petitioners Ronaldo Capulong, Herbert Paran, Benjamin Serna, and Rexy Rapsing should be paid their separation pay and backwages. As such, the Labor Arbiter and the NLRC are hereby ordered to determine the exact and proper monetary benefits which are to be awarded in favor of the aforementioned individuals. The backwages is [sic] computed from the time of dismissal until the finality of this decision ordering separation pay. Likewise, all monetary grants awarded shall earn interest at the rate of six percent (6%) *per annum* of the total monetary obligation computed from the time the same was judicially demanded and an additional six percent (6%) *per annum* from the time of the finality of judgment until its full satisfaction shall be imposed.
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> **SO ORDERED.**[45] (Emphases in the original)

In fine, the CA made the following determinations *vis-à-vis* the case:

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[42] Id. at 509-525.
[43] Id. at 745-747.
[44] Id. at 765-777.
[45] Id. at 775-776.

1. The first NLRC Decision dated January 30, 2004 had long been vacated by virtue of the remand ordered by the CA on January 29, 2007 for further proceedings, due to the fact that the said Decision was made "on account of bare allegations."[46] The new proceedings and decisions subsequent to the remand are now the prevailing authoritative assertions as to the employment status of complainants.

2. The second NLRC Decision did not err in holding that the 10 (or 11) remaining complainants were regular employees, since petitioner failed to prove that they were merely hired for a specific undertaking or project. There was indeed a lack of documentary evidence in this case. This was precisely why the NLRC was constrained to declare the remaining complainants as regularized the second time around.

3. The failure of Rodrigo Borromeo and Florie Rosima to sign and verify the appeal from the Executive Labor Arbiter's Decision dated September 24, 2013 was of no moment, and should have been questioned at the earliest opportunity, and that the failure of the NLRC to mention the name of Rodel Quitevis was a mere inadvertence.

4. Messrs. Capulong, Paran, Serna, and Rapsing were indeed regular employees because they were repeatedly hired by petitioner to perform the same tasks year after year. This means that their work was necessary and indispensable to the activities of petitioner's business.

Petitioner duly filed its Motion for Reconsideration[47] *vis-à-vis* the aforementioned ruling, which was denied by the CA 8th Division in its Resolution[48] dated February 23, 2016, to wit:

> **WHEREFORE**, premises considered, the foregoing Motion for Reconsideration is hereby ***DENIED***.
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> **SO ORDERED**.[49] (Emphases in the original)

Hence, the present Petition.

Reiterating its arguments in their Motion for Reconsideration before the CA, petitioner alleges that the CA erred in holding that respondents were illegally dismissed and entitled to the reliefs they prayed for. This is especially applicable to the heirs of Enrico Dulo and Florie Rosima, who executed compromise agreements with petitioner, and Rodel Quitevis whose

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[46] Id. at 770.
[47] Id. at 778-803.
[48] Id. at 825-827.
[49] Id. at 827.

name did not appear in the dispositive portion of the Executive Labor Arbiter's Decision dated September 24, 2013.

Messrs. Capulong, Paran, Serna, and Rapsing filed their Comment.[50] They discuss the pivotal issue of the alleged finality of the first NLRC Decision dated January 30, 2004, and the fact that the case has been unresolved since 2001—prompting the speedy resolution by this Court. The other respondents in G.R. No. 223604 filed a Manifestation[51] to indicate that they would no longer be filing a comment on the Petition due to the fact that they have already received full payment of their claims from petitioner.

The Court's Decision

This Court now resolves.

There are two issues for the disposition of the Court: one procedural and one substantive. The first is whether or not the first Decision of the NLRC dated January 30, 2004 had become final and executory. This is determinative of the jurisdiction of the CA *vis-à-vis* all its proceedings with regard to the case, as well as that of this Court. The second is whether or not respondents were in fact project employees, having no cause of action to file their case for illegal dismissal in the first place.

Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended by A.M. No. 07-7-12-SC, is clear: a petition for *certiorari* shall be filed not later than 60 days from notice of the judgment, order, or resolution being questioned on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction. If a motion for reconsideration or new trial was timely filed, regardless of the fact that it is not required, the period for filing shall be counted from notice of the denial of the said motion.

From the facts and admissions of the parties, it is clear that respondents collectively received the first NLRC Decision on March 23, 2004.[52] However, respondents collectively state in their original Petition for *Certiorari* in CA-G.R. SP No. 86866 that they filed their Motion for Reconsideration on April 2, 2004, and received the NLRC's Resolution on the same on August 12, 2004. Respondents thus allege that their original Petition for *Certiorari* before the CA was timely filed, *i.e.*, on or before October 11, 2004.

Looking, however, at the contents of the alleged Motion for Reconsideration, which is the anchor of respondents' original Petition for *Certiorari*, this appears to only be the Motion for Partial Reconsideration filed

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[50] Id. at 837-848.
[51] Id. at 866-868.
[52] Id. at 279.

and verified by five of the original complainants: Gilbert Manata, Sonny Coronado, Junar Caccam, Anacleto Caccam, and Ederlino Cruz. There is nothing to indicate that the pleading was filed on behalf of all the other complainants, other than the fact that the caption of the pleading remained unchanged, and that their counsel remained the same. There is also no special power of attorney attached to the pleading that authorized either the five complainants or their counsel of record to sign and file the same on behalf of all the other complainants. It would mean that as to the other 73 complainants, no Motion for Reconsideration was filed. The first NLRC Decision dated January 30, 2004 seems to have indeed become final and executory as to the remaining complainants, to which the present respondents belong, after a period of 10 days from their receipt of the same on March 23, 2004, in accordance with the Article 223 of the Labor Code of the Philippines.

From a procedural standpoint, the 73 complainants seem to have "hitched a ride" with the five who filed their Motion for Partial Reconsideration on the way to the CA long after the finality of the first NLRC Decision. In *Labao v. Flores*,[53] the Court categorically held that the 60-day period is an inextendible time frame imposed "to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case."[54] In holding another judgment of the NLRC as already immutable due to the late filing of the original petition for *certiorari* before the CA in that case, the Court emphasized this in the following manner:

> The NLRC's resolution became final ten (10) days after counsel's receipt, and the respondents' failure to file the petition within the required (60)-day period rendered it impervious to any attack through a Rule 65 petition for *certiorari*. Thus, no court can exercise jurisdiction to review the resolution.
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> Needless to stress, a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final and executory; execution of the decision proceeds as a matter of right as vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. After all, a denial of a petition for being time-barred is tantamount to a decision on the merits. Otherwise, there will be no end to litigation, and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the

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[53] 649 Phil. 213 (2010).

[54] Id. at 221; see also *Thenamaris Philippines, Inc. v. Court of Appeals*, 725 Phil. 590 (2014) and *Laguna Metts Corp. v. Court of Appeals*, 611 Phil. 530, 535 (2009).

> maintenance of peace and order by settling justiciable controversies with finality.[55]

In addition, by going to the CA *via* an original petition for *certiorari*, without having filed their own motion for reconsideration *vis-à-vis* the first NLRC Decision, the respondents are in breach of the general rule with regard to the exhaustion of administrative remedies in the NLRC before proceeding to the courts. In *Olores v. Manila Doctors College*,[56] the Court held that—

> The general rule is that a motion for reconsideration is indispensable before resort to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any. The rule is well settled that the filing of a motion for reconsideration is an indispensable condition to the filing of a special civil action for *certiorari*.
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> The rationale for the requirement of first filing a motion for reconsideration before the filing of a petition for *certiorari* is that the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had.[57]

Thus, respondents, as part of the 73 original complainants who filed the original petition for *certiorari* before the CA in order to question the first NLRC Decision without having filed and verified a motion for reconsideration thereof, are seemingly bound by the immutability of the same. This may seem to have been an inadvertence of their counsel on record, who chose to only file the Motion for Partial Reconsideration for and on behalf of only five complainants.

However, this Court is inclined to view the lack of verification on the Motion for Partial Reconsideration *vis-à-vis* the first NLRC Decision as a procedural lapse to be resolved in favor of respondents. In *Ballao v. Court of Appeals*,[58] the Court held that—

> Time and again, we have said the lack of verification is merely a formal defect that is neither jurisdictional nor fatal. In a proper case, the court may order the correction of the pleading or act on the unverified pleading, if the attending circumstances are such that strict compliance with the rule may be dispensed with in order to serve the ends of justice. It should be stressed that rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts cannot be enslaved by technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat *vis-à-vis* substantive rights, and not the other way around. Thus, if the application of the Rules

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[55] *Labao v. Flores*, supra note 53, at 224-225. Citations omitted.
[56] 731 Phil. 45 (2014).
[57] Id. at 58. Citations omitted.
[58] 535 Phil. 236 (2006).

> would tend to frustrate rather than promote justice, it is always within the Court's power to suspend the rules or except a particular case from its operation. This is more so in labor cases where social justice should be emphasized. In light of the circumstances of this case, we find that the lack of verification may be excused, so that the case could be decided on its merits.[59]

Thus, in the interest of justice, this Court is inclined to excuse the non-verification of the 73 original complainants *vis-à-vis* the Motion for Partial Reconsideration filed by the other five in relation to the first NLRC Decision, and to consider the same as the Motion for Reconsideration of all the complainants. In making this *pro hac vice* exception, this Court is also mindful of the exceptions to mandatory 60-day period within which to file a special civil action for *certiorari*, and the rule on exhaustion of administrative remedies (*i.e.*, filing a motion for reconsideration *vis-à-vis* decisions and resolutions of administrative bodies such as the NLRC).

Labao v. Flores noted various exceptions to the strict observance of the 60-day period, but in the instant Petition, this Court notes that the following are applicable: 1) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; 2) the merits of the case; 3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; 4) fraud, accident, mistake or excusable negligence without appellant's fault; 5) peculiar legal and equitable circumstances attendant to each case; 6) in the name of substantial justice and fair play; and 7) exercise of sound discretion by the judge guided by all the attendant circumstances.[60]

The exception to the rule on filing a motion for reconsideration present here would be the fact that the questions raised in the first set of *certiorari* proceedings before the CA were duly passed upon by the NLRC, or alternatively, are the same as those raised and passed upon in the NLRC.[61]

In summary, there are compelling reasons for the Court's final disposition of the case despite the procedural lapse on the part of the original complainants' counsel of record even before the case reached this Court the first time around. The case has been active for nearly 21 years since the filing of the complaint for illegal dismissal on August 14, 2001. Most of the original complainants have moved on from the controversy, and some have already passed away without the final resolution of their employment status at the time. Moreover, upon a reading of the critical Partial Motion for Reconsideration filed by only five complainants, the same looks indeed to be

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[59] Id. at 243-244. Citations omitted.
[60] Supra note 53.
[61] See *Olores v. Manila Doctors College*, supra note 56.

a reiteration of the arguments in complainants' general Reply to petitioner's Position Paper before the Labor Arbiter.

Thus, the NLRC actually had every opportunity to address the substantive issues of the case anew—as if a motion for reconsideration were indeed filed by the 73 other complainants. Again, this is a *pro hac vice* suspension of the general rules on verification, the time frame for filing a special civil action for *certiorari*, and on filing a motion for reconsideration before the NLRC before going up to the CA on Rule 65. The mistake of the original complainants' counsel of record is strongly frowned upon, and should not be repeated. This Court will not hesitate to dismiss a similar petition outright in the future.

Going now to the substantive aspect of the case, and to finally settle the present controversy once and for all, this Court hereby rules that respondents (and necessarily, the rest of the original complainants) were not merely project employees of petitioner—they should have been deemed regular in the eyes of the law.

As early as *Associated Labor Unions—Trade Union Congress of the Philippines v. National Labor Relations Commission*,[62] the Court defined the specific nuances of the term "project" *vis-à-vis* the determination of project employment:

> In the realm of business and industry, we note that "project" could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company: A construction company ordinarily carries out two or more discrete identifiable construction projects *e.g.*, a twenty-five-storey hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as "project employees," and their services may be lawfully terminated at completion of the project.
>
> The term "project" could also refer to, secondly, a particular job or undertaking that is *not* within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or

[62] 304 Phil. 844 (1994).

> undertaking also begins and ends at determined or determinable times. x x x.[63]

The Court has also recently dealt with updated standards by which one can determine if an employee's engagement is either regular or project-based. In *Del Rosario v. ABS-CBN Broadcasting Corp.*,[64] the Court held that "[i]t is basic that project or contractual employees shall be apprised of their project under a written contract, specifying *inter alia* the nature of the work to be performed and the rates of pay and the program in which they will work."[65] The Court also held that even if contractual or project employees were constitutive of a work pool, this did not prevent their regularization if they were continuously rehired by the same employer for the same tasks, which are vital, necessary, and indispensable to the usual trade or business of the employer in question.[66]

In *Serrano v. Loxon Philippines, Inc.*,[67] the Court reaffirmed the ruling in *Fuji Television Network, Inc. v. Espiritu*[68] that "an employment contract indicating a fixed term did not automatically mean that the employee could never be a regular employee."[69] Thus, "[w]here an employee's contract had been continuously extended or renewed to the same position, with the same duties and under the same employ without any interruption, then such employee is a regular employee. The continuous renewal is a scheme to prevent regularization."[70]

In *Square Meter Trading Construction v. Court of Appeals*,[71] the Court accorded employees the presumption of regularity of employment due to the fact that their employer absolutely failed to present any evidence that each of the employees were assigned to a particular project, with a defined scope or duration. And in *Toyo Seat Philippines Corp. v. Velasco*,[72] the Court reiterated the application of the standards in DOLE Department Order No. 19 (s. 1993) to the determination of project employment in industries other than that of construction.[73]

Specifically, Section 2.2 of the said Department Order notes six indicators of project employment: 1) reasonable determinability of project duration; 2) definitive stipulation of project duration, and work specifics in the employment agreement made clear to the employee before engagement; 3)

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[63] Id. at 851-852.
[64] G.R. No. 202481, September 8, 2020.
[65] Id.
[66] Id.
[67] G.R. No. 249092, September 30, 2020.
[68] 749 Phil. 388 (2014).
[69] *Serrano v. Loxon Philippines, Inc.*, supra note 67.
[70] Id. Citation omitted.
[71] G.R. No. 225914, January 26, 2021.
[72] G.R. No. 240774, March 3, 2021.
[73] Id. See also *Maraguinot, Jr. v. National Labor Relations Commission*, 348 Phil. 580 (1998).

connection between work to be performed and the specific project; 4) freedom of employees to offer services to any other employer; 5) reporting of termination due to project completion to the DOLE Regional Office; and 6) employer's undertaking to pay completion bonus.

Applying the foregoing to the case at bar, the implications are clear: the complainants, respondents included, were regular employees by force and operation of law as correctly determined by the Labor Arbiter in his Decision dated September 10, 2002. Despite the fact that petitioner could only present four project employment contracts covering the period of March to May 2000, the fact that the supposed project employees named therein appear in petitioner's establishment termination report for August 2001, is a strong indicator that the complainants were continuously rehired for work usually necessary and desirable for petitioner's business.

Moreover, the contracts are not clear and definitive as to what nature of work is assigned to each supposed project employee, and for what specific project. Verily, a perusal of the contracts would only show the name and signature of the supposed project employee, the date of contract effectivity, and his or her pay rate. As to the space provided for the specific project or job order, there are at least two projects (or more specifically, client entities) mentioned, without any more specifics. There is thus, a lack of definitive stipulation as to work specificity in the alleged project employment agreements. Any ambiguity in this regard must be resolved in favor of labor.

This Court notes that it cannot grant relief to all of the original complainants, since only 15 remain as parties to the case. Without further speculating as to the reasons why so many of the original complainants either desisted from the case or came into compromise agreements with petitioner, and despite the Manifestation of respondents in G.R. No. 223604, this Court still sees fit to grant relief to all remaining 15 respondents in terms of their backwages and benefits denied to them for more than two decades. It will thus be up to the NLRC during execution proceedings to verify petitioner's alleged full payment of the claims of the respondents, who have manifested so, especially the heirs or successors-in-interest of Enrico Dulo and Florie Rosima.

As to petitioner's objection to the inclusion of Rodel Quitevis in the computation of the first NLRC Decision, since it was proven that he was indeed named in petitioner's establishment termination report for August 2001 along with the other original complainants, his exclusion from the Labor Arbiter's original computation was indeed mere inadvertence.[74]

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[74] *Rollo*, p. 112.

As to the claim of respondents in G.R. No. 223605 for moral damages, the Court finds this belated. Respondents should have raised this at the earliest opportunity before the Labor Arbiter and before the NLRC either affirmed or denied any of the former's findings. This is also important due to the need for a specific determination of bad faith on account of the employer. As stated in *Primero v. Intermediate Appellate Court*,[75]

> [A]ny award of moral damages by the Labor Arbiter obviously cannot be based on the *Labor Code* but should be based on the *Civil Code*. Such an award cannot be justified solely upon the premise (otherwise sufficient for redress under the Labor Code) that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, to repeat, that the act of dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, *etc.*, resulted therefrom.[76]

With no specific determination of bad faith or fraud on the part of petitioner that is stated in any of the decisions and resolutions below, due to the fact that none were specifically pleaded and demanded by the complainants, this Court is disinclined to grant the same. Not being a trier of facts, this Court can no longer disturb further the factual determinations of the Labor Arbiters and the NLRC in this case.

WHEREFORE, the present Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated October 19, 2015 and the Resolution dated February 23, 2016 of the Court of Appeals 8th Division relative to CA-G.R. SP Nos. 137883 and 137968 are hereby **AFFIRMED**.

SO ORDERED." (**Dimaampao**, *J., recused himself from the case as he concurred in the CA Decision and Resolution;* **Marquez**, *J., designated additional Member per Raffle dated January 10, 2023.*)

By authority of the Court:

MiSRDCB-III
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court JB 4/28/23

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[75] 240 Phil. 412 (1987).
[76] Id. at 421. Citation omitted.

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