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Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

MARY ANN G. VENZON,
 EDDIE D. GUTIERREZ, JOSE
 M. GUTIERREZ, JR. and MONA
 LIZA L. CABAL,

G.R. No. 213934

Petitioners,

Present:

- versus

VELASCO, JR.,* *J.*, Chairperson,
 PERALTA,**
 PEREZ,
 REYES, and
 JARDELEZA, *JJ.*

ZAMECO II ELECTRIC
 COOPERATIVE, INC. and
 ENGR. FIDEL S. CORREA,
 GENERAL MANAGER,
 Respondents.

Promulgated:

November 9, 2016

X-----*Wilverdo J. Capitan*-----X

DECISION

PERALTA, J.:

Before us is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court which seeks the reversal of the Resolution² dated July 31, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 125798. The CA affirmed the Decision³ of the National Labor Relations Commission (NLRC), Special Third Division, in NLRC Case No. RAB-III-10-15467-09 reversing, on reconsideration, the Decision⁴ of the NLRC Third Division which held that,

* On official leave.

** Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

¹ *Rollo*, pp. 9-33.

² Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Manuel M. Barrios and Samuel H. Gaerlan, concurring; *id.* at 35-37.

³ Penned by Commissioner Pablo C. Espiritu, Jr., with Commissioners Raul T. Aquino and Numeriano D. Villena, concurring; *id.* at 69-79.

⁴ Penned by Commissioner Gregorio O. Bilog III, with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring; *id.* at 52-68.

while there was illegal dismissal of petitioners contrary to the Decision⁵ of the Labor Arbiter (*LA*), the case has been mooted due to the reinstatement of petitioners.

Petitioners were regular employees of ZAMECO II Electric Cooperative, Inc. (*ZAMECO II*) occupying managerial and rank-and-file positions. They filed a case for illegal dismissal from employment claiming that they were mere victims of a power struggle between the two (2) factions fighting to control the management of ZAMECO II.

The Factual Antecedents relating to ZAMECO II:

On November 21, 2002, Castillejos Consumers Associations, Inc. (*CASCONA*), an organization of electric consumers from the Municipality of Castillejos, Zambales under the coverage area of ZAMECO II and represented by Engr. Dominador Gallardo, filed a letter-complaint with the National Electrification Administration (*NEA*). The complaint sought to remove the Board of Directors of ZAMECO II headed by the Board President, Jose S. Dominguez, for mismanagement of funds and expiration of their term of office.⁶

On November 24, 2004, the NEA issued a Resolution removing from office all the members of the Board of Directors of ZAMECO II with perpetual disqualification to run for the same position in any future district elections of the cooperative, and ordered the immediate conduct of district elections. On December 21, 2004, the NEA issued an Office Order designating Engr. Paulino T. Lopez as Project Supervisor of ZAMECO II who was tasked to perform his duty until such time that a new set of Board of Directors shall have been constituted.⁷

The Board of Directors headed by Dominguez appealed to the CA on the ground that Republic Act (*R.A.*) No. 9136, or the *Electric Power Industry Reform Act (EPIRA)*, abrogated the regulatory and disciplinary power of the NEA over electric cooperatives.⁸

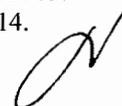
On February 7, 2005, the CA issued a Temporary Restraining Order (*TRO*) valid for sixty (60) days enjoining the NEA and *CASCONA* from enforcing or implementing the aforementioned NEA Resolution and Office Order. On April 5, 2005, a Writ of Preliminary Injunction was issued by the CA. On October 4, 2006, the CA upheld the authority of the NEA in the supervision of electric cooperatives such as ZAMECO II, and the power to

⁵ *Rollo*, pp. 38-51.

⁶ *Id.* at 55; *CASCONA v. Dominguez*, G.R. No. 189949, March 25, 2015, 754 SCRA 385.

⁷ *Id.*; *ZAMECO II, et al. v. CASCONA, et al.*, G.R. No. 176935-36, October 20, 2014.

⁸ *Id.*; *CASCONA v. Jose S. Dominguez, et al.*, *supra* note 6.



undertake preventive and/or disciplinary measures against the board of directors, officers and employees of electric cooperatives.⁹

On March 22, 2007, the Board of Directors of ZAMECO II headed by Dominguez appealed the CA Decision with this Court. They manifested that they had registered ZAMECO II as a cooperative under the Cooperative Development Authority (CDA), and, thus, it was the CDA which had regulatory powers over ZAMECO II.¹⁰

Meanwhile, by virtue of the aforesaid NEA Resolution dated November 24, 2004, NEA installed an Interim Board of Directors led by Gallardo as Interim President to function within an un-extendible period of 100 days beginning November 10, 2008 until February 18, 2009.¹¹

On March 13, 2009, this Court promulgated its Decision (G.R. No. 176935-36)¹² which held that the passage of the EPIRA did not affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives.¹³ This Court further ruled that there was substantial evidence to justify the penalty of removal from office imposed by NEA against the incumbent Board of Directors of ZAMECO II.¹⁴

With respect to the issue of ZAMECO II being under the regulatory powers of the CDA in view of its registration, this Court declared that the matter could not then be adjudicated yet. This Court stated that the EPIRA provides that an electric cooperative must first convert into either a stock cooperative or stock corporation before it could register under the CDA. This Court further stated that whether ZAMECO II complied with the provisions particularly on the conduct of a referendum and obtainment of a simple majority vote prior to its conversion into a stock cooperative, was a question of fact which this Court could not then review. The evidence on record did not afford this Court sufficient basis to make a ruling on the matter. Thus, this Court remanded the case to the CA. The dispositive portion of the Decision reads:

WHEREFORE, the instant case is hereby *REMANDED* to the Court of Appeals for further proceedings in order to determine whether the procedure outlined in Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and its Implementing Rules for the conversion of an electric cooperative into a stock cooperative under the Cooperative Development Authority had been complied with. The Court of Appeals is directed to raffle this case immediately upon receipt of this

⁹ *Rollo*, p. 55.

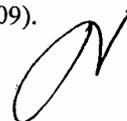
¹⁰ *CASCONA v. Dominguez*, *supra* note 6.

¹¹ *Rollo*, p. 56.

¹² *ZAMECO II Board of Directors v. CASCONA*, 600 Phil. 365 (2009).

¹³ *Id.* at 376.

¹⁴ *CASCONA v. Dominguez*, *supra* note 6, at 388.



Decision and to proceed accordingly with all deliberate dispatch. Thereafter, it is directed to forthwith transmit its findings to this Court for final adjudication. No pronouncement as to costs.

SO ORDERED.¹⁵

On March 22, 2009, Republic Act No. 9520 otherwise known as the Philippine Cooperative Code of 2008 took effect.¹⁶

On April 28, 2009, NEA issued a Resolution reappointing the members of the Interim Board of Directors for 180 days or until the regular Board of Directors of ZAMECO II have been elected and qualified.¹⁷

On June 22, 2009, the CDA through a Board Resolution, issued a confirmation as to the registration of ZAMECO II. A Task Force for ZAMECO II was created headed by Atty. Fulgencio A. Vigare, Jr., who was the CDA Administrator for Luzon and the Oversight Administrator for Electric Cooperatives.¹⁸ The Task Force was created primarily to reinstate the duly-recognized incumbent members of the board of directors who should perform their functions until such time as elections were conducted, and their successors should have been elected and qualified.¹⁹

On August 27, 2009, the NEA Administrator recalled the designation of Engr. Lopez as Project Supervisor of ZAMECO II effective September 1, 2009.²⁰

On September 1, 2009, Vigare issued a Memorandum stating that the CDA should assume jurisdiction over ZAMECO II. It also stated that in the August 26, 2009 hearing of the House of Representatives Committee on Cooperative Development (*August 26, 2009 House Committee Hearing*), the NEA readily acceded that the CDA should assume jurisdiction over ZAMECO II.²¹ It recognized the incumbent Board of Directors of ZAMECO II headed by Dominguez and the Management Staff headed by General Manager Fidel S. Correa.²²

On September 19, 2009, a Special Annual General Membership Assembly was called and conducted by the Interim Board of Directors headed by Gallardo.

¹⁵ Rollo, p. 56; *ZAMECO II Board of Directors v. CASCONA*, *supra* note 12, at 385.

¹⁶ Rollo, p. 56.

¹⁷ *Id.* at 56-57.

¹⁸ *Id.* at 57.

¹⁹ *CASCONA v. Dominguez*, *supra* note 6, at 390.

²⁰ Rollo, p. 57.

²¹ *CASCONA v. Dominguez*, *supra* note 6, at 390.

²² Rollo, p. 57.

In a letter dated October 12, 2009, NEA informed the Interim Board of Directors that their previous reappointment for 180 days had expired on the said date.²³

On October 19, 2009, pursuant to the said Memorandum issued by Vigare, the CDA issued a Resolution which created a team composed of the officers of the CDA. The team was mandated to meet with the ZAMECO II management who was then headed by Gallardo to talk about some issues and concerns; to pave the way for the conduct of the election of officers; and to seek the opinion of the Department of Justice (*DOJ*) about the jurisdiction of the CDA over electric cooperatives. The said Resolution was implemented through a Special Order issued on October 20, 2009.²⁴

According to CASCONA, on October 22, 2009, Correa, who was installed by the CDA as General Manager, and his companions entered the ZAMECO II premises and refused to leave. Come night fall, members of the Philippine National Police (*PNP*) and security guards assembled outside the gates of ZAMECO II but were not allowed inside the premises.²⁵

The next day, on October 23, 2009, the *PNP* members asked Gallardo, the Interim President of the Board of Directors of ZAMECO II, for a discussion. When the latter opened the gates, the *PNP* members and security guards forcefully entered the grounds of ZAMECO II. The Interim Board of Directors did not surrender the management of ZAMECO II to the group of Correa.²⁶

On October 24, 2009, Dominguez, who was installed as President of the Board by the CDA, and two other former board members arrived at the ZAMECO II premises. Tensions only de-escalated when the *PNP* members left the scene through the intervention of Governor Amor Deloso.²⁷

On October 30, 2009, petitioners Mary Ann Venzon, Eddie Gutierrez, Jose Gutierrez, Jr., Correa and another employee filed a complaint for damages with the Regional Trial Court (*RTC*) of Olongapo City with an application for a TRO and a writ of preliminary injunction against the Interim Board of Directors and General Manager Engr. Alvin Farrales. On November 24, 2009, a Preliminary Injunction was granted by the *RTC*²⁸ and ordered the Interim Board of Directors and General Manager Engr. Alvin Farrales to vacate their positions, and prevented them from interfering in the performance

²³*Id.*²⁴*CASCONA v. Jose S. Dominguez, et al., supra note 6.*²⁵*Id.*²⁶*Id.*²⁷*Id.*²⁸*Rollo, p. 58.*

of the functions of General Manager Fidel S. Correa who was designated by the CDA.

On November 27, 2009, the CA annulled the aforesaid NEA Resolution dated April 28, 2009.

On February 15, 2010, the RTC of Olongapo City, set aside the Writ of Injunction it had previously issued. The RTC took into consideration the Resolutions that were passed on October 30, 2008 which were affirmed in the Annual General Assembly held on September 19, 2009, to wit: (1) Resolution removing Engr. Fidel S. Correa as OIC General Manager of ZAMECO II and appointed Engr. Alvin Farrales as the Interim OIC General Manager; (2) Resolution withdrawing and cancelling ZAMECO II's registration with the CDA and recognizing the NEA as the regulatory agency; (3) Resolution recognizing the present members of the Interim Board of Directors as legitimate and ratifying their continuance in office until the next regular election.²⁹ The dispositive portion of the RTC Order states:

WHEREFORE, in order to avoid the provocative effect in the catalytic change of the General Manager and Members of the Board of Directors of Zameco II by the resolution of the Cooperative Development Authority, the powers of which as alleged by the defendants' counsel are not clearly defined by law insofar as appointment and removal of the General Manager and Members of the Board of Directors are concerned, the Court finds merit in the motion for reconsideration of the order dated November 19, 2009 and the writ of injunction issued on November 24, 2009 pursuant to the said order is hereby set aside.

Consequently, and there being no legal and factual basis for the issuance of the writ of injunction dated November 24, 2009, defendant Engr. Alvin Farrales and the other defendants are hereby reinstated to their positions as General Manager and Members of the Interim Board of Directors of Zameco II, respectively. x x x.

x x x. Ineluctably, plaintiff Fidel S. Correa is hereby ordered to vacate his position as Manager of Zameco II and the other plaintiffs to desist from performing their duties and functions as designated by the Cooperative Development Authority.³⁰

On June 16, 2010, this Court issued a Resolution in G.R. No. 176935-36, thus:

The Court NOTES the Report dated 25 March 2010 submitted by Associate Justice Romeo F. Barza of the Court of Appeals, Manila, in compliance with the Decision dated 13 March 2009 (which remanded these cases to the Court of Appeals for further proceedings to determine whether the proceedings outlined in Republic Act No. 9136 (Electric Power Industry

²⁹ *Id.* at 84.

³⁰ *Id.* at 86-87.

Reform Act of 2001 or EPIRA) and its Implementing Rules for the conversion of an electric cooperative under the Cooperative Development Authority had been complied with), stating that in the hearing conducted by the appellate court on October 20, 2009, it was aptly observed by respondents CASCONA and NEA that counsel for petitioners categorically admitted that none of the requirements such as conduct of a referendum and obtainment of a simple majority vote of its members to determine whether they agree to convert into a stock cooperative or stock corporation were complied with, and that given the said admissions, the appellate court cannot but conclude that petitioners failed to prove compliance with the procedure outline[d] in the EPIRA and its Implementing Rules for the conversion of an electric cooperative into a stock certificate under the CDA.³¹

On September 24, 2010, the RTC of Olongapo City denied the motion of ZAMECO II to declare the Order of February 15, 2010 immediately executory in view of the motion for reconsideration filed by petitioners and Correa.³²

On October 20, 2014, this Court issued a Decision in G.R. Nos. 176935-36³³ stating that the NEA's power of supervision applies whether an electric cooperative remains as a non-stock cooperative or opts to register with the CDA as a stock cooperative. This Court ruled:

x x x. This only means that even assuming *arguendo* that the petitioners validly registered ZAMECO II with the CDA in 2007, the NEA is not completely ousted of its supervisory jurisdiction over electric cooperatives under the R.A. No. 10531. This law may be considered as curative statute that is intended to address the impact of a restructured electric power industry under the EPIRA on electric cooperatives, which has not been fully addressed by the Philippine Cooperative Code of 2008.

The Facts of the Case:

Petitioner Jose M. Gutierrez, Jr. was the Manager of Administrative and Personnel Department of ZAMECO II and was hired on June 1, 2003. Petitioner Mary Ann Venzon was the Manager of Member Service Department and had been with ZAMECO II since January 21, 1996. Petitioner Eddie Gutierrez was a member of the Operation and Disconnection Team and was hired on April 29, 2002. Petitioner Monaliza L. Cabal was an accounting staff and started working at ZAMECO II on August 1, 2001.³⁴

³¹ *Id.* at 58.

³² *Id.* at 90.

³³ *ZAMECO II, et al. v. CASCONA, et al.*, *supra* note 7.

³⁴ *Rollo*, p. 59.

In a Memorandum dated September 2, 2009, OIC-General Manager Engr. Alvin Farrales designated petitioner Gutierrez, Jr. as Officer-in-Charge of the cooperative during his official travel to Manila on September 3, 2009.³⁵

On September 3, 2009, the CDA authorities arrived in ZAMECO II to assume management of the cooperative. This was opposed by the existing management of ZAMECO II.³⁶ The following day, September 4, 2009, Petitioner Gutierrez, Jr. issued a Memorandum for and in behalf of Farrales directing the employees to proceed to the main office in compliance with the directive of the CDA appointed officers. Thus, a meeting was held on the same date at ZAMECO II's office in San Antonio led by CDA representatives. Petitioners Gutierrez, Jr., Venzon and Gutierrez participated in the said meeting.³⁷ Also, several meetings were held which were attended by employees and officers of ZAMECO II who allegedly defected to the side of CDA appointed officers.³⁸

Likewise, on September 4, 2009, petitioners Venzon, Gutierrez and Gutierrez, Jr. were given separate memoranda by Engr. Farrales directing them to explain why no disciplinary action should be taken against them for failure to report for work on the said date and for violating the Company Code of Ethics and Discipline and the Employees Code of Conduct.³⁹ The charges against them were: (a) attending unauthorized meetings, gatherings or assembly of employees; (b) abandonment of work or of assigned duties; (c) misrepresentation or usurpation of functions; (d) giving unlawful orders that create confusion and disorder; (e) rumor mongering or gossiping with intent to destroy the reputation of the company or its officers and employees; and/or (f) any act conduct or behavior not included in the above but which is prejudicial or detrimental to the company or its employees and/or contrary to good order or discipline.⁴⁰

Incidentally, petitioner Gutierrez, Jr. had undergone medical treatment from September 8 to September 28, 2009. He submitted medical certificates but did not file any application for sick leave.⁴¹ He, together with petitioner Gutierrez, did not submit any explanation with regard to the above charges.

On September 11, 2009, petitioner Venzon answered the above charges. She explained that effective September 3, 2009 when CDA had assumed jurisdiction over ZAMECO II, after a serious discernment, she recognized

³⁵ *Id.* at 43 and 59.

³⁶ *Id.* at 43-44.

³⁷ *Id.* at 59.

³⁸ *Id.* at 43-44.

³⁹ *Id.* at 59-60.

⁴⁰ *Id.* at 41-42.

⁴¹ *Id.* at 60.



only the officers appointed by the CDA, who were the ones dismissed by the NEA, and Fidel Correa as the General Manager. She further averred:

2. Nevertheless, allow us to state our position on the issues you raised:

a. Unauthorized meeting/gathering or assembly of employees at sub-offices. The meeting was called by the CDA representatives who have the mandate to conduct information dissemination under the CDA Memorandum dated September 1, 2009 and we had no other choice but to follow a lawful order.

b. Abandonment of work or assigned duties – Since the interim board (which has no legal authority or power whatsoever) has virtually driven out of ZAMECO II's office premises the legally-recognized management of the cooperative, we decided to report for work and undertake our respective duties at their designated [workplace]. x x x

c. Misrepresentation or usurpation of functions –xxx. It is the illegally-constituted interim board that is usurping the functions of the CDA-recognized Board of Directors. In addition, you are the one usurping the functions of General Manager Fidel S. Correa, while the other cooperative staff you designated in our stead are the ones usurping our own functions as Department Managers.

d. Giving unlawful orders that create confusion and disorder - xxx; It is you and the interim board that are giving unlawful orders on account of your lack of legal basis to continue performing such functions, regrettably.

e. Rumor mongering or gossiping with intent to destroy the reputation of the company or its officers and employees - xxx. Openly discussing the more than P17M net losses of the cooperative incurred for only the six-month period January to June 2009 that were registered under the watch of the interim board and yourself, and talking about the true state of validity of the registration of Zameco II with CDA are legitimate issues.

f. Any act, conduct or behavior not included in the above but which is prejudicial or detrimental to the company or its employees and/or contrary to good order or discipline, etc. – Your inclusion of this “offense” among those that we need to explain merely exposes your lack of knowledge and competence on general management. x x x ⁴²

Petitioner Cabal stopped reporting for work starting September 13, 2009.

⁴²

Id. at 60-61.

On September 18, 2009, Farrales issued a Memorandum to the security personnel to deny entry to petitioners Gutierrez, Jr, Gutierrez and Venzon and four other persons including Engr. Correa, and to not allow them to report for work.⁴³

On September 22, 2009, Farrales issued several memoranda: a) for petitioner Venzon to return the laptop computer and other equipment entrusted to her; b) for petitioner Gutierrez to answer the charges against him; c) for petitioners Venzon, Jose Gutierrez, Jr., and Gutierrez placing them under preventive suspension pending investigation by the Investigation and Appeals Committee (IAC).⁴⁴

Also, on September 22, 2009, a Memorandum was sent to petitioner Cabal to explain in writing why no disciplinary action should be taken against her for violating the Company Code of Ethics and Discipline particularly on the unauthorized and unexcused absence from work which exceeded six (6) consecutive days.⁴⁵ On September 24, 2009, she was directed to appear before the IAC but she stated that she was banned from entering the premises. She submitted a Memorandum claiming that she had not abandoned her work, and that she believed that she had not incurred any unauthorized and unexcused absences from work exceeding six consecutive days on the basis of what she believed was “right and legal”.⁴⁶ She was again required to appear, for the last time, on September 29, 2009 but she replied through a letter that she couldn’t do so because of the existing ban for her from entering the main office of ZAMECO II.⁴⁷ On October 1, 2009, she made a written manifestation to Engr. John Regadio that she did not recognize the authority of the IAC, and that the Interim Board of Directors was not cloth with any authority, such that, their actions were illegal.⁴⁸

On October 27, 2009, upon the recommendation of the IAC in a meeting on October 22, 2009, petitioners were dismissed from employment. The order of dismissal was served to them on November 20, 2009 but they refused to receive the same.⁴⁹

On November 23, 2009, petitioners Venzon and Gutierrez jointly filed a complaint for illegal dismissal, illegal suspension, non-payment of 13th month pay, damages payment of allowances. On January 5, 2010, petitioners Gutierrez, Jr. and Cabal jointly filed the same complaint.

⁴³ *Id.* at 62.

⁴⁴ *Id.*

⁴⁵ *Id.* at 42.

⁴⁶ *Id.* at 61.

⁴⁷ *Id.* at 62.

⁴⁸ *Id.* at 42.

⁴⁹ *Id.* at 41-42; 63.

During the mandatory conference, a Manifestation and Motion was filed by Correa stating that petitioners were already reinstated to their respective positions by him as the CDA-recognized and recently reinstated General Manager of ZAMECO II commencing on October 20, 2009 with Board Resolution dated November 14, 2009, and that the Interim Board Members and the OIC General Manager were prohibited from meddling with the operations of ZAMECO II by virtue of the writ of preliminary injunction issued by the RTC of Olongapo City. Various checks issued in the names of petitioners dated January 2010 and February 2010, signed by Dominguez as President and by Correa as General Manager of ZAMECO II, were presented.

On the other hand, Farrales submitted his Comment stating that the action of the CDA in assuming jurisdiction over ZAMECO II was a unilateral act on the part of Vigare; and that, Farrales' appointment as General Manager was still subsisting and recognized by the Board of Directors of ZAMECO II.⁵⁰

On August 11, 2009, an Order was issued by LA Leandro M. Jose suspending the resolution of the incident.⁵¹

On January 21, 2011, the LA issued a Decision declaring petitioners to have been illegally dismissed from employment. The LA held that though the evidence may, at first glance, shows compliance with the notice requirement of procedural due process, the same failed to show that petitioners were indeed guilty of violations of the cooperative's Code of Ethics and Discipline. According to the LA, the Investigation Reports and Recommendations were noticeably undated which gave rise to a suspicion that it was conveniently intercalated to give basis to the memorandum of dismissal, and that, the supporting documents were not attached to the said reports.

Thereafter, respondents elevated the case before the NLRC Third Division. On September 30, 2011, the NLRC ruled that the termination of petitioners from employment was valid, but in view of their reinstatement, it dismissed the case for being moot and academic, thus:

We rule that the said Manifestation and Motion has rendered this case moot and academic. Notably, when complainants were suspended on September 23, 2009 and dismissed on October 27, 2009 by OIC-General Manager Farrales, he appears to have the authority to do so. This is because at that point in time, the CDA has already assumed jurisdiction over ZAMECO II and has recognized the incumbent Board of Directors headed by Jose S. Dominguez and the management staff under General Manager Correa. The NEA has (sic) apparently gave way to CDA as shown by its recall order of Engr. Lopez as Project Supervisor of ZAMECO II effective 1 September 2009 and its letter stating that the reappointment/appointment

⁵⁰ *Id.* at 63-64.

⁵¹ *Id.* at 64.



of the interim board headed by Gallardo has expired on October 12, 2009. Besides, on April 28, 2009, the NEA Board of Administrators' Resolution (reappointing as members of Interim Board of Directors for 180 days or sooner when the regular Board of Directors of ZAMECO II has been duly elected and qualified) was annulled and set aside by the Court of Appeals' Special Sixteenth Division in its Decision dated November 27, 2009 in CA-G.R. SP No. 108553. The records of this case is bereft of any showing that said Decision was assailed before the Supreme Court.

x x x. Unless the issue as to which of the Board of Directors and/or management have authority to control the affairs of ZAMECO II is legally settled with clarity and finality, we uphold the right of the complainants to remain in their employment with ZAMECO II and accordingly, receive their salaries and benefits. The grounds (serious misconduct, breach of trust, willful disobedience, etc.) relied upon by Engr. Farrales for suspending and dismissing the complainants are essentially anchored on his and the Interim Board's authority, which authority the complainants believe they do not possess. And, we have no jurisdiction to rule on the same.⁵²

Respondent ZAMECO II filed a Motion for Reconsideration. On March 26, 2012, the NLRC Special Third Division held that there was no valid reinstatement of petitioners hence the case has not been mooted:

It is thus clear that as of February 15, 2010, Engr. Alvin Farrales and no longer Fidel S. Correa was the General Manager of herein respondent-appellant Zameco II and therefore Fidel S. Correa's Manifestion and Motion filed on February 18, 2010 which sought the dismissal of these consolidated cases since herein complainants-appellees were allegedly reinstated earlier should not have made these cases moot and academic since as of February 15, 2010, he already lost his standing and authority to do anything in connection with these cases.

We therefore reconsider and set aside Our having, thus, dismissed these cases and proceed to resolve the issue in this case.⁵³

The NLRC Special Third Division⁵⁴ ruled, however, that there was valid dismissal of petitioners because, instead of playing neutral, they embroiled themselves in the ongoing corporate dispute. Hence, it set aside its Decision dated September 30, 2011 and dismissed case the case for lack of merit. The decretal portion of the Decision states:

WHEREFORE, the Motion for Reconsideration of respondents-appellants is hereby GRANTED. Our Decision dated September 30, 2011 is hereby reconsidered and SET ASIDE and a new one entered dismissing the case *a quo* for lack of merit.

SO ORDERED.⁵⁵

⁵² *Id.* at 66-67.

⁵³ *Id.* at 76.

⁵⁴ NLRC Chairman Gerardo C. Nograles issued Administrative Order No. 02-28 (Series of 2012) creating a Special Third Division to resolve the Motion for Reconsideration in view of the inhibition of Commissioner Gregorio O. Bilog III and Presiding Commissioner Alex A. Lopez; *id.* at 69.

⁵⁵ *Rollo*, p. 79.



Aggrieved, petitioners filed a petition for certiorari before the CA. In a Decision dated July 31, 2014, the CA affirmed the Decision of the NLRC. It held that the petitioners failed to substantiate their claim, or point to a specific act on the part of the NLRC that can be construed as amounting to grave abuse of discretion.

Hence, the instant Petition, wherein petitioners make the following assignment of errors:

1. THE COURT OF APPEALS ERRED IN DISMISSING PETITIONERS' PETITION FOR REVIEW ON CERTIORARI ON THE GROUND THAT THEY FAILED TO SUBSTANTIATE THEIR CLAIM THAT THE NLRC ACTED ARBITRARILY IN CONCLUDING THAT THEIR TERMINATION FROM EMPLOYMENT WAS IN ACCORDANCE WITH LAW CONTRARY TO LAW AND JURISPRUDENCE; [and]
2. THE COURT OF APPEALS FAILED TO CONSIDER AS AN ACT OF ABUSE OF DISCRETION THE GRANTING OF PRIVATE RESPONDENTS' MOTION FOR RECONSIDERATION BY THE NLRC WHEN SUCH MOTION WAS BASED ON THE MISLEADING AND INCOMPLETE INFORMATION GIVEN BY THE PRIVATE RESPONDENTS.⁵⁶

Petitioners argued in their petition that the NLRC acted with grave abuse of discretion when it treated the Order dated February 15, 2010 of RTC Olongapo City as final and executory. Petitioners cited the fact that there is a pending appeal before this Court as to the execution of the said Order in GR No. 199828. They alleged that without any finality on who has the control of ZAMECO II because of the pending cases with this Court, they could not be faulted for following orders of the other faction.

In their Comment,⁵⁷ respondents alleged that the petition should not be given due course because it raises questions of fact which is not allowed under Rule 45 of the Rules of Court. They also showed the dismissal of the case before the RTC Olongapo City upon the initiative of both parties.⁵⁸ And that, the dismissal of the case settled the issue of injunction.

Our Ruling

There are two issues that have to be resolved in this case, to wit: a) whether or not Engr. Farrales of the Interim Board of Directors of ZAMECO

⁵⁶ *Id.* at 21-22.

⁵⁷ *Id.* at 99-104.

⁵⁸ Annex "1" to the Comment filed by respondents; *id.* at 104.

II had the authority to suspend and dismiss petitioners from employment; and, b) whether petitioners were validly terminated from employment.

To resolve the first issue, We need to determine who between the two factions – the NEA appointed General Manager Engr. Farrales or the CDA installed General Manager Engr. Correa – had the authority to manage the affairs of ZAMECO II for the period from September 4, 2009, when the first memorandum was issued to petitioners, until October 27, 2009, when petitioners were dismissed from employment.

We have clarified this in our Decision in *CASCONA v. Dominguez*,⁵⁹ thus:

In the case at bench, the respondents committed several acts which constituted indirect contempt. **The CDA issued the September 1, 2009 Memorandum stating that it had jurisdiction over ZAMECO II and could reinstate the former members of the Board of Directors. The CDA officials also issued Resolution No. 262, S-2009 and Special Order 2009-304 to interfere with the management and control of ZAMECO II. Armed with these issuances, the other respondents even tried to physically takeover ZAMECO II on October 22, 2009. These acts were evidently against the March 13, 2009 decision of this Court and, thus, constituted indirect contempt against the Court. These contemptuous acts are criminal in nature because these obstruct the administration of justice and tend to bring the court into disrepute or disrespect. x x x.**

x x x x

x x x. [T]he March 13, 2009 decision should not be taken in isolation. A perusal of the said decision shows that there were several pronouncements which must be respected and obeyed, to wit: *first*, the CA shall make a factual determination as to the propriety of ZAMECO II's registration with the CDA; *second*, the continuing jurisdiction of the Court, as the case is not yet final and executory; and *lastly*, **that there is substantial evidence to justify the removal from office of respondents Dominguez, et al.**

Precisely, the Court remanded the case to the CA to determine whether ZAMECO II was properly registered as a stock cooperative under the CDA. **Until the CA properly had ascertained such fact, the Court could not determine conclusively that the CDA had supervisory powers over ZAMECO II. The parties were then expected to maintain status quo and refrain from doing any act that would pre-empt the final decision of the Court.** Hence, the Court continued to exercise its jurisdiction in G.R. Nos. 176935-36 until a final decision was promulgated. **The respondents, however, unreasonably interfered with the proper procedure mandated by the Court when they decided for themselves that the CDA had jurisdiction over ZAMECO II.** This constituted a contemptuous act because it unlawfully interfered with the processes or proceedings of a court.

⁵⁹ *Supra* note 6.

Worse, the respondent-officials of the CDA, fully aware of the Court's pronouncement, attempted to reinstate respondents Dominguez, et al. despite the existence of substantial evidence that warrant the latter's removal from office. Glaringly, this grave allegation was never refuted by the respondents. Dominguez, et al. were found unfit to hold office yet the respondents relentlessly endeavored to return them to the seat of power in ZAMECO II. **This blatant disregard of the March 13, 2009 decision of the Court is an improper conduct that impedes, obstructs, or degrades the administration of justice.**

The respondents justify their acts by stating that in the August 26, 2009 House Committee Hearing, the NEA acceded to the jurisdiction of the CDA over ZAMECO II. This contention, however, is completely unsubstantiated. Notably, respondents Esguerra and Apalisok admitted that the creation of a task force to take over ZAMECO II would place dire consequences against the CDA. Even CDA Regional Director Manuel A. Mar doubted that the NEA consented to the authority of the CDA over ZAMECO II.

Indeed, the October 20, 2014 decision of the Court in G.R. Nos. 176935-36 conclusively settled that it is NEA, and not the CDA, that has jurisdiction and disciplinary authority over ZAMECO II. The substantial issues of the case have now been laid to rest. The Court, however, cannot turn a blind eye to the contemptuous acts of the respondents during the pendency of the case. If the Court condones these acts of interference and improper conduct, it would set a dangerous precedent to future litigants in disregarding the interlocutory orders and processes of the Court.⁶⁰

Clearly, from the above pronouncement, during the period material to this case, the Interim Board of Directors of ZAMECO appointed by the NEA had the jurisdiction and disciplinary authority over ZAMECO II. Thus, Engr. Farrales, as General Manager, had the authority to suspend and dismiss petitioners.

We go now to the second issue as to whether the petitioners were validly dismissed from employment. The right to security of tenure states that no employee shall be dismissed unless there are just or authorized causes and only after compliance with procedural and substantive due process. Article 279 of the Labor Code provides for this right, thus:

Art. 279. *Security of tenure.* In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause of 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.

⁶⁰*Id.* at 395-397.

Hence, a lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing. Article 282 of the Labor Code provides the just causes for dismissing an employee, to wit:

ART. 282. TERMINATION BY EMPLOYER

An employer may terminate an employment for any of the following causes:

- (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 representative;
- (e) Other causes analogous to the foregoing.

Serious misconduct by the employee justifies the employer in terminating his or her employment.

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct must be serious, i.e., of such grave and aggravated character and not merely trivial or unimportant.

Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, and equally important and required, the act or conduct must have been performed with wrongful intent.⁶¹

In the case at bar, General Manager Farrales, himself, designated petitioner Gutierrez, Jr. as Officer-in-Charge of the cooperative during his official travel to Manila on September 3, 2009. But when the CDA authorities arrived in ZAMECO II to assume management of the cooperative which was opposed by the existing management of ZAMECO II, petitioner Gutierrez, Jr. issued a Memorandum, allegedly signed on behalf of Farrales, directing the employees to proceed to the main office in compliance with the directive of the CDA appointed officers. Hence, a meeting was held on the same date at the cooperative's office in San Antonio led by CDA representatives. Petitioners Gutierrez, Jr., Venzon and Gutierrez participated in the said meeting.

⁶¹ *Imasen Philippine Manufacturing Corporation v. Alcon*, G.R. No. 194884, October 22, 2014, 739 SCRA 187, 196-197.



Petitioners obviously aligned themselves with the former Board of Directors led by Dominguez in trying to wrest control of the management of ZAMECO II. In deciding to get involved in the power play, petitioners relinquished their duties as employees. They defied the instructions and directives of the Interim Board of Directors as well as that of the General Manager. Instead, they followed the instructions of the Board of Directors and officers designated by the CDA. They even filed a civil action against Farrales and the Interim Board of Directors.

Petitioners did not participate in the proceedings before the IAC because they did not recognize its authority. It was the officers designated by the CDA whom they recognize. Their acts definitely undermined the existence of the cooperative.

Under these factual premises, We cannot help but consider the petitioners' misconduct to be of grave and aggravated character so that the cooperative was justified in imposing the highest penalty available — dismissal. In ruling as We do now, We considered the balancing between petitioners' tenurial rights and ZAMECO II's interests. Unfortunately for the petitioners, in this balancing under the circumstances of the case, we have to rule against their tenurial rights in favor of the employer's management rights.⁶²

As correctly held by the NLRC Special Third Division, thus:

What is important, as shown by the records, is that complainants-appellees Venzon, Jose Gutierrez, Jr. and Eddie Gutierrez burned their bridges when they not only sided with the group of Fidel S. Correa but also fought with them as actual complainants-appellees in their effort at wresting control over ZAMECO II and its interim board headed by Engr. Alvin Farrales.

This is shown by the fact that instead of playing neutral, they, along with Correa, instituted Civil Case No. 163-0-2009 with the Regional Trial Court of Olongapo City against Farrales to remove him as the rightful General Manager of Zameco II. Complainants-appellees embroiled themselves in the ongoing corporate dispute instead of being neutral.⁶³

Furthermore, Article 296(c) states that loss of trust and confidence in the employee is a just cause for dismissal. But it will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.⁶⁴

⁶² *Imasen Philippine Manufacturing Corporation v. Alcon, supra*, at 200.

⁶³ *Rollo*, p. 77.

⁶⁴ *Alvarez v. Golden Tri Bloc, Inc., et al.*, 718 Phil. 415, 425 (2013).

Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.⁶⁵

While loss of trust and confidence should be genuine, it does not require proof beyond reasonable doubt, it being sufficient that there is some basis to believe that the employee concerned is responsible for the misconduct and that the nature of the employee's participation therein rendered him unworthy of trust and confidence demanded by his position.⁶⁶

There are two classes of positions of trust. First, are the managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. The second class consists of the fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.⁶⁷

It is undisputed that at the time of their dismissal, the petitioners Gutierrez, Jr. and Venson were holding managerial positions and greater fidelity and trust were expected of them.⁶⁸ Farrales even designated petitioner Gutierrez, Jr. as Officer-in-Charge of ZAMECO II during his official travel to Manila. Their positions were unmistakably imbued with trust and confidence as they were charged with the delicate task of overseeing the operations of their divisions. As managers, a high degree of honesty and responsibility, as compared with ordinary rank-and-file employees, were required and expected of them.

It need not be stressed that the nature or extent of the penalty imposed on an erring employee must be commensurate to the gravity of the offense as weighed against the degree of responsibility and trust expected of the employee's position. Petitioners Gutierrez, Jr. and Venson are not just charged with a misdeed, but with loss of trust and confidence, a cause premised on the

⁶⁵ *Bluer Than Blue Joint Ventures Company/Mary Ann Dela Vega v. Esteban*, G.R. No. 192582, April 7, 2014, 720 SCRA 765, 775.

⁶⁶ *P.J. Lhuillier, Inc. v. Velayo*, G.R. No. 198620, November 12, 2014, 740 SCRA 147, 162.

⁶⁷ *Alvarez v. Golden Tri Bloc, Inc., et al.*, *supra* note 64.

⁶⁸ *Torres v. Rural Bank of San Juan, Inc.*, 706 Phil. 355, 370 (2013).

fact that petitioners Gutierrez, Jr. and Venzon hold positions whose functions may only be performed by someone who enjoys the trust and confidence of the management. Needless to say, such an employee bears a greater burden of trustworthiness than ordinary workers, and the betrayal of the trust reposed is the essence of the loss of trust and confidence which is a ground for the employee's dismissal.⁶⁹

As to the standards of procedural due process, the same were likewise observed in effecting the petitioner's dismissal. Petitioners were given written memorandum to inform them of the charges against them as well as notices of termination in accordance with Section 2, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code

In protecting the rights of the workers, the law, however, does not authorize the oppression or self-destruction of the employer. The constitutional commitment to the policy of social justice cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor. The constitutional and legal protection equally recognizes the employer's right and prerogative to manage its operation according to reasonable standards and norms of fair play.⁷⁰

Finally, in labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC. In this case, the CA is correct in ruling that the NLRC cannot be faulted for grave abuse of discretion amounting to excess or lack of jurisdiction in concluding that, indeed, petitioners were validly dismissed from their employment. After all, grave abuse of discretion implies a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion of positive duty enjoined or to act at all in contemplation of law.⁷¹ Such is not present in this case.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 125798, dated July 31, 2014, is hereby **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

⁶⁹ *P.J. Lhuillier, Inc. v. Velayo*, *supra* note 66, at 159.

⁷⁰ *Imasen Philippine Manufacturing Corporation v. Alcon*, *supra* note 61, at 195.

⁷¹ *Machica v. Roosevelt Services Center, Inc. and/or Dizon*, 523 Phil. 199, 212 (2006).

WE CONCUR:

On official leave
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

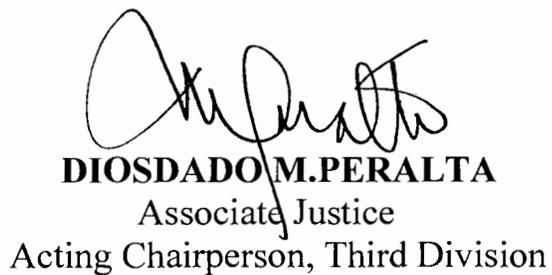

JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

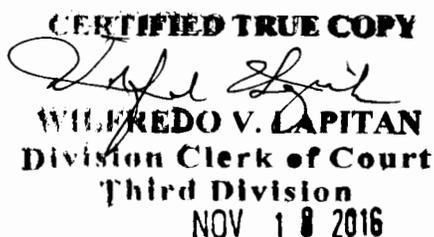
ATTESTATION

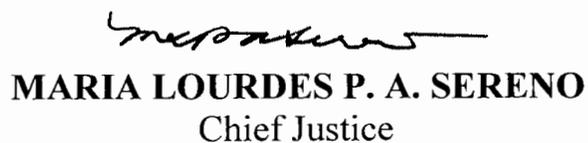
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
NOV 18 2016


MARIA LOURDES P. A. SERENO
Chief Justice