



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**ALMA C. LUGAWE,**

*Petitioner,*

**G.R. No. 236161**

Present:

**GESMUNDO, C.J.,**

*Chairperson,*

**HERNANDO,**

**ZALAMEDA,**

**ROSARIO,\* and**

**MARQUEZ, JJ.**

-versus-

**PACIFIC CEBU RESORT  
INTERNATIONAL, INC.,**

*Respondent.*

Promulgated:

**JAN 25 2023**

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**DECISION**

**HERNANDO, J.:**

This Petition for Review on *Certiorari*,<sup>1</sup> filed under Rule 45 of the Rules of Court, seeks to reverse and set aside the April 6, 2017 Decision<sup>2</sup> and the November 8, 2017 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP. No. 09206. The CA reversed and set aside the November 28, 2014 Decision<sup>4</sup> and the February 27, 2015 Resolution<sup>5</sup> of the National Labor Relations Commission (NLRC) affirming the Labor Arbiter's (LA) June 30, 2014

\* On official leave.

<sup>1</sup> *Rollo*, pp. 45-442.

<sup>2</sup> *Id.* at 13-37. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Edgardo L. Delos Santos and Edward B. Contreras.

<sup>3</sup> *Id.* at 39-41. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Edgardo L. Delos Santos and Edward B. Contreras.

<sup>4</sup> *Id.* at 273-291. Penned by Commissioner Julie C. Rendoque and concurred in by Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Jose G. Gutierrez.

<sup>5</sup> *Id.* at 300-301. Penned by Commissioner Julie C. Rendoque and concurred in by Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Jose G. Gutierrez.

Decision.<sup>6</sup> The CA ruled that petitioner Alma C. Lugawe (Lugawe) voluntarily resigned from her employment and was not constructively dismissed by respondent Pacific Cebu Resort International, Inc. (PCRI).

### **The Antecedents**

This case stemmed from a complaint for constructive dismissal, non-payment of separation pay, and damages filed by Lugawe against PCRI, and/or Felipe A. Cruz, Jr., Cecilia S. Castillo, and Eric Chung Mang Shum (Shum).<sup>7</sup>

Lugawe was hired by PCRI as an Accounting Clerk on March 9, 2000 and was later promoted to Human Resource (HR) Officer/Manager on January 1, 2007.<sup>8</sup>

Sometime in October 2013, PCRI underwent a takeover when Filipinas (PREFAB BLDG) Systems Inc. (FILSYSTEMS) bought out the shares of the Japanese owners.<sup>9</sup>

Months prior to the takeover, a Memorandum of Agreement was executed between PCRI and FILSYSTEMS whereby the latter agreed to maintain the continuity of the service records and regular employment status of the 104 regular employees of PCRI and to pay each of their employees the benefits required under the law.<sup>10</sup> On September 2, 2013, the regular employees held a General Assembly. This was followed by a Mediation Assistance and Intervention on September 6, 2013, where the parties had the opportunity to submit their proposals and concerns regarding the transition to new management.<sup>11</sup>

Within just three days after the new management took over on October 5, 2013, Lugawe claimed that PCRI removed the Compensation and Benefits functions from her office and transferred these the Finance Department, which was headed by Christine Almaden (Almaden).<sup>12</sup> These functions included the following:

- tracking of employees' leave credits,
- time keeping,

<sup>6</sup> Id. at 223-240. Penned by Labor Arbiter Maria Ada Aniceto-Veloso.

<sup>7</sup> Id. at 107-108.

<sup>8</sup> Id. at 14.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at 14-15.

<sup>12</sup> Id. at 15.

- reviewing and monitoring of employees' attendance records and schedules,
- implementation of payroll and attendance policies,
- payroll processing,
- distribution of payslips,
- preparation and processing of government-mandated benefits, and
- handling of employees' concerns.<sup>13</sup>

Lugawe asked her employers to reconsider the transfer of these functions, because their removal rendered her a mere office clerk, if not a "lame duck" HR Officer/Manager.<sup>14</sup> In addition to the transfer of the foregoing functions, Lugawe claimed that she also lost one of her two HR assistants to the Finance Department.<sup>15</sup> Lugawe claimed that she was also deprived of a "say" or discretion in hiring.<sup>16</sup>

Lugawe's list of grievances against PCRI only grew from that point. Lugawe further alleged that, despite retaining her title as HR Officer/Manager, she was denied access to employees' records/reports and that she was required to report to and receive instructions from Almaden when she would previously report to the General Manager.<sup>17</sup> She claimed that there were other functions that were removed from her office, including the administration of Security Services, which was transferred to the Engineering Department under Rey Belandres (Belandres), and supervision over the company drivers, which was transferred to the Finance Department and the General Manager.<sup>18</sup>

To demonstrate that PCRI did not intend to remove such basic HR functions from the HR Department at all and planned to restore such functions once Lugawe vacated the position, Lugawe pointed to PCRI's job post on JobStreet.com dated January 6, 2014,<sup>19</sup> which included "Compensation & Benefits" as one of the required skills for an HR Manager.

Lugawe claimed that these acts were committed with the intent of gradually edging her out of employment.<sup>20</sup> This also includes PCRI's inaction on her Complaint for Discourtesy, Insult, Libel and Slander against Belandres, whom she claimed made false, malicious, and irresponsible accusations

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<sup>13</sup> Id. at 15.

<sup>14</sup> Id. at 490.

<sup>15</sup> Id. at 15.

<sup>16</sup> Id. at 491.

<sup>17</sup> Id. at 16.

<sup>18</sup> Id. at 491.

<sup>19</sup> CA *rollo*, p. 84.

<sup>20</sup> *Rolló*, p. 491.

regarding her involvement in supposed anomalies related to the Security Services Contract with Probe Security Agency.<sup>21</sup>

Lugawe alleged several other instances of supposedly disdainful and discriminatory treatment she suffered at the hands of PCRI. She claimed that she was accused by General Manager Shum, of incompetence and “doing nothing.”<sup>22</sup> When Shum was planning to hold a thanksgiving party for employees affected by typhoon Yolanda, Lugawe claimed that he went over her head and coordinated instead with the Executive Housekeeper, Julius Quitol, for the list of affected employees.<sup>23</sup> She also alleged that Almaden attempted to remove her name from the list of authorized signatories for government-related transactions without prior notice, but was unable to do so.<sup>24</sup>

On December 10, 2013, Lugawe fell ill and took a sick leave, but was required to report to the office the next day by Shum to attend to a leaking faucet in the HR Office comfort room. Despite being on sick leave and Lugawe pointing out that the Engineering Department could repair the leaking faucet, she went to the office at Shum’s insistence.<sup>25</sup>

Lugawe’s sick leave lasted until December 12, 2013, but instead of returning to work on December 13, 2013, she filed a Complaint<sup>26</sup> for constructive dismissal with the Regional Arbitration Branch No. VII, NLRC, Cebu City, claiming for separation pay in lieu of reinstatement, with prayer for payment of 13<sup>th</sup> Month Pay for the year 2013 and other allowances. Lugawe later submitted an Amended Complaint dated January 16, 2014<sup>27</sup> claiming payment of separation pay in lieu of reinstatement, moral damages, and attorney’s fees.

In its defense, PCRI contended that Lugawe was not constructively dismissed from employment as she abandoned her work when she went on Absence Without Leave (AWOL) after her approved sick leave expired on December 12, 2013.<sup>28</sup> PCRI was unaware that Lugawe filed her Complaint for constructive dismissal on December 13, 2013. Lugawe took a compensation day-off on December 14, 2013 and another leave on December 15, 2013, claiming to have a fever. PCRI was informed by its Accounting Officer, Mary Ann Bunac, that Lugawe would be absent on December 16 to 18, 2013 due to

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<sup>21</sup> Id. at 492.

<sup>22</sup> Id. at 493.

<sup>23</sup> Id.

<sup>24</sup> Id. at 16.

<sup>25</sup> Id. at 494.

<sup>26</sup> CA *rollo*, pp. 182-183.

<sup>27</sup> Id. at 184

<sup>28</sup> *Rollo*, p. 521-523.

illness. On December 16, 2013, HR Officer Jeanette Apolinario (Apolinario) informed PCRI's Finance Controller, Sabbas Cheung (Cheung), that Lugawe was no longer coming back to work after receiving her 13<sup>th</sup> month pay. Later in the same day, Cheung received a text message from Lugawe stating that she will no longer report for duty.<sup>29</sup>

As PCRI was unaware that Lugawe had filed a Complaint for constructive dismissal, it sent Lugawe a letter dated January 7, 2014 directing her to submit a written explanation regarding her unauthorized absences and her text message to Cheung within two days from receipt thereof.<sup>30</sup> Lugawe did not respond to the letter, so PCRI deemed her to have abandoned her job.<sup>31</sup>

In connection with the removal and transfer of functions from Lugawe as HR Officer/Manager, PCRI claimed that Lugawe suffered neither a demotion in rank nor a diminution in pay, as she retained both her position as HR Officer/Manager and the salary and benefits pertaining to that position.<sup>32</sup> PCRI described the realignment or transfer of Lugawe's functions (particularly, payroll preparation, security guard supervision, and van driver's supervision) to other appropriate departments as a valid exercise of its management prerogative to achieve effective performance, monitoring, and internal control.<sup>33</sup>

PCRI alleged that Lugawe was overloaded with a variety of overlapping functions that she virtually controlled all aspects of the business, whereas in most companies, Human Resource functions were limited to personnel and human resources and relations concerns.<sup>34</sup> PCRI characterized Lugawe's position under the old management as consisting of "disorganized mixed multiple functions, that evidently lacks control, transparency, and check and balance (*sic*) mechanism, that it is prone to abuse and manipulation."<sup>35</sup>

Further, PCRI disputed Lugawe's claim that she was left with only one staff member and claimed that, out of the six personnel assigned to her, only three were re-assigned to other departments.<sup>36</sup> HR Assistant Apolinario and two company nurses, Nizzel Tumulak and Brenda Ymbong, all remained as part of Lugawe's staff.<sup>37</sup>

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<sup>29</sup> Id. at 17.

<sup>30</sup> Id. at 17-18.

<sup>31</sup> Id. at 18.

<sup>32</sup> Id. at 524.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id. at 523.

<sup>37</sup> Id.

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Lastly, to prove that the transfer of functions from the HR Department was done in good faith and to correct and streamline the old management's previous organizational deficiencies, PCRI pointed out that it did not hire an outsider to fill the position vacated by Lugawe but instead appointed Apolinario, Lugawe's former HR Assistant, to take and assume the position of HR Officer/Manager with its reduced functions.<sup>38</sup>

PCRI also denied that Lugawe experienced any discrimination, insensibility, or disdain at the hands of PCRI that would make her continued employment unbearable.<sup>39</sup> The altercation between Lugawe and Belandres involving the alleged anomalies in the security services contract was a personal matter between co-employees that could not be attributed to PCRI.<sup>40</sup>

Based on the foregoing reasons, PCRI concluded that Lugawe was not constructively dismissed and, consequently, her claim for backwages, separation pay, moral damages and attorney's fees must fail.

### **Ruling of the Labor Arbiter**

In the Decision dated June 30, 2014,<sup>41</sup> the LA ruled that Lugawe was constructively dismissed:

**WHEREFORE**, above premises considered, we find that [sic] complainant **ALMA C. LUGAWE** to have been constructively dismissed, tantamount to illegal dismissal by respondent **PACIFIC CEBU RESORT INTERNATIONAL INC.** Respondent corporation is hereby ordered to pay the complainant the following:

- a) Backwages in the amount of P331,214.80;
- b) Separation Pay in the amount of P250,649.00;
- c) Attorney's Fees in the amount of P59,186.38;
- d) Moral damages in the amount of P10,000.00

All other claims are dismissed for lack of merit.

**SO ORDERED.**<sup>42</sup>

The arbiter ruled that the transfer of functions from Lugawe's position amounted to a "demotion" as she was stripped by management of her true duties and responsibilities as HR Officer/Manager.<sup>43</sup> Having been relegated to

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<sup>38</sup> Id. at 525.

<sup>39</sup> Id.

<sup>40</sup> Id. at 18-19.

<sup>41</sup> *CA rollo*, pp. 146-163.

<sup>42</sup> Id. at 162-163.

<sup>43</sup> Id. at 160-161.

a “lame duck HR Officer and Manager,” the LA found that Lugawe had been constructively dismissed and, consequently, that her actions from December 13, 2013 onwards did not amount to abandonment.<sup>44</sup>

### **Ruling of the National Labor Relations Commission**

PCRI appealed<sup>45</sup> the LA Decision to the NLRC. In its November 28, 2014 Decision,<sup>46</sup> the NLRC dismissed the appeal and affirmed the LA’s Decision with modification:

**WHEREFORE**, premises considered, respondents’ appeal is **DISMISSED**. The Decision of the Honorable Labor Arbiter Maria Ada Aniceto-Veloso, dated June 30, 2014, is **MODIFIED**, but only with respect to the amount of Backwages, Damages, and Attorney’s Fees, as computed above. This Commission, hereby, orders the respondent **PACIFIC CEBU RESORT INTERNATIONAL, INC.**, to pay the complainant in the aggregate amount of **five hundred sixteen thousand four hundred twenty and 83/100 (Php 516,420.83)**, in the concept of Separation Pay, Backwages, Moral Damages, and Attorney’s fees.

**SO ORDERED.**<sup>47</sup>

PCRI filed its Motion for Reconsideration,<sup>48</sup> which the NLRC denied in its February 27, 2015 Resolution:<sup>49</sup>

**WHEREFORE**, the foregoing considered, respondent’s Motion for Reconsideration is **DENIED**. Our Decision dated November 28, 2014, **STANDS**.

**SO ORDERED.**<sup>50</sup>

The NLRC affirmed the LA’s finding of the existence of constructive dismissal and similarly dismissed PCRI’s defense that Lugawe’s refusal to return to work constitutes abandonment.<sup>51</sup> The NLRC ruled that PCRI, under the guise of streamlining and organizational restructuring, created a situation to make Lugawe feel like she was no longer needed at the company, thus compelling her to give up her employment.<sup>52</sup> The removal of major functions

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<sup>44</sup> Id. at 161.

<sup>45</sup> Id. at 164-179.

<sup>46</sup> Id. at 245-263.

<sup>47</sup> Id. at 263.

<sup>48</sup> Id. at 264-269.

<sup>49</sup> Id. at 270-271.

<sup>50</sup> Id. at 271.

<sup>51</sup> Id. at 257-259.

<sup>52</sup> Id. at 257-258.

and key personnel from the HR Department reduced Lugawe to a mere office clerk, if not a lame duck HR Manager.<sup>53</sup> This, together with the insulting, disdainful, and discriminatory acts of PCRI, made continued employment unbearable for Lugawe, thus amounting to constructive dismissal.<sup>54</sup> However, the NLRC tempered the award and reduced this from PHP 614,890.08 to PHP 516,420.83.

### **Ruling of the Court of Appeals**

Undeterred, PCRI filed a Petition for *Certiorari*<sup>55</sup> dated May 8, 2015 with the CA. Lugawe was directed to file her comment on the PCRI's Petition for *Certiorari*, but failed to do so. The CA ordered the parties to submit their respective memoranda in its August 27, 2015 Resolution.<sup>56</sup> PCRI filed its Memorandum dated September 28, 2015,<sup>57</sup> but, per the CA Resolution dated March 10, 2015,<sup>58</sup> Lugawe did not file the required memorandum.

During the pendency of the petition before the CA, Lugawe filed a Motion for Execution dated June 10, 2015<sup>59</sup> praying for the execution of the NLRC Decision at the recomputed amount of PHP 632,147.56, adjusted based on the date of finality of judgment.<sup>60</sup> PCRI filed a Comment/Opposition to Motion for Extension with Motion for Inhibition dated June 17, 2015,<sup>61</sup> alleging partiality on the part of the LA and praying that the Motion or Execution be denied.<sup>62</sup> In an Order<sup>63</sup> dated July 13, 2015, the LA denied PCRI's Motion for Inhibition and issued the Writ of Execution in favor of Lugawe based on the recomputed judgment amount of PHP 614,890.08.<sup>64</sup>

In its April 6, 2017 Decision,<sup>65</sup> the CA reversed the rulings of the NLRC and found PCRI's petition to be meritorious:

**WHEREFORE**, the petition is **GRANTED**. The 28 November 2014 Decision and the 27 February 2015 Resolution of the NLRC are hereby **REVERSED** and **SET ASIDE**. Respondent Alma C. Lugawe is **ORDERED** to return the sum of Four Hundred Eighty Nine Thousand Five Hundred Sixty

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<sup>53</sup> Id. at 257.

<sup>54</sup> Id. at 257-258.

<sup>55</sup> Id. at 3-271.

<sup>56</sup> Id. at 336-340.

<sup>57</sup> Id. at 341-375.

<sup>58</sup> Id. at 376.

<sup>59</sup> Id. at 307-313.

<sup>60</sup> Id. at 312.

<sup>61</sup> Id. at 289-298.

<sup>62</sup> Id. at 297.

<sup>63</sup> Id. at 327-333.

<sup>64</sup> Id. at 332-333.

<sup>65</sup> *Rollo*, pp. 13-37.

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Five and 58/100 (Php 489,565.58) to petitioner Pacific Cebu Resort International, Inc. The amount shall earn interest at the rate of six percent (6%) per annum from the finality of this Judgment.

**SO ORDERED.**<sup>66</sup>

The CA ruled that the NLRC committed grave abuse of discretion when it affirmed the LA's decision that Lugawe was constructively dismissed despite the absence of evidence to support her claim. The CA found that Lugawe voluntarily resigned from her employment and was therefore not entitled to the payment of separation pay, backwages, and damages.

Lugawe filed a Motion for Reconsideration<sup>67</sup> dated May 24, 2017, but this was denied by the CA for lack of merit in its Resolution dated November 8, 2017.<sup>68</sup>

Hence, Lugawe filed the instant Petition for Review on *Certiorari*<sup>69</sup> with this Court, with the following assigned errors:

A.

THE HONORABLE COURT OF APPEALS, FORMER NINETEENTH DIVISION, WITH ALL DUE RESPECT, COMMITTED AN ERROR OF LAW WHEN IT EVALUATED AND EXAMINED ANEW THE EVIDENCE AND MADE AND SUBSTITUTED ITS OWN FINDING OF FACTS FOR THOSE OF THE HONORABLE NLRC SEVENTH DIVISION AND THE HONORABLE LABOR ARBITER DESPITE THAT BOTH LABOR TRIBUNALS' UNIFORM FINDINGS HAVE BEEN FULLY SUPPORTED BY SUBSTANTIAL EVIDENCE.

B.

THE HONORABLE COURT OF APPEALS, FORMER NINETEENTH DIVISION, WITH ALL DUE RESPECT, COMMITTED AN ERROR OF LAW WHEN IT RULED THAT PETITIONER VOLUNTARILY RESIGNED DESPITE CONTRARY EVIDENCE.

C.

THE HONORABLE COURT OF APPEALS, FORMER NINETEENTH DIVISION, WITH ALL DUE RESPECT, COMMITTED AN ERROR OF LAW WHEN IT DELETED PETITIONER'S MONETARY AWARD AND ORDERED ITS RETURN TO PRIVATE RESPONDENT.<sup>70</sup>

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<sup>66</sup> Id. at 36.

<sup>67</sup> CA *rollo*, pp. 405-418.

<sup>68</sup> *Rollo*, pp. 39-41.

<sup>69</sup> Id. at 45-442.

<sup>70</sup> Id. at 57-58.

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### Issue

Simply stated, the principal issue to be resolved in this case is whether Lugawe was constructively dismissed from employment.

### Our Ruling

We resolve to deny Lugawe's Petition.

We hold that PCRI's act of removing basic HR functions from Lugawe was a valid exercise of its management prerogative in the pursuit of its legitimate business interest. The circumstances alleged by Lugawe to demonstrate the discriminatory, insensible, and disdainful treatment of PCRI are self-serving and uncorroborated by documentary or testimonial evidence. Instead, the evidence on record would show that Lugawe voluntarily abandoned her employment.

At the outset, it must be emphasized that a petition for review under Rule 45 is limited only to questions of law, as factual questions are not the proper subject of an appeal by certiorari. The Court is not a trier of facts and it is not its function to analyze or weigh all over again the evidence already considered in the proceedings below.<sup>71</sup>

In this case, however, the findings of the LA and NLRC on the one hand, and the CA on the other, are conflicting. Therefore, the instant case falls under exemptions to the foregoing rule. Thus, in the exercise of its equity jurisdiction, this Court is compelled to reevaluate and reexamine the factual issues and findings in this case.<sup>72</sup>

In deciding petitions under Rule 45 assailing the CA's decision from an appeal under Rule 65, the Court must determine whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the NLRC, rather than deciding whether the NLRC decision was correct on the case's merits.<sup>73</sup> In labor disputes, there is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not grounded on substantial evidence, which is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>74</sup>

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<sup>71</sup> *Teletech Customer Care Management Philippines, Inc. v. Gerona, Jr.*, G.R. No. 219166, November 10, 2021.

<sup>72</sup> *Id.*, citing *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 790 (2015).

<sup>73</sup> *Id.*, citing *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*, 809 Phil. 106, 121 (2017).

<sup>74</sup> *Saunar v. Ermita*, 822 Phil. 536, 547 (2017), citing *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642 (1940).

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Guided by the foregoing principles, We find that the CA correctly ruled that the NLRC committed grave abuse of discretion when it held that Lugawe was constructively dismissed.

### **Preliminary Matters**

#### **Lugawe is not estopped from questioning the rulings of the Court of Appeals**

PCRI contends that Lugawe's failure to file a comment to PCRI's petition in the CA and to submit a memorandum, despite the appellate court's directives to do so, estop her from questioning the assailed CA Decision and Resolution.<sup>75</sup>

We disagree.

Lugawe's failure to file a comment on the petition for *certiorari* before the appellate court or to submit a memorandum is deemed to be a waiver only of her right to file the foregoing pleadings<sup>76</sup> and her right to object to any formal flaws of such petition.<sup>77</sup>

Being a statutory privilege, the right to appeal is neither a natural right nor is it a component of due process. Accordingly, it may be exercised only in the manner and in accordance with the provisions of law.<sup>78</sup> In *Kumar v. People of the Philippines*,<sup>79</sup> We summarized the procedural standards required under Rule 45 that a petition for review on *certiorari* must satisfy in order for it to be entertained:

1. that the petition does not only exclusively raise questions of law, but also that it distinctly sets forth those legal issues;
2. that it be filed within 15 days of notice of the adverse ruling that impels it;
3. that docket and other lawful fees are paid;
4. that proper service is made;
5. that all matters that Section 4 specifies are indicated, stated, or otherwise contained in it;
6. that it is manifestly meritorious;
7. that it is not prosecuted manifestly for delay; and

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<sup>75</sup> *Rollo*, pp. 520-521.

<sup>76</sup> See *Development Bank of the Philippines v. Carpio*, 805 Phil. 99, 107 (2017).

<sup>77</sup> See *Larano v. Spouses Calendacion*, 552 Phil. 146, 153 (2007).

<sup>78</sup> *Boardwalk Business Ventures, Inc. v. Villareal*, 708 Phil. 443, 456 (2013), citing *Apex Mining Co. v. Commissioner of Internal Revenue*, 510 Phil. 269, 275 (2005).

<sup>79</sup> G.R. No. 247661, June 15, 2020.

8. that that the questions raised in it are of such substance as to warrant consideration.<sup>80</sup>

The foregoing enumeration does not include the requirement that the petitioner should have filed a comment and/or memorandum. Further, Lugawe clearly demonstrated her intent to assail the questioned rulings when she filed her Motion for Reconsideration with the appellate court on May 24, 2017. Accordingly, Lugawe is not estopped from questioning the CA's rulings in this Petition for Review on *Certiorari*.

**The CA, in the exercise of its *certiorari* jurisdiction, can review the factual findings and legal conclusions of the NLRC**

Lugawe argues that the appellate court committed an error of law when it reexamined the evidence and substituted its factual findings for those of the NLRC and LA.

In labor cases, where there is an appeal from decisions of the NLRC, the CA has the authority to review not only the legal conclusions of the NLRC, but also reexamine the factual issues. In *Laya v. Philippine Veterans Bank*,<sup>81</sup> the Court reiterated the foregoing rule, to wit:

Conformably with such observation made in *St. Martin Funeral Homes*, we have then later on clarified that the CA, in its exercise of its *certiorari* jurisdiction, can review the factual findings or even the legal conclusions of the NLRC, viz.:

In *St. Martin Funeral Home[s] v. NLRC*, it was held that the special civil action of *certiorari* is the mode of judicial review of the decisions of the NLRC either by this Court and the Court of Appeals, although the latter court is the appropriate forum for seeking the relief desired "in strict observance of the doctrine on the hierarchy of courts" and that, in the exercise of its power, the Court of Appeals can review the factual findings or the legal conclusions of the NLRC. The contrary rule in *Jamer* was thus overruled.

There is now no dispute that the CA can make a determination whether the factual findings by the NLRC or the Labor Arbiter were based on the evidence and in accord with pertinent laws and jurisprudence.

The significance of this clarification is that whenever the decision of the CA in a labor case is appealed by petition for review on *certiorari*, the Court can competently delve into the propriety of the factual review not only by the

<sup>80</sup> Id. Citations omitted.

<sup>81</sup> 823 Phil. 302 (2018).

CA but also by the NLRC. Such ability is still in pursuance to the exercise of our review jurisdiction over administrative findings of fact that we have discoursed on in several rulings, including *Aklan Electric Cooperative, Inc. v. National Labor Relations Commission*, where we have pointed out:

While administrative findings of fact are accorded great respect, and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court had not hesitated to reverse their factual findings. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness.<sup>82</sup>

In accordance with the foregoing ruling, the CA did not err when it reviewed the factual findings of the NLRC.

**The evidence on record is insufficient to show that Lugawe was constructively dismissed**

Constructive dismissal is defined as quitting or cessation of work, because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. Aptly called a “dismissal in disguise,” it exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.<sup>83</sup> The test of constructive dismissal is whether a reasonable person in the employee’s position would have felt compelled to give up his employment/position under the circumstances.<sup>84</sup>

In constructive dismissal cases, before the legality or illegality of the dismissal can be determined, the employee must first discharge the burden to prove the fact of dismissal by substantial evidence. In *Galang v. Boie Takeda Chemicals, Inc.*,<sup>85</sup> We held:

It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. However, it is likewise true that in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence. Only

<sup>82</sup> Id. at 334-335. Citations omitted.

<sup>83</sup> *Ico v. Systems Technology Institute, Inc.*, 738 Phil. 641, 669 (2014), citing *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 120-121 (2012).

<sup>84</sup> *Dimagan v. Dacworks United, Incorporated*, 677 Phil. 472, 481 (2011).

<sup>85</sup> 790 Phil. 582 (2016).

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then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause. The logic is simple — if there is no dismissal, there can be no question as to its legality or illegality.<sup>86</sup>

Applying the foregoing principle to the instant case, it is evident that Lugawe has the burden of proving that she was dismissed by PCRI, considering PCRI's allegation that Lugawe was not dismissed, but instead voluntarily abandoned her employment. Before the legality of her dismissal can be raised as an issue, Lugawe must first prove that she was actually dismissed by PCRI.

In the instant case, the evidence on record would show that Lugawe failed to prove the fact of her dismissal.

Lugawe's primary evidence to support her claim for constructive dismissal is the transfer of certain functions from her office to other departments. These functions include payroll preparation, security guard supervision, and van driver's supervision. According to Lugawe, the removal of these functions was tantamount to a demotion in rank, thus proving the existence of constructive dismissal.

As a rule, management has the prerogative to transfer its employees based on its assessment and perception of its employees' qualifications, aptitudes, and competence and to reorganize various areas of its business operations and organizational structure to the maximum benefit of the company.<sup>87</sup> "An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful."<sup>88</sup>

Despite the high degree of respect accorded to the employer's prerogative to regulate all aspects of its business, it must be emphasized that the managerial prerogative to transfer its employees must be exercised without grave abuse of discretion and must adhere to the basic elements of justice and fair play.<sup>89</sup>

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<sup>86</sup> Id. at 599.

<sup>87</sup> *Pantranco North Express, Inc. v. National Labor Relations Commission*, 373 Phil. 520, 531 (1999), citing *Philippine Japan Active Carbon Corporation v. National Labor Relations Commission*, 253 Phil. 149, 153 (1989).

<sup>88</sup> Id.

<sup>89</sup> *Peckson v. Robinsons Supermarket Corp.*, 713 Phil. 471, 483 (2013), citing *Blue Dairy Corporation v. National Labor Relations Commission*, 373 Phil. 179, 186 (1999), *Jarcia Machine Shop and Auto Supply v. National Labor Relations Commission*, 334 Phil. 84, 93 (1997).

Stated otherwise, the transfer must not be used as a subterfuge by the employer to rid itself of an undesirable worker, such that the employer is able to demonstrate that the transfer is not unreasonable, inconvenient, or prejudicial to the employee, nor does it involve a demotion in rank or diminution of salaries, privileges, and other benefits.<sup>90</sup> Failure on the part of the employer to discharge this burden of proof would result in a finding of the existence of constructive dismissal.

While Lugawe retained her title as HR Officer/Manager, the transfer of functions from her office may be treated as an employee transfer, as it resulted in changes to the business operations and organizational structure of PCRI and also changed the nature of Lugawe's work. Further, the removal of payroll preparation, security guard supervision, and van driver's supervision from Lugawe may also be characterized as a demotion, as the scope of her authority, duties, and responsibilities was diminished.

Demotion occurs when "an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary."<sup>91</sup>

However, the Court in *Jarcia Machine Shop and Auto Supply v. National Labor Relations Commission*,<sup>92</sup> recognized that management has the prerogative to effect demotions pursuant to legitimate business interests, to wit:

In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal x x x.<sup>93</sup>

In the instant case, PCRI has consistently maintained that the transfer of functions from the HR Department to other departments was done in good faith and to correct and streamline the previous management's previous organizational deficiencies. Having discovered that Lugawe's office handled

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<sup>90</sup> Id.

<sup>91</sup> *Isabela-I Electric Coop., Inc. v. Del Rosario, Jr.*, G.R. No. 226369, July 17, 2019, citing *Norkis Trading Co., Inc. v. Melvin Gnilo*, 568 Phil. 256, 267 (2008).

<sup>92</sup> 334 Phil. 84 (1997).

<sup>93</sup> Id. at 95.

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several overlapping functions, such as preparation of payroll and payment of salaries, PCRI transferred these duties to more appropriate departments with the goal of improving performance, introducing an internal checks and balances system, and increasing transparency in business operations. This explanation, coupled with the fact that Lugawe retained her rank as HR Officer/Manager and did not suffer any diminution in salaries, privileges, and other benefits, would show that the transfer of functions was not done in bad faith, but in the pursuit of legitimate business objectives. Accordingly, the transfer was a valid exercise of management prerogative.

Lugawe's other allegations of PCRI's acts of discrimination, insensibility, and disdain are deserving of scant consideration, as they are self-serving and uncorroborated by any substantial evidence, with Lugawe failing to proffer any documentary or testimonial evidence to sufficiently support her claims. It is well-settled that "[b]are allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence."<sup>94</sup>

Accordingly, the acts attributed by to Lugawe by PCRI, such as accusing her of incompetence and attempting to remove her authority to sign for government transactions, among others, fall short of the evidence required under the law to discharge Lugawe's burden to prove that she was dismissed by PCRI.

Anent the job post on JobStreet.com dated January 6, 2014,<sup>95</sup> which included "Compensation & Benefits" as one of the required skills for HR Manager, We note that Lugawe's Certificate of Employment<sup>96</sup> lists the following functions under Compensation & Benefits:

- Ensures that employees are properly compensated for their work
- Administering payroll and maintaining accurate records relating to staff
- Advising on pay and other remuneration issues, including promotion and benefits
- Undertakes regular salary reviews
- Coordinates and provides data analysis on performance evaluation reports
- Ensures accurate and timely submission of employees remittance reports<sup>97</sup>

A cursory examination of the foregoing enumeration would show that payroll preparation is merely one aspect of the Compensation & Benefits responsibilities of the HR Officer/Manager. Accordingly, the inclusion of

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<sup>94</sup> *Italkarat 18, Inc. v. Gerasmio*, G.R. No. 221411, September 28, 2020; citing *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, 637 Phil. 244, 256 (2010).

<sup>95</sup> *CA rollo*, p. 84.

<sup>96</sup> *Id.* at 116.

<sup>97</sup> *Id.*

Compensation & Benefits as one of the required skills for HR Manager does not substantially prove that PCRI's removal of certain functions under Compensation & Benefits from Lugawe was motivated by bad faith.

Lastly, anent PCRI's alleged inaction on Lugawe's complaint against Belandres regarding an altercation between the two, Lugawe submitted as evidence the Incident Report<sup>98</sup> she prepared and the email<sup>99</sup> submitting such report to PCRI management, both dated October 18, 2013. Lugawe claims that these documents are the bases for her Complaint for Discourtesy, Insult, Libel and Slander against Belandres, which PCRI allegedly did not act on. However, a perusal of such documents does not show the purpose for which they were submitted. Nowhere in the Incident Report or email does Lugawe lodge or indicate that she intends to lodge a complaint against Belandres; in fact, the Incident Report provides that it is submitted "For information."<sup>100</sup> Consequently, Lugawe cannot aver that PCRI did not act on her complaint against Belandres when the evidence on record belies the existence of such complaint in the first place.

In conclusion, Lugawe failed to discharge the burden of proof that the alleged transgressions committed by PCRI amounted to a dismissal. Having failed to prove with particularity the alleged acts of discriminatory, insensible, and disdainful treatment by PCRI that compelled her to resign, Lugawe is deemed to not have been constructively dismissed.

**Lugawe voluntarily abandoned her employment when she failed to report to work without any sufficient justification**

As established by the Court in a long line of jurisprudence, abandonment, as a just and valid cause for termination of employment, is defined as follows:

As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his [or her] employment. It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 of the Labor Code. To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Otherwise stated,

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<sup>98</sup> Id. at 174-175.

<sup>99</sup> Id. at 173.

<sup>100</sup> Id. at 175.

absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.<sup>101</sup>

Although the filing of a complaint for illegal or constructive dismissal has repeatedly been held to be inconsistent with a charge of abandonment—especially when such complaint is accompanied with a prayer for reinstatement—the act of filing does not foreclose the possibility of abandonment, as this is not the sole indicator in determining the employee's intent.<sup>102</sup> All circumstances surrounding the termination of employment should be taken into account.<sup>103</sup>

It is undisputed that Lugawe's sick leave expired on December 12, 2013 and that she stopped reporting to work without prior request for leave of absence from December 13, 2013, which is the day she filed her complaint for constructive dismissal. It is also undisputed that PCRI sent Lugawe a letter dated January 7, 2014 directing her to submit a written explanation regarding her unauthorized absences and the text message she sent to Cheung within two days from receipt of such letter, and that Lugawe did not respond to this letter.

The LA and NLRC both assumed that the aforementioned letter was sent when PCRI already had notice of the complaint filed by Lugawe, but this is not supported by any evidence on the record and amounts to mere speculation. Absent any proof that the letter was an afterthought in response to Lugawe's complaint, We presume that PCRI sent the letter in good faith to afford Lugawe an opportunity to explain her absences. Lugawe's failure to respond to PCRI's directive, taken together with her absence from work and notices to her co-workers that she would no longer report to work, all point to the conclusion that Lugawe abandoned her employment.

**WHEREFORE**, petitioner Alma C. Lugawe's Petition for Review on *Certiorari* is **DENIED**. The Court of Appeals' April 6, 2017 Decision and the November 8, 2017 Resolution in CA-G.R. SP. No. 09206 are **AFFIRMED**.

<sup>101</sup> *Tan Brothers Corp. of Basilan City v. Escudero*, 713 Phil. 392, 400-401 (2013).

<sup>102</sup> *Mehitabel, Inc. v. Alcuizar*, 822 Phil. 863, 878 (2017), citing *Basay v. Hacienda Consolacion*, 632 Phil. 430, 44 (2010).

<sup>103</sup> *Id.*

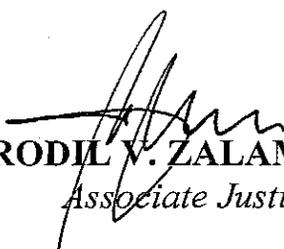
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**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*  
*Chairperson*

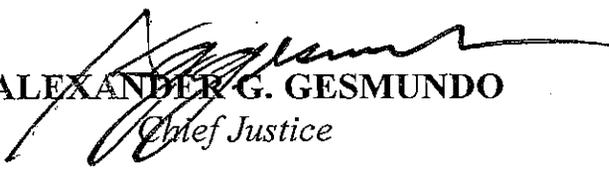
  
**RODIL V. ZALAMEDA**  
*Associate Justice*

On official leave.  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO  
*Chief Justice*