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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 2, 2020** *which reads as follows:*

"G.R. No. 197614 – JESSIE O. BALDISIMO, *petitioner,* ***versus*** **NSR RUBBER CORPORATION AND OSCAR PEREZ,** *respondents.*

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated March 14, 2011 and Resolution[3] dated July 8, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 107908, which affirmed the National Labor Relations Commission's (NLRC) ruling that respondent corporation validly terminated petitioner's employment due to retrenchment.

Facts

The facts as found by the CA and the NLRC are as follows:

> "[Petitioner] started to work with the [respondent corporation] in April 1990 as a factory worker, and later promoted to the position of foreman. A year after his promotion, he was transferred from the plant division to the printing division. Whenever no printing job was available at the printing division, he was being reassigned to other departments to perform equally important tasks, such as machine maintenance and other utility functions, like an all-around foreman ready to accept job in any department at [any time] the need arises.
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> "On September 27, 2006, [petitioner] filed a complaint for diminution of benefits before the Commission. According to him,

- over – nine (9) pages ...

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1 *Rollo*, pp. 9-47, excluding the Annexes.

2 Id. at 59-72. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Rebecca De Guia-Salvador and Amy C. Lazaro-Javier (now a Member of the Court).

3 Id. at 49.

> [respondents] reduced his 13th month pay, sick and vacation leave cash conversion, allowances, and Christmas bonus. Because of the filing of the said case, [respondents] became hostile to him, in that he was no longer given any work in the other departments. Instead, he was stucked (*sic*) at the printing department where no printing job was regularly performed.
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> "On July 17, 2007, [petitioner] received a letter informing him of [respondents'] decision to shut down the printing department, due to alleged lack of operation (Annex 'B'). They submitted a Termination Report to the Department of Labor and Employment (DOLE) showing that only one, [petitioner] was affected by the shutdown (Annex 'C'). Although, [respondents] promised to give his separation pay, he was only offered one (1) month's salary, contrary to the promised benefits contained in their letter dated July 17, 2007.
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> "[Respondents], on the other hand, aver that due to high competition in the business they had engaged in, they were compelled to reduce workdays from six (6), then five (5), and eventually four (4) days. For this reason, majority of the workers voluntarily resigned. The printing department was severely affected, so, [petitioner] was assigned to other departments. But the printing department also shut down. Since July 2006, it had only two (2) to three (3) days operations.
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> "This prompted [respondents] to send a letter dated July 17, 2007 to [petitioner] informing him to stop working but assured him that he would be paid his separation benefits as mandated by law. However, during the conciliation meeting, [petitioner] demanded a higher pay. In view of this, the Labor Arbiter ordered them to file their respective position papers.
>
> "In his Reply, [petitioner] alleges that the retrenchment program was implemented in utter bad faith as there was no fair and reasonable criteria used in retrenching him. The shutdown was a mere ploy to get rid of him."[4]

In her Decision,[5] the Labor Arbiter (LA) found respondents liable for illegal dismissal and awarded separation pay in lieu of reinstatement, backwages, other money claims, and attorney's fees.[6]

Respondents appealed to the NLRC, which reversed the LA. The NLRC found that petitioner's dismissal was valid as it was through retrenchment. The NLRC awarded separation pay in the amount of

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4 Id. at 60-61.

5 Decision dated March 4, 2008 in NLRC NCR Case No. 08-09067-07, penned by Executive Labor Arbiter Fatima Jambaro-Franco, id. at 170-178.

6 *Rollo*, p. 61.

₱89,550.00.[7] Petitioner moved for reconsideration but the NLRC denied this.[8]

Petitioner therefore filed a petition for *certiorari* before the CA, which affirmed the NLRC Decision with modification. The dispositive portion of the CA Decision states:

> **WHEREFORE**, the Decision dated June 27, 2008 of the NLRC is **AFFIRMED with MODIFICATION** in that, private respondents NSR Rubber Corporation and Oscar Perez, in addition to the award of separation pay in the amount of P89,550.00, are hereby further ordered to pay petitioner his other monetary claims in the total amount of P11,948.04.
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> **SO ORDERED.**[9]

The CA ruled that respondents were able to prove compliance with the mandatory procedure of one month prior notice to the Department of Labor and Employment and to petitioner.[10] Further, petitioner's separation pay was ready, but petitioner refused to receive it.[11]

The CA also found that respondents were able to show through their 2006 Audited Financial Statement (AFS) and the AFS until September 2007 that the retrenchment undertaken by them was valid in order to prevent losses. The CA found that based on the 2007 AFS as of September 2007, respondent corporation's net loss on operations was ₱1,978,375.37 and the company only posted a net income of ₱24,111.77[12] as a result of income from other sources amounting to ₱2,015,470.40.[13]

The CA also found that respondent corporation had implemented retrenchment as a last resort. It implemented cost-cutting measures such as reducing workdays from six days to five days, and eventually to four days. Petitioner was likewise previously assigned to different departments which were also shut down by respondent corporation.[14] The CA also found that the Printing Department, where petitioner was assigned prior to implementation of the retrenchment, had been

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7 Id. at 62.
8 Id.
9 Id. at 71.
10 Id. at 68.
11 Id.
12 Stated as ₱24,117.77 in the CA Decision, *rollo*, p. 66.
13 *Rollo*, pp. 66-67, 252.
14 Id. at 69.

operating for only two to three days as of July 2006, it was not operating since May 15, 2007, and in July 2007, it only operated for one day.[15] Given the foregoing, the CA found that respondent corporation validly dismissed petitioner due to retrenchment.[16]

The CA, however modified the monetary award to add ₱11,948.04 as respondent corporation admitted that it had not paid petitioner's 13th month pay, sick/vacation leaves, salary for August 16-18, 2007, ECOLA, and meal allowance.[17]

Petitioner moved for reconsideration, but the CA denied this.

Hence, this Petition.

In a Resolution[18] dated October 10, 2011, the Court denied the Petition for having failed to show that the CA committed any reversible error. Petitioner moved for reconsideration. And in a Resolution dated February 15, 2012, the Court granted the reconsideration, reinstated the Petition, and directed respondents to file their Comment.[19]

Respondents filed their Comment[20] and, in turn, petitioner filed his Reply.[21]

In a Resolution[22] dated January 16, 2013, the Court directed the parties to file their respective Memoranda, which the parties complied with.[23]

Issues

In his Memorandum, petitioner raised the following issues:

> WHETHER OR NOT THE [CA] COMMITTED SERIOUS REVERSIBLE ERROR IN AFFIRMING THE FINDING OF THE NLRC THAT RESPONDENTS['] BUSINESS SUFFERED LOSSES.
>
> WHETHER OR NOT THE [CA] COMMITTED SERIOUS REVERSIBLE ERROR IN AFFIRMING THE COMPUTATION

15 Id. at 67-68.
16 See id. at 68.
17 Id. at 70, 71.
18 Id. at 264.
19 Id. at 273.
20 Id. at 274-282.
21 Id. at 283-287.
22 Id. at 289-290.
23 Memorandum for petitioner, id. at 291-300 and Memorandum for respondents, id. at 301-309.

MADE BY THE NLRC SHOWING THAT PETITIONER'S MONTHLY SALARY IS ALLEGEDLY P9,500.00 PER MONTH WHEN HIS PAYSLIP SHOWED IT IS P13,550.00 PER MONTH.[24] (Emphasis omitted)

The Court's Ruling

The Petition lacks merit.

The issues that petitioner raised involve questions of facts as they require the evaluation of the evidence that the NLRC and the CA found as basis for their conclusion that respondent corporation validly implemented petitioner's retrenchment.[25] This cannot be done in a petition for review on *certiorari,* especially one arising from a labor case where the prism of review is only to determine whether the CA correctly determined the existence of grave abuse of discretion. As the Court held in *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*:[26]

> Although SACORU claims that its petition raises only questions of law, a careful examination of the issues on the validity of the redundancy program and whether it constituted an unfair labor practice shows that in resolving the issue, the Court would have to reexamine the NLRC and CA's evaluation of the evidence that the parties presented, thus raising questions of fact. This cannot be done following *Montoya v. Transmed Manila Corp.* that only questions of law may be raised against the CA decision and that the CA decision will be examined only using the prism of whether it correctly determined the existence of grave abuse of discretion, thus:
>
> > Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** x x x
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> > x x x x
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> The reason for this limited review is anchored on the fact that the petition before the CA was a *certiorari* petition under Rule

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24 *Rollo*, p. 294.
25 See *Sebuguero v. National Labor Relations Commission*, 318 Phil. 635, 648 (1995).
26 819 Phil. 326 (2017).

> 65; thus, even the CA did not have to assess and weigh the sufficiency of evidence on which the NLRC based its decision. The CA only had to determine the existence of grave abuse of discretion. As the Court held in *Soriano, Jr. v. National Labor Relations Commission*:
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> > As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.[27] (Emphasis in the original; citations omitted)

Here, the CA correctly determined that the NLRC did not commit grave abuse of discretion as its decision is in accord with law and jurisprudence. Further, the CA, even if it was not required, reviewed the evidence on record and found that the NLRC's conclusion was supported by substantial evidence. These are therefore binding on the Court.

In fact, faced with a similar issue, the Court in *Manila Polo Club Employees' Union (MPCEU) FUR-TUCP v. Manila Polo Club, Inc.*[28] *(Manila Polo Club Employees' Union)* held that the closure of a department is a business judgment and courts will not interfere with it provided that no abuse of discretion or arbitrary or malicious action was present in its implementation. The Court therein found that the corporation had exerted efforts to avoid losses but was unsuccessful. The Court also ruled that even if the operational losses were covered by other income, this did not mean that the implementation of the retrenchment of the employees was done in bad faith. Thus:

> Respondent correctly asserted in its Memorandum that the instant case is similar to *Alabang Country Club Inc.* When it decided to cease operating its F & B Department and open the same to a concessionaire, respondent did not reduce the number of personnel assigned thereat; instead, it terminated the employment of all personnel assigned at the department and those who are directly and indirectly involved in its operations. The closure of the F & B Department was due to legitimate business considerations, a

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27 Id. at 333-334.
28 715 Phil. 18 (2013).

> resolution which the Court has no business interfering with. We have already resolved that the characterization of the employee's service as no longer necessary or sustainable, and therefore, properly terminable, is an exercise of business judgment on the part of the employer; the determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere with the exercise of such so long as no abuse of discretion or arbitrary or malicious action on the part of the employer is shown. As recognized by both the VA and the CA, evident proofs of respondent's good faith to arrest the losses which the F & B Department had been incurring since 1994 are: engagement of an independent consulting firm to conduct manpower audit/organizational development[,] institution of cost-saving programs, termination of the services of probationary employees, substantial reduction of a number of agency staff and personnel, and the retrenchment of eight (8) managers. After the effective date of the termination of employment relation, respondent even went on to aid the displaced employees in finding gainful employment by soliciting the assistance of respondent's members, Makati Skyline, Human Resource Managers of some companies, and the Association of Human Resource Managers. These were not refuted by petitioner. **Only that, it perceives them as inadequate and insists that the operational losses are very well covered by the other income of respondent and that less drastic measures could have been resorted to, like increasing the membership dues and the prices of food and beverage. Yet the wisdom or soundness of the Management decision is not subject to discretionary review of the Court for, even the VA admitted, it enjoys a pre-eminent role and is presumed to possess all relevant and necessary information to guide its business decisions and actions.**[29] (Emphasis supplied)

Manila Polo Club Employees' Union applies here. The CA found that respondent corporation had implemented petitioner's retrenchment as a last resort. The Court affirms the CA's findings, which petitioner did not refute, as follows:

> Moreover, private respondents were able to prove that they acted in consonance with the rule that retrenchment is a remedy of last resort. Worthy to note is that private respondents had resorted to other means to forestall losses which proved to be inadequate or insufficient. The records disclosed that respondent company engaged in some cost-cutting measures before it effected the questioned retrenchment, such as: reducing the employees' workdays from 6 days to 5 days and eventually to 4 days as a result of the poor market demand for local products as well as the globalization that adversely affected the company. It is not also disputed that petitioner was earlier assigned at the Sandal's

[29] Id. at 33-34.

> Assembly Department and PVC Injection Department of the company which previously shutdown. The contention therefore of petitioner, that the decision of private respondents to retrench him was just a ploy to get rid of him, for filing a labor case against them earlier, is bereft of merit. The bad faith imputed to private respondents was not, therefore, proven with convincing evidence.[30]

Further, as to petitioner's claim that respondent corporation still posted a net income and was not operating at a loss, the Court finds that the CA was correct that the AFS as of September 2007 showed that respondent corporation posted a net loss for its operations and that it only posted a net income because of its Other Income. And given that respondent corporation had previously implemented measures to forestall losses but failed, it validly closed its Printing Department which resulted in the termination of petitioner's employment.

As respondent corporation was able to show that it implemented the retrenchment as a last resort and in good faith, the Court cannot interfere with its business decision to close down its Printing Department as this is within the ambit of management prerogative. The Court cannot supplant the employer's decision absent a showing of abuse of discretion or arbitrary or malicious action on the part of respondent corporation.

On the second issue, the Court affirms the NLRC and the CA's computation as the records show that petitioner's basic pay is ₱9,950.00.[31]

Finally, following *Nacar v. Gallery Frames*,[32] the additional monetary award granted by the CA shall earn interest at six percent (6%) *per annum* from finality of this Resolution. The separation pay as computed by the NLRC in its Decision[33] dated June 27, 2008, if still unpaid, shall earn interest at the rate of twelve percent (12%) *per annum* from its finality until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full payment.[34]

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30 *Rollo*, p. 69.

31 Id. at 141, 192.

32 716 Phil. 267 (2013).

33 *Rollo*, pp. 136-142. Penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Lourdes C. Javier and Tito F. Genilo.

34 See *Nacar v. Gallery Frames*, supra note 32 and Rule VII, Section 14 vis-à-vis Rule XI, Section 4 of the NLRC Rules of Procedure, as amended, the NLRC monetary award already became final and executory despite the filing of a petition for *certiorari* with the CA. Thus, the running of the interest imposed should be reckoned from the finality of the NLRC decision.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated March 14, 2011 and Resolution dated July 8, 2011 of the Court of Appeals in CA-G.R. SP No. 107908 are **AFFIRMED** with **MODIFICATION** that the additional monetary award granted by the Court of Appeals shall earn interest at six percent (6%) *per annum* from the finality of this Resolution, while the separation pay as computed by the National Labor Relations Commission, if still unpaid, shall earn interest at the rate of twelve percent (12%) *per annum* from its finality until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full payment.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court 3/24

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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