



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MELBA
DENUSTA,

ALCANTARA

Petitioner,

- versus -

MIGRANT WORKERS
MANPOWER AGENCY,
THERESITA M. CERALDE,
and K&G MANPOWER
SERVICES, LTD.,

Respondents.

G.R. No. 264158

Present:

CAGUIOA, J.,
Chairperson,

INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, JJ.

Promulgated:

January 31, 2024

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DECISION

GAERLAN, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the Resolutions dated June 14, 2022² and October 19, 2022³ of the Court of Appeals (CA) in CA-G.R. SP No. 171524, which dismissed the Petition for *Certiorari* filed by Melba Alcantara Denusta (petitioner) for being filed beyond the reglementary period.

The Antecedents

Petitioner filed a complaint for illegal dismissal, underpayment of salaries, damages, payment of wages for the unexpired portion of the contract,

¹ *Rollo*, pp. 8–33.

² *CA rollo*, pp. 190–193; penned by Associate Justice Emily R. Aliño-Geluz and concurred in by with Associate Justices Nina G. Antonio-Valenzuela and Jose Lorenzo R. Dela Rosa, of the Thirteenth Division, Court of Appeals, Manila.

³ *Id.* at 219–221.

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and attorney's fees against Migrant Workers Manpower Agency, Inc. (Migrant), a placement and recruitment agency, K&G Manpower Services, Ltd. (K&G), Migrant's foreign principal, and Theresita M. Ceralde (Ceralde), in her capacity as Migrant's president (collectively, respondents).⁴

In the complaint, petitioner averred that she was hired as a Kitchen Hand for The Lunch Box Ltd. (Lunch Box) in Rarotonga, Cook Islands under a two-year employment contract executed with Migrant and K&G. Based on her contract, she would receive a weekly salary of NZ\$400.00 or NZ\$1,600.00 per month. On May 22, 2019, she arrived in the Cook Islands and started her employment. She was repatriated to the Philippines on November 17, 2019.⁵

During her employment, petitioner alleged that her employer, Charlene Tairea (Tairea) committed several violations of her contract of employment. She was paid less than the agreed rate and was not provided with accommodation, transportation, or food allowances. She was considered a part-time employee and was not paid her salary during holidays. Petitioner likewise averred that she was maltreated by her foreign employer's family members. Due to her predicaments in the hands of her foreign employer, she claimed that respondents were guilty of illegal dismissal.⁶

Worse, when petitioner informed Migrant of her situation, Migrant did not act on it. Furthermore, before she was permitted to return home, respondents forced her to sign a Quitclaim, but she refused. Instead, she executed a Letter of Dispute narrating her ordeal.⁷

Petitioner, thus, prayed in her complaint that she be reimbursed for her accommodation and transportation expenses while in the Cook Islands, as well as for the amount she paid for the return ticket, agency fee, and work permit fee.⁸ She likewise claimed that she was entitled to her salaries and benefits for the unexpired portion of her contract, as well as her salary differentials in the total amount of PHP 1,379,170.00 based on the prevailing conversion rate.⁹

Respondents denied the allegations in the complaint. They countered that petitioner was not illegally dismissed and, therefore, not entitled to her monetary claims.¹⁰

⁴ *Id.* at 37.

⁵ *Id.* at 38.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 38–39.

⁹ *Id.* at 39.

¹⁰ *Id.*

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Respondents claimed that petitioner was a “name-hire” worker and that she was not an agency-recruited worker of Migrant. She was engaged but through the referral of her friend, who sought the help of another friend in securing her employment with Tairea. It was only Migrant who processed her travel documents.¹¹

Furthermore, respondents contended that petitioner lied in her application as she claimed that she could speak basic English and drive a motorcycle, which were among the main conditions of her employment. However, when asked to drive a motorcycle by her employer, she refused and said that she did not know how to drive. Further, during her employment in the Cook Islands, petitioner demonstrated an arrogant attitude towards Tairea’s mother, Vaine Parau Tairea (Vaine).¹²

After Tairea left with her daughter to New Zealand for the latter’s surgery, Vaine took over the management of the restaurant and it was this time when petitioner’s attitude changed. She no longer wanted to work until Tairea’s return. She falsely accused another employee of stealing, which disrupted the workplace.¹³

When Tairea returned from New Zealand, she asked petitioner to return to work but the latter refused. Instead, petitioner asked that she be released from her employment contract. She then requested to be repatriated because of her disagreement with Vaine. Tairea was then constrained to release her from her employment contract and repatriate her to the Philippines.¹⁴

Respondents concluded that petitioner was not illegally dismissed as it was petitioner who asked for her release from her employment and declined to finish her two-year contract. Furthermore, petitioner is not entitled to her money claims for failure to present sufficient evidence to support the same.¹⁵

The Labor Arbiter Ruling

After the proceedings, Labor Arbiter (LA) Ronald Doctor issued a Decision¹⁶ dated January 27, 2021, granting petitioner’s complaint for illegal dismissal. The LA explained that per the text message between petitioner and Tairea, the latter dismissed petitioner from service. Tairea, being the employer,

¹¹ *Id.*

¹² *Id.* at 39–40.

¹³ *Id.* at 40.

¹⁴ *Id.*

¹⁵ *Id.* at 40–41.

¹⁶ *Id.* at 22–33.

failed to show that such termination was valid.¹⁷ Moreover, even before the actual dismissal of petitioner, she was constructively dismissed as her employer committed gross violations of the employment contract. Petitioner had shown that she received a weekly salary less than that stipulated in the employment contract as a result of her shortened working hours from eight hours a day to six hours a day. She was also made to pay for her own accommodation, when it was indicated in her employment contract that she would be provided a suitable accommodation. Worse, petitioner was threatened by Vaine with a knife which made her decide not to report for work until Tairea arrived from New Zealand. The LA, thus, concluded that petitioner was illegally dismissed.¹⁸ He then disposed of the case in this wise:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant to have been illegally dismissed. Accordingly, respondent Migrant Workers Manpower Agency, Inc., K&G Manpower Services Ltd., and Theresita M. Ceralde are hereby ordered to pay, jointly and severally, complainant Melba A. Denusta, the Philippine Peso equivalent at the time of actual payment in the amount of NZD9,423.70, representing her salaries for the unexpired portion of her contract, salary differentials and attorney's fees.

Further, Migrant Workers Manpower Agency, Inc., K&G Manpower Services Ltd., and Theresita M. Ceralde are hereby ordered to pay complainant the amount of PhP10,000.00 as moral damages and PhP10,000.00 as exemplary damages.

All other claims are hereby **DISMISSED** for lack of merit.

The attached computation shall form part of this Decision.

SO ORDERED.¹⁹

Aggrieved, respondents appealed the LA ruling before the NLRC. Petitioner, likewise, filed a Partial Appeal attributing serious errors on the part of the LA in the computation of her monetary award and in not awarding other money claims.²⁰

The NLRC Ruling

The NLRC, on July 16, 2021, granted respondents' appeal.²¹ It ruled that petitioner was not illegally dismissed. Hence, she is not entitled to her supposed salary for the unexpired portion of her employment contract, as well as damages.

¹⁷ *Id.* at 30–31.

¹⁸ *Id.* at 31.

¹⁹ *Id.* at 32–33.

²⁰ *Id.* at 37.

²¹ *Id.* at 36–58.

The NLRC ratiocinated that petitioner's claim of illegal dismissal is unsupported by substantial evidence. In addition to her testimony, she referred to her online conversation with Tairea. While based on the latest conversation, she was indeed terminated by Tairea, her previous conversation with Tairea shows that it was petitioner who wanted her employment terminated. Her previous conversation further shows that there were complaints against petitioner regarding her work ethics, not only from Vaine but also from her co-workers; and Vaine was very dissatisfied with petitioner's work and attitude.²²

Meanwhile, on petitioner's partial appeal, NLRC ruled that she was entitled to a recomputed monetary award of her salary differential based on her monthly salary, but not to her other claims.²³ The *fallo* of the NLRC Decision reads:

WHEREFORE, the respective Appeals filed by Melba Alcantara Denusta and Migrant Workers Manpower Agency, Inc., K&G Manpower Services Ltd., and Theresita M. Ceraldo are **PARTIALLY GRANTED**.

The Decision dated January 27, 2021 rendered by the Labor Arbiter Ronaldo R. Doctor is hereby **MODIFIED** dismissing the complaint for illegal dismissal for lack of merit. Consequently, the awards of salaries equivalent to the unexpired portion of complainant's contract and moral and exemplary damages are hereby deleted.

The awards of salary differentials and attorney's fees are hereby sustained. Respondents Migrant Workers Manpower Agency, Inc., K&G Manpower Services Ltd., and Theresita M. Ceralde are hereby ordered to pay, jointly and severally, complainant the total aggregate amount of One Thousand Six Hundred Fifty New Zealand Dollars (NZD1,650.00) representing her salary differentials and attorney's fees.

All other disposition not inconsistent herein stays.

SO ORDERED.²⁴

Undaunted, petitioner moved for reconsideration. The same, however, was denied for lack of merit per Resolution²⁵ dated October 15, 2021.

Petitioner, thereafter, filed a Petition for *Certiorari* with the CA.

²² *Id.* at 49–52.

²³ *Id.* at 55–56.

²⁴ *Id.* at 57–58.

²⁵ *Id.* at 60–63.

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The CA Ruling

In the assailed Resolution²⁶ promulgated on June 14, 2022, the CA dismissed petitioners' Petition for *Certiorari* for being filed beyond the reglementary period. Prior to the filing of the Petition for *Certiorari*, petitioner filed a motion for extension of time praying for a 15-day extension from December 21, 2021 or until January 5, 2022 within which to file her petition as the current pandemic rendered her impossible to file the petition on time. Petitioner then filed her Petition for *Certiorari* on January 5, 2022.²⁷

In denying the motion and dismissing the Petition for *Certiorari*, the court explained that petitions for *certiorari* must be filed strictly within 60 days from the notice of judgment or from the order denying the motion for reconsideration; and that the 60-day time frame was non-extendible.²⁸

A motion for reconsideration was, thereafter, filed. On October 19, 2022, however, it was denied for lack of merit.²⁹ Hence, the instant Petition for Review on *Certiorari*.

Issues

I.

WHETHER OR NOT THE COVID19 PANDEMIC AND THE SURGE OF CASES THAT OCCURRED IN DECEMBER 2021 IS AN EXCEPTIONAL CIRCUMSTANCE OR COMPELLING REASON TO ALLOW THE PETITIONER AN EXTENSION OF TIME TO FILE A PETITION FOR *CERTIORARI* UNDER RULE 65 BEYOND THE SIXTY-DAY PERIOD.

....

II.

WHETHER OR NOT THE HONORABLE COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED PETITIONER'S COMPLAINT FOR ILLEGAL DISMISSAL.³⁰

²⁶ *Id.* at 190–193.

²⁷ *Id.* at 190–191.

²⁸ *Id.* at 192.

²⁹ *Id.* at 219–221.

³⁰ *Id.* at 242–243.

The Court's Ruling

The instant petition is meritorious.

The CA erred in denying the motion for extension of time to file Petition for Certiorari and dismissing the same for being filed beyond the reglementary period.

In the instant petition, petitioner begs this Court to relax the procedures and rule on the substantive issues raised in the petition. She claims that motions for extension to file a petition for *certiorari* are allowed and that the extension thereof is subject to the sound discretion of the court. Petitioner added that the COVID-19 pandemic and the deadly surge of cases are exceptional circumstances and compelling reasons to allow the extension of time to file a petition for *certiorari*.³¹

We are persuaded.

Under the Rules of Court, a petition for *certiorari* under Rule 65 shall be filed not later than 60 days from notice of the judgment, order, or resolution.³² With the issuance of A.M. No. 00-2-03-SC,³³ motions for extension of time to file petitions for *certiorari* were allowed for compelling reasons only. The rules, therefore, admit an exception and the filing of petitions for *certiorari* is now extendible, albeit only for compelling reasons.

In the case of *Fluor Daniel, Inc.-Philippines v. Fil-Estate Properties, Inc.*,³⁴ We enumerated several instances where the Court allowed an extension for filing a petition for *certiorari*, thus:

. . . when the assailed decision was contradictory to the evidence presented; in a motion for consolidation of several criminal cases, when the relief sought would be more in keeping with law and equity, and to facilitate a speedy trial, considering that there was substantial identity in the informations filed and the witnesses to be presented; where paramount public interest necessitated that the dispute involving the operation of a major power plant be resolved on the merits; where the case involved the expropriation of private property to build a major highway and no undue prejudice or delay will be caused to either party in admitting the petition; and when the appellate court had already granted an extension but later reversed itself. Furthermore,

³¹ *Id.* at 243–245.

³² RULES OF COURT, Rule 65, Section 4.

³³ Dated September 1, 2000.

³⁴ 866 Phil. 626 (2019) [Per J. Reyes, A., Jr., Second Division].

in *Castells, et al. v. Saudi Arabian Airlines*, the Court enumerated the following instances when the period to file a petition for *certiorari* may be extended:

(1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake, or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances.³⁵ (Citations and underscoring omitted)

In this case, We find that there is a compelling or special reason that warrants the allowance of an extension to file the Petition for *Certiorari*, that is, the surge of COVID-19 infection and the lockdowns brought about by such surge.

To recall, petitioner requested an extension of time to file a petition for *certiorari* before the CA. She reasoned that “in view of the difficulties of the present situation, such as the severe limitations on face to face meetings, verification with the NLRC, and restrictions on movement imposed by the authorities in order to combat the spread of this deadly disease, this petition cannot be filed on time.”³⁶ We take judicial notice that the COVID-19 pandemic paralyzed not only the Philippines but the whole world. During the latter part of 2021, there was a sharp increase in COVID-19 infections. Lockdowns and restrictions were then placed by the government to prevent and mitigate infections. During these lockdowns, offices, including government offices, were closed or at least transactions therewith were restricted. This was the situation during the period given by the rules for petitioner to file the petition for *certiorari* with the CA.

Taking into account the attendant circumstances in this case, the CA should have granted petitioner's Motion for Extension of Time to File a Petition for *Certiorari*. Instead of dismissing the petition due to technicalities, the CA should have ruled on the merits of the case. It is worth noting that petitioner

³⁵ *Id.* at 635–636.

³⁶ *CA rollo*, p. 3.

filed the Petition for *Certiorari* within the period of extension prayed for.

Petitioner was constructively dismissed from her employment.

Petitioner averred that she was illegally dismissed from her employment. She explained that respondents and her foreign employer committed gross violations of the contract, as she was paid less than the salary stated in the POEA-approved employment contract; she was regarded as a part-time employee and was not paid during holidays; she was maltreated by Vaine by verbally abusing her and threatening her with a knife. Her ordeal in the hands of Vaine, according to petitioner, is tantamount to illegal dismissal.³⁷

After a careful review of the records of the case, *vis-à-vis* the pertinent jurisprudence, We are constrained to grant the instant petition and declare petitioner constructively dismissed from her employment.

At the outset, the issue in this case involves a question of fact. It is settled that We do not generally pass upon question of facts as We accord great weight to the factual findings of labor officials. Notwithstanding, We are not precluded from making Our own factual determination when the factual findings of the tribunals below are conflicting, as in this case.³⁸

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.³⁹ 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 or her except to forego his or her continued employment.⁴⁰ 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. It is a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not.⁴¹

In this case, based on petitioner's narration of events, it is evident that she suffered at the hands of her foreign employer. Records show that she had experienced unbearable treatment from her foreign employer which compelled her to give up her employment and ask that she be released from her contract.

³⁷ *Id.* at 248–249.

³⁸ *Dela Fuente v. Gimenez*, G.R. No. 214419, November 17, 2021 [Per J. Zalameda, Third Division].

³⁹ *Macali v. Baliwag Lechon Manok, Inc.*, G.R. No. 251731, September 2, 2020 [Notice, Second Division].

⁴⁰ *Lagamayo v. Cullinan Group, Inc.*, G.R. No. 227718, November 11, 2021 [Per J. Lopez, First Division].

⁴¹ *Traveloka Philippines, Inc. v. Ceballos, Jr.*, G.R. No. 25469, February 14, 2022 [Per J. Perlas-Bernabe, Second Division].

Indubitably, there exists illegal constructive dismissal.

It is established that respondents committed a breach of the employment contract. Based on the POEA-approved employment contract, petitioner will work for 40 hours per week and will receive a salary of NZ\$400 per week.⁴² She will likewise receive holiday pay.⁴³ Finally, she will be provided a suitable accommodation during her employment.⁴⁴

In this case, however, petitioner established that she was made to work for only six hours a day, notwithstanding her willingness to work the full eight hours, and received NZ\$300.00 per day. This is clearly less than that stipulated in the employment contract.⁴⁵ Furthermore, Tairea failed to provide her accommodation. As found by the LA, petitioner was made to pay her accommodation despite the clear tenor of the employment contract that a suitable accommodation would be provided by her employer.⁴⁶

It bears stressing that the foregoing breach of contract is a sufficient ground for termination of the contract by the employee, viz.:

... The Employee may also terminate this contract without serving any notice to the Employer for any of the following just causes: serious insult by the Employer or his representative, inhumane and unbearable treatment accorded the Employee by the Employer or his representative; commission of a crime/offence by the Employer or his representative, and **violation of the terms and conditions of the employment contract by the Employer or his representative**. Employer shall pay the repatriation expenses back to the Philippines.⁴⁷ (Emphasis supplied)

Furthermore, petitioner claimed that her life with her foreign employer was like a life in hell. She narrated that she was verbally abused by Vaine and was even threatened with a knife. To recall, petitioner claims that she was verbally abused and insulted by Vaine. In one instance, while she was working, Vaine got angry at her and she was threatened, with a knife pointed at her, and was ordered to leave, to wit:

Ika-4 ng Setyembre taong 2019 habang ako ay nagtatrabaho at katulad ng madalas na nangyayari ay mainit ang ulo ni Ginang Vaine. Nariyang nag "rant" siya at nagumpisa na ako'y pagmumurahin at insultuhin. Naririnig ko ang mga salitang "STUPID", "IDIOT", "FUCK YOU" at marami pang iba. Mahinahon akong nagsalita at sinabi kay Ginang

⁴² CA rollo, p. 73.

⁴³ *Id.* at 74.

⁴⁴ *Id.*

⁴⁵ *Id.* at 99.

⁴⁶ *Id.* at 31.

⁴⁷ *Id.* at 96.

*Vaine "Antie Parau please stop insulting me because I respect you as a mother of my employer". LALO PO SIYANG NANGGALAITI O NAGALIT LALO, ITINUTOK NIYA BIGLA SA AKING ANG HAWAK NIYANG KUTSILYO. Ako'y napaatras at nagulat sa ginawa niya, nakiusap ako sa kanya at paulit ulit na sinasabi na "Antie please don't do that to me", PERO PATULOY PO SIYA SA PAGTUTOK NG KUTSILYO SA AKING MUKHA. Nanlilisik ang kanyang mata na senyales na siryoso siya, ng mag oras na yon alam ko na hindi ito katulad ng normal na [galit] ni Ginang Vaine, wala akong magawa kundi magmakaawa. Kasunod nito ay pinagtulakan na niya ako palabas ng pintuan ng kantina at sinabong "YOU GO HOME OR I KILL YOU! . . ."*⁴⁸

Interestingly, in her affidavit, Vaine did not refute such narration. However, she tried to brush aside the incident as a mere misunderstanding and explained that she was merely waving her hands at petitioner, while incidentally, holding a knife at the same time.⁴⁹ Such explanation, however, fails to persuade. As observed by the NLRC, Vaine threatened petitioner with a knife and told her, "YOU GO HOME OR I KILL YOU."⁵⁰ This, therefore, belies Vaine's claim that she had not threatened petitioner with a knife. Furthermore, to a lowly employee in a foreign land, such is a clear act of maltreatment and abuse.

Moreover, while Tairea and Vaine executed affidavits⁵¹ to support their contention that petitioner's employment was problematic, We find the same self-serving and utterly unsubstantiated. Their statements were uncorroborated by statements of other employees who could have witnessed the alleged attitude of petitioner during the latter's employment.

Even assuming that petitioner had committed wrongdoings or that there were indeed complaints against petitioner on her work ethic, threatening her with a knife and insulting her are beyond the scope of legality. Otherwise stated, petitioner's alleged attitude and/or work ethic during her employment cannot justify the actions of her foreign employers who maltreated her and even threatened her life.

The foregoing led petitioner to ask Tairea to release her from her employment, less she would continue to suffer at the hands of Vaine. Needless to state, the cessation of petitioner's employment was not of her own doing but was brought about by unfavorable circumstances created by her foreign employer. While We agree with the NLRC that it was petitioner who asked that her employment with Tairea be terminated, We hold that her supplication with Tairea was a result of an intolerable working environment brought about by Tairea and Vaine. We conclude that if not for the breach of contract and the

⁴⁸ *Id.* at 28.

⁴⁹ *Id.* at 141.

⁵⁰ *Id.* at 54.

⁵¹ *Id.* at 121–128; 137–143.

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maltreatment she suffered at the hands of her foreign employer, she could not have asked her employer to release her from her contract. We, therefore, cannot blame her for initiating the termination of her employment contract. Simply put, her working environment had become so intolerable that she was impelled to leave her job. This is the very essence of constructive dismissal.

Having been constructively dismissed, petitioner is entitled to the unexpired portion of her employment contract.

The pertinent portion of Section 10 of Republic Act (R.A.) No. 8042 (*The Migrant Workers and Overseas Filipinos Act of 1995*), as amended by R.A. No. 10022, reads:

....

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

....

It is now settled that the clause "or for three (3) months for every year of the unexpired term, whichever is less" is unconstitutional for violating the equal protection clause and substantive due process.⁵² Accordingly, an illegally dismissed employee is entitled to his/her salaries for the unexpired portion of her employment contract.⁵³

In this case, petitioner's employment contract provides that her employment in the Cook Island is for two years or 24 months. It is undisputed, however, that her employment with Tairea and Vaine lasted only for four months – May 23, 2019 to September 5, 2019. Since, as above discussed, petitioner was constructively dismissed from employment, she is entitled to the unexpired portion of the contract, i.e., 20 months.

Under the same provision of R.A. No. 8042, as amended, in cases of illegal dismissal, the worker shall likewise be entitled to the full reimbursement of his/her placement fee. In this case, while petitioner failed to present receipt/s pertaining to her payment of placement fee, petitioner was able to present a

⁵² *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 429 (2014) [Per J. Leonen, *En Banc*].

⁵³ *Jacob v. First Step Manpower Int'l. Services, Inc.*, 876 Phil. 771, 801 (2020) [Per J. Leonen, Third Division].

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document, wherein K&G admits that petitioner paid for her PHP 90,000.00 placement fee (PHP 65,000.00 as agency fee paid to Migrant, and PHP 25,500.00 payment for expenses in providing documents to Cook Islands).

During the proceedings with the LA, petitioner presented an Acknowledgement Receipt⁵⁴ which K&G gave petitioner for her to sign. In this document, K&G would like petitioner to receive the amount of PHP 5,500.00 and sign the document as proof of receipt thereof corresponding to partial reimbursement of the placement fee which petitioner paid to Migrant. There was, therefore, an admission on the part of K&G that petitioner paid the total amount of PHP 90,500.00 as placement fee. Petitioner, however, refused to sign the document as she planned to seek full reimbursement upon her return to the Philippines,⁵⁵ which she did upon her repatriation.

Petitioner, however, is not entitled to reimbursement for her alleged transportation expenses, as well as expenses for her accommodation and repatriation for her failure to substantiate such claims.

As to transportation expenses during her employment in the Cook Islands, there is nothing in the employment contract granting the same in her favor. In other words, there was no proof of her entitlement thereto. Anent her expenses for accommodation and repatriation, there is nothing on record to prove that she incurred the same. While she presented a list of her expenses,⁵⁶ the same lacks any probative value. The list is merely handwritten, and she made a mere enumeration of her expenses without any other document to support the same, such as receipts.

Nonetheless, We agree with the LA and the NLRC that petitioner is entitled to her salary differentials during the four months of her employment with Tairea and Vaine. To recapitulate, petitioner's supposed weekly salary of NZ\$400.00 was reduced to NZ\$300.00 as a result of her shortened working hours, that is, from 8 hours to 6 hours per day. Despite her willingness to render 8 hours of work per day as contained in the employment contract, petitioner was made to work for only 6 hours.

Anent the award of damages, We hold that petitioner is entitled to damages and attorney's fees.

Moral damages are recoverable if the termination is attended with bad faith, or fraud, or was oppressive to labor or done in a manner contrary to morals,

⁵⁴ CA *rollo*, p. 100.

⁵⁵ *Id.*

⁵⁶ *Id.* at 162.

good customs, or public policy and that social humiliation, wounded feelings, or grave anxiety resulted therefrom.⁵⁷ Exemplary damages, on the other hand, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner.⁵⁸

Vaine's conduct towards petitioner during the latter's employment in the Cook Islands is clearly abusive. Vaine's actions were nothing but oppressive. To recall, she uttered insulting words at petitioner and even threatened her with a knife. These left petitioner with no other recourse but to request her termination from employment.

Worse, instead of giving petitioner protection, respondents seemingly took advantage of her helpless condition by asking her to sign a Resignation Letter,⁵⁹ Letter of Apology,⁶⁰ and Acknowledgment Receipt.⁶¹ Petitioner was asked by K&G to sign a Waiver and Quitclaim⁶² as a prerequisite for her repatriation. Petitioner, however, refused to execute these documents as she was steadfast in her claim that she did nothing wrong, and signing the same would be contrary to her claim. Instead, petitioner executed a Letter of Dispute⁶³ narrating her ordeal at the hands of her foreign employer. With the foregoing in mind, an award of PHP 50,000.00 moral damages is, therefore, justified. Additionally, to deter the commission of similar actuations, an award of PHP 25,000.00 exemplary damages is also warranted.

Moreover, We agree with the LA that petitioner is entitled to attorney's fees. This is pursuant to the settled rule that award of attorney's fees equivalent to 10% of the total monetary award may be awarded to an employee in actions for indemnity under the employer's liability laws.⁶⁴ Finally, in line with prevailing jurisprudence, all monetary awards due to petitioner shall earn legal interest at the rate of six percent *per annum* from the finality of this Decision until fully paid.⁶⁵

From all the foregoing, We are constrained to set aside the Resolution of the CA dismissing the petition for *certiorari* for being filed out of time. The filing of petitioner's motion for extension of time to file a petition for *certiorari* is warranted as restrictions were imposed during the filing of the petition due

⁵⁷ *Ascent Skills Human Resources Services, Inc. v. Manuel*, G.R. No. 249843, October 6, 2021 [Per J. Zalameda, Third Division].

⁵⁸ *Jacob v. First Step Manpower Int'l. Services, Inc.*, *supra* note 53, at 797.

⁵⁹ CA rollo, p. 101.

⁶⁰ *Id.* at 105.

⁶¹ *Id.* at 100.

⁶² *Id.* at 78.

⁶³ *Id.* at 77.

⁶⁴ *Ascent Skills Human Resources Services, Inc. v. Manuel*, *supra* note 57.

⁶⁵ *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, September 20, 2022 [Per Acting C.J. Leonen, *En Banc*].

to the sharp increase in COVID-19 infections. This led to the difficulty in, if not the impossibility of, timely filing of a *certiorari* petition before the CA.

Furthermore, petitioner's case is meritorious. As records show, petitioner was constructively dismissed from her foreign employment. Respondents and her foreign employer breached the employment contract by paying her a salary less than that stipulated in the contract. She was likewise made to work for only six hours a day, again in violation of the employment contract. Worse, she suffered verbal abuse at the hands of her foreign employer. She was also threatened by her employer with a knife. All these led to her release from the contract and repatriation to the Philippines.

ACCORDINGLY, in view of the foregoing premises, the instant petition is **GRANTED**. The Court of Appeals Resolutions dated June 14, 2022, and the October 19, 2022, in CA-G.R. SP No. 171524 are **REVERSED and SET ASIDE**.

The January 27, 2021 Decision of the Labor Arbiter is **REINSTATED** in so far as it ruled that petitioner Melba Alcantara Denusta was illegally dismissed and that respondents Migrant Workers Manpower Agency, Inc., K&G Manpower Services Ltd., and Theresita M. Ceralde are ordered to pay, jointly and severally, her salary for the unexpired portion of her contract, as well as for salary differentials, and attorney's fees, with **MODIFICATIONS** that petitioner be entitled to an increased amount of moral damages, and exemplary damages, as well as reimbursement of placement fee. Accordingly, respondents are further **ORDERED to pay** petitioner Melba Alcantara Denusta the following:

1. Moral and exemplary damages in the amount of PHP 50,000.00 and PHP 25,000.00, respectively.
2. PHP 90,000.00, as reimbursement for the placement fee which petitioner paid to Migrant Workers Manpower Agency, Inc.

An interest of six percent (6%) per annum of the total monetary awards shall be imposed, computed from the time the complaint was filed until its full satisfaction.

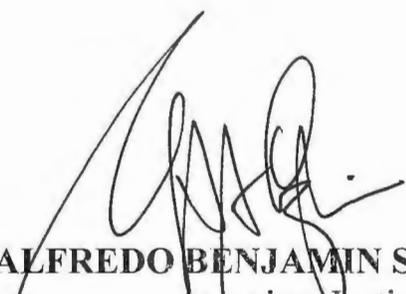
The Labor Arbiter is **ORDERED** to compute the total monetary benefits awarded and due the petitioner in accordance with this Resolution.

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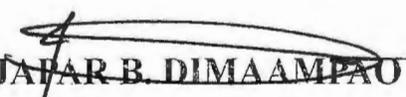
SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

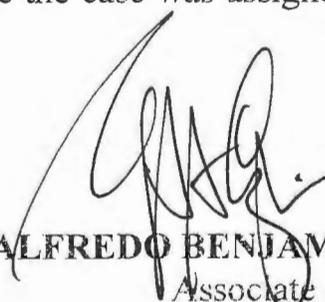

HENRI JEAN PAUL B. INTING
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice


MARIA PILOMENA D. SINGH
Associate Justice

ATTESTATION

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


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice

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