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WILFREDO V. LAPITAN
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Third Division
SEP 26 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MARIO A. ABUDA, RODOLFO DEL REMEDIOS, EDWARDO DEL REMEDIOS, RODOLFO L. ZAMORA, DIONISIO ADLAWAN, ELPIDIO GARCIA, JR., ROGELIO ZAMORA, SR., JIMMY TORRES, POLICARPIO OBANEL, JOSE FERNANDO, JOHNNY BETACHE, JAYSON GARCIA, EDWIN ESPE, NEMENCIO CRUZ, LARRY ABAÑES, ROLANDO SALEN, JOSEPH TORRES, FRANCISCO LIM, ARNALDO GARCIA, WILFREDO BROÑOLA, GLENN MORAN, JOSE GONZALES, ROGER MARTINEZ, JAIME CAPELLAN, RICHARD ORING, JEREMIAS CAPELLAN, ARNEL CAPELLAN, MELCHOR CAPELLAN, ROLLY PUGOY, JOEY GADONES, ARIES CATIANG, LEONEL LATUGA, VICENTE GO, TEMMIE C. NAWAL, and EDUARDO A. CAPILLAN,
Petitioners,

-versus-

L. NATIVIDAD POULTRY FARMS, JULIANA NATIVIDAD, and MERLINDA NATIVIDAD,
Respondents.

x----------x

G.R. No. 200712

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:
July 4, 2018

DECISION

LEONEN, *J.*:

The necessity or desirability of the work performed by an employee can be inferred from the length of time that an employee has been performing this work. If an employee has been employed for at least one (1) year, he or she is considered a regular employee by operation of law.

This resolves the Petition for Review[1] filed by Mario A. Abuda, Rodolfo Del Remedios, Edwardo Del Remedios, Rodolfo L. Zamora, Dionisio Adlawan, Elpidio Garcia, Jr., Rogelio Zamora, Sr., Jimmy Torres, Policarpio Obanel, Jose Fernando, Johnny Betache, Jayson Garcia, Edwin Espe, Nemencio Cruz, Larry Abañes, Rolando Salen, Joseph Torres, Francisco Lim, Arnaldo Garcia, Wilfredo Broñola, Glenn Moran, Jose Gonzales, Roger Martinez, Jaime Capellan, Richard Oring, Jeremias Capellan, Arnel Capellan, Melchor Capellan, Rolly Pugoy, Joey Gadones, Aries Catiang, Leonel Latuga, Vicente Go, Temmie C. Nawal, and Eduardo A. Capillan (collectively, workers), assailing the October 11, 2011 Decision[2] and February 8, 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 117681.

The workers of L. Natividad Poultry Farms (L. Natividad) filed complaints for "illegal dismissal, unfair labor practice, overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, thirteenth month pay, and moral and exemplary damages"[4] against it and its owner, Juliana Natividad (Juliana), and manager, Merlinda Natividad (Merlinda).[5]

The workers claimed that L. Natividad employed and terminated their employment after several years of employment. The dates they were hired and terminated are as follows:

NAME	POSITION	DATE OF HIRING	DATE OF TERMINATION
Arnaldo Garcia	Maintenance Personnel	May 1997	June 2005

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1 *Rollo*, pp. 12–47.

2 Id. at 49–74. The Decision was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro of the Special Fourth Division, Court of Appeals, Manila.

3 Id. at 76. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro of the Former Special Fourth Division, Court of Appeals, Manila.

4 Id. at 50.

5 Id.

Dionisio Adlawan	Maintenance Personnel	January 1991	November 2005
Edwardo Del Remedios	Maintenance Personnel	1990	April 2005
Edwin Espe	Maintenance Personnel	January 1997	April 2006
Elpidio Garcia, Jr.	Maintenance Personnel	March 1990	February 2006
Francisco Lim	Maintenance Personnel	May 1997	March 2007
Jayson Garcia	Maintenance Personnel	March 1998	June 2005
Jimmy Torres	Maintenance Personnel	May 1990	November 2006
Johnny Betache	Maintenance Personnel	May 1990	March 2005
Jose Fernando	Maintenance Personnel	February 1999	March 2007
Larry Abañe[s]	Maintenance Personnel	April 1997	April 2005
Mario A. Abuda	Maintenance Personnel	September 2004	January 2007
Nemencio Cruz	Maintenance Personnel	April 1990	May 2006
Policarpio Obanel	Maintenance Personnel	January 1991	September 2005
Rodolfo Del Remedios	Maintenance Personnel	March 1990	March 2007
Rodolfo L. Zamora	Maintenance Personnel	January 1999	March 2005
Rogelio Zamora, Sr.	Maintenance Personnel	March 1995	September 2005
Rolando Salen	Maintenance Personnel	1997	2005
Jose Gonzales	Poultry & Livestock Feed Mixers	1989	May 2007
Roger Martinez	Poultry & Livestock Feed Mixers	July 2002	May 2007
Wilfredo Broñola	Poultry & Livestock Feed Mixers	April 1995	May 2007
Arnel Capellan	Delivery Helper	December 2004	January 2006
Eduardo A. Cap[i]llan	Checker	March 1989	November 2006
Jeremias Capellan	Security Guard	February 2003	December 2006
Temmie C. Nawal	Poultry Helper	April 2000	August 2000[6]

On May 13, 2009, Labor Arbiter Robert A. Jerez (Labor Arbiter Jerez) dismissed the complaint due to lack of employer-employee relationship between the workers and L. Natividad. He ruled that San Mateo General Services (San Mateo), Wilfredo Broñola (Broñola), and Rodolfo Del

[6] Id. at 50–51. CA Decision. Larry Abañes is sometimes referred to as "Larry Abañez" and Eduardo Capillan as "Eduardo Capellan."

Remedios (Del Remedios) were the real employers as they were the ones who employed the workers, not L. Natividad.[7]

The workers appealed Labor Arbiter Jerez's Decision, and on August 31, 2010, the National Labor Relations Commission modified the assailed Decision.[8]

The National Labor Relations Commission found that the workers were hired as maintenance personnel by San Mateo and Del Remedios on *pakyaw* basis to perform specific services for L. Natividad. Furthermore, it ruled that Jose Gonzales (Gonzales) and Roger Martinez (Martinez) could not be considered as regular employees because their jobs as poultry livestock mixers were not necessary in L. Natividad's line of business. However, it found Broñola, Jeremias Capellan (Jeremias), Arnel Capellan (Arnel), Temmie Nawal (Nawal), and Eduardo Capillan (Eduardo) to be regular employees and ordered L. Natividad to reinstate them and pay their thirteenth month pay and service incentive leave pay.[9]

The dispositive portion of the National Labor Relations Commission August 31, 2010 Decision read:

> WHEREFORE, the Decision dated May 13, 2009 is hereby MODIFIED. Complainants Wilfredo Bronola, Jeremias Capellan, Arnel Capellan, Temmie Nawal, and Eduardo Capellan, are hereby declared regular employees of respondent L. Natividad Poultry Farms. However, considering that the above-named complainants were not illegally dismissed by the respondents and the former's intention to be reinstated to work, respondents L. Natividad Poultry Farms through respondents Juliana Natividad and Merlinda Natividad are hereby directed to reinstate the above-named complainants to their former position or substantially equivalent position without backwages. Respondent [L. Natividad] is also directed to pay their respective 13th month pays and service incentive leave pays as follows:
>
> | Name | 13th Month Pay | Service Incentive Leave Pay (SILP) | Total Amount |
> |---|---|---|---|
> | Wilfredo Bronola | P20,690.77 | Not Entitled/Supervisor | P20,690.77 |
> | Jeremias Capellan | P14,952.60 | P2,875.50 | P17,828.10 |
> | Arnel Capellan | P5,687.05 | P1,093.66 | P6,780.71 |
> | Temmie Nawal | P9,143.90 | P1,758.44 | P10,902.34 |
> | Eduardo Capellan | P15,274.53 | P2,937.41 | P18,211.94 |
> | | **TOTAL** | **AWARDS** | **P74,413.86** |
>
> For failure to comply with the requisites of Article 106 of the Labor Code on permissible job contracting, third party respondents San Mateo General Services and Rodolfo Del Remedios are hereby declared to

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7 Id. at 55–57.
8 Id. at 57.
9 Id. at 57–58.

> be engaged in labor-only contracting. No employer-employee relationship existed, however, between respondent [L. Natividad] and the following complainants: Rodolfo Del Remedios, Edward Del Remedios, Dionisio Adlawan, Elpidio Garcia, Jr., Rogelio Zamora, Sr., Jimmy Torres, Policarpio Obanel, Jose Fernando, Johnny Betache, Jayson Garcia, Edwin Espe, Nemencio Cruz, Larry Aba[ñ]es, Rolando Salen, Francisco Lim, Arnold Garcia, Mario Abuda, Rodolfo Zamora, Jose Gonzales and Roger Martinez, as they performed tasks not usually necessary or desirable in the business of respondent [L. Natividad]. Thus, it is hereby declared that the above-named complainants were engaged on pakyaw basis and not regular employees of the latter.
>
> All other claims of the complainants are hereby dismissed for lack of merit.
>
> SO ORDERED.[10]

The workers moved to reconsider the National Labor Relations Commission August 31, 2010 Decision, but this was denied by the National Labor Relations Commission in its October 26, 2010 Resolution.[11]

The workers filed a Petition for Review on Certiorari[12] before the Court of Appeals.

On October 11, 2011, the Court of Appeals[13] modified the National Labor Relations Commission's assailed Decision and ruled that San Mateo and Del Remedios were labor-only contractors, and as such, they must be considered as L. Natividad's agents.[14]

The Court of Appeals also reversed the National Labor Relations Commission's ruling on Gonzales' and Martinez's employment status since as poultry and livestock feed mixers, they performed tasks which were necessary and desirable to L. Natividad's business and were not mere helpers. It deemed them to be L. Natividad's regular employees.[15]

However, the Court of Appeals upheld the National Labor Relations Commission's finding that the maintenance personnel were only hired on a *pakyaw* basis to perform necessary repairs or construction within the farm as the need arose.[16]

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10 Id. at 58–59.
11 Id. at 59.
12 Id. at 77–107.
13 Id. at 49–74.
14 Id. at 67.
15 Id. at 71.
16 Id. at 68–69.

As for the issue of illegal dismissal, the Court of Appeals also affirmed the National Labor Relations Commission's finding that the workers failed to substantiate their bare allegation that L. Natividad verbally notified them of their dismissal.[17]

The dispositive portion of the Court of Appeals October 11, 2011 Decision read:

> **ACCORDINGLY**, the petition is **PARTLY GRANTED** and the Decision dated August 31, 2010, **MODIFIED**. Petitioners Jose Gonzales and Roger Martinez are **DECLARED** regular employees of respondent L. Natividad Poultry Farms; and the latter, **DIRECTED** to reinstate Jose Gonzales and Roger Martinez without backwages and to pay their 13th month and service incentive leave pay.
>
> No costs.
>
> **SO ORDERED**.[18]

On October 24, 2011, the workers moved for the reconsideration of the Court of Appeals Decision, but their motion was denied in the Court of Appeals February 8, 2012 Resolution.[19]

On March 27, 2012, the workers filed their Petition for Review on Certiorari before this Court.[20]

In their Petition, petitioners claim that as maintenance personnel assigned to respondent L. Natividad's farms and sales outlets, they performed functions that were necessary and desirable to L. Natividad's usual business.[21] They assert that they have been continuously employed by L. Natividad for a period ranging from more than one (1) year to 17 years.[22]

Petitioners also state that as maintenance personnel, they repaired and maintained L. Natividad's livestock and poultry houses, facilities, and sales outlets.[23] They worked from Monday to Saturday, from 7:15 a.m. to 5:15 p.m., with their attendance checked by the guard on duty.[24]

Petitioners stress that L. Natividad provided all the tools, equipment, and materials they used as maintenance personnel. Respondents Juliana and

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17 Id. at 71–72.
18 Id. at 73.
19 Id. at 76.
20 Id. at 12–47.
21 Id. at 26–27.
22 Id. at 34.
23 Id. at 26–27.
24 Id. at 16.

Merlinda then gave them specific tasks and supervised their work.[25]

Petitioners argue that even if they were mere project employees as respondents claim, respondents failed to present any service contract executed between them.[26]

Petitioners point out that respondents used the supposed contracting arrangement with petitioner Del Remedios to prevent them from becoming L. Natividad's regular employees. They also highlight that the Court of Appeals ruled that petitioner Del Remedios was engaged in labor-only contracting. Thus, they declare that this should have already been equivalent to a finding of an employer-employee relationship between them and L. Natividad[27] and that they were illegally dismissed.[28]

In their Comment,[29] respondents claim to be engaged in the business of livestock and poultry production.[30] They also aver to have engaged San Mateo's services to clean-up the poultry farm, and to repair and maintain their chicken pens.[31]

Respondents likewise state that they engaged petitioner Del Remedios to provide carpentry services. They assert that petitioners who claim to be maintenance personnel were actually carpenters or masons deployed by petitioner Del Remedios for his own account.[32]

Respondents refer to the statements of petitioners Rolando Salen and Larry Abañes as proof that the maintenance personnel were employees of Del Remedios:

> 4.1.17. It must be also be (sic) pointed out that two (2) of the named petitioners, namely: ROLANDO SALEN and LARRY ABA[Ñ]E[S], who were supposed to be among the "Maintenance Personnel" after re-thinking their stance in the present controversy, in their own handwriting submitted their statements, narrated and admitted that they were indeed the former employees of Rodolfo Del Remedios and from whom they drew their respective salaries. And, that when they signed the complaint, they were only forced by Rodolfo Del Remedios to do so. These two supposed petitioners are apologetic to Respondent and that they were withdrawing their respective complaints as indicated in their written statements. They should therefore be taken out from the list of the petitioners. The written retraction of Rolando Salen is reproduced as follows:

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25 Id. at 16–17.
26 Id. at 34–35.
27 Id. at 36–39.
28 Id. at 39–41.
29 Id. at 181–201.
30 Id. at 181.
31 Id. at 181–182.
32 Id. at 182.

> "Ako po si Rolando A. Salen, dating tauhan ni Rody Del Remedios kusang loob na pumunta ditto (sic) sa opisina ng L. Natividad Poultry Farms Corporation upang kami ay humingi ng tawad sa aming ginawa sa pagsama sa pagrereklamo nila sa Labor. Ako po ay sumama lamang sa kadahilanang ako ay pinilit lamang na sumama sa kanila.
>
> Alam ko po naman na si Rody Del Remedios an[g] siyang tumangap at humanap sa amin upang magtrabaho at siya rin ang nagpapasahod sa amin, hindi ang L. Natividad Poultry Farms Corporation.
>
> Hindi na po ako sasama sa kanilang paghahabla o pagrereklamo sa Labor. Kusang loob po akong bumibitiw sa kagustuhan ni Rody Del Remedios na magreklamo laban sa kanila.
>
> SGD. ROLANDO A. SALEN"
>
> (underscoring supplied)
>
> Larry Aba[ñ]es' written retraction is similar with that of Rolando Salen.[33]

Respondents further assert that carpentry and masonry cannot be considered as necessary or desirable in their business of livestock and poultry production. They point out that petitioners, through petitioner Del Remedios, were only occasionally deployed as needed to repair and maintain their farm and sales outlets as needed.[34]

Respondents then state that they engaged the services of petitioner Broñola to mix feeds for a specific number of tons or on a *pakyaw* system. They assert that petitioners Gonzales and Martinez were Broñola's employees, whom he hired specifically to help him mix feeds.[35]

Respondents deny that petitioners were illegally dismissed and contend that their contracts were merely not renewed.[36]

Nonetheless, respondents state that pursuant to the National Labor Relations Commission August 31, 2010 Decision, they sent return to work notices to petitioners Jeremias, Arnel, Nawal, Eduardo, and Broñola; however, they failed to return to work.[37]

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33 Id. at 187–188.
34 Id. at 185.
35 Id. at 182.
36 Id. at 182–183.
37 Id. at 183.

In their Reply,[38] petitioners who claim to be maintenance personnel deny lodging their applications with petitioner Del Remedios, who was then employed as L. Natividad's supervisor. They point out that petitioner Del Remedios was included in the employees' payroll, therefore, disputing L. Natividad's assertion that he was engaged as a contractor.[39]

Petitioners then reiterate that they were illegally dismissed and are entitled to damages.[40]

The primary issue for the resolution of this Court is whether or not the maintenance personnel in L. Natividad Poultry Farms can be considered as its regular employees.

When a decision of the Court of Appeals decided under Rule 65 is brought to this Court through a petition for review under Rule 45, the general rule is that this Court may only pass upon questions of law. *Meralco Industrial Engineering Services Corp. v. National Labor Relations Commission*[41] emphasized as follows:

> This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the [National Labor Relations Commission], when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[42]

Furthermore, judicial review under Rule 45 is confined to the question of whether or not the Court of Appeals correctly "determined the presence or absence of grave abuse of discretion in the [National Labor Relations Commission] decision before it and not on the basis of whether the [National Labor Relations Commission] decision on the merits of the case was correct."[43]

Respondents deny that the petitioners, who claim to be maintenance personnel are their employees and declare that they were hired by independent contractors, who exercised control over them and paid their wages.

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38 Id. at 252–270.
39 Id. at 253–254.
40 Id. at 264–267.
41 572 Phil. 94 (2008) [Per J. Chico-Nazario, Third Division].
42 Id. at 117 *citing Ramos v. Court of Appeals,* 477 Phil 205, 211 (2004) [Per J. Corona, Third Division].
43 *David v. Macasio,* 738 Phil 293, 204 (2014) [Per J. Brion, Second Division] *citing Montoya v. Transmed Manila Corporation,* 613 Phil. 696 (2009) [Per J. Brion, Second Division].

Respondents fail to convince.

Permissible contracting or subcontracting, and labor-only contracting is provided for under Article 106 of the Labor Code:

> Article 106. Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
>
> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Labor-only contracting is prohibited as it is seen as a circumvention of labor laws; thus, the labor-only contractor is treated as a mere agent or intermediary of its principal.[44]

The Court of Appeals found that San Mateo and petitioner Del Remedios were not independent contractors but labor-only contractors since they did not have substantial investment in the form of tools, equipment, or work premises.[45] As labor-only contractors, they were considered to be agents of respondent L. Natividad:

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[44] *Maraguinot, Jr. v. National Labor Relations Commission,* 348 Phil. 580, 596 (1998) [Per. Davide, Jr., First Division].

[45] *Rollo,* p. 67.

> The fact, however, that neither of the contractors [San Mateo] and Rodolfo Del Remedios had substantial investment in the form of tools, equipment and even work premises, nor were the services performed by their workers, i.e. carpentry and masonry works, directly related to and usually necessary and desirable in [L. Natividad]'s main business of livestock and poultry production showed that they were merely engaged in "labor-only" contracting. As "labor-only" contractors, [San Mateo] and Rodolfo Del Remedios are considered as agents of the employer, [L. Natividad]. Liability, therefore, if any, must be shouldered by either one or shared by both. As it was, however, petitioners failed to prove any unpaid claims against [L. Natividad].[46]

However, the Court of Appeals ruled that even if petitioners were L. Natividad's employees, they still cannot be considered as regular employees because there was no reasonable connection between the nature of their carpentry and masonry work and respondents' usual business in poultry and livestock production, sale, and distribution. It also found that the maintenance personnel were hired on a piece rate or *pakyaw* basis about once or thrice a year, to perform repair or maintenance works; thus, they could not be considered as regular employees.[47]

The Court of Appeals is mistaken.

A *pakyaw* or task basis arrangement defines the manner of payment of wages and not the relationship between the parties.[48] Payment through *pakyaw* or task basis is provided for in Articles 97(f) and 101 of the Labor Code:

> Article 97. Definitions. — As used in this Title:
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> . . . .
>
> (f) "Wage" paid to any employee shall mean the *remuneration or earnings*, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, *task, piece*, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer, or to any person affiliated with the employer.
>
> . . . .
>
> Article 101. Payment by results. — (a) The Secretary of Labor and Employment shall regulate the payment of wages by results, including

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46 Id.

47 Id. at 68.

48 *David v. Macasio*, 738 Phil 293, 305–306 (2014) [Per J. Brion, Second Division].

> pakyao, piecework, and other non-time work, in order to ensure the payment of fair and reasonable wage rates, preferably through time and motion studies or in consultation with representatives of workers' and employers' organizations.

Both the National Labor Relations Commission and the Court of Appeals found respondent L. Natividad to be petitioners' real employer, in light of the labor-only contracting arrangement between respondents, San Mateo, and petitioner Del Remedios. This Court sees no reason to disturb their findings since their findings are supported by substantial evidence.

Furthermore, a resort to the four (4)-fold test of "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct"[49] also strengthens the finding that respondent L. Natividad is petitioners' employer.

Respondents hired petitioners directly or through petitioner Del Remedios, a supervisor at respondents' farm.[50] They likewise paid petitioners' wages, as seen by the vouchers[51] issued to Del Remedios and San Mateo. They also had the power of dismissal inherent in their power to select and engage their employees. Most importantly though, they controlled petitioners and their work output by maintaining an attendance sheet and by giving them specific tasks and assignments.[52]

With an employer-employee relationship between respondent L. Natividad and petitioners duly established, the next question for resolution is whether petitioners can be considered to be regular employees.

A regular employee is an employee who is:

> 1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or 2) *has rendered at least 1 year of service, whether such service is continuous or broken, with respect to the activity for which he is employed* and his employment continues as long as such activity exists.[53] (Emphasis supplied, citation omitted)

This finds basis in Article 280 of the Labor Code which provides:

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49 *Rhone-Poulenc Agrochemicals Phil., Inc. v. National Labor Relations Commission*, 291 Phil 251, 259 (1993) [Per J. Gutierrez, Jr., Third Division] (citations omitted).

50 *Rollo*, pp. 27–28.

51 Id. at 63–64.

52 Id. at 16–17.

53 *Vicmar Development Corp. v. Elarcosa*, 775 Phil. 218, 232 (2015) [Per J. Del Castillo, Second Division].

> Article 295. [280] Regular and casual employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, that any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

De Leon v. National Labor Relations Commission[54] instructs that "[t]he primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer."[55] The connection is determined by considering the nature of the work performed vis-à-vis the entirety of the business or trade. Likewise, if an employee has been on the job for at least one (1) year, even if the performance of the job is intermittent, the repeated and continuous need for the employee's services is sufficient evidence of the indispensability of his or her services to the employer's business.[56]

Respondents did not refute petitioners' claims that they continuously worked for respondents for a period ranging from three (3) years to 17 years.[57] Thus, even if the Court of Appeals is of the opinion that carpentry and masonry are not necessary or desirable to the business of livestock and poultry production,[58] the nature of their employment could have been characterized as being under the second paragraph of Article 280. Thus, petitioners' service of more than one (1) year to respondents has made them regular employees for so long as the activities they were required to do subsist.

Nonetheless, a careful review of petitioners' activity as maintenance personnel and of the entirety of respondents' business convinces this Court that they performed activities which were necessary and desirable to respondents' business of poultry and livestock production.

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54 257 Phil 626 (1989) [Per C.J. Fernan, Third Division].
55 Id. at 632.
56 Id. at 632–633.
57 *Rollo*, p. 16.
58 Id. at 68.

As maintenance personnel, petitioners performed "repair works and maintenance services such as fixing livestock and poultry houses and facilities as well as doing construction activities within the premises of [L. Natividad's] farms and other sales outlets for an uninterrupted period of three (3) to seventeen (17) years."[59] Respondents had several farms and offices in Quezon City and Montalban, including Patiis Farm, where petitioners were regularly deployed to perform repair and maintenance work.[60]

At first glance it may appear that maintenance personnel are not necessary to a poultry and livestock business. However, in this case, respondents kept several farms, offices, and sales outlets, meaning that they had animal houses and other related structures necessary to their business that needed constant repair and maintenance. In petitioner Del Remedios' sworn affidavit:

> 1. RODOLFO DEL REMEDIOS — Noong Marso 1990, ako ay direktang tinanggap at nagtrabaho sa malawak na farm ng L. Natividad Poultry Farms sa San Mateo Rizal na pagmamay-ari ni Gng. Juliana Natividad at pinamamahalaan ng kanyang anak na si Merlinda Natividad. *Ako ang nangangasiwa sa pagkukumpuni sa mga sirang bahay ng mga manok, baboy atbp., gumawa at tumulong sa construction ng mga ito at magmentina ng mga pasilidad sa loob ng farm at maging sa mga sales outlets nito sa iba't ibang lugar.* Ako ay isa lamang empleyado ng L. Natividad Poultry Farms at kasamang sumasahod ng iba pang mga trabahador. Ang lahat ng gamit o materyales sa paggawa at pagkukumpuni ng mga bahay ng mga manok, baboy atbp. ay nanggagaling sa L. Natividad Poultry Farms.[61] (Emphasis supplied)

Gapayao v. Fulo[62] likewise categorically stated that *pakyaw* workers may be considered as regular employees provided that their employers exercised control over them. Thus, while petitioners may have been paid on *pakyaw* or task basis, their mode of compensation did not preclude them from being regular employees.

Being regular employees, petitioners, who were maintenance personnel, enjoyed security of tenure[63] and the termination of their services without just cause entitles them to reinstatement and full backwages, inclusive of allowances and other benefits.

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59 Id. at 26–27.

60 Id. at 34.

61 Id. at 29.

62 711 Phil 179, 195–196 (2013) [Per CJ Sereno, First Division].

63 LABOR CODE, art. 279 provides:

> Article 294. [279] Security of tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Nonetheless, the prayer for moral and exemplary damages must be denied. The termination of employment without just cause or due process does not immediately justify the award of moral and exemplary damages. *Philippine School of Business Administration v. National Labor Relations Commission*[64] stated:

> This Court however cannot sustain the award of moral and exemplary damages in favor of private respondents. Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proved to warrant the grant of moral damages under the Civil Code. The act of dismissal must be attended with 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, or grave anxiety resulted therefrom. Similarly, exemplary damages are recoverable only when the dismissal was effected in a wanton, oppressive or malevolent manner. [65] (Citations omitted)

Petitioners maintain that their employments were terminated by respondents in an "oppressive, malicious and unjustified manner,"[66] yet they failed to explain or illustrate how their dismissal was oppressive, malicious, or unjustified. It is not enough that they were dismissed without due process. Additional acts of the employers must also be pleaded and proved to show that their dismissal was tainted with bad faith or fraud, was oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy. Petitioners failed to allege any acts by respondents which would justify the award of moral or exemplary damages.

As for petitioners Broñola, Gonzales, Martinez, Jeremias, Arnel, Nawal, and Eduardo, although the Court of Appeals reversed the labor tribunals' decisions and held them to be regular employees, it nonetheless upheld the findings of both Labor Arbiter Jerez and the National Labor Relations Commission that they failed to support their allegation that they were illegally dismissed, thus:

> In illegal dismissal cases, it is incumbent upon the employees to first establish the fact of their dismissal before the burden is shifted to the employer to prove that the dismissal was legal. Here, [the National Labor Relations Commission] found no dismissal, much less, an illegal one as petitioners failed to substantiate their bare allegation that [L. Natividad] verbally notified them of their dismissal. It is settled that in the absence of proof of dismissal, the remedy is reinstatement without backwages.[67]

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64 329 Phil 932 (1996) [Per J. Bellosillo, First Division].
65 Id. at 940.
66 *Rollo*, p. 41.
67 Id. at 71–72.

Illegal dismissal is essentially a factual issue,[68] and therefore, not proper in a Rule 45 petition. This Court does not try facts.[69] Moreover, the labor tribunals and the Court of Appeals unanimously held that petitioners were not illegally dismissed. This Court sees no reason to overturn their findings as it is settled that:

> [T]he findings of facts and conclusion of the [National Labor Relations Commission] are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. This Court finds no basis for deviating from said doctrine without any clear showing that the findings of the Labor Arbiter, as affirmed by the [National Labor Relations Commission], are bereft of substantiation. Particularly when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.[70] (Citations omitted)

WHEREFORE, this Court resolves to **PARTIALLY GRANT** the petition. The assailed October 11, 2011 Decision and February 8, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 117681 are **AFFIRMED** with **MODIFICATION.** The following petitioners are **DECLARED** to be regular employees of L. Natividad Poultry Farms and are **ORDERED** to be **REINSTATED** to their former positions and to be **PAID** their backwages, allowances, and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement:

a) Rodolfo Del Remedios
b) Edwardo Del Remedios
c) Dionisio Adlawan
d) Elpidio Garcia, Jr.
e) Rogelio Zamora, Sr.
f) Jimmy Torres
g) Policarpio Obanel
h) Jose Fernando
i) Johnny Betache
j) Jayson Garcia
k) Edwin Espe
l) Nemencio Cruz
m) Larry Abañes
n) Rolando Salen
o) Francisco Lim
p) Arnaldo Garcia
q) Mario Abuda

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68 *Cañedo v. Kampilan Security and Detective Agency, Inc.*, 715 Phil 625, 635 (2013) [Per J. Del Castillo, Second Division].

69 *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212 (2005) [Per J. Garcia, Third Division].

70 *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541 (2007) [Per J. Chico-Nazario, Third Division].

r) Rodolfo Zamora[71]

The monetary awards shall bear the legal interest rate of six percent (6%) per annum to be computed from the finality of this Decision until full payment.

The case is **REMANDED** to the Labor Arbiter for the computation of backwages and other monetary awards due to petitioners.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

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[71] *Rollo*, pp. 15–16.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPAN
Division Clerk of Court
Third Division