Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ERNESTO C. LUCES, ANDRES G. GUINTO, LAMBERTO B. SORIANO, NOLY T. TALARO, SERAFIN A. SABILLO JR., EDUARDO C. CHICA, JOSEPH N. OAQUIERA, ELESEO P. PAROHINOG, HERNIE M. ESCOMEN, LITO REMOLANO, DANIEL VERGARA, ORLANDO C. VERGARA ALEJANDRO M. GERONIO, ALMEN R. ABELLERA, DENNIS A. SENCIO, JESUS R. PENASO JR., ALBERT TALA-OC, ANGELITO L. BARES, JERRY V. DELLOSA, CHARLON R. TADALAN, CHARLITO E. ALIGATO, JESSIE C. MABUTE, REY P. MOJADOS, MARLON Z. BERNARDINO, ZALDY O. SILLAR WILLIAM NICDAO, Petitioners, - versus - **COCA-COLA BOTTLERS PHILS. INC., INTERSERVE MANAGEMENT MANPOWER RESOURCES, INCORPORATED, AND HOTWIRED MARKETING SYSTEMS INC.,** Respondents.	**G.R. No. 213816** Present: PERALTA, *CJ.*, *Chairperson*, CAGUIOA, CARANDANG, ZALAMEDA, GAERLAN, *JJ.* Promulgated: DEC 02 2020

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DECISION

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to set aside the Decision[2] dated September 26, 2013 and the Resolution[3] dated May 5, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 116615 affirming the Decision[4] dated March 31, 2010 and the Resolution[5] dated August 12, 2010 of the National Labor Relations Commission (NLRC). The NLRC affirmed the Decision[6] dated September 22, 2008 of the Labor Arbiter (LA) dismissing the complaint of petitioners for regularization and illegal dismissal against the private respondents Coca-Cola Bottlers Philippines Inc. (CCBPI), Interserve Management Manpower Resources Inc. (Interserve) and Hotwired Marketing Systems Inc. (Hotwired).

Facts of the Case

On December 11, 2007, the following petitioners filed a case for regularization and claim for fringe benefits and other benefits from Collective Bargaining Agreement (CBA) against respondents CCBPI, Interserve and Hotwired,[7] to wit:

Name	Position	Agency
Ernesto C. Luces	Driver	Interserve
William F. Nicdao	Helper	Interserve/Hotwired
Almen R. Abellera	Helper	Interserve/Hotwired
Jerry V. Dellosa	Helper	Interserve/Hotwired
Angelito L. Barres	Helper	Hotwired
Albert Talaoc	Helper	Hotwired
Lamberto Soriano	E/C Operator	D&Y Services/Hotwired
Jesus Bayani	Helper	Enter/Hotwired
Aldous Domingo	Helper & Driver	(blank)
Allan Domingo	Helper & Driver	(blank)

1 *Rollo*, pp. 8-18.
2 Penned by Edwin D. Sorongon, with the concurrence of Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison; id. at 19-30.
3 Id. at 31-32.
4 Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with the concurrence of Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro; id. at 62-72.
5 Id. at 74-77.
6 Penned by Executive Labor Arbiter Fatima Jambardo-Franco; id. 211-228.
7 Id. at 79-103.

Joseph Oaquiera	Helper	Interserve
Renan Garcia	Helper	Interserve
Andres G. Guinto	Helper & Driver	CCBPI/Interserve
Noel Cordova	Helper	CCBPI/Interserve
Eduardo Chica	Helper & Driver	CCBPI/Interserve/Hot wired
Mamerto San Roman	Route Helper	Hotwired
Rolly D. Alabat	Driver	Hotwired
Roderick Edmund	Driver	Hotwired
Dominador Banogon	Driver	Hotwired
Zaldy Sillar	Helper	Interserve/Hotwired
Jessie C. Mabute	Helper	Hotwired
Marlon Bernardino	Helper	Hotwired
Serafin Sabilo Jr.	Driver	Genesis/Interserve/Hot wired
Rio Coralde	Helper	Interserve
Ricardo Coralde	Helper	Interserve
Alejandro Geronio	Forklift Operator	Genesis
Lito Remolano	Driver	Hotwired/Interserve
Jay Martos	Helper	Hotwired
Jesus Panaso Jr.	Route Helper	Hotwired/CCBPI
Alvin Labrador	Helper	Hotwired
Rey Mojados	Helper	Hotwired
Arthur Balubar	Helper	Hotwired
Orlando Bertol	Helper	Hotwired
Arturo Aclao	Forklift Operator	(blank)
Dondon Fabricante	Leadman	Interserve/Hotwired
Dennis Cencio	Helper	Interserve/Hotwired
Rhoderick Garcia	Helper	Interserve
Charlito Aligato	Driver	Hotwired
Garizaldy Calderon	Messenger	Interserve/Union Services

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Rojen S. Cervana	Helper	Hotwired
Aldwin M. Depaz	Helper	Hotwired
Francis Manlangit	Helper	Hotwired
Jonnie A. Siervo	Helper	Hotwired
Orlando Vergara	Helper	Interserve
Charlon R. Tadalan	Driver	Interserve/Hotwired
Noly T. Talaro	Checker	
Jayson C. Soliman	Utility	Hotwired
Dennis Venus	Helper	Interserve/Hotwired
Romnick Rebellon	Helper	Hotwired
Rolando L. Baba	Leadman	Hotwired
Thomas John Felarca	Helper	Hotwired
Jaime C. Malimata Jr.	Helper	Interserve/Hotwired
Aurelio J. Olana	Helper	Interserve/Hotwired
Ronie G. Villar	Dispatcher	Genesis/Interserve/Hotwired
Chito M. Mangonti	Helper	Interserve/Hotwired
Alfredo Laqui	Helper	Hotwired
Michael Abad	Helper	Hotwired
Romeo Berdera	Driver	Genesis/Interserve/Hotwired
Joey Sarte	Helper	Hotwired
Joenniefer Sabilla	Driver	Hotwired[14]

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14 *Sama-samang Pahayag ng Pagsapi at Autorisasyon na Ibinigay namin sa Abogado at Opisyales ng National Organization of Workingmen (N.O.W.M)*; id. at 108-115.

Mauro Paniamogan	Helper	Hotwired[8]

In their original Complaint,[9] petitioners sought their regularization as employees of CCBPI arguing that Interserve and Hotwired are labor-only contractors. Petitioners averred that they have been continuously rendering services to CCBPI despite having been re-employed by at least five different contractors such as: Excellent Partners Cooperative, Genesis Inc., Holgado, United Utility, Interserve and Hotwired. They alleged that the functions they perform, particularly as route helpers, drivers, messengers, and forklift operators, are directly related to the business of CCBPI, which is the manufacture, sales and distribution of soft drinks. They likewise use the delivery trucks owned by CCBPI and work within the premises the company owns. They are also under the supervision of CCBPI's authorized salesmen.[10]

Further, they argued that their current employment as contractual worker is contrary to labor laws and that they are being deprived of their security of tenure and the benefits and emoluments entitled to a regular worker of CCBPI. They contend that Interserve and Hotwired are labor-only contractors being utilized by CCBPI in order to deny them of the rights accorded by law to a regular employee.[11]

On January 30, 2008, an additional 27 employees filed a Supplemental Complaint[12] joining the 40 employees in the original complaint and adopting their statement of facts and arguments in support of their complaints, being in the same situation and having common issues and claims.[13] The following are the 27 employees:

Name	Position	Agency
Daniel Vergara	Helper	Interserve
Hernie Escomen	Forklift Operator/Mechanic	D&Y/Interserve
Elesco Parohinog	Helper	Interserve/Hotwired
Dennis Maglaqui	Helper	Interserve
Erick F. Gozarin	Helper	Hotwired
Allan G. Gonzales	Helper	Hotwired

8 *Sama-samahang Pahayag ng Pahayag ng Pagsapi at Autorisasyon na Ibinigay Namin sa Abogado at Opisyales ng National Organization of Workingmen (N.O.W.M)*; id at 92-103.
9 Id. at 79-103.
10 Id. at 81-84.
11 Id. at 84-85.
12 Id. at 104-115.
13 Id. at 104-105.

On March 27, 2008, all 67 petitioners, through the National Organization of Workingmen, filed a Second Supplemental Complaint[15] invoking illegal dismissal against CCBPI, Interserve, and Hotwired.[16]

Allegedly, Interserve and Hotwired informed them that CCBPI will soon close the Almanza I Sales Outlet in Las Pinas City and that petitioners should transfer to other outlets particularly in Sta. Rosa, Laguna. However, before they could be transferred, petitioners needed to withdraw their complaint against CCBPI first, to which petitioners did not agree. Thus, on January 30, 2008, they were all banned from reporting to their duties forcing them to file the Illegal Dismissal complaint.[17]

The case was raffled to Executive Labor Arbiter Fatima J. Franco docketed with case number NLRC NCR Case No. 12-13087-07. Having failed to arrive at a compromise settlement, the LA directed the parties to file their respective position papers. Petitioners adopted their Original Complaint and Supplemental Complaints as their position paper,[18] while respondents CCBPI, Interserve, and Hotwired separately submitted their own.[19]

In its Position Paper/Motion to Dismiss,[20] CCBPI rebutted the claims of petitioners. *Firstly*, CCBPI contended that the LA has no jurisdiction over the complaint because there is no employer-employee relationship between CCBPI and petitioners.[21]

CCBPI discussed the four-fold test in determining whether there exists an employer-employee relationship between them and petitioners. For the selection and hiring of the employees, CCBPI argued that it had no participation or say therein and it was solely the discretion of Interserve and Hotwired how the employees were screened, selected and hired. Each of the employees executed employment contracts with Interserve or Hotwired and not with CCBPI. For the payment of the wages, it was also Interserve and Hotwired who regularly paid their employees.[22]

For the discipline and termination of the employees, such power lies with Interserve and Hotwired. The complaints of CCBPI against the work of the employees were just coursed through the representatives of Interserve and Hotwired, who still decides on how to discipline them.[23]

For the power of control, CCBPI submitted the Sworn Statements of Howard Clidera (Clidera), operations manager of Hotwired, and Carmelito Bunagan (Bunagan), coordinator of Interserve. Clidera stated that he was

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15 Id. at 116-118.
16 Id.
17 Id. at 117.
18 Id. at 202-203.
19 Id. at 119-169, 176-183, 204-208.
20 Id. at 119-169.
21 Id. at 120-121.
22 Id. at 138-144, 147-148.
23 Id. at 127, 133, 144-145, 148-149.

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responsible for assigning the forklift operators and helpers who would discharge the products from the hauler trucks to the warehouse. He was also in charge of assigning the helpers and drivers who would deliver the products in designated areas for maximized use of facilities. He was also responsible for monitoring the inventory of goods in the warehouse and for informing CCBPI whenever there is shortage or surplus in the supply.[24] Likewise, Bunagan stated that he was in charge of overseeing the work of the route helpers. He would assign them to specific delivery trucks and would monitor their attendance.[25]

Hence, CCBPI held that since it does not exercise any of the powers enumerated under the four-fold test, it is not considered as employer of petitioners. Further, it held that the true employers of petitioners are either Interserve or Hotwired, the latter exercising control and supervision over the manner and method of performing their duties.[26]

Secondly, CCBPI averred that Interserve and Hotwired are legitimate job contractors and not labor-only contractors. To support their claim, CCBPI submitted documents to prove the substantial capitalization of Interserve and Hotwired, some of which are the following: (1) Affidavit of Mr. Howard Clidera (the Operations Manager of Hotwired); (2) Affidavit of Mr. Carmelito Bunagan (the Designated Coordinator of Interserve); (3) Warehousing Management Agreement with Hotwired; (4) Delivery Agreement with Hotwired; (5) Articles of Incorporation of Hotwired; (6) Balance Sheet and Income Statement of Interserve; and (7) Service Agreements with Interserve.[27]

According to CCBPI, Hotwired possesses at least 15 delivery trucks used for the warehousing and delivery services rendered to it. Hotwired has an authorized capital stock amounting to ₱10,000,000.00, out of which ₱2,500,000.00 had been subscribed and paid up.[28] Meanwhile, Interserve has capitalization amounting to ₱21,658,220.26. It has a total assets amounting to ₱27,509,716.32 with investment in properties, tools, and equipment worth ₱12,538,859.55.[29] Finding that Interserve and Hotwired exercised the power of control over the employees and that both have substantial capital or investment, they are considered legitimate job contractors.[30]

Thirdly, CCBPI contended that the claims of some of the petitioners have prescribed for having been filed beyond the 4-year prescriptive period. CCBPI enumerated petitioners whose claims were filed beyond the period allowed by law.[31]

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24 Id. at 128-130, 145-147.
25 Id. at 132-133, 149-150.
26 Id. at 127-135, 152-153, 157.
27 Id. at 127-136.
28 Id. at 125.
29 Id. at 131-132.
30 Id. at 125, 131.
31 Id. at 159-162.

Lastly, CCBPI argued that the case of *Magsalin & Coca-Cola Bottlers Phils. Inc. v. National Organization of Working Men* (*Magsalin*)[32] is not applicable in this case because of different factual milieu. In the case of *Magsalin*, the claimant-employees were directly hired by CCBPI as opposed to petitioners who were hired by Interserve or Hotwired. Further, the employees in the case of *Magsalin* were engaged on a day-to-day basis while petitioners are engaged by Interserve or Hotwired on a contractual arrangement.

Meanwhile, in the Position Paper of Interserve,[33] it claimed that it is a legitimate job contractor whose continued operation in business is dependent upon the contracts it is able to secure from principals, such as CCBPI. Thus, it held that it can only offer a contractual employment to petitioners and that petitioners were informed prior to signing their contracts that their employment is for a limited duration only. It also argued that as employer of petitioners, it provides them with training and practical lessons which they utilize at work. Petitioners are under the direct control and supervision of Interserve through its supervisors. Further, it did not dismiss petitioners but some of them actually resigned while others had their contracts expired.[34]

In the Position Paper[35] of Hotwired, it contended that it did not dismiss petitioners but the latter abandoned their work by not reporting at the Sta. Rosa, Laguna plant. Some of the petitioners actually applied directly with CCBPI and another job contractor, Aero Plus. It averred that petitioners are using the illegal dismissal complaint as leverage to gain employment at CCBPI which connotes gross bad faith and selfish intent on petitioner's part.[36]

Ruling of the Labor Arbiter

On September 22, 2008, the LA rendered a Decision[37] dismissing the complaint against CCBPI for lack of jurisdiction and dismissing the complaint against Interserve and Hotwired for lack of merit, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant complaint is hereby **DISMISSED** for lack of jurisdiction insofar as respondent **Coca-Cola Bottlers Philippines, Inc. (CCBPI)** is concerned, and for lack of merit insofar as respondents **Hotwired Marketing Systems Incorporated** and **Interserve Management and Manpower Resources Incorporated** are concerned.
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> **SO ORDERED.**[38] (Emphasis in the original)

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32 451 Phil. 254 (2003).
33 *Rollo*, pp. 176-183.
34 Id. at 180-183.
35 Id. at 204-208.
36 Id. at 206-208.
37 Supra note 6.
38 *Rollo*, p. 228.

The LA gave credence to the arguments of CCBPI. It ruled that petitioners failed to substantiate their claim that CCBPI exercised control and supervision over them. Petitioners merely denied the statements of Clidera and Bunagan whose affidavits detailed the supervision they do over the work of petitioners.[39]

Further, the LA found that the evidence submitted prove that both Interserve and Hotwired are legitimate job contractors. It relied on the Position Paper of CCBPI showing that Interserve and Hotwired have substantial capitalization or investment, that they exercise power of control over petitioners, and that they carry businesses independent, separate and distinct from CCBPI.[40]

It ruled that there is nothing in law or jurisprudence that necessitates that a contractual employment be set in a fixed or pre-determined period. Thus, even though the contractual arrangement of petitioners with Interserve or Hotwired does not have a fixed or pre-determined period, the same is still valid. The LA gave notice on the fact that Interserve or Hotwired relies on the contract it secures from its principals, such as CCBPI. Thus, these job contractors cannot assure definite employment to its workers.[41]

Lastly, the LA ruled that Article 280 of the Labor Code is inapplicable in the case at hand because, as established before, there is no employer-employee relationship between CCBPI and petitioners. Thus, the necessary or desirable test to determine whether petitioners are regular or casual employees finds no application to petitioners.[42]

Aggrieved, the 67 petitioners filed an appeal before the NLRC.[43]

Ruling of the National Labor Relations Commission

On March 31, 2010, the NLRC issued a Decision[44] affirming the dismissal of the complaint, to wit:

> **WHEREFORE**, premises considered, the instant appeal is DISMISSED for lack of merit and the Decision dated 22 September 2008 is hereby AFFIRMED.
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> **SO ORDERED**.[45] (Emphasis in the original)

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39 Id. at 222-223.
40 Id. at 223-225.
41 Id. at 225-226.
42 Id. at 226-227.
43 Id. at 229-234.
44 Supra note 4.
45 *Rollo*, pp. 71-72.

NLRC affirmed the findings of the LA that Interserve and Hotwired are legitimate job contractors having shown that they have substantial capitalization and that they perform business independent and different from the business of CCBPI.[46]

Also, NLRC found that petitioners did not perform tasks that are indispensable in carrying out the principal business of CCBPI. It ruled that under the Warehouse Management Contract, petitioners were in charge of stock handling and storage, loading and unloading of goods. Meanwhile, CCBPI is engaged in the business of manufacturing, distributing and marketing of softdrinks. NLRC held that petitioners' tasks were not pivotal to the main business of CCBPI.[47]

Lastly, NLRC ruled that CCBPI did not exercise the power of control over the work of petitioners. The power of control was exercised by the representatives of Interserve and Hotwired, Bunagan and Clidera, respectively. CCBPI did not have a hand on the manner of delivery, loading, and unloading of the products. Likewise, it did not have supervision over petitioners.[48]

Aggrieved, petitioners filed a Motion for Reconsideration (MR) of the Decision of the NLRC. On August 12, 2010, the NLRC issued a Resolution[49] denying the MR for lack of merit.[50]

Undaunted, herein petitioners filed a Petition for *Certiorari*[51] under Rule 65 before the CA. The other 41 petitioners no longer filed a petition to contest the decision of the NLRC.

Ruling of the Court of Appeals

On September 26, 2013, the CA issued a Decision[52] denying the petition for *certiorari* filed by petitioners and affirming the decision of the NLRC, *viz.*:

> **WHEREFORE**, there being no grave abuse of discretion on the part of the NLRC in rendering the assailed decision, the petition for certiorari is hereby **DENIED**. The impugned decisions of both labor tribunals are **AFFIRMED IN TOTO**.
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> **SO ORDERED**.[53] (Emphasis in the original)

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46 Id. at 69.
47 Id. at 69-70.
48 Id. at 70-71.
49 Supra note 5.
50 *Rollo*, p. 76.
51 Id. at 33-59.
52 Supra note 2.
53 *Rollo*, p. 30.

The CA affirmed the NLRC and the LA in ruling that Hotwired and Interserve are legitimate independent job contractors. It ruled that the NLRC did not commit grave abuse of discretion in finding that Interserve and Hotwired had substantial capitalization as evidenced in the Certification from the Department of Labor and Employment (DOLE). Likewise, the Certification gives the presumption that they are not labor-only contractors which petitioners failed to dispute.[54]

Further, the CA ruled that the extension of service contract between the independent contractors and CCBPI is not a source of employer-employee relationship with respect to CCBPI and petitioners. CA reiterated the findings of NLRC and LA in establishing that there was no employer-employee relationship between CCBPI and petitioners using the four-fold test.[55]

On the issue of illegal dismissal, CA stated that it cannot pass upon the issue raised for the first time on appeal and affirmed the LA finding that petitioners failed to raise the illegal dismissal complaint with respect to Interserve and Hotwired. Assuming it can decide on such issue, CA agreed with the LA that petitioners were not dismissed but actually, petitioners had an expiration of contract by virtue of the expiration of the service contract between the contractors and CCBPI.[56]

Petitioners filed an MR on October 16, 2013, which was denied in a Resolution[57] dated May 5, 2014.

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

In its Petition dated October 2, 2014, petitioners raised this sole issue:

> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, WHICH IF NOT CORRECTED, WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO HEREIN PETITIONERS WHEN IT HELD THAT RESPONDENTS INTERSERVE AND HOTWIRED ARE LEGITIMATE INDEPENDENT CONTRACTORS

Petitioner's Arguments

Petitioners argued that the CA erred in not applying the case of *Coca-Cola Bottlers Phils., Inc. v. Agito* (*Agito*),[58] wherein the Court found that Interserve was a labor-only contractor.[59] Petitioners averred that petitioners and respondents in this case and the case of *Agito* are similarly situated and

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54 Id. at 26.
55 Id. at 27-29.
56 Id. at 29-30.
57 Supra note 3.
58 598 Phil. 909 (2009).
59 Id. at 930.

the issues raised are the same; thus, in consonance with the principle of *stare decisis*, the ruling in *Agito* must be likewise applied in their case.[60]

Petitioners also pointed out that their employment has not been fixed for a specific project of undertaking. Their services were continuously utilized by CCBPI through the intermediation of several labor-only contractors. Thus, they are considered employees of CCBPI.[61]

Lastly, on the issue of illegal dismissal, petitioners contended that the CA erred in holding that they were not illegally dismissed. CCBPI merely used the labor-only contractors to remove the employees who filed the regularization cases against them. Assuming that they were not illegally dismissed, CCBPI failed to follow the notice before termination provided under Article 283 of the Labor Code.[62]

Respondent's Comment

CCBPI filed its Comment[63] dated January 30, 2015 debunking the arguments raised by petitioners. It raised that the arguments in the petition were mere rehash of the issues raised by petitioners before the CA, NLRC and LA. These issues have been squarely ruled upon by these courts, and thus, the petition lacks merit.[64]

CCBPI averred that the CA did not commit grave abuse of discretion in finding that Interserve and Hotwired are legitimate job contractors. Both contractors have independent business from CCBPI and have substantial capitalization. According to CCBPI, in order for there to be a finding of a labor-only contracting, petitioners must establish that Interserve and Hotwired do not have a substantial capital or investment, the workers are performing jobs directly related to the principal's main business and the contractor does not exercise control over the workers. So even if workers are performing jobs directly related to the business of the principal, absent the element of lack of substantial capital and power of control, there is no labor-only contracting.[65]

Further, CCBPI argued that the cases cited by petitioners, particularly the case of *Magsalin* and *Agito* do not apply to the case at hand. The circumstances of petitioners are entirely different from the employees involved in those cases.[66]

Lastly, CCBPI reiterated its contention that there is no employer-employee relationship between them and petitioners, applying the four-fold test. Thus, it cannot be held liable for the illegal dismissal of petitioners and

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60 *Rollo*, pp. 57-58.
61 Id. at 54, 57.
62 Id. at 56-57.
63 Id. at 284-332.
64 Id. at 303-304.
65 Id. at 304-313.
66 Id. at 313-318.

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non-compliance with the provisions of Article 283 of the Labor Code on notice before termination.[67]

Issues

Upon review of the entire records of the case, this Court will discuss the following main issues, to wit:

1. Whether Interserve and Hotwired are labor-only contractors? Corollarily, whether or not there is an employer-employee relationship between CCBPI and petitioners
2. Whether petitioners were illegally dismissed by CCBPI/Interserve/Hotwired

Ruling of the Court

The petition is meritorious.

As a rule, the determination of whether an employer-employee relationship exists between the parties involves factual matters that are generally beyond the ambit of this Petition as only questions of law may be raised in a petition for review on *certiorari*. However, this rule allows certain exceptions, such as: (1) when the findings are grounded entirely on speculation, surmises or conjectures; **(2) when the inference made is manifestly mistaken, absurd or impossible;** (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts;** (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[68] In this case, We hold that the second and fourth exceptions are present thus, this Court deems it proper to reassess the findings in order to arrive at a proper and just conclusion.

Labor-only contracting refers to the arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job or work for a principal. Under Sec. 5 of the DOLE) Department Order (DO) No. 174, series of 2017,[69] there is labor-only contracting when: (a) the contractor or subcontractor does not have substantial capital or does not have

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67 Id. at 318-329.

68 *Sps. Almendrala v. Sps. Ngo*, 508 Phil. 305, 315-316 (2005).

69 Rules Implementing Article 106-109 of the Labor Code, as amended.

investment in tools, equipment, machineries, supervision and work premises and the employees are performing activities which are directly related to the main business of the principal; **or** (b) the contractor or subcontractor does not exercise the right of control over the work of the employees except as to the result thereto.

Accordingly, there are two instances when a contractor or subcontractor is deemed to be engaged in labor-only contracting. In the first instance, there are two indicators: (1) the contractor or subcontractor does not have substantial capitalization or it does not have investment in tools, equipment, machineries, supervision and work premises and (2) its employees are performing activities or jobs which are directly related and indispensable to the main business of the principal. In the second instance, the principal, not the contractor or subcontractor, exercises the power of control over the manner and method of the employees' work.

Upon review of the records, We rule that Interserve and Hotwired are engaged in labor-only contracting under the first instance. As petitioners pointed out, Interserve and Hotwired do not have investment or capitalization in tools, equipment, machineries, supervision and work premises. Petitioners worked in the premises owned by CCBPI. The tools, machineries and equipment they use all belong to CCBPI. Neither Interserve nor Hotwired submitted any evidence to show that they own the delivery trucks, machineries and equipment used by the employees in storing and delivering the softdrinks. At the jobsite, petitioners were given tasks and assignments by the sales supervisors and salesmen of CCBPI. These facts belie the claim that Interserve or Hotwired has substantial capitalization in tools, machineries, equipment, supervision and work premises.

CCBPI submitted the following evidence to prove that Interserve had substantial capitalization: (1) Service Agreement between Interserve and CCBPI; and (2) Interserve's Balance Sheet and Income Statement. Meanwhile, the following documents were submitted for Hotwired: (1) Hotwired's Articles of Incorporation; (2) Warehouse Management Agreement between Hotwired and CCBPI; and (3) Delivery Agreement between Hotwired and CCBPI. From these documents, CCBPI averred that Interserve has total capitalization of ₱21,658,220.26 and total assets of ₱27,509,716.32 with property and equipment worth ₱12,538,859.55. On the other hand, CCBPI raised that Hotwired has a total authorized capital stock of ₱10,000,000.00, out of which ₱2,500,000.00 is subscribed and paid up.

However, having substantial capitalization does not easily convince this Court that Interserve and Hotwired are legitimate job contractors. Jurisprudence has established that this Court does not set an absolute figure for what it considers substantial capital for an independent job contractor, but it measures the same against the type of work which the contractor is obligated to perform for the principal. In this case, Interserve entered into a Service Agreement with CCBPI wherein it will provide pool of relievers to the latter in case there would be absent employees or there would be an upsurge in the

workload.[70] Hotwired was engaged for warehousing management and delivery services.[71]

Be that as it may, neither Interserve nor Hotwired presented evidence to show that they possess tools and equipment necessary in the performance of the agreements they entered into with CCBPI. Interserve merely provides manpower to CCBPI which is tantamount to labor-only contracting. Hotwired does not have any tool or equipment it uses in the warehouse management. It did not show that it owns any forklift or trucks used in the loading and unloading of the products. The warehouse being used as storage of the goods was owned by CCBPI. Further, it failed to show evidence of ownership/possession of delivery trucks sufficient to fulfill the delivery operations under the Delivery Agreement.

A finding that a company has substantial capitalization does not automatically result to a finding that it is an independent job contractor. In the case of *San Miguel Corp. v. MAERC Integrated Services Inc.*,[72] the investment of MAERC, the contractor therein, in the form of buildings, tools, and equipment of more than ₱4,000,000.00 did not impress this Court, which still declared MAERC to be a labor-only contractor.[73] Likewise, in the case of *DOLE Philippines Inc. v. Esteva*,[74] this Court did not recognize the contractor therein as a legitimate job contractor, despite its paid-up capital of over ₱4,000,000.00, in the absence of substantial investment in tools and equipment used in the services it was rendering.[75]

Similar to the above-cited cases, We are not convinced that Interserve and Hotwired are legitimate job contractors in absence of proof that they have substantial investment in tools, equipment, machineries among others.

Moreover, the fact that the petitioners are performing activities directly related and indispensable to the main business of CCBPI is well-established. According to CCBPI, it is engaged in the business of manufacturing, distributing and marketing of soft drinks and beverage products. Meanwhile, the petitioners, as route helpers, delivery truck drivers and forklift operators are doing tasks necessary, pertinent and vital to the operations of CCBPI. They are in charge of preparing the products from the warehouse, loading and unloading the products to the delivery trucks, deliver the soft drinks to the clients in the assigned areas and bring back the undelivered goods to the warehouse. These tasks are indispensable in the aspect of distribution and marketing of soft drinks, which is the main business of CCBPI.

As a matter of fact, jurisprudence has established the relationship between the nature of the work of route helpers, drivers and forklift operators with respect to the principal business of CCBPI. As early as the case of

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70 *Rollo*, p. 131.
71 Id. 123-124.
72 453 Phil. 543 (2003).
73 Id. at 566.
74 538 Phil. 817 (2006).
75 Id. at 867.

Magsalin v. National Organization of Working Men[76] this Court has ruled that route helpers perform activities that are necessary and desirable in the usual business or trade of CCBPI that could qualify them as regular employees.[77]

The employees in *Magsalin* are sales route helpers employed by CCBPI on a day-to-day basis to work as relievers or substitutes to absent employees or whenever CCBPI would need more workers in times of high demand from clients. They claimed for regularization which CCBPI refused to grant.[78]

According to the Court in the *Magsalin* case, the applicable test is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The standard, supplied by the law itself, is whether the work undertaken is necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course.[79] Looking at the nature of the services rendered by the route helpers in that case, the Court concluded that they perform activities indispensable to the main operations of the CCBPI. The Court held:

> The argument of petitioner (CCBPI) that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely "postproduction activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have then been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confined scope.
>
> The repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of petitioner company.[80]

The ruling in *Magsalin* was reiterated in the case of *Pacquing v. Coca-Cola Philippines, Inc.*[81] wherein the Court applied the principle of *stare decisis*. In the case of *Pacquing*, the petitioners were also sales route helpers who claimed for regularization but later were illegally dismissed.[82] CCBPI argued that petitioners therein were not regular employees but temporary

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76 451 Phil. 254 (2003).
77 Id. at 262.
78 Id. at 258-259.
79 Id. at 260-261.
80 Id. at 261-262.
81 567 Phil. 323 (2008).
82 Id. at 328-329.

workers engaged for a five-month period to work as substitutes to regular employees.[83] The Court therein ruled:

> Under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), it is the Court's duty to apply the previous ruling in Magsalin to the instant case. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner. Else, the ideal of a stable jurisprudential system can never be achieved.[84]

Thus, it was held in *Pacquing* that sales route helpers are considered regular employees of CCBPI because the nature of their work is necessary and desirable in the main business or trade of CCBPI.[85]

A similar issue was raised in the case of *Coca-Cola Bottlers Phils., Inc. v. Agito*[86] But in this case, the employees affected are salesmen assigned at the Lagro Sales Office of CCBPI. In the case of *Agito*, the workers filed a complaint for reinstatement after they had been unjustly dismissed from their employment. They averred that they are regular employees of CCBPI. On the other hand, CCBPI argues that it is not the employer of the workers but instead, they are the employees of Interserve, a legitimate job contractor.[87]

The Court in that case ruled that salesmen are performing tasks which are necessary and indispensable to the business or trade of CCBPI, to wit:

> Respondents [Agito et al.] worked for petitioner (CCBPI) as salesmen, with the exception of respondent Gil Francisco whose job was designated as leadman. In the Delivery Agreement between petitioner and TRMD Incorporated, it is stated that petitioner is engaged in the manufacture, **distribution and sale** of softdrinks and other related products. The work of respondents, constituting distribution and sale of Coca-Cola products, is clearly indispensable to the principal business of petitioner. The repeated re-hiring of some of the respondents supports this finding. Petitioner also does not contradict respondents' allegations that the former has Sales Departments and Sales Offices in its various offices, plants, and warehouses; and that petitioner hires Regional Sales Supervisors and District Sales Supervisors who supervise and control the salesmen and sales route helpers."[88] (Emphasis in the original)

In addition to that, the Court therein categorically ruled that Interserve was engaged in labor-only contracting

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83 Id. at 329.
84 Id. at 340-341.
85 Id. at 339-340.
86 598 Phil. 909 (2009).
87 Id. at 915.
88 Id. at 925-926.

Consequently, in another case, the Court reiterated the ruling in *Magsalin* wherein it was held that route helpers are regular employees of CCBPI. In *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz*,[89] the workers therein filed a complaint for regularization and impleaded CCBPI and its contractors Peerless Integrated Service Inc. and Excellent Partners Cooperative Inc. They alleged that they have been working for CCBPI and that they have been hired directly by CCBPI or through its contractors. They posited that they have been performing tasks which are directly related to the business of CCBPI. The company contends that the workers are employees of either Peerless or Excellent and that these companies are independent job contractors.[90]

The Court ruled in *Dela Cruz* that the sales route helpers were doing tasks that are related to the distribution and sale of CCBPI's products, which is part of its usual business or trade, to wit:

> In plainer terms, the contracted personnel (acting as sales route helpers) were only engaged in the marginal work of helping in the sale and distribution of company products; they only provided the muscle work that sale and distribution required and were thus necessarily under the company's control and supervision in doing these tasks.
>
> Still another way of putting it is that the contractors were not independently selling and distributing company products, using their own equipment, means and methods of selling and distribution; they only supplied the manpower that helped the company in the handing of products for sale and distribution. In the context of D.O. 18-02, the contracting for sale and distribution as an independent and self-contained operation is a legitimate contract, but the pure supply of manpower with the task of assisting in sales and distribution controlled by a principal falls within prohibited labor-only contracting.[91]

The case of *Basan v. Coca-Cola Bottlers Philippines Inc.*[92] is similar to the case of *Pacquing* wherein CCBPI hired temporary route helpers to act as substitutes for absent regular employees or to report in case there is a high volume of work.[93] The Court in that case reiterated the ruling in *Pacquing* and *Magsalin* that route helpers are regular employees because their work is necessary or desirable to the usual business or trade of CCBPI.[94]

More recently, the Court has decided similar issues in the cases of *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*[95] and *Lingat v. Coca-Cola Bottlers Philippines, Inc.*[96] which find application in the case at hand.

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89 622 Phil. 886 (2009).
90 Id. at 893-895.
91 Id. at 906.
92 753 Phil. 74 (2015).
93 Id. at 78-79.
94 Id. at 86.
95 788 Phil. 385 (2016).
96 G.R. No. 205688, July 4, 2018.

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In *Quintanar*, the workers involved are route helpers who were tasked to distribute Coca-Cola products to the stores and customers in their assigned areas/routes. They were directly hired by CCBPI at first and then transferred to the different contractors, namely: Lipercon Services Inc., People's Services Inc., ROMAC and now Interserve Management Manpower Resources. They filed claims before the DOLE asserting that they are regular employees of CCBPI and are entitled to the benefits and emoluments accorded to regular employees. They were dismissed by CCBPI upon learning of the claims they filed before DOLE. CCBPI counters that Interserve is an independent job contractor and that it is not the employer of the workers.[97]

The Court in *Quintanar* ruled that the characterization of the relationship between route helpers and CCBPI is no longer a novel issue. Citing the case of *Magsalin*, the Court reiterated the finding that "the repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of the petitioner company."[98] Similar to the case of *Pacquing*, the Court applied the principle of *stare decisis* and held that an issue already decided must be upheld absent any strong or compelling reason to abandon the same. In that case, CCBPI failed to show any strong or compelling reason to abandon the ruling established in the *Magsalin* case. Thus, the Court ruled that route helpers are considered regular employees of CCBPI as held in *Magsalin* and *Pacquing*.[99]

Meanwhile, in the case of *Lingat*, Lingat was hired as a plant driver and forklift operator while Altiveros was assigned as a segregator/mixer. They were employees of CCBPI for more than a year and then they were transferred from one agency to another which included Lipercon Services Inc., People Services Inc., Interserve Management Manpower Resources Inc., and Monte Daples Trading Corp. (MDTC). They contended that the agencies were labor-only contractors and that they didn't have any equipment, machinery and work premises for warehousing purposes. CCBPI owned the warehouse they were working at and the supervisors who were overseeing their work were employees of CCBPI. They were illegally dismissed by CCBPI for 'overstaying'. On the other hand, CCBPI contends that it is not the employer of Lingat and Altiveros and that MDTC has an independent business separate from CCBPI.[100]

The Court therein ruled that *Lingat* are regular employees of CCBPI and not of MDTC because they were performing tasks necessary and indispensable to the business of CCBPI, to wit:

> Here, based on their Warehousing Management Agreement, CCBPI hired MDTC to perform warehousing management services, which it claimed did not directly relate to its (CCBPI's) manufacturing operations. However,

97 Supra note 95.
98 Id. at 403.
99 Id. at 404.
100 Supra note 96 at 98.

> it must be stressed that CCBPI's business *not* only involved the manufacture of its products but also included their distribution and sale. Thus, CCBPI's argument that petitioners were employees of MDTC because they performed tasks directly related to "warehousing management services," lacks merit. On the contrary, records show that petitioners were performing tasks directly related to CCBPI's distribution and sale aspects of its business.
>
> To reiterate, CCBPI is engaged in the manufacture, distribution, and sale of its products; in turn, as plant driver and segregator/mixer of soft drinks, petitioners were engaged to perform tasks relevant to the distribution and sale of CCBPI's products, which relate to the core business of CCBPI, not to the supposed warehousing service being rendered by MDTC to CCBPI. Petitioners' work were (sic) directly connected to the achievement of the purposes for which CCBPI was incorporated. Certainly, they were regular employees of CCBPI.[101]

Similar to the above-mentioned cases, the petitioners herein are route helpers, delivery truck drivers and forklift operators. Similar to the cases of *Agito, Dela Cruz, Quintanar* and *Lingat*, the petitioners were hired by contractors who had warehouse management agreements, delivery agreements and service agreements with CCBPI. In these four cases, the Court ruled that the contractors engaged by CCBPI were labor-only contractors and the workers were doing tasks that are directly related and indispensable to the business or trade of CCBPI, particularly in the aspect of distribution and sale of its products. Hence, the Court held that as such, the workers were considered regular employees of CCBPI.

Accordingly, the issue of whether route helpers are regular employees of CCBPI has long been resolved in a long line of cases starting with the case of *Magsalin* as early as May 2003. It is worthy to note that the Court has been consistent with its rulings in accordance with the principle of *stare decisis*. This Court held in one case that the *stare decisis* rule bars the relitigation of an issue long settled except when strong and compelling reasons arise to reconsider it anew, *viz:*

> Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same**, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be**

101 Supra note 96.

> **decided alike.** Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.**[102] (Emphasis and italics supplied)

As follows, We rule that the petitioners who are performing tasks indispensable to the usual business or trade of CCBPI are considered regular employees. Interserve and Hotwired, which are found to lack investment in tools, equipment, machineries, supervision and work premises, are considered engaged in labor-only contracting.

Under Section 7 of D.O. No. 174, s. 2017, a principal is deemed as the employer of the contractor's or subcontractor's employees upon a finding that the latter is a labor-only contractor, to wit:

> **Section 7. When principal is deemed the direct employer of the contractor's or subcontractor's employees.** In the event that there is a finding that the contractor or subcontractor is engaged in labor-only contractor under Section 5 and other illicit forms of employment arrangements under Section 6 of these Rules, the principal shall be deemed the direct employer of the contractor's or subcontractor's employees. (Emphasis supplied)

Thus, the LA, as affirmed by NLRC and CA, erred in dismissing the complaint with respect to CCBPI for lack of jurisdiction. **CCBPI is the direct employer of the petitioners, thus it is liable for their claims.**

On the issue of illegal dismissal, it is not contended that the petitioners were dismissed from their respective positions upon the alleged termination of the Warehousing Management Agreement and Service Agreement with Hotwired and Interserve, respectively. They were refused entry to the work premises of CCBPI. CCBPI argues that it was because of the expiration of the contract with Interserve and Hotwired that petitioners no longer reported to work. However, this is not a just or authorized cause to dismiss petitioners' services. Articles 282-284 of the Labor Code provide:

> **Article 282. 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;

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102 *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320 (2008), citing *Ty v. Banco Filipino Savings & Mortgage Bank*, 511 Phil. 510, 520-521 (2005).

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.

Article 283. Closure of establishment and reduction of personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Article 284. Disease as ground for termination. An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year. (Emphasis supplied)

Nowhere in these just or authorized causes mention expiration of contract. **Thus, it was illegal for CCBPI to terminate the petitioners**. At the same time, there was no clear showing that petitioners were afforded due process when they were terminated. As a matter of fact, the petitioners pointed out that CCBPI did not comply with the provisions of Art. 283 of the Labor Code on notice before dismissal. Therefore, their dismissal was without valid cause and due process of law; as such, the same was illegal.

Considering that petitioners were illegally terminated, **CCBPI, Interserve and Hotwired are solidarily liable for the rightful claims of petitioners.**

Settled is the rule that 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 up to the time of actual reinstatement. If reinstatement is not possible, however, the award of separation pay is proper.[103]

Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work. They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment.[104]

Petitioners herein were unjustly dismissed by CCBPI when they were prevented from entering the work premises on January 30, 2008. The petitioners have lost the earnings they should have been entitled to had they not been illegally dismissed. Thus, the **petitioners are entitled to their full backwages inclusive of all allowances and other benefits from the time that they were illegally dismissed or on January 30, 2008 when they were banned from reporting to their duty until the finality of this Decision.**

However, with respect to the claims and benefits under the CBA, the same cannot be granted because of the failure to show that the petitioners are part of the bargaining unit and their failure to provide a copy of the CBA provisions. The Court cannot grant the same.

Further, similar to the case of *Lingat and Altiveros*, almost 13 years have lapsed since the inception of this case on December 11, 2007. For practical reasons and to serve the best interest of the parties, the Court deems it proper to award separation pay to the petitioners, instead of reinstatement. Thus, the **petitioners are entitled to separation pay equivalent to one month's salary for every year of service from January 30, 2008 until the finality of this Decision.**

Finally, since petitioners were compelled to litigate to protect their rights and interests, attorney's fees of 10% of the monetary award is likewise awarded. The legal interest of 6% *per annum* shall be imposed on all the monetary grants from the finality of the Decision until paid in full.

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103 *ICT Marketing Services Inc. v. Sales*, 769 Phil. 498, 524 (2015).

104 *Equitable Banking Corporation (EQUITABLE-PCI BANK) v. Sadac*, 523 Phil. 781, 819 (2006), citing *Paguio v. Philippine Long Distance Telephone Co., Inc.*, 441 Phil. 679, 690-691 (2002).

WHEREFORE, the petition is **GRANTED**. The Decision dated September 26, 2013 and the Resolution dated May 5, 2014 of the Court of Appeals in CA-G.R. SP No. 116615, affirming the Decision dated March 31, 2010 and the Resolution dated August 12, 2010 of the National Labor Relations Commission and the Decision dated September 22, 2008 of the Labor Arbiter dismissing the complaint of the petitioners are **REVERSED** and **SET ASIDE**. Accordingly, petitioners are awarded the following:

1. Full backwages, inclusive of all allowances and other benefits, from January 30, 2008 until finality of this Decision;
2. Separation pay, in lieu of reinstatement, equivalent to one month of salary for every year of service with a fraction of a year of at least six months as one whole year from January 30, 2008 until finality of this Decision; and
3. Attorney's fees equivalent to 10% of the monetary grants to them.

Let this case be **REMANDED** to the Labor Arbiter for a detailed computation of the monetary awards.

All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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.

DIOSDADO M. PERALTA
Chief Justice