Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ABS-CBN IJM WORKERS UNION,
Petitioner,

G.R. No. 202131

Present:

- versus -

LEONEN, *J.*,* *Chairperson*,
LAZARO-JAVIER,
LOPEZ, M.,**
LOPEZ, J., and
KHO, JR., *JJ.*

ABS-CBN CORPORATION,
Respondent.

Promulgated:

SEP 21 2022

x----------x

DECISION

LOPEZ, J., *J.*:

This Court resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court, filed by petitioner ABS-CBN IJM Workers Union (*AIWU*), seeking the reversal of the Decision[2] and the Resolution,[3] both rendered by the Court of Appeals in CA-G.R. SP No. 116883. The assailed Decision and Resolution reversed and set aside the Decision[4] and the Resolution,[5] both rendered by the Office of the Secretary of Department of

---

* Acting Chief Justice per Special Order No. 2914, dated September 15, 2022.

** On official business.

1 *Rollo*, pp. 9-23.

2 The December 1, 2011 Decision was penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino; *id.* at 24–34.

3 The May 18, 2012 Resolution was penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino; *id.* at 35–36.

4 The August 13, 2010 Decision was rendered by Secretary Rosalinda Dimapilis-Baldoz of the DOLE; *id.* at 406–421.

5 The October 26, 2010 Resolution was rendered by Secretary Rosalinda Dimapilis-Baldoz of the DOLE; *id.* at 444–445.

Labor and Employment (*DOLE Secretary*) in OS-A-9-5-10. In the foregoing rulings, the DOLE Secretary granted the appeal filed by AIWU, reversing and setting aside the Order[6] of the Mediator-Arbiter, which denied its petition for certification election in NCR-OD-M-0911-006.

Facts and Antecedent Proceedings

Respondent ABS-CBN Corporation, formerly ABS-CBN Broadcasting Corporation (*ABS-CBN*), is a domestic corporation, principally engaged in the business of broadcasting television and radio content in the Philippines.[7]

Sometime in 2002, ABS-CBN adopted the Internal Job Market System (*IJM*), a database which provides a list of accredited technical or creative manpower, and/or talents who offer their services for a fee. Found in the database, among other things, are the competency rating of the technical manpower and their corresponding professional rates.[8]

Workers in ABS-CBN who have been hired through the IJM system (*IJM workers*) include Electronic Field Production Camera Personnel, Studio Camera Personnel, OB Van Operators, Technical Directors, Light Operators, Video Engineers, Video Editors, Compositing Artists, VTR Personnel, Audio Personnel, Audio Engineers,[9] Crane Operators and Drivers.[10] Together, IJM workers formed the AIWU. AIWU is registered with the Department of Labor under NCR-QCFOO-UR-06-005-09.[11]

On November 23, 2009, AIWU, through its president, Antonio B. S. Perez, filed a Petition[12] before the Bureau of Labor Relations (*the Bureau*), praying for the conduct of a certification election among IJM workers.[13] AIWU alleged that it seeks to represent 1,101 employees from the IJM work pool and be certified as their exclusive bargaining agent. According to the union, no sole and exclusive bargaining agent was certified, or voluntarily recognized by ABS-CBN. There was also no certification, consent, or run-off election conducted in such bargaining unit within one year from its filing. The petition was supported by 369 IJM workers comprising 33.51% of the total bargaining unit through their signatures, and it was docketed as NCR-OD-M-0911-006.[14]

---

6 The April 14, 2010 Order was rendered by Mediator-Arbiter Catherine Legados-Parado of the DOLE; *id.* at 259–271.
7 *Id.* at 622, 624.
8 *Id.*
9 *Id.* at 183.
10 *Id.* at 276.
11 *Id.* at 11–12.
12 *Id.* at 153–155.
13 *Id.* at 25.
14 *Id.* at 153–155; 161–177.

In response, ABS-CBN filed a Comment[15] dated December 18, 2009, which sought the denial of AIWU's petition on the ground that there was no employer-employee relationship between the company and IJM workers. While ABS-CBN averred that it did not seek to participate in the certification election, it called the attention of the Bureau to the rulings of the National Labor Relations Commission (*Commission*) involving the same company and 71 of the 369 signatories of the petition, namely: (1) Resolutions[16] in *Payonan, et al. v. ABS-CBN*;[17] and (2) Resolutions[18] in *Jalog, et al. v. ABS-CBN*.[19] Both *Payonan* and *Jalog* were resolved by the Commission in favor of ABS-CBN, after finding that no employment relationship existed between the parties.[20]

After the parties submitted their respective memoranda, the Mediator-Arbiter issued the Order[21] dated April 14, 2010, denying the petition for certification election filed by AIWU. The *fallo* of the Order states:

> **WHEREFORE**, the petition for certification election filed by ABS-CBN IJM Workers [union] is **DENIED** for lack of employer-employee relationship between the bargaining unit sought to be represented and ABS-CBN.
>
> **SO ORDERED**.[22] (Emphasis in the original)

The Mediator-Arbiter reasoned that the DOLE is bound to respect the Commission's determination of the status of AIWU members in *Payonan* and *Jalog*, even if these cases were pending appeal before the Court of Appeals. In any case, it agreed with the Commission that the jobs performed by IJM workers in *Payonan* and *Jalog* were not exactly necessary and indispensable to the primary business of ABS-CBN.[23]

Aggrieved, AIWU filed a Notice of Appeal and Memorandum of Appeal[24] with the DOLE Secretary, which prayed for the reversal of the Order of the Mediator-Arbiter. It argued that its members are tasked with functions and activities that are not only desirable, but also necessary to the principal and usual business of ABS-CBN. In fact, numerous documents would show

---

15 *Id.* at 181–191.

16 The October 23, 2008 and January 30, 2009 Resolutions were penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan; *id.* at 112–121, 123–124.

17 NLRC NCR CA No. 03-01550-02.

18 The November 19, 2008 and June 18, 2009 Resolutions were penned by Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay concurring; *rollo*, pp. 125–149, 151–152.

19 NLRC NCR CA No. 042763-05.

20 *Rollo*, pp. 189–190.

21 *Id.* at 259–271.

22 *Id.* at 271.

23 *Id.* at 268–271.

24 *Id.* at 272–290.

that the conditions of IJM workers' employment satisfied the four-fold test. Moreover, the so-called "talents" and similarly-situated employees have already been declared by this Court to be regular employees in *ABS-CBN v. Nazareno*,[25] and *ABS-CBN v. Marquez*.[26] As such, the Commission issued a ruling in *Herrera v. ABS-CBN*[27] which deemed audio personnel to be regular employees of the company.[28]

Thereafter, ABS-CBN filed the Opposition to Appeal[29] dated May 7, 2010. It countered that the circumstances obtaining in the *Nazareno* and *Marquez* cases occurred before the IJM System was implemented. Thus, this Court's pronouncements therein were inapplicable to AIWU members.[30]

On August 13, 2010, DOLE Secretary Rosalinda Dimapilis-Baldoz rendered a Decision,[31] the dispositive portion of which reads:

> **WHEREFORE**, the appeal filed by ABS-CBN IJM Workers Union is **GRANTED**. The Order dated 14 April 2010 of DOLE-NCR Mediator-Arbiter Catherine Legardos-Parado is hereby **REVERSED** and **SET ASIDE**.
>
> Accordingly, let the entire records of the case be remanded to DOLE-NCR for the conduct of a certification election among the ABS-CBN IJM Workers, with the following choices:
>
> 1. ABS-CBN IJM Workers Union; and
>
> 2. No Union.
>
> ABS-CBN and/or the union are hereby directed to submit to the Regional Office of origin, within ten (10) days from receipt of this Decision, a certified list of employees in the bargaining unit or the payrolls covering the members of the bargaining unit for the last three (3) months prior to the issuance of this Decision.
>
> **SO DECIDED**.[32]

In the foregoing Decision, the DOLE Secretary found the controlling jurisprudence to be the *Nazareno* case, holding that IJM workers are similarly situated to the production assistants therein. It likewise found the evidence to have shown badges of an employer-employee relationship between the IJM workers and ABS-CBN. In all, it ruled that the four elements of employment

---

25 534 Phil. 306 (2006) [Per J. Callejo, Sr.].
26 G.R. No. 167638, June 22, 2005 (Notice).
27 NLRC NCR Case No. 03-02458-07.
28 *Rollo*, pp. 275–289.
29 *Id.* at 389–404.
30 *Id.* at 400.
31 *Id.* at 406–421.
32 *Id.* at 421.

9

apply to the parties.[33]

ABS-CBN filed a Motion for Reconsideration[34] dated August 24, 2010, contending that the DOLE Secretary erred in disregarding the Commission's rulings in *Payonan* and *Jalog*. With its Decision, ABS-CBN posited that the DOLE encroached upon the powers of the labor arbiter, which had original and exclusive jurisdiction in deciding controversies arising from an employer-employee relationship, and of the Court of Appeals, which possessed jurisdiction to determine whether the Commission committed grave abuse of discretion in issuing such rulings. [35]

On October 26, 2010, the DOLE Secretary denied ABS-CBN's Motion for Reconsideration for lack of merit in a Resolution[36] of even date.

To seek the reversal of the DOLE Secretary's rulings, ABS-CBN elevated the case to the Court of Appeals *via* a petition for *certiorari*[37] dated November 15, 2010. Still arguing that no employer-employee relationship existed between the IJM workers and ABS-CBN, the petition also prayed for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction enjoining the conduct of a certification election.[38] The same was opposed by AIWU through its Comment/Opposition[39] dated December 13, 2010.

On January 10, 2011, the Court of Appeals issued a Resolution[40] granting ABS-CBN's application for a Writ of Preliminary Injunction and ordering the issuance of the writ upon the posting of a bond in the amount of PHP 100,000.00. The Writ of Preliminary Injunction enjoined AIWU from implementing the DOLE Secretary's rulings.[41]

Subsequently, the Court of Appeals rendered the assailed Decision,[42] disposing the case as follows:

> ***ACCORDINGLY***, the petition is ***GRANTED***. The assailed Decision dated August 13, 2010 and Resolution dated October 26, 2010 are ***REVERSED*** and ***SET ASIDE***. No costs.

---

33 *Id.* at 418–21.
34 *Id.* at 422–437.
35 *Id.* at 431–433.
36 *Id.* at 444–445.
37 *Id.* at 41–86.
38 *Id.* at 84.
39 *Id.* at 446–468.
40 *Id.* at 1168–1172.
41 *Id.* at 1171.
42 *Id.* at 24–34.

SO ORDERED.[43] (Emphasis in the original)

In the assailed Decision, the Court of Appeals ruled that the existence or absence of an employer-employee relationship is a question of fact that requires examination of evidentiary matters within the competence and primary jurisdiction of the labor arbiter and the Commission. Considering that the Commission dismissed the complaints for regularization in *Payonan* and *Jalog* prior to the filing of the petition for certification election, the DOLE Secretary committed grave abuse of discretion in resolving the issue on the existence of employer-employee relations between the parties. The DOLE instead, should have respected the factual findings of the labor arbiter as sustained by the Commission, or held in abeyance the resolution of the issue until the same is resolved with finality by this Court, in order to avoid conflicting decisions.[44]

The assailed Decision was appealed by AIWU in the Motion for Reconsideration[45] dated December 19, 2011. In its motion, AIWU argued that the DOLE Secretary's jurisdiction in deciding the existence of employer-employee relations has been confirmed by this Court's ruling in *M.Y. San Biscuits, Inc. v. Acting Secretary Bienvenido E. Laguesma.*[46] Further, it stressed that the Commission's ruling in *Payonan* has been overturned by the Court of Appeals. After consolidating the two cases, the Court of Appeals found that the IJM workers in *Payonan* and *Herrera* cases were regular employees who are entitled to benefits and privileges accorded to all other regular employees.[47]

Finding the Motion for Reconsideration to be bereft of merit, the Court of Appeals denied the same in the assailed Resolution.[48]

Hence, AIWU filed the present Petition for Review on *Certiorari*. AIWU reiterated that the DOLE Secretary has jurisdiction to decide issues of employer-employee relationship.[49] In any case, the Court of Appeals should have been guided by its own ruling in the consolidated *Payonan* and *Herrera* cases, which declared IJM workers to be regular employees of ABS-CBN.[50]

---

43 *Id.* at 33.
44 *Id.* at 30–33.
45 *Id.* at 558–563.
46 273 Phil. 482 (1991) [Per J. Gancayco, First Division].
47 *Rollo*, pp. 560–561
48 *Id.* at 35–36.
49 *Id.* at 15–18.
50 *Id.* at 18–20.

Issues

I.

Whether the DOLE Secretary committed grave abuse of discretion in resolving the issue of the existence of an employer-employee relationship; and

II.

Whether the DOLE Secretary committed grave abuse of discretion in granting the petition for certification election

Our Ruling

Foremost, the present petition stems from a special civil action for *certiorari* filed before the Court of Appeals, anchored on the argument that the DOLE Secretary gravely abused her discretion in finding the existence of an employer-employee relationship, and consequently, in granting the petition for certification election of AIWU. Thus, to resolve the present Rule 45 petition, this Court is ultimately concerned with whether the Court of Appeals correctly resolved the presence or absence of grave abuse of discretion in the decision of the DOLE Secretary, and not on the basis of whether the latter's decision on the merits of the case was strictly correct.[51]

Additionally, it is settled that only questions of law may be raised in a petition for *certiorari* under Rule 45 because this Court is not a trier of facts.[52] However, when the factual findings of the DOLE Secretary are contrary to those of the Court of Appeals and of the Mediator-Arbiter, as in this case, it becomes proper for this Court to reexamine the records and reevaluate the factual findings of the case in the exercise of its equity jurisdiction.[53]

Under these parameters, this Court finds the instant petition meritorious.

The DOLE Secretary did not commit grave abuse of discretion in resolving the issue of the existence of employer-employee relationship

---

51 *Holy Child Catholic School v. Hon. Sto. Tomas*, 714 Phil. 427, 456–457 (2013) [Per J. Peralta., En Banc].

52 *Teekay Shipping Philippines, Inc. v. Ramoga, Jr.*, 824 Phil. 35 (2018) [Per J. Tijam, First Division].

53 *See Caurdanetaan Piece Workers Union v. Laguesma*, 350 Phil. 35 (1998) [Per J. Panganiban, First Division] and *Manila Cordage Company-Employees Labor Union-Organized Labor Union in Line Industries and Agriculture v. Manila Cordage Co.*, G.R. No. 242495 to G.R. No. 242496, September 16, 2020 [Per J. Leonen, Third Division].

According to the Court of Appeals, "the exclusive and original jurisdiction to determine the existence of employer-employee relationship is vested primarily in the labor arbiter and in the NLRC[,] in the exercise of its appellate jurisdiction" pursuant to Article 224 (previously, Article 217) of the Labor Code. The Court of Appeals then cited this Court's decision in *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of DILG*[54] to declare that "[m]ore often than not, the question of employer-employee relationship becomes a battle of evidence, the determination of which should be comprehensive and intensive and therefore[,] best left to the specialized judicial body that is the NLRC." Based on the foregoing, it concluded that the DOLE Secretary committed grave abuse of discretion in resolving the issue of the existence of employer-employee relations between the parties and ordering the conduct of certification election.[55] The Court of Appeals is mistaken.

While Article 224 of the Labor Code, as amended, provides that claims for actual, moral, exemplary and other forms of damages[56] and all other claims involving PHP 5,000.00,[57] both arising from the employer-employee relations, are within the original and exclusive jurisdiction of the labor arbiter, the same did not vest the labor arbiter with the sole authority to decide all matters which are harped on the existence of employer-employee relations.

It bears stressing that the present controversy involves the propriety of the conduct of a certification election among IJM workers, which is cognizable by the Bureau. Under Article 232 of the Labor Code, as amended, the Bureau, where the Mediator-Arbiter serves as an officer, has the original and exclusive authority to act on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all work places:

> ARTICLE 232. [226] *Bureau of Labor Relations.* — The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all work places whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.

---

54 605 Phil. 801, 829 (2009) [Per J. Tinga, Second Division].
55 *Rollo*, pp. 30–33.
56 LABOR CODE, Article 224(4).
57 LABOR CODE, Article 224(6).

On the other hand, the order of the Mediator-Arbiter granting or denying a petition for certification election may be appealed before the DOLE Secretary:

> ARTICLE 272. [259] *Appeal from certification election orders.* — Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days.

As the purpose of a petition for certification election is to determine which organization will represent the employees in their collective bargaining with the employer,[58] it follows that the nature of the relationship between the members of the union or organization and the company must first be determined. In order then for the Bureau to perform its mandate of resolving issues arising from or affecting labor-management relations, which includes the issue of whether a certification election should be conducted by a union, the Meditor-Arbiter must necessarily make a finding as to the existence of employer-employee relations, which shall be subject to review by the DOLE Secretary on appeal.

As correctly submitted by the petitioner, this Court, in *M.Y. San Biscuits Inc. v. Acting Sec. Laguesma*,[59] is emphatic that the Mediator-Arbiter and the DOLE Secretary are sufficiently empowered to make their own independent finding as to the existence of such relationship, without having to rely and wait for such a determination by the labor arbiter or the Commission in a separate proceeding:

> From the foregoing, the BLR has the original and exclusive jurisdiction to *inter alia*, decide all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or non-agricultural. Necessarily, in the exercise of this jurisdiction over labor-management relations, **the med-arbiter has the authority, original and exclusive, to determine the existence of an employer-employee relationship between the parties.**
>
> Apropos to the present case, once there is a determination as to the existence of such a relationship, the med-arbiter can then decide the certification election case. **As the authority to determine the employer-employee relationship is necessary and indispensable in the exercise of jurisdiction by the med-arbiter, his finding thereon may only be reviewed and reversed by the Secretary of Labor who exercises appellate jurisdiction under Article 259 of the Labor Code**, as amended, which provides —

---

58 *Hijo Resources Corp. v. Mejares*, 778 Phil. 344 (2016) [Per J. Carpio, Second Division].
59 273 Phil. 482 (1991) [Per J. Gancayco, First Division].

. . . .

> When as in this case Secretary Drilon of DOLE rendered a resolution dated December 15, 1989 reversing the order of the med-arbiter dated August 25, 1989 by declaring the existence of an employer-employee relationship between the parties, **such finding cannot be rendered nugatory by a contrary finding of the labor arbiter in a separate dispute for money claims between same parties.**
>
> **It is absurd to suggest that the med-arbiter and Secretary of Labor cannot make their own independent finding as to the existence of such relationship and must have to rely and wait for such a determination by the labor arbiter or NLRC in a separate proceeding.** For then, given a situation where there is no separate complaint filed with the labor arbiter, the med-arbiter and/or the Secretary of Labor can never decide a certification election case or any labor-management dispute properly brought before them as they have no authority to determine the existence of an employer-employee relationship. Such a proposition is, to say the least, anomalous.
>
> Correctly indeed, the Secretary of Labor denied the prayer in the manifestation of petitioner to await the resolution of the NLRC as to the existence of such employer-employee relationship.[60] (Citations omitted and emphasis supplied)

Based on the foregoing, this Court disagrees with the Court of Appeals that the DOLE Secretary should have "refrain[ed] or avoid[ed] resolving factual issues," including the existence of an employer-employee relationship, which is supposedly "within the competence of the Labor Arbiter and the NLRC to resolve."[61] Certainly, We have long recognized the ample authority of the Mediator-Arbiter and the DOLE Secretary to determine the relationship between the parties in a petition for certification election, without the need to rely on a prior determination by the Commission on the matter.

Meanwhile, the Court of Appeals' reliance in Our ruling in *Bombo Radyo*[62] is misplaced. To recall, the case delved on the issue of whether the exercise of DOLE's visitorial and enforcement powers allowed it to make a determination of the existence of an employer-employee relation. We initially ruled therein that the prerogative of the DOLE to determine the existence of employer-employee relationship is merely preliminary, incidental and collateral to its primary function of enforcing labor standards provisions, while the power of determining the existence of employer-employee relationship remains primarily lodged with the Commission. However, such pronouncement, which is being cited by the Court of Appeals as basis for declaring the DOLE Secretary to be without jurisdiction in

---

60 *Id.* at 486–487.
61 *Rollo*, p. 32.
62 *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of DILG*, *supra* note 54.

determining the existence of employer-employee relationship, has since been modified by this Court *En Banc* in the same case. In the Resolution[63] dated March 6, 2012, this Court, revisiting the earlier *Bombo Radyo* decision, declared that the DOLE has the power to independently determine whether or not an employer-employee relationship exists and that such determination must be respected, to the exclusion of the Commission, in order to eliminate conflicting conclusions:

> The prior decision of this Court in the present case accepts such answer, but places a limitation upon the power of the DOLE, that is, the determination of the existence of an employer-employee relationship cannot be co-extensive with the visitorial and enforcement power of the DOLE. But even in conceding the power of the DOLE to determine the existence of an employer-employee relationship, the Court held that the determination of the existence of an employer-employee relationship is still primarily within the power of the NLRC, that any finding by the DOLE is merely preliminary.
>
> This conclusion must be revisited.
>
> No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship. No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. **The law did not say that the DOLE would first seek the NLRC's determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship be disputed, the DOLE would refer the matter to the NLRC. The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128 (b) of the Labor Code, as amended by RA 7730.**
>
> **The DOLE, in determining the existence of an employer-employee relationship, has a ready set of guidelines to follow, the same guide the courts themselves use.** The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employee's conduct. The use of this test is not solely limited to the NLRC. **The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC.**
>
> **The determination of the existence of an employer-employee relationship by the DOLE must be respected.** The expanded visitorial and enforcement power of the DOLE granted by RA 7730 would be rendered nugatory if the alleged employer could, by the simple expedient of disputing

---

[63] *People's Broadcasting Service (Bombo Radyo Phils. Inc.) v. The Secretary of the DOLE et al.*, 683 Phil. 509 (2012) [Per J. Velasco, En Banc].

the employer-employee relationship, force the referral of the matter to the NLRC. The Court issued the declaration that at least a *prima facie* showing of the absence of an employer-employee relationship be made to oust the DOLE of jurisdiction. But it is precisely the DOLE that will be faced with that evidence, and it is the DOLE that will weigh it, to see if the same does successfully refute the existence of an employer-employee relationship.

If the DOLE makes a finding that there is an existing employer-employee relationship, it takes cognizance of the matter, to the exclusion of the NLRC. The DOLE would have no jurisdiction only if the employer-employee relationship has already been terminated, or it appears, upon review, that no employer-employee relationship existed in the first place.

The Court, in limiting the power of the DOLE, gave the rationale that such limitation would eliminate the prospect of competing conclusions between the DOLE and the NLRC. **The prospect of competing conclusions could just as well have been eliminated by according respect to the DOLE findings, to the exclusion of the NLRC, and this We believe is the more prudent course of action to take.**

This is not to say that the determination by the DOLE is beyond question or review. Suffice it to say, there are judicial remedies such as a petition for *certiorari* under Rule 65 that may be availed of, should a party wish to dispute the findings of the DOLE.

It must also be remembered that the power of the DOLE to determine the existence of an employer-employee relationship need not necessarily result in an affirmative finding. The DOLE may well make the determination that no employer-employee relationship exists, thus divesting itself of jurisdiction over the case. It must not be precluded from being able to reach its own conclusions, not by the parties, and certainly not by this Court.

. . . .

To recapitulate, if a complaint is brought before the DOLE to give effect to the labor standards provisions of the Labor Code or **other labor legislation, and there is a finding by the DOLE that there is an existing employer-employee relationship, the DOLE exercises jurisdiction to the exclusion of the NLRC**. If the DOLE finds that there is no employer-employee relationship, the jurisdiction is properly with the NLRC. If a complaint is filed with the DOLE, and it is accompanied by a claim for reinstatement, the jurisdiction is properly with the Labor Arbiter, under Art. 217 (3) of the Labor Code, which provides that the Labor Arbiter has original and exclusive jurisdiction over those cases involving wages, rates of pay, hours of work, and other terms and conditions of employment, if accompanied by a claim for reinstatement. If a complaint is filed with the NLRC, and there is still an existing employer-employee relationship, the jurisdiction is properly with the DOLE. The findings of the DOLE, however, may still be questioned through a petition for *certiorari* under Rule 65 of the Rules of Court.[64] (Citations omitted and emphasis supplied)

---

[64] *Id.* at 517–521.

Furthermore, the DOLE Secretary correctly observed that the Commission's rulings in the *Payonan* and *Jalog* cases are not binding on petitioner as these have not yet attained finality when the instant case was pending before the DOLE Secretary. Notably, *res judicata* by conclusiveness of judgment will only apply under the following conditions: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, but not identity of causes of action.[65] Here, it is undisputed that *Payonan* and *Jalog* were still pending before the Court of Appeals during the DOLE Secretary's resolution of the petition for certification election. Thus, the Commission's determination of the lack of employer-employee relations between 71 AIWU members in *Payonan* and *Jalog* and respondent, did not preclude the DOLE from independently resolving the issue of the existence of employer-employee relationship between the parties in the petition for certification election.[66]

Even assuming *arguendo* that the Commission's rulings in *Payonan* and *Jalog* have attained finality, the conclusiveness of judgment cannot be applicable to the other AIWU members who were not parties in *Payonan* and *Jalog*. To be sure, the totality of the facts and the surrounding circumstances of the case must be considered in determining whether an employer-employee relationship exists.[67] That 71 out of the 369 signatories to the petition for certification election were not found by the Commission to be regular employees of respondent, did not settle the status of the other 298 signatories or 1,030 AIWU members. Simply put, removing 71 IJM workers involved in the *Payonan* and *Jalog* cases from the roster of AIWU will not affect the union's eligibility to file a petition for certification election on behalf of the remaining 1,030 IJM workers.

Guided by the Labor Code provisions and jurisprudence, We find the DOLE Secretary to have properly exercised her discretion in resolving the issue on the existence of an employer-employee relationship in favor of AIWU. Contrary to the conclusion of the Court of Appeals, grave abuse of discretion cannot be attributed to the DOLE, simply by reason of its conflicting findings with the Commission on the existence of employer-employee relations. To be considered grave abuse of discretion, the rendition of judgment must have been done in a capricious, whimsical, or arbitrary manner tantamount to lack of jurisdiction,[68] which is not the case here.

---

65 *Melpin A. Gonzaga, et al. v. Commission on Audit*, G.R. No. 244816, June 29, 2021 [Per J. J. Lopez, En Banc].

66 *Rollo*, pp. 414-416.

67 *Conqueror Industrial Peace Management Cooperative v. Balingbing*, G.R. Nos. 250311 and 250501, January 5, 2022 [Per J. Inting, Second Division].

68 See *Asian Terminals, Inc. v. Eteliano Reyes, Jr.*, G.R. No. 240507, April 28, 2021 [Per J. J. Lopez, Third Division].

The DOLE Secretary did not commit grave abuse of discretion in granting the petition for certification election

In the Decision[69] dated August 13, 2010, the DOLE Secretary found the IJM workers to be regular employees under working conditions that are akin to those of the production assistants in *Nazareno*,[70] based on the evidence submitted by the parties:

> This brings us to the principal issue of whether or not IJM workers are employees of ABS-CBN. The controlling jurisprudence on the matter is the case of *ABS-CBN Broadcasting Company vs. Nazareno, el al.*, as the facts of the case squarely apply to the subject petition.
>
> In *Nazareno, et al.*, ABS-CBN raised the same arguments as in the present case, when production assistants (PAs) filed a complaint for regular status before the Labor Arbiter . . . .
>
> . . . .
>
> However, the Supreme Court rejected the arguments of ABS-CBN . . . .
>
> The IJM workers are similarly situated with those production assistants in the *Nazareno, et al.*, case.
>
> First, the purported "talents" could not be considered independent contractors based on the following:
>
> a) The arrangement entered into between ABS-CBN and the IJM workers could not be considered as contracting or sub-contracting under Department Order No. 18-02, series of 2002, as there is no indication that the contract entered into is on the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal as prescribed by Section 4(a) in relation[n] to Section 9(c) of said Department Order. No evidence was presented to show that the duration and scope of the project were determined or specified at the time of their engagement;
>
> b) The alleged contractors do not have substantial capital or investment in the form of capital stocks and subscribed capitalization in the case of corporations, or tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out;
>
> c) The IJM set-up is in the nature of in-house agency which is a prohibited activity under Section 6(d) of D.O. 18-02. As admitted, the

---

[69] *Rollo*, pp. 406–421.
[70] *Supra* note 25.

"talents" are pooled through the Internal Job Market which is managed by ABS-CBN through an electronic data bank and are asked to report to the technical director or in-house supervisor;

d) The "talents" are performing activities which are necessary and desirable to the ordinary course of business of ABS-CBN. Notably, the company admitted that when it has realized that all payments by advertisers went to producers/blocktimers such as Ms. Monteverde, the company was constrained to venture into co-productions and company-produced programs, entailing the need for Electronic Field Production (EFP), cameramen, studio cameramen, OB van operators, technical directors, light operators, video engineers, video editor, compositing artists, VTR [personnel], audio personnel and audio engineers. Clearly, when ABS-CBN realized that it has no share from advertiser's payment[,] it ventured into production of shows making such activity party of its ordinary business as indicated in Paragraphs 1, 3 and 4 of the Secondary Purposes of the Company as stated in its Amended Articles of Incorporation.

Second, even assuming that production of shows is not part of the company's ordinary course of business, IJM workers are considered regular employees by virtue of their length of service of at least one year. As stated by the Supreme Court in *Nazareno, et al.*, there are two kinds of regular employees under the law: (1) those engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activities in which they are employed.

Third, the evidence and admissions by both parties unilaterally show badges of employer-employee relationship, such as:

1. IJM workers are admittedly hired by the company and put under the supervision of technical directors and/or in-house supervisors;

2. Payment of wages whether in the form of "talent fee" is made directly by the company;

3. ABS-CBN has reported and indicated to government agencies such as the BIR, SSS and PAG-IBIG that the concerned individuals are its employees;

4. IJM workers are issued company identification cards[;]

5. Personnel discipline are enforced through the company's Technical Operations Division; and

6. Personnel movements such as promotion are approved by the Head of ABS-CBN Entertainment Group.

Fourth, there is no substantial difference between the pre and post IJM set-up. The concept of hiring the purported talents is still the same. Hence, the *Nazareno, et al.*, case is very much applicable.

Lastly, the element of control which refers to the right reserved to the person for whom the services of the contractual workers are performed,

> to determine not only the end to be achieved, but also the manner and means to be used in reaching that end[,] rests with ABS-CBN as shown by personnel memoranda issued by the company to several IJM union members.[71]

Aside from being anchored on substantial evidence, the findings of the DOLE Secretary are also consistent with this Court's rulings in *Del Rosario, et al. v. ABS-CBN Broadcasting Corp.*,[72] *ABS-CBN Corp. v. Concepcion*,[73] *Gava, et al. v. ABS-CBN Broadcasting Corp.*,[74] and *ABS-CBN Broadcasting Corp. v. Tajanlangit, et al.*[75] In all these cases, the Court uniformly declared that IJM workers are regular employees of respondent.

As the first case that reviewed the status of IJM workers, the *En Banc* ruling in *Del Rosario*, penned by Associate Justice Alfredo Benjamin S. Caguioa, resolved the consolidated cases for regularization and illegal dismissal filed by IJM workers. Similar to the sound decision of the DOLE Secretary in the instant case, *Del Rosario* evaluated the circumstances of the IJM workers and found these to have satisfied all the elements of the four-fold test to prove the IJM workers' employer-employee relationship with respondent:

> In ascertaining the existence of an employer-employee relationship, the Court has invariably adhered to the four-fold test, which pertains to: (i) the selection and engagement of the employee; (ii) the payment of wages; (iii) the power of dismissal; and (iv) the power of control over the employee's conduct, or the so-called "control test."
>
> . . . .
>
> The records show that the workers were hired by ABS-CBN through its personnel department. In fact, the workers presented certificates of compensation, payment/tax withheld (BIR Form 2316), Social Security System (SSS), Pag-IBIG Fund documents, and Health Maintenance Cards, which all indicate that they are employed by ABS-CBN.
>
> In the same vein, the workers received their salaries from ABS-CBN twice a month, as proven through the pay slips bearing the latter's corporate name. Their rate of wages was determined solely by ABS-CBN. ABS-CBN likewise withheld taxes and granted the workers PhilHealth benefits. These clearly show that the workers were salaried personnel of ABS-CBN, not independent contractors.
>
> Likewise, ABS-CBN wielded the power to discipline, and correspondingly dismiss, any errant employee. The workers were

---

71 *Rollo*, pp. 417–421.

72 G.R. Nos. 202481, 202495, 202497, 210165, 219125, 222057, 224879, 225101 and 225874, September 8, 2020 [Per J Caguioa, En Banc].

73 G.R. No. 230576, October 5, 2020 [Per J. Zalameda, Third Division].

74 G.R. No. 214288, January 26, 2021 (Notice).

75 G.R. No. 219508, September 14, 2021 [Per J. J. Lopez, First Division].

> continuously under the watch of ABS-CBN and were required to strictly follow company rules and regulations in and out of the company premises.
>
> Finally, consistent with the most important test in determining the existence of an employer-employee relationship, ABS-CBN wielded the power to control the means and methods in the performance of the employees' work. The workers were subject to the constant watch and scrutiny of ABS-CBN, through its production supervisors who strictly monitored their work and ensured that their end results are acceptable and in accordance with the standards set by the company. In fact, the workers were required to comply with ABS-CBN's company policies which entailed the prior approval and evaluation of their performance. They were further mandated to attend seminars and workshops to ensure their optimal performance at work. Likewise, ABS-CBN controlled their schedule and work assignments (and re-assignments). Furthermore, the workers did not have their own equipment to perform their work. ABS-CBN provided them with the needed tools and implements to accomplish their jobs.[76] (Citations omitted)

We also agree with the DOLE Secretary that the pronouncement in *Nazareno*[77] is instructive on the regular employment status of IJM workers. Accordingly, in *Del Rosario*, this Court applied *Nazareno* in noting the necessity and desirability of the workers' functions to the overall business or trade of ABS-CBN as an essential characteristic of the employment of IJM workers:

> Notably, **an essential characteristic of regular employment as defined in Article 280 of the Labor Code is the performance by the employee of activities considered necessary and desirable to the overall business or trade of the employer**. The necessity of the functions performed by the workers and their connection with the main business of an employer shall be ascertained "by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety."
>
> Again, this is not the first time the Court has determined that certain workers of ABS-CBN are regular employees given the tasks that they were engaged in. In *ABS-CBN Broadcasting Corporation v. Nazareno* (*Nazareno*), the workers involved were production assistants who were repeatedly hired but treated as talents. The Court therein ruled that the production assistants were regular employees as follows:
>
> > The principal test is whether or not the project employees were assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employees were engaged for that project.
> >
> > In this case, it is undisputed that respondents had continuously performed the same activities for an average of

---

[76] *Supra* note 72.
[77] *Supra* note 25.

> five years. Their assigned tasks are necessary or desirable in the usual business or trade of the petitioner. The persisting need for their services is sufficient evidence of the necessity and indispensability of such services to petitioner's business or trade. While length of time may not be a sole controlling test for project employment, it can be a strong factor to determine whether the employee was hired for a specific undertaking or in fact tasked to perform functions which are vital, necessary and indispensable to the usual trade or business of the employer. We note further that petitioner did not report the termination of respondents' employment in the particular "project" to the Department of Labor and Employment Regional Office having jurisdiction over the workplace within 30 days following the date of their separation from work, using the prescribed form on employees' termination/dismissals/suspensions.
>
> As gleaned from the records of this case, petitioner itself is not certain how to categorize respondents. In its earlier pleadings, petitioner classified respondents as program employees, and in later pleadings, independent contractors. Program employees, or project employees, are different from independent contractors because in the case of the latter, no employer-employee relationship exists.

***Nazareno* applies here**. A scrutiny of the Articles of Incorporation of ABS-CBN shows that its primary purpose is:

> x x x To carry on the business of television and radio network broadcasting of all kinds and types; to carry on all other businesses incident thereto; and to establish, construct, maintain and operate for commercial purposes and in the public interest, television and radio broadcasting stations within or without the Philippines, using microwave, satellite or whatever means including the use of any new technologies in television and radio systems.

In conjunction therewith, paragraphs 3, 4, and 5 of the same Articles of Incorporation reveal that ABS-CBN is likewise engaged in the business of the production of shows:

> 3. To engage in any manner, shape or form in the recording and reproduction of the human voice, musical instruments, and sound of every nature, name and description; to engage in any manner, shape or form in the recording and reproduction of moving pictures, visuals and stills of every nature, name and description; and to acquire and operate audio and video recording, magnetic recording, digital recording and electrical transcription exchanges, and to purchase, acquire, sell, rent, lease, operate, exchange or otherwise dispose of any and all kinds of recordings, electrical transcriptions or other devices by which sight and sound may be reproduced.

> 4. To carry on the business of providing graphic, design, videographic, photographic and cinematographic production services and other creative production services; and to engage in any manner, shape or form in post production mixing, dubbing, overdubbing, audio-video processing, sequence alteration and modification of every nature of all kinds of audio and video productions.
>
> 5. To carry on the business of promotion and sale of all kinds of advertising and marketing services and generally to conduct all lines of business allied to and interdependent with that of advertising and marketing services.

Based on the foregoing, the recording and reproduction of moving pictures, visuals, and stills of every nature, name, and description — or simply, the production of shows — are an important component of ABS-CBN's overall business scheme. In fact, ABS-CBN's advertising revenues are likewise derived from the shows it produces.

The workers — who were cameramen, light men, gaffers, lighting directors, audio men, sound engineers, system engineers, VTR men, video engineers, technical directors, and drivers — all played an indispensable role in the production and re-production of shows, as well as post-production services. The workers even played a role in ABS-CBN's business of obtaining commercial revenues. To obtain profits through advertisements, ABS-CBN would also produce and air shows that will attract the majority of the viewing public. **The necessary jobs required in the production of such shows were performed by the workers herein.**

In fact, a perusal of ABS-CBN's Organizational Structure would show that the workers' positions were included in the *plantilla*, under the Network Engineering Group and Production Engineering Services, and News and Current Affairs Department of ABS-CBN. This serves as clear proof of the importance of the functions performed by the workers to the over-all business of ABS-CBN. In *Fuji Television Network, Inc. v. Espiritu*, the Court emphasized that organization charts and personnel lists, among others, serve as evidence of employee status.[78] (Citations omitted and emphasis supplied)

Lastly, the DOLE Secretary correctly concluded that the implementation of the IJM System did not differentiate the regular employees in *Nazareno* from IJM workers in the instant case. *Del Rosario* extensively discussed that notwithstanding the hiring of workers through a work pool, the continuous rehiring of the IJM workers from one program to another bestowed upon them regular employment status:

> In the particular case of ABS-CBN, the IJM System clearly functions as a work pool of employees involved in the production of programs. A closer scrutiny of the IJM System shows that it is a pool from which ABS-CBN draws its manpower for the creation and production of its television

---

[78] *Del Rosario, et al. v. ABS-CBN Broadcasting Corp.*, *supra* note 72.

> programs. It serves as a "database which provides the user, basically the program producer, a list of accredited technical or creative manpower who offer their services." The database includes information, such as the competency rating of the employee and his/her corresponding professional fees. Should the company wish to hire a person for a particular project, it will notify the latter to report on a set filming date.
>
> Both parties acknowledged the existence of the IJM System work pool and the workers' inclusion therein. On the part of ABS-CBN, it gave the workers an ABS-CBN identification card, placed them under the supervision of its officers and managers, allowed them to use its facilities and equipment, and continuously employed them in the production of television programs. On the part of the workers, they formed the ABS-CBN IJM System Worker's Union, recognizing that they were in fact part of the IJM System work pool.
>
> However, the continuous rehiring of the members of the IJM System work pool from one program to another bestowed upon them regular employment status. As such, they cannot be separated from the service without cause as they are considered regular, at least with respect to the production of the television programs. This holds true notwithstanding the fact that they were allowed to offer their services to other employers.[79] (Citations omitted)

At this juncture, it is not amiss to point out that 64 signatories of the present petition for certification election[80] have been earlier declared by this Court to be regular employees in *Del Rosario*, *Concepcion*, *Gava* and *Tajanlangit*. These rulings involving IJM workers should remove doubts as to the existence of an employer-employee relationship between members of the AIWU and ABS-CBN.

Finally, respondent calls our attention to the 11 members of AIWU who were found to be independent contractors by the Court of Appeals in *Jalog, et al. v. NLRC*, docketed as CA-G.R. SP No. 110334.[81] The Court of Appeal's Decision[82] dated December 21, 2010 and the Resolution[83] dated July 22, 2011 have been affirmed by this Court through the Minute Resolution[84] dated October 5, 2011 in *Jalog, et al. v. ABS-CBN Broadcasting Corporation*,[85] due to several defects in the petition, namely: (1) lack of verification; (2) lack of a valid certification of non-forum shopping; and (3) failure to show reversible error in the assailed Court of Appeals judgment. [86]

---

79 *Id.*
80 *Rollo*, pp. 161–177.
81 *Id.* at 636-637.
82 *Id.* at 1179–1199.
83 *Id.* at 1201–1202.
84 *Id.* at 1203.
85 G.R. No. 198065, October 5, 2011 (Notice).
86 *Rollo*, p. 1203.

To write *finis* to this matter, We ruled in *Del Rosario* that the minute resolution in *Jalog* "constitutes *res judicata* only insofar as it involves the same subject matter and the same issues concerning the same parties. [I]t will not set a binding precedent if other parties or another subject matter (even with the same parties and issues) is involved." Hence, in the present petition for certification election involving 1,090 other members of the AIWU, *Jalog* bears no binding force. Nonetheless, We clarified in *Concepcion* that even with the finality of *Jalog*, this Court is not precluded from revisiting doctrines and precedents.[87] As such, despite Garett Cailles and Fernando Lopez being parties in *Jalog*,[88] both were still declared to be regular employees of respondent in *Del Rosario*.

Indeed, once a determination as to the existence of an employer-employee a relationship has been made, the Mediator-Arbiter can rule on the propriety of a certification election, subject to the review of the DOLE Secretary on appeal.[89] Here, having duly established the existence of such relationship between the IJM workers and respondent, the DOLE Secretary did not gravely abuse her discretion in granting AIWU's petition for certification election. There being no other ground raised to deny the petition besides the purported absence of employer-employee relations, this Court deems the conduct of certification election among IJM workers proper, in recognition of their right to self-organization and collective bargaining.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated December 1, 2011 and the Resolution dated May 18, 2012 of the Court of Appeals in G.R. SP No. 116883 are **REVERSED** and **SET ASIDE**. The Decision dated August 13, 2010 and the Resolution dated October 26, 2010 of the Secretary of the Department of Labor and Employment are **REINSTATED**, granting the petition for certification election filed by ABS-CBN IJM Workers Union.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

---

87 *ABS-CBN Corp. v. Jaime Concepcion, supra* note 73.
88 *Rollo*, p. 637.
89 *M.Y. San Biscuits Inc. v. Laguesma, supra* note 48.

WE CONCUR:

MARVIC M.V.F. LEONEN
Acting Chief Justice
Chairperson, Second Division

AMY C. LAZARO-JAVIER
Associate Justice

On official business
MARIO V. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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.

MARVIC M.V.F. LEONEN
Acting Chief Justice