Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MELCHOR A. CUADRA, MELENCIO TRINIDAD, and SERAFIN TRINIDAD, Petitioners,	**G.R. No. 194467** Present:
-versus-	LEONEN, *J.*, *Chairperson,* GESMUNDO, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
SAN MIGUEL CORPORATION, Respondent.	**Promulgated:** July 13, 2020

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DECISION

LEONEN, *J.*:

When there is no evidence to the contrary, an employee's period of service is presumed continuous and its reckoning point shall be the day the employee first came under the employ of the employer. However, if in the interim, the employer-employee relationship was validly severed, returning to the same employer for work shall be considered a rehiring, and the length of service shall be reckoned from the day the employee was rehired.

This resolves the Petition for Review on Certiorari[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No.

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1 *Rollo*, pp. 7–24.

2 Id. at 25–37. The June 29, 2010 Decision was penned by Associate Justice Amelita G. Tolentino and was concurred in by Associate Justices Normandie B. Pizzaro and Jane Aurora C. Lantion of the Special Eighth Division of the Court of Appeals, Manila.

3 Id. at 38–42. The November 8, 2010 Resolution was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Normandie B. Pizzarro and Jane Aurora Lantion of the Former Special Eighth Division of the Court of Appeals, Manila.

104828. The Court of Appeals declared that the length of service of Melchor Cuadra (Melchor), Melencio Trinidad (Melencio), and Serafin Trinidad (Serafin) in San Miguel Corporation (San Miguel) must be reckoned from the time they were declared regular employees on December 15, 1994.[4] Thus, the Court of Appeals affirmed with modification the Voluntary Arbitrator's Decision[5] that reckoned the computation of Melchor, Melencio, and Serafin's length of service from the time they first started working in San Miguel, i.e., 1985 for Melchor, and 1988 for Melencio and Serafin.

Melchor, Melencio, and Serafin were among the 60[6] complainants who filed an illegal dismissal case before the National Labor Relations Commission against Lippercon Services, Inc. and San Miguel on January 4, 1991.[7] During the pendency of the proceedings before the Labor Arbiter, 51 out of the 60 complainants amicably settled with San Miguel.

In the December 15, 1994 Decision,[8] Labor Arbiter Manual R. Caday (Labor Arbiter Caday) found that the remaining nine (9) complainants were regular employees of San Miguel. According to Labor Arbiter Caday, Lippercon Services was a mere labor-only contractor and that San Miguel was the true employer of complainants. Therefore, it was San Miguel who was ordered to reinstate the complainants to their former positions as regular employees, their regular status "effective as of the date of [the Labor Arbiter's] decision."[9] The complainants were then awarded backwages "of not more than three (3) years"[10] as well as wage differentials pursuant to Wage Order No. NCR-01 and NCR-02. The dispositive portion of Labor Arbiter Caday's December 15, 1994 Decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered declaring the respondent San Miguel Corporation (SMC) as the true employer of the remaining nine (9) complainants, with the respondent Lippercon Services, Inc. as "labor only" contractor; declaring the dismissal of the said remaining nine (9) complainants to be illegal and ordering the respondent San Miguel Corporation to reinstate them as regular employees, effective as of the date of this decision, to their former positions at its Manila Glass Plant with backwages of not more than three (3) years without any qualification or reductions and to pay them the ₱17.00 and ₱10.00 Wage increases under Wage Order No. NCR-01 and Wage Order No. 2 pursuant to the above dispositions.
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> SO ORDERED.[11]

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4 Id. at 52.
5 Id. at 51–57. The July 22, 2008 Decision was penned by Voluntary Arbitrator Angel A. Ancheta.
6 Id. at 52.
7 Id. at 58.
8 Id. at 58–74. The Decision dated December 15, 1994 was penned by Labor Arbiter Manuel R. Caday of the National Labor Relations Commission, national Capital Region, Manila.
9 Id. at 73.
10 Id.
11 Id.

San Miguel appealed before the National Labor Relations Commission. In its May 31, 1995 Resolution, the Commission's Third Division modified the Decision of Labor Arbiter Caday, ordering instead the payment of separation pay to complainants, thus:

> WHEREFORE, premises considered, the appealed decision is hereby MODIFIED as aforediscussed. The award of reinstatement with one (1) year backwages is hereby deleted. In lieu thereof, respondent is hereby ordered to pay complainants their separation pay equivalent to one (1) month salary for every year of service, as period of at least six (6) months considered as one (1) whole year or the benefits provided under the Company's total assistance program, whichever is higher.[12]

Alleging grave abuse of discretion on the National Labor Relations Commission's part, the complainants directly filed a Petition for Certiorari before this Court.[13] However, pursuant to *St. Martin Funeral Homes v. National Labor Relations Commission*,[14] this Court referred the Petition for Certiorari to the Court of Appeals.[15]

In the April 12, 1999 Resolution, the Court of Appeals affirmed with modification the National Labor Relations Commission's Decision. The Court of Appeals further ordered the payment of backwages to complainants to be computed from the time they were dismissed until the furnace they used for work was closed in June 1993.[16] The dispositive portion of the April 12, 1999 Resolution reads:

> WHEREFORE, premises considered, the appealed Decision dated 31 May 1995 and Resolution dated 13 October 1995 are both AFFIRMED with modification that the petitioners are likewise entitled to backwages corresponding to the period commencing on their respective dates of dismissal until the closure of the furnace in June 1993. The case is hereby REMANDED to the public respondent for a computation of the amount of backwages to be paid to petitioners in accordance with this decision as modified.[17]

San Miguel Corporation filed a Motion for Reconsideration and the complainants filed a Motion for Partial Reconsideration of the April 12, 1999 Resolution.[18] The Court of Appeals, in an October 14, 1999 Resolution, denied San Miguel's Motion for Reconsideration and partly granted the complainants' Motion for Partial Reconsideration by deleting the award of separation pay and ordering the complainants' reinstatement.[19] The dispositive portion of the October 14, 1999 Resolution states:

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12 Id. at 76. Writ of Execution.
13 Id.
14 356 Phil. 811 (1998) [Per J. Regalado, En Banc].
15 *Rollo*, p. 76.
16 Id.
17 Id. at 76–77.
18 Id. at 77.
19 Id.

> Accordingly, the private respondent's motion for reconsideration is DENIED and the petitioners' Motion for Partial Reconsideration is partly granted. The Court's Decision dated April 12, 1999 is MODIFIED to the extent that the award of separation pay is deleted and private respondent is directed to reinstate the petitioners to their former positions. In all other respects, the Decision stands.[20]

The Petition for Review on Certiorari filed by San Miguel was denied by this Court in the Resolution dated December 15, 1999 for having been filed out of time and for lack of the required affidavit of service. San Miguel's Motion for Reconsideration and Second Motion for Reconsideration were likewise denied by this Court.[21]

On May 25, 2000, this Court made an Entry of Judgment in its Book of Entries of Judgments, declaring its December 15, 1999 and February 7, 2000 Resolutions final and executory.[22]

On Melchor, Melencio, and Serafin's motion, Labor Arbiter Caday issued a Writ of Execution on September 1, 2000, directing the Sheriff to implement the order of reinstatement, thus:

> NOW THEREFORE, you are hereby commanded to proceed to the premises of the respondents at SMC Complex, San Miguel Avenue, Mandaluyong City, or wherever it may be found to cause the immediate reinstatement of complainants herein as decreed in the dispositive portion of the decision.[23]

During the execution proceedings, the parties entered into a compromise. Specifically for Melchor, Melencio, and Serafin, they each received ₱550,000.00 "as full, complete, absolute[,] and final settlement and satisfaction"[24] of each of their money claims and benefits as well as "any and all claims" connected with the illegal dismissal case filed before the National Labor Relations Commission. The complete terms of the quitclaim are as follows:

> I, Melchor A. Cuadra[,] of legal age, Filipino[,] and with residence address at _____, hereby acknowledge receipt of United Coconut Planters Bank (UCPB-SMC Complex, Mandaluyong City) Check No. 0000047548 dated May 23, 2003 in the amount of Five Hundred Fifty Thousand Pesos (PhP 550,000.00) only, given to me by San Miguel Corporation as full, complete, absolute[,] and final settlement and satisfaction of all my money claims and benefits in connection with the

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20 Id.
21 Id.
22 Id.
23 Id. at 78.
24 Id. at 32. Court of Appeals Decision.

> case of Melchor Cuadra, et al. vs. San Miguel Corporation, et al.[,] [d]ocketed as NLRC-NCR Case No. 01-0049-91, now pending before the NLRC and whatever claims I may have in connection therewith as well as any and all claims of whatever kind and nature which I had, I now may have or hereafter have against all respondents regarding incidents of this case and if any and all other cases, related to or which arose from the incidents of this case which were filed or are still pending.[25]

The compromise agreement was approved by Labor Arbiter Antonio R. Macam (Labor Arbiter Macam),[26] replacing Labor Arbiter Caday who had died during the pendency of the execution proceedings.[27] Labor Arbiter Macam's June 25, 2003 Order provides:

> The parties appeared and manifested that they have finally settled the case with each complainant receiving a sum of P550,000.00 plus reinstatement with a daily salary rate of P400.00. Reinstatement will begin on July 1, 2003. Submitted in addition, are the respective Quitclaim and Release which complainants have executed.
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> ACCORDINGLY, finding the agreement to be fair and reasonable, the same is approved and the case dismissed, with prejudice.[28]

Pursuant to the compromise agreement, Melchor, Melencio, and Serafin were accordingly reinstated on July 1, 2003. However, as reflected in their newly issued identification cards, San Miguel reckoned the date of their employment from July 1, 2003—not from the time they were first hired to work in San Miguel, which was 1985 for Melchor, and 1988 for Melencio and Serafin.[29]

Thus, with the reckoning date of their service's length in San Miguel as the sole issue for resolution, Melchor, Melencio, and Serafin submitted their grievance to the Office of the Voluntary Arbitrator of the National Conciliation and Mediation Board.[30]

For them, Melchor's reckoning date should be from 1985, while Melencio and Serafin's should be from 1988, simply because they began their employment in those years. As for San Miguel, however, the lump sum paid under the quitclaim already included Melchor, Melencio, and Serafin's separation pay. Thus, they were already effectively new hires upon reinstatement, considering that their new positions were substantially different from their previous positions.[31]

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25 Id.
26 Id. at 33.
27 Id. at 55. Voluntary Arbitrator's Decision.
28 Id.
29 Id.
30 Id. at 51.
31 Id. at 55.

Furthermore, the reckoning date—as San Miguel concluded—should begin on July 1, 2003, as provided in Labor Arbiter Macam's Order. Neither should the length of service be reckoned from December 15, 1994, the date of Labor Arbiter Caday's Decision; nor should it be reckoned from 1985 and 1988—the years when Melchor, Melencio, and Serafin began their employment in San Miguel.[32]

Voluntary Arbitrator Angel A. Ancheta (Voluntary Arbitrator Ancheta) decided the grievance, ruling in favor of Melchor, Melencio, and Serafin. Voluntary Arbitrator Ancheta held that the length of their service should be reckoned from the date when they were first hired, i.e., 1985 for Melchor, and 1988 for Melencio and Serafin. His reason was that reinstatement, "in its generally accepted sense, refers or denotes to restoration to a state which one has been removed or separated."[33]

Moreover, "[s]ince [Melchor, Melencio, and Serafin] were to be restored to their [former] positions and [their] status being found to be regular employees[.]" Voluntary Arbitrator Ancheta concluded that they "could not be said as having started their employment only on the date when they were reinstated unless proven otherwise."[34]

Examining the terms of the quitclaim executed by Melchor, Melencio, and Serafin, Voluntary Arbitrator Ancheta held that nothing in the quitclaim provided that the compromise amount included separation pay. Therefore, based on the Parol Evidence Rule,[35] San Miguel cannot claim that Melchor, Melencio, and Serafin received the ₱550,000.00 as separation pay. They were not new hires when they commenced their employment on July 1, 2003, and their length of service must be reckoned from the time they were first hired: 1985 for Melchor and 1988 for Melencio and Serafin.

The dispositive portion of Voluntary Arbitrator Ancheta's July 22, 2008 Decision[36] reads:

> **WHEREFORE, in the light of the foregoing, judgment is hereby rendered declaring that the complainants' length of service must be reckoned from the date when they were hired specifically in 1985 for Melchor Cuadra, 1988 for both Melencio and Serafin Trinidad.**
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> **All other claims are dismissed for lack of merit.**

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32 Id. at 56.
33 Id. at 57.
34 Id.
35 RULES OF COURT, Rule 130, sec. 9 provides:
SECTION 9. *Evidence of written agreements.* — When the terms of an agreement have been reduced to writing, it is considered containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
36 *Rollo,* pp. 51–57.

SO ORDERED.[37] (Emphasis in the original)

Similar to Voluntary Arbitrator Ancheta's finding, the Court of Appeals found that the parties agreed on reinstatement, defined as the "continuation of the service that was temporarily stopped due to an act of illegal dismissal imposed against an employee."[38] It noted that the June 25, 2003 compromise judgment ordered reinstatement.[39] Therefore, San Miguel cannot conclude that the compromise amount included separation pay.

For the Court of Appeals, the contention that the new positions given to Melchor, Melencio, and Serafin were substantially different from the previous positions they held does not mean that they were new hires when they returned for work on July 1, 2003.[40]

Moreover, the Court of Appeals said that "while an employer cannot be compelled to reinstate an employee to the same position if it is already legally impossible, [the employer], however, can choose to reinstate the latter to a different position subject to the acceptance of the said employee."[41] Considering that Melchor, Melencio, and Serafin accepted their new positions, the Court of Appeals said that such acceptance amounted to "a waiver of their right to be restored to their prior positions."[42]

However, the Court of Appeals differed from Voluntary Arbitrator Ancheta's finding on the reckoning date of Melchor, Melencio, and Serafin's length of service. For the Court of Appeals, the date should be reckoned from December 15, 1994: the date when they were officially declared as regular employees of San Miguel. The reason was that reinstatement is "a right accorded to an illegally dismissed *regular* employee."[43]

The dispositive portion of the June 29, 2010 Decision[44] of the Court of Appeals reads:

> **WHEREFORE**, premises considered, the assailed decision of the Voluntary Arbitrator dated July 22, 2008 is **AFFIRMED** with the **MODIFICATION** that the reckoning period for the computation of the length of service of the private respondents shall be on December 15, 1994.

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37 Id. at 57.
38 Id. at 34. Court of Appeals Decision.
39 Id. at 33–34.
40 Id. at 34–35.
41 Id. at 35.
42 Id.
43 Id. at 36.
44 Id. at 25–37.

SO ORDERED.[45] (Emphasis in the original)

Melchor, Melencio, and Serafin then filed a Motion for Partial Reconsideration, maintaining that the length of service should be reckoned from 1985 for Melchor, and 1988 for Melencio and Serafin.

The Court of Appeals, however, rejected their argument. According to the Court of Appeals, Melchor, Melencio, and Serafin were initially hired as contractual employees through "labor-only"[46] contractor Lippercon Services when they first started working in San Miguel.

To attain regular status, they had to file a Complaint before the National Labor Relations Commission; further, it was in Labor Arbiter Caday's Decision where they were ordered "reinstated with backwages, but this time as regular employees already effective as of this date of the decision[,]"[47] i.e., December 15, 1994. The Court of Appeals then found that the issue of when they became regular employees remained undisputed; hence, already the law of the case. As such, the date of their reinstatement as regular employees may no longer be assailed.[48]

The dispositive portion of the November 8, 2010 Court of Appeals Resolution[49] reads:

> **WHEREFORE**, the respondents' Partial Motion for Reconsideration is ***DENIED*** for lack of merit.
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> **SO ORDERED.**[50] (Emphasis in the original)

On January 3, 2011, petitioners filed their Petition for Review on Certiorari,[51] which respondent commented on April 11, 2011.[52]

On January 12, 2010, petitioners filed their Reply[53] to the Comment. Although respondent filed a Rejoinder,[54] which was merely noted without action per A.M. No. 99-2-04-SC dispensing with the filing of rejoinder.[55]

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45 Id. at 36–37.
46 Id. at 39.
47 Id. at 40.
48 Id. at 41.
49 Id. at 38–42.
50 Id. at 42.
51 Id. at 7–24.
52 Id. at 84–97.
53 Id. at 101–106.
54 Id. at 115–124.
55 Id. at 127. Resolution dated August 29, 2012.

In the January 28, 2013 Resolution, this Court gave due course to the Petition and directed the parties to file their respective memoranda.[56] Petitioners filed their Memorandum[57] on April 19, 2013, while respondent filed its own[58] on April 25, 2013.

On July 4, 2018, this Court ordered the parties to move in the premises by filing a manifestation of pertinent subsequent developments that may help this Court in the immediate disposition of the case or that may have rendered the case moot and academic.[59]

In its July 30, 2018 Manifestation,[60] respondent argued that, as to petitioner Serafin, the Petition had been rendered moot and academic by his execution of a Release, Waiver, and Quitclaim that released San Miguel from any and all claims that he may have against the corporation.[61]

Further, respondent alleged that petitioner Serafin had been separated since May 31, 2013 due to an Involuntary Separation Program it had implemented to install labor saving devices. Petitioner Serafin then filed anew an illegal dismissal case against respondent, but the parties amicably settled. The 2013 illegal dismissal case was closed and terminated in an April 13, 2015 Order issued by Labor Arbiter Fe S. Cellan. As for petitioners Melencio and Melchor, respondent alleged that no relevant event supervened during the pendency of the case.[62]

In their own Manifestation/Compliance,[63] petitioner Serafin agreed that he had waived all his claims against respondent. However, petitioners Melencio and Melchor maintain that they "are still employees of [respondent] and... [are] petitioners in this case."[64]

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56 Id. at 129–130.
57 Id. at 131–141.
58 Id. at 142–158.
59 Id. at 191.
60 Id. at 171–176.
61 Id. at 172. Serafin Trinidad's Release, Waiver, and Quitclaim dated February 27, 2015 provided:

I also manifest that the payment by the Respondent Company of any or all of the foregoing sum of money shall neither be taken by me, my heirs or assigns as a confession and/or admission of the existence of employment relationship between the Respondent Company and I nor any liability on the part of the Respondent Company, as well as successors-in-interest, stockholders, officers, directors, agents or employees for any matter, cause[,] demand or claim that I may have against any or all of them. I acknowledge that I have received all amounts that are now, or in the future, may be due me from the Company. If hereafter, I am found to be entitled to any other amount, the above consideration shall constitute a full and final satisfaction of any and all such undisclosed claims. I also acknowledge that I have not suffered any illness or injury directly or indirectly caused or aggravated by my employment with the Respondent Company.

I further warrant that neither I nor my heirs or assigns will institute any action and will continue to prosecute any pending action, if any, against the Respondent Company and Individual Respondent, as well as their successors-in-interest, stockholders, officers, directors, agents or employees, by reason of my past transactions with the Company.

62 Id. at 171–172.
63 Id. at 183–186.
64 Id. at 184.

The sole issue for this Court's resolution is the reckoning date of petitioners' length of service in San Miguel.

Petitioners maintain that the date of their reinstatement cannot be deemed the reckoning date for computing the length of their service in San Miguel. Petitioners defined the term "length of service" as "the period that an employee rendered service and it commences when the employee was hired[,]"[65] and that "reinstatement," on the other hand, means "restoration to a state which one has been removed or separated."[66]

Therefore, the Court of Appeals' pronouncement that the length of service should be reckoned from the time petitioners were declared as regular employees on December 15, 1994 was "erroneous and contrary to law"[67] because "declaration of status as regular employee could be years after an employee started working[,]"[68] as in this case.

Petitioners cite Article 283[69] and 284[70] of the Labor Code and argue that the basis of separation pay is the employee's years of service, not when the employee was declared regular. The Court of Appeals' declaration, therefore, had no legal basis and must be modified to reckon petitioners' length of service from the years they first came under the employ of respondent.[71]

Respondent counters that petitioners are already estopped from raising the issue of the date of their reinstatement.[72] That they were regular employees as of December 15, 1994 was already final and executory. As

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65 Id. at 139.
66 Id.
67 Id.
68 Id.
69 LABOR CODE, art. 283 (now art. 298) provides:
ARTICLE 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving decides or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.
70 LABOR CODE, art. 284 (now art. 299) provides:
ARTICLE 284. *Disease as ground for termination.* — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.
71 *Rollo,* p. 140. Memorandum for Petitioners.
72 Id. at 151. Memorandum for Respondent.

such, when Labor Arbiter Caday ordered their reinstatement as regular employees as of the date of his decision, petitioners' length of service should commence on December 15, 1994.[73]

We grant the Petition as to petitioners Melchor Cuadra and Melencio Trinidad. Their length of service should be reckoned from the time they first came under the employ of respondent, i.e., 1985 for Melchor and 1988 for Melencio. However, given Serafin Trinidad's waiver of his claims against respondent, the Petition is deemed moot and academic as to him.

The parol evidence rule provides that "when the terms of an agreement have been reduced into writing, it is considered containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement."[74] In this case, the parties entered into a compromise agreement to put an end to the litigation between them, and the terms of the quitclaim executed by petitioners are as follows:

> I, [name of employee], of legal age, Filipino[,] and with residence address at _____, hereby acknowledge receipt of United Coconut Planters Bank (UCPB-SMC Complex, Mandaluyong City) Check No. 0000047548 dated May 23, 2003 in the amount of Five Hundred Fifty Thousand Pesos (Php 550,000.00) only, given to me by San Miguel Corporation as full, complete, absolute and final settlement and satisfaction of all my money claims and benefits in connection with the case of Melchor Cuadra, et al. vs. San Miguel Corporation, et al., [d]ocketed as NLRC-NCR Case No. 01-0049-91, now pending before the NLRC and whatever claims I may have in connection therewith as well as any and all claims of whatever kind and nature which I had, I now may have or hereafter have against all respondents regarding incidents of this case and if any and all other cases, related to or which arose from the incidents of this case which were filed or are still pending.[75]

The quitclaim provides that the compromise amount of ₱550,000.00 shall serve as "*full, complete, absolute and final settlement and satisfaction* of *all my money claims and benefits* in connection with the case of Melchor Cuadra, et al. vs. San Miguel Corporation, et al., docketed as NLRC-NCR Case No. 01-0049-91, now pending before the NLRC and *whatever claims I may have in connection therewith* as well as *any and all claims of whatever kind and nature which I had*, I now may have or hereafter have against all respondents regarding incidents of this case[.]" These claims, in connection with the case, are the claims for payment of backwages, for regularization, and for reinstatement. Nothing in the quitclaim, however, indicates that the compromise amount respectively paid to petitioners included separation pay.

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73 Id. at 151–152.
74 RULES OF COURT, Rule 130, sec. 9.
75 *Rollo*, p. 32. Court of Appeals Decision.

Since there is no evidence that the compromise amount included separation pay, the services of petitioners are presumed continuous, reckoned from the date they first came under the employ of respondent.

The present case should be contrasted with *Carandang v. Dulay,*[76] *Sta. Catalina Colleges v. National Labor Relations Commission,*[77] and *Philippine Village Hotel v. National Labor Relations Commission*[78] where this Court likewise determined length of service but did *not* consider as reckoning point the employee's first day of work with the same employer.

Carandang involved a high school teacher, Felisa Carandang, who was first hired in 1974 but had to resign in 1979 to take graduate studies. Upon her application, she was re-employed in 1985 by respondent school, Diocesan Schools of La Union. In 1988, the school wrote Carandang, stating that it would no longer be renewing her employment for the next school year because she failed to pass the evaluation conducted for probationary teachers. Thus, Carandang filed a complaint for illegal dismissal, contending that she was already a permanent employee in 1988 and may only be removed for just or authorized causes; not for failure to pass evaluations meant for probationary employees.[79]

This Court held that Carandang was illegally dismissed because she was already a permanent employee when the school terminated her employment. However, due to the strained relations between her and the school, she was instead awarded separation pay. In computing Carandang's separation pay, this Court reckoned Carandang's length of service from 1985, not from 1974 when she first started working in the school. This Court noted that Carandang voluntarily resigned in 1979; hence, when she was re-employed in 1985, she started as a probationary employee again, effectively a new hire with "zero" experience.[80]

Sta. Catalina College likewise involved a teacher, Hilaria Tercero, who first started working in Sta. Catalina College in 1955. In 1970, the school granted her leave of absence for one (1) year because of her mother's illness. However, after her leave of absence expired, the school had not heard from her until she returned in 1982 to apply for re-employment. She was then accepted again by the school.[81]

In 1997, Tercero reached the compulsory retirement age of 65. In computing her retirement pay, the school only considered her service from

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76 266 Phil. 862 (1990) [Per J. Cortes, Third Division].
77 461 Phil. 720 (2003) [Per J. Carpio Morales, Third Division].
78 300 Phil. 445 (1994) [Per J. Nocon, Second Division].
79 *Carandang v. Dulay,* 266 Phil. 862, 863–865 (1990) [Per J. Cortes, Third Division].
80 Id. at 865–868.
81 *Sta. Catalina College v. National Labor Relations Commission,* 461 Phil. 720, 725–726 (2003) [Per J. Carpio Morales, Third Division].

1982 to 1997, and excluded her service rendered from 1955 to 1970. It was the school's contention that Tercero abandoned her employment in 1971 when she failed to return for work after the expiration of her leave of absence.[82]

This Court agreed with the school, holding that, for purposes of computing Tercero's retirement benefits, her length of service should be reckoned from 1982 when she was re-employed, and not from 1955 when she first started working in the school. This Court found that Tercero abandoned her employment in 1971 when she failed to return after the expiration of her leave of absence. She was even employed in a different school for the school years 1980-1981 and 1981-1982 before she returned to Sta. Catalina in 1982. Having abandoned her employment in Sta. Catalina from 1955 to 1971, this Court said that she "effectively relinquished the retirement benefits accumulated during the said period."[83]

Philippine Village Hotel involved a hotel that was closed down in 1986 due to serious business losses, resulting in the dismissal of employees. The employees then filed a complaint before the National Labor Relations Commission, but the validity of the closure was upheld.[84]

In 1989, the hotel decided to have a one-month dry-run operation to explore the possibility of resuming its operations. It then re-hired some of the employees it had dismissed earlier in 1986. However, by the end of the month, the hotel dismissed the re-hired employees again. This caused them to file another illegal dismissal case.[85]

This Court held that the subsequently re-hired employees were validly dismissed after the end of the one-month contract. According to this Court, the employees "voluntarily and knowingly agreed to be employed only for a period of one (1) month[.]"[86] As a consequence, the employees were not "deemed to have continued their regular employment status, which they had enjoyed before their... termination due to [Philippine Village Hotel's] financial losses."[87] In this Court's words, "the prior employment which was terminated cannot be joined or tacked to the new employment for purposes of security of tenure."[88]

Carandang, *Sta. Catalina College*, and *Philippine Village Hotel* all illustrate how an employee who returns to work for the same employer is

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82 Id. at 726–727.
83 Id. at 730.
84 *Philippine Village Hotel v. National Labor Relations Commission*, 300 Phil. 445, 447–448 (1994) [Per J. Nocon, Second Division].
85 Id. at 448.
86 Id. at 449.
87 Id. at 451.
88 Id. at 452.

considered a new hire if prior employment was validly terminated, either voluntarily or under any of the just and authorized causes provided in the Labor Code. Therefore, the reckoning point of the length of service, for purposes of security of tenure, begins on the date the employee was re-hired.

However, if an employee returns to work upon an order of reinstatement, he or she is not considered a new hire. Because reinstatement presupposes the illegality of the dismissal,[89] the employee is deemed to have remained under the employ of the employer from the date of illegal dismissal to actual reinstatement. Further, there is no "prior employment"[90] to speak of, and the payment of backwages is compensation for the time the employee was illegally deprived of work. In the latter case, the reckoning point of the length of service must be the date the employee first began working for the employer, not when he or she returned for work.

In *Carandang*, *Sta. Catalina*, and *Philippine Village Hotel*, the prior employment of the employees were all validly terminated. Carandang voluntarily resigned from work before she was re-hired, while Tercero abandoned her prior employment in Sta. Catalina. The closure of the establishment of Philippine Village Hotel was declared valid in a final and executory judgment of the National Labor Relations Commission. In these cases, the reckoning point of the employees' length of service is the date when they were re-hired.

The same, however, cannot be said in this case. Here, petitioners were found to have been illegally dismissed and only returned to work upon an order of reinstatement. Further, they were not new hires when they returned in San Miguel. Under the law, they remained under the employ of respondent from the time they were illegally dismissed up to the time of their actual reinstatement. The reckoning point of their length of service must be the date they first started working in San Miguel, i.e., 1985 for Melchor, and 1988 for Melencio and Serafin.

The Court of Appeals erred when it reckoned petitioners' length of service from the time they were supposedly declared as regular employees pursuant to the December 15, 1994 Decision of Labor Arbiter Caday. What Labor Arbiter Caday declared was that petitioners were "reinstated with backwages, but this time as regular employees already effective as of this date of the decision."[91] The use of "already effective" means that they became regular employees *even before* the Labor Arbiter's Decision was rendered in December 15, 1994. This is consistent with Labor Arbiter Caday's finding that petitioner Melchor was illegally dismissed on January

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89 LABOR CODE, art. 279 (now art. 294).

90 *Philippine Village Hotel v. National Labor Relations Commission*, 300 Phil. 445, 452 (1994) [Per J. Nocon, Second Division].

91 *Rollo*, p. 72. Labor Arbiter Caday's Decision.

26, 1991, while petitioners Melencio and Serafin were illegally dismissed on November 21, 1990:

> With respect to the third issue of whether or not the remaining nine (9) complainants were illegally dismissed, the evidence on record equally and convincingly requires an affirmative answer.
>
> The evidence shows that complainants Melchor Cuadra, Joselito Flores, Dennis Rauto, were dismissed on January 26, 1991, while Raymundo Gaviola, Eliseo Yumang, Abelardo Carlos, Serafin Trinidad and Melencio Trinidad were dismissed on November 21, 1990 and Ben Mangindin on December 27, 1991, all by respondent [San Miguel Corporation].
>
> As undisputedly testified to by the complainants, they were dismissed by respondent [San Miguel Corporation] due to different reasons. According to complainant Melchor Cuadra, on January 21, 1991 they were told by foreman Salucia that their line will be shut down or closed because of the Gulf War (t.s.n. 27, Oct. 3, 1991). While complainants Eliseo Yumang and Serafin Trinidad were told by their supervisor Oligario that they are being terminated because they were among those laid off or retrenched (t.s.n., pp. 19-23, Sept. 20, 1993 and pp. 15-17, Nov. 11, 1993). On the other hand, complainant Ben Mangindin testified that in the notice posted in the Bulletin Board on December 27, 1991, it was announced that all contract workers assigned at the Applied Color Level (ACL) Department of SMC Manila Glass Plant will be up to December 27, 1991 only (tsn, pp. 9-11, July 28, 1993).[92]

For there to be an illegal dismissal, there must first exist the status as regular employee and the concomitant violation of the regular employee's security of tenure.[93] There can be no illegal dismissal in 1990 or 1991 when the employee only became a regular employee in 1994.

In sum, service to an employer is presumed continuous unless there is evidence that employer-employee relations were validly severed in the interim. Here, the employer-employee relationship between respondent, on the one hand, and petitioners, on the other, was not validly severed when respondent illegally dismissed them. Consequently, the length of service of petitioners must be reckoned from the time they first started working in San Miguel—1985 for Melchor, and 1988 for Melencio and Serafin Trinidad.

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92 *Rollo*, pp. 70–71.

93 LABOR CODE, art. 279, renumbered art. 294, 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.

However, considering that petitioner Serafin had waived his claims against respondent as he had manifested,[94] the Petition is moot and academic as to him.

WHEREFORE, as to petitioner Serafin Trinidad, the Petition for Review on Certiorari is **DISMISSED** for being moot and academic.

However, as for petitioners Melchor Cuadra and Melencio Trinidad, the Petition for Review on Certiorari is **GRANTED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 104828 are **REVERSED** and **SET ASIDE**. Their length of service must be reckoned from the time they first started working for respondent San Miguel Corporation, specifically, 1985 for petitioner Melchor Cuadra, and 1988 for petitioner Melencio Trinidad.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

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94 *Rollo*, pp. 183–184.

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.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
NOV 19 2020