Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CORNWORLD BREEDING SYSTEMS CORPORATION and/or LAUREANO C. DOMINGO,
Petitioners,

- *versus* -

HON. COURT OF APPEALS and LUCENA M. ALVARO-LADIA,
Respondents.

G.R. No. 204075

Present:

GESMUNDO, *C.J.,*
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:
AUG 17 2022

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D E C I S I O N

HERNANDO, *J.*:

This Petition for *Certiorari*[1] assails the February 8, 2012 Decision[2] and the July 24, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 116391 which held that respondent Lucena Alvaro-Ladia (Lucena) was constructively dismissed from her employment by petitioner Cornworld Breeding Systems Corporation (Cornworld).

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1 *Rollo*, pp. 6-31.
2 Id. at 33-46; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Josefina Guevara-Salonga and Florito S. Macalino.
3 Id. at 48-49.

The Antecedents

Sometime in August 1982, Lucena was hired as a field labor employee by Cornworld. She rose from the ranks and was eventually designated as Vice President for Research and Development in the company.[4]

When Cornworld's then President, Benito M. Domingo, suffered a stroke on January 16, 2009, petitioner Laureano C. Domingo (Laureano) took over the management of the company.[5]

On January 24, 2009, Laureano called for a special meeting of some of the company's employees including Lucena. The latter claimed that before the meeting started, several employees witnessed Laureano berating her as to why she was not able to attend some of the meetings of the company and failed to answer his phone calls and letters.[6] She then recalled the following verbal exchange that transpired during the said meeting:

Lucena:	Sorry sir umiiwas lang po ako sa gulo.
Laureano:	What gulo?
Lucena:	Kasi everytime na nagmi meeting tayo nauuwi sa gulo at ang issues ay pabalikbalik at nasasagot naman at dinedelegate ko sa mga research assistant ko para malaman ko ang capacity nila.
Laureano:	It is your responsibility as a head of this department to attend all the meetings (at the same time pointing a finger at Lucena)
Lucena:	Yes sir. Sorry sir kung ano man ang nagawa kong kasalanan, patawarin nyo ako sir, at kung gusto niyo sir luluhod ako sa harapan niyo para mapatawad niyo lang ako. And if you want, I will attend all the meetings, Sir.
Laureano:	(answering in a high-pitched voice) No! It is not what I want! It is your obligation to attend all the meetings (at the same time pointing an accusing finger at Lucena).
Lucena:	Yes sir! But please treat me as a person sir. (at which point she started crying)
Laureano:	I don't want any drama here, you get out (motioning his hand for Lucena to leave the premises of the building)

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4 Id. at 33.
5 Id. at 34.
6 Id.

Lucena: Yes sir, Yes sir, but please treat me as a person.

Laureano: I don't want crying ladies here, you get out. Get out! Ilabas niyo dito yan.[7]

Lucena alleged that as a result of the foregoing incident, she was confined at the Cabanatuan Family Hospital due to hypertension. In view of her ailment, she applied for sick leave on January 26, 2009 for a period of seven days.[8]

On February 17, 2009, she wrote Laureano for the payment of her salary and sales incentive pay. However, on the same day, the Officer-in-Charge of Cornworld, Ms. Rizalina C. Domingo, issued a memorandum addressed to all employees informing them of the appointment of Mr. Alan Canama (Canama) as Overseer of all offices under the Research and Development pursuant to a Board Resolution issued on January 22, 2009.[9]

Lucena asserted that with the appointment of Canama, her employment with Cornworld was left on a floating status as she had no more personality to attend meetings and head the Research and Development Department. She also claimed that threats against her person and life were made in connection with her employment with Cornworld, and that by reason thereof, she could no longer report for work. Consequently, on May 15, 2009, she was again treated for hypertension. Furthermore, on May 25, 2009, she attended the Meeting of the Private Seeds Company in Laguna, in representation of Cornworld, but two other employees were sent by Laureano to represent the company.[10]

Thus, on June 23, 2009, Lucena instituted a complaint for constructive dismissal against Cornworld and Laureano.[11]

On the other hand, petitioners argued that the company had lost its trust and confidence reposed upon respondent. Lucena was neither actually nor constructively dismissed from service. On the contrary, it was Lucena who refused to cooperate with the new management under Laureano despite occupying a very important and sensitive position in the company, to the extent that she absented herself from management meetings and sending her assistants in her stead.[12]

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7 Id.
8 Id. at 34-35.
9 Id. at 35.
10 Id.
11 Id.
12 Id. at 35-36.

Lucena apparently resented the January 24, 2009 incident, and that since then she absented herself from the company and refused to report back to work, which culminated in the filing of her complaint. Before the complaint, Lucena filed three separate applications for sick leave covering the period of January 24, 2009 until March 16, 2009, but subsequently did not communicate with the company even after the expiration of her approved leave period. Petitioners exerted efforts to reach Lucena through numerous phone calls to her mobile phone which turned out futile since her phone was always turned off. She also did not provide any notice or information to the company regarding her plans with her job.[13]

Petitioners claimed that since there was no other person appointed to fill Lucena's position as Vice President for Research and Development, she could not complain that she was dismissed. The appointment of Canama on February 17, 2009 was done only to ensure the smooth and continued operations of the Research and Development Department in the company. Petitioners insisted that it was Lucena who abandoned her job and she was not dismissed, either actually or constructively.[14]

Ruling of the Labor Arbiter

In a Decision[15] dated August 24, 2009, the Labor Arbiter dismissed respondent's complaint. The dispositive portion of said Decision reads:

> **IN VIEW TREREOF**, judgment is hereby rendered **DISMISSING** the complainant's claim for illegal dismissal for lack of merit.
>
> **SO ORDERED**.[16]

Ruling of the National Labor Relations Commission (NLRC)

Aggrieved with the Labor Arbiter's ruling, Lucena filed an appeal[17] with the NLRC. However, in its March 24, 2010 Decision,[18] the NLRC found that there was neither constructive dismissal nor abandonment in her case. There was no abandonment in the absence of a clear intention on the part of Lucena to sever her employment relationship with petitioners. On the contrary, Lucena clearly manifested her intention to continue working for petitioners by her filing

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[13] Id.
[14] Id. at 36.
[15] Id. at 159-167. Penned by Labor Arbiter Irenarco R. Rimando.
[16] Id. at 167.
[17] Id. at 168.
[18] Id. at 168-175. Penned by Presiding Commissioner Gerardo C. Nograles, and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

of applications for leave of absence and her subsequent return to work. The NLRC also ruled that petitioners did not constructively dismiss Lucena. The latter failed to substantiate her claim of their insensitivity, discrimination, or disdain towards her.[19] The *fallo* of the NLRC's Decision reads:

> WHEREFORE, premises considered, the appeal filed by complainant [Lucena] is DISMISSED for lack of merit. The Decision of the Labor Arbiter Irenarco Rimando dated August 24, 2009 is AFFIRMED.
>
> **SO ORDERED.**[20]

Lucena filed a Motion for Reconsideration, which the NLRC denied.[21]

Ruling of the Court of Appeals

Lucena then filed a Petition for *Certiorari*[22] under Rule 65 of the Rules of Court with the CA imputing grave abuse of discretion on the NLRC amounting to lack or in excess of jurisdiction when it ruled that she was not constructively dismissed.

In its February 8, 2012 Decision, the appellate court granted her Petition and held that Lucena was indeed constructively dismissed, and thus, entitled to her monetary claims and damages. The dispositive portion of the appellate court's Decision reads:

> ***WHEREFORE,*** the instant petition is hereby ***GRANTED*** and the NLRC Decision dated March 24, 2010 and Resolution dated July 10, 2010 are ***SET ASIDE.*** Private respondent Cornworld Breeding System Corporation is ordered to pay petitioner Lucena M. Alvaro-Ladia full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time her compensation was withheld from her up to the finality of Our decision, separation pay equivalent to (1) month salary for every year of service computed from the date of her dismissal until finality of Our Decision, and attorney's fees equivalent to ten (10%) percent of the total monetary award. Let the records of this case be ***REMANDED*** to the National Labor Relations Commission for determination of the backwages and other benefits, separation pay, and attorney's fees.[23]

Petitioners moved for reconsideration which the appellate court denied in its assailed July 24, 2012 Resolution.[24]

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19 Id. at 37-38.
20 Id. at 175.
21 Id. at 38.
22 Id. at 33.
23 Id. at 45.
24 Id. at 48-49.

As a result, on November 22, 2012, petitioners filed the instant Petition for *Certiorari*[25] under Rule 65 of the Rules of Court with prayer for temporary restraining order and/or writ of preliminary injunction. The instant Petition raises the following assignment of errorr:

> i.) The assailed [CA] Decision and Resolution were issued with grave abuse of discretion tantamount to lack or in excess of jurisdiction;
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> ii.) Petitioners never dismissed Lucena either actually or constructively;
>
> iii.) It was Lucena who failed to report back for work and abandoned her job; and
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> iv.) Lucena was accorded all the opportunity to report back to work and was given due process.[26]

The pivotal issue in the instant case is whether Lucena's employment with Cornworld was validly severed through her own act of abandonment or unjustly terminated through constructive dismissal.

In a Resolution dated November 26, 2012,[27] this Court resolved to dismiss the instant Petition, to wit:

> [T]he Court resolves to **DISMISS** the petition for being a wrong mode of appeal under the Rules. Moreover, the petition failed to strictly comply with the requirements specified in Rule 65 and other related provisions of the 1997 Rules of Civil Procedure, as amended, as the petition lacks proofs of service (registry receipts) on the Court of Appeals and counsel for respondent pursuant to Section 2(c), Rule 56, Section 3, 3rd par., Rule 46 in relation to Section 5(d), Rule 56 and Section 13, Rule 13 of the Rules.
>
> In any event, the petition failed to sufficiently show that the questioned judgment is tainted with grave abuse of discretion.[28]

On January 28, 2013, petitioners moved for reconsideration of this Court's November 26, 2012 Resolution, which was granted through this Court's June 4, 2014 Resolution.[29]

Our Ruling

The Petition is devoid of merit.

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[25] Id. at 6-39.
[26] Id. at 20.
[27] Id. at 178-179.
[28] Id. at 178.
[29] Id. at 207.

Petitioner Cornworld availed of the wrong remedy. Nonetheless, Even if We treat the instant special civil action for *certiorari* as a Petition for Review on *Certiorari,* the same must be dismissed outright for being filed late.

At the outset, We reiterate that Cornworld availed of the wrong remedy by filing the present special civil action for *certiorari* under Rule 65 of the Rules of Court to assail a final judgment of the appellate court. Cornworld should have filed a Petition for Review on *Certiorari* under Rule 45 of the same Rules. In *Fuji Television Network, Inc. v. Espiritu,*[30] We explained that:

> A petition for *certiorari* under Rule 65 is an original action where the issue is limited to grave abuse of discretion. As an original action, it cannot be considered as a continuation of the proceedings of the labor tribunals.
>
> On the other hand, a petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited to questions of law. In labor cases, a Rule 45 petition is limited to reviewing whether the Court of Appeals correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the National Labor Relations Commission.[31]

The remedy of *certiorari* may only be resorted to in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Thus, as a rule, *certiorari* cannot be made as a substitute for a lost appeal.[32]

Nevertheless, there have been cases where the petitioner availed of the wrong remedy but the Court, in the spirit of liberality and in the interest of substantial justice, treated a petition as a petition for review.[33] *Republic v. National Labor Relations Commission*[34] *(Republic)* instructs why this is so: "procedural rules are not to be applied in a very rigid and technical sense if its strict application will frustrate, rather than promote, substantial justice." It is settled that procedural rules are designed to facilitate the orderly administration of justice.[35]

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30 749 Phil. 388 (2014).
31 Id. at 415.
32 *Lefebre v. A Brown Co., Inc.*, 818 Phil. 1046, 1056 and 1061 (2017).
33 See *Suib v. Ebbah*, 774 Phil. 1, 11 (2015).
34 783 Phil. 62, 77 (2016).
35 Id.

In this case, even if the Court deems it proper to heed *Republic* by relaxing the rules and, thus, treat the instant petition for *certiorari* as a petition for review on *certiorari* under Rule 45, it remains that the instant petition was filed out of time.

Under the Rules of Court, the proper remedy of a party aggrieved by a judgment, final order, or resolution of the CA is to file with the Supreme Court a verified petition for review on *certiorari* under Rule 45[36] within 15 days from notice of the judgment, final order, or resolution appealed from.[37]

We note the following relevant dates: (a) on July 24, 2012 the appellate court issued its Resolution denying the motion for reconsideration of Cornworld; (b) the latter received the said Resolution on August 1, 2012;[38] and (c) the instant Petition was filed on September 28, 2012.[39]

Therefore, based on the foregoing, Cornworld belatedly filed the instant Petition 58 days after receipt of the appellate court's July 24, 2012 Resolution.

Thus, although this Court has considered petitions erroneously filed under Rule 65 as filed under Rule 45, We cannot do so in this case because the instant Petition was filed beyond the 15-day reglementary period.

Therefore, in view of Cornworld's recourse of the wrong remedy and late filing, the instant Petition should be dismissed outright.

Besides, as noted in Our November 26, 2012 Resolution, the petition suffers from an infirmity that also merits its outright dismissal. The petition lacked proof of service to the CA and the counsel of Lucena in clear violation of Section 2(c), Rule 56, Section 3, 3rd par., Rule 46 in relation to Section 5(d), Rule 56 and Section 13, Rule 13 of the Rules.

Cornworld constructively dismissed Lucena.

Even if this Court will review the merits of the instant case, We find that petitioner utterly failed to prove that the appellate court gravely abused its discretion when it issued its assailed Decision and Resolution. Thus, even assuming *arguendo* that this Court relaxes the procedural rules in Cornworld's favor, the petition would still be denied for lack of merit.

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36 RULES OF COURT, RULE 45, Section 1.
37 RULES OF COURT, RULE 45, Section 2.
38 *Rollo*, pp. 6-7.
39 Id. at 1.

Upon a careful review, We find that Cornworld constructively dismissed Lucena.

In order for a dismissal from employment to be valid, it must be for a just or authorized cause and the procedural requirements of due process, through notice and hearing, must be complied. The employer must furnish the employee with two written notices before termination of the employment. The first notice apprises the employee of the particular acts or omissions for which dismissal is sought, while the second notice informs the employee of the employer's decision to dismiss him/her. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[40]

In addition, the determination of whether an employee was validly dismissed on the ground of abandonment is a factual matter because it requires this Court to review evidence presented by both parties. As a rule, factual issues are beyond the purview of a petition for review on *certiorari* under Rule 45, which covers only questions of law. Thus, the factual findings of the appellate court are generally binding upon the parties and this Court. However, there is an exception to this rule as when the CA and the NLRC arrived at a different conclusion, such as in the instant case.[41]

Article 297 of the Labor Code enumerates the just causes for the dismissal of an employee:

> Article 297. *Termination by Employer.* - An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

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40 *Distribution & Control Products, Inc., vs. Santos*, 813 Phil. 423, 436 (2017).
41 *Demex Rattancraft Inc., v. Lerons*, 820 Phil. 693, 701 (2017).

In *Demex Rattancraft, Inc. v. Leron*,[42] the Court held that although abandonment of work is not expressly enumerated as a just cause under Article 297 of the Labor Code, jurisprudence has recognized it as a form of or akin to neglect of duty.

In the instant case, Cornworld contends that that there was no constructive dismissal of Lucena since she was guilty of abandonment of work, and therefore she is not entitled to any monetary award.

The Court disagrees.

In *Diamond Taxi v. Llamas, Jr.*,[43] abandonment was characterized as "the deliberate and unjustified refusal of an employee to resume his employment. It is a form of neglect of duty that constitutes just cause for the employer to dismiss the employee." In *Tamblot Security & General Services, Inc. v. Item*,[44] this Court reiterated that to constitute abandonment of work, two elements must concur, to wit:

> [F]or abandonment of work to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. . . . Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.[45] (Underscoring in the original)

Guided by the foregoing parameters, We find that Cornworld failed to adduce evidence of Lucena's alleged abandonment. There was no showing by the company that she committed overt acts that clearly and unequivocally showed her intention to abandon her job.

On the contrary, sufficient proof was presented by Lucena which indicated that she had no intention to sever her employment with Cornworld. These consisted of her filing of three separate applications for sick leave covering the period of January 24, 2009 to March 16, 2009.[46] Also, Lucena lost no time in filing the instant illegal dismissal case against Cornworld on June 23, 2009, or barely a month from the time she discovered on May 25, 2009 during the Meeting of the Private Seeds Company in Laguna that two other employees

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[42] Id.
[43] 729 Phil. 364, 381 (2014).
[44] 774 Phil. 312, 315 (2015).
[45] Id. at 315.
[46] *Rollo*, p. 40.

were sent by Cornworld to represent the company in her stead.[47] Jurisprudence holds that "the immediate filing by the employee of an illegal dismissal complaint is proof enough of his[/her] intention to return to work and negates the employer's charge of abandonment. To reiterate and emphasize, abandonment is a matter of intention that cannot lightly be presumed from certain equivocal acts of the employee."[48]

In *Doble, Jr. v. ABB, Inc.*,[49] the Court explained that-

> [C]onstructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his[/her] continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer.[50]

The test for constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[51]

In this case, this Court finds that the following instances support Lucena's claim that she was constructively dismissed: (i) the January 22, 2009 Board Resolution appointing Canama as Overseer of all offices under Research and Development clearly implied that it was meant to take Lucena's position which made her employment under floating status. This was so even before the confrontation that occurred during the January 24, 2009 meeting which prompted Lucena to avail of a sick leave;[52] (ii) Cornworld withheld Lucena's salaries and benefits as early as February 2009 while she was still on leave but still employed with the company and thus entitled to her pay;[53] and (iii) public ridicule and humiliation during meetings which caused a toll on her medical condition. The foregoing circumstances, among others, truly made Lucena's employment impossible and unbearable on her part as to effectively force her to forego her continued employment.

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47 Id. at 35.
48 *Diamond Taxi v. Llamas, Jr.*, 729 Phil. 364, 382 (2014).
49 810 Phil. 210 (2017).
50 Id. at 229.
51 Id.
52 *Rollo*, p. 41.
53 Id. at 42.

In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action were for valid and legitimate grounds.[54] Here, Cornworld failed to overcome its burden to prove that Lucena was validly dismissed.

Cornworld's assertion that Lucena's employment was severed due to loss of trust and confidence is just as unacceptable.

Loss of trust and confidence is a just cause for dismissal as provided under Article 282(c) of the Labor Code. Thus, an employer may terminate an employment for "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." The requisites to validly terminate an employee on this ground are: (i) the employer must show that the employee holds a position of trust and confidence; and (ii) the employer must establish the existence of an act justifying the loss of trust and confidence. Thus, said act must be real, founded on clearly established facts, and the employee's breach of trust must be willful, intentional, knowingly and purposely done without justifiable excuse.[55]

Therefore, termination of employees on the ground of loss of trust and confidence likewise requires compliance of procedural and substantive due process. However, We find that Cornworld failed to substantiate its claim.[56] In particular, this Court finds that the company failed to show that the act of Lucena was willful, intentional, knowingly and purposely done without justifiable excuse that would have justified the company's loss of trust and confidence in her.

Consequently, in view of Lucena's illegal dismissal, she is entitled to two reliefs, namely, backwages and reinstatement. However, where reinstatement is no longer feasible, such as in the instant case, separation pay shall be granted in lieu of reinstatement, as appropriately held by the appellate court.[57]

WHEREFORE, the instant Petition is hereby **DISMISSED**. The assailed February 8, 2012 Decision and the July 24, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 116391 are **AFFIRMED**.

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[54] *Diamond Taxi v. Llamas, Jr.*, supra at 383.
[55] *Distribution & Control Products, Inc.* v. *Santos*, supra note 40 at 433-434.
[56] See also *rollo*, pp. 42-43.
[57] *Golden Ace Builders v. Talde*, 634 Phil. 364, 370 (2010).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

ALEXANDER G. GESMUNDO
Chief Justice