Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ERIKA KARIZZA T. POLINTAN,* **as sole proprietor of KARIZ POLINTAN ATELIER,** Petitioner,	**G.R. No. 268527**
	Present:
	LEONEN, *SAJ, Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.*
-versus-	
	Promulgated:
ARLENE C. MALABANAN, Respondent.	JUL 29 2024

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DECISION

LOPEZ, J., *J.*:

This Court resolves the Petition for Review on *Certiorari*[1] filed by Erika Karizza T. Polintan (Polintan), as sole proprietor of Kariz Polintan Atelier, assailing the Decision[2] and Resolution[3] of the Court Appeals (CA), which held that Polintan illegally terminated Arlene C. Malabanan (Malabanan) from employment.

Polintan is the sole proprietor of a business engaged in the production of custom-made wedding gowns operating under the name Kariz Polintan Atelier. On November 14, 2019, Polintan hired Malabanan to work as a "bead worker" or "beader" in her shop. When the pandemic hit, Kariz Polintan Atelier ceased operations on March 15, 2020 due to government-imposed

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* Also referred to as "Karizza Erika T. Polintan" in some parts of the *rollo*/records.

1 *Rollo*, pp. 14–63.

2 *Id.* at 65–73. The February 9, 2023 Decision in CA-G.R. SP No. 175641 was penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edwin D. Sorongon and Eduardo S. Ramos, Jr. of the Eighth Division, Court of Appeals, Manila.

3 *Id.* at 335–336. The August 2, 2023 Resolution in CA-G.R. SP No. 175641 was penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edwin D. Sorongon and Eduardo S. Ramos, Jr. of the Eighth Division, Court of Appeals, Manila.

lockdowns. On June 1, 2020, the government eased health quarantine protocols, which enabled Kariz Polintan Atelier to partly reopen its business. Subsequently, Polintan recalled her employees back to work, except for Malabanan.[4]

Dejected, Malabanan filed a complaint for constructive dismissal, money claims and damages against Polintan as sole proprietor of Kariz Polintan Atelier. Malabanan claimed that she was a regular employee, and she was terminated without due process. During her employment, she received a daily wage of PHP 500.00, which was below the prevailing minimum wage of PHP 537.00, during the material period.[5]

For her part, Polintan asserted that Malabanan was a part-time employee, and not a regular employee since her services were engaged only when a gown would require bead work. More, she had less than 10 employees, thus, her business was exempted from paying minimum wage. She also added that she had to downsize due to the health quarantine protocols imposed by the government during the pandemic.[6]

After due proceedings, the labor arbiter rendered a Decision,[7] which dismissed Malabanan's complaint. The labor arbiter held that Malabanan failed to prove the fact of her dismissal. Bare allegations of dismissal, unsubstantiated by any evidence on record, cannot be given credence.[8] Be that as it may, the labor arbiter granted Malabanan's claim for salary differentials from November 14, 2019 to March 15, 2020,[9] since Polintan never presented proof that she complied with the payment of minimum wage of PHP 537.00 set by the National Wages and Productivity Commission—National Capital Region (NWPC-NCR).[10] The labor arbiter underscored that Polintan failed to substantiate her allegation that she had less than 10 employees for her to be exempted from the payment of minimum wage.[11] The labor arbiter also awarded Malabanan a pro-rated 13th month pay as she worked from November 14, 2019 to March 15, 2020, and attorney's fees representing 10% of the total award since Malabanan was compelled to litigate to protect her rights and interests.[12]

The dispositive portion of the labor arbiter's Decision reads:

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4 *Id.* at 66.
5 *Id.*
6 *Id.*
7 *Id.* at 130–135. The February 21, 2022 Decision in NLRC-NCR Case No. 05-00775-21 was penned by Labor Arbiter Maki T. Datu Ramos II of Regional Arbitration NCR Branch, National Labor Relations Commission, Quezon City.
8 *Id.* at 132.
9 *Id.* at 133.
10 *Id.* at 134.
11 *Id.*
12 *Id.*

> WHEREFORE, premises considered, the complaint for constructive dismissal filed by Arlene C. Malabanan against respondent Kariz Polintan Atelier and Erika Karizza T. Polintan is DISMISSED for lack of merit.
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> However, Respondent Kariz Polintan Atelier and Erika Karizza T. Polintan is DIRECTED AND ORDERED to pay complainant in the total salary differentials, 13[th] month pay and attorney's fees equivalent to 10% of the monetary award, the copy of exact computation for the monetary award is hereto attached forming part of this Decision.
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> Claim for moral and exemplary damages and all other claims are DISMISSED for lack of merit.
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> SO ORDERED.[13]

The computation of Malabanan's monetary awards is shown below:

Awards:
1. Salary Differentials
2. 13th month pay
3. Ten [percent (10%)] Attorney's fees
Date Hired: 11/14/2019
Last Day of Work: 3/15/2020
Rate: [PHP] 500.00/day

Money Claims
A. Salary Differential
11/14/2019 3/15/2020 = 4.07 mos.
537.00 - 500.00 x 26 x 4.07 mos.= 3,915.34

B. 13th mo. Pay
11/14/2019 3/15/2020 = 4.07 mos.
537.00 x 26 x 4.07 mos./12= 4,735.45
Sub total 1 8,650.79
Ten [percent (10%)] Attorney's fees 865.08
Grand total [PHP] **9,515.87**[14] (Emphasis in the original)

Dissatisfied, both parties appealed to the National Labor Relations Commission (NLRC).[15]

The NLRC rendered a Decision,[16] which reversed the ruling of the labor arbiter. It held that there was no contract, written or otherwise, which clearly showed whether Malabanan was properly informed of her employment status with Kariz Polintan Atelier. Consequently, Malabanan enjoyed the

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13 *Id.* at 134–135.
14 *Id.* at 136.
15 *Id.* at 67.
16 *Id.* at 100–115. The June 27, 2022 Decision in NLRC LAC No. 05-001612-22/NLRC NCR Case No. 05-00775-21 was penned by Presiding Commissioner Joseph Gerard E. Mabilog and concurred in by Commissioners Agnes Alexis A. Lucero-De Grano and Donna Caluag Ramos of the Sixth Division, National Labor Relations Commission, Quezon City.

presumption of regular employment in her favor.[17] More, Polintan as sole proprietor of Kariz Polintan Atelier, was primarily engaged in the creation of bridal wear. Malabanan's work as a sewer of beads in wedding gowns was necessary or desirable in Polintan's business or trade. Hence, Malabanan was a regular employee.[18]

The NLRC underscored that under Department of Labor and Employment (DOLE) Department Order No. 215, Series of 2020 dated October 23, 2020 (DOLE Department Order No. 215-20), in the event of a pandemic, the employer and employee must meet in good faith to extend the suspension of employment for a period not to exceed six months.[19] In the present case, Polintan did not deny that her business resumed operations on June 1, 2020.[20] While the pandemic may have impacted Polintan's business, there was no evidence presented to establish that it suffered serious business losses. Given that Kariz Polintan Atelier had already resumed business operations on June 1, 2020, Polintan's failure to recall Malabanan within six months from her floating status had ripened to constructive dismissal.[21]

As for Malabanan's money claims, the NLRC ruled that she was entitled to the payment of backwages, 13th month pay, service incentive leave pay, and salary differentials.[22] The NLRC also held that Malabanan was entitled to moral and exemplary damages due to Polintan's failure to recall her to work without any valid reason. She was likewise entitled to attorney's fees since she was forced to litigate.[23]

The dispositive portion of the NLRC Decision states:

> WHEREFORE, premises considered, the appeal of complainant Arlene C. Malabanan is PARTIALLY GRANTED. The appeal of respondent Kariz Polintan Atelier and Erika Karizza T. Polintan is DENIED. The assailed Decision of Labor Arbiter Maki T. Datu-Ramos II is hereby REVERSED and SET ASIDE. Complainant Arlene C. Malabanan is respondents Kariz Polintan Atelier and Erika Karizza T. Polintan's regular employee. Respondents Kariz Polintan Atelier and Erika Karizza T. Polintan are ordered to reinstate complainant Arlene C. Malabanan to her former position without loss of seniority rights or diminution of benefits.
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> Moreover, respondents are ordered to pay complainant salary differentials from 14 November 2019 to 14 March 2020, within five (5) days from the finality of this decision, otherwise double indemnity would be imposed during execution pursuant to NLRC En Banc Resolution No.09-20, Series of 2020.

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17 *Id.* at 104–105.
18 *Id.* at 105–106.
19 *Id.* at 106.
20 *Id.* at 108.
21 *Id.* at 109.
22 *Id.* at 113.
23 *Id.* at 112–113.

> To date, complainant's total monetary award, as stated above, is P[HP] 491,763.78.
>
> Lastly, interest at the rate of six percent (6%) per annum shall be imposed on the monetary awards from date of finality of this Decision until full payment.
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> SO ORDERED.[24]

Polintan filed a Motion for Reconsideration, which was denied by the NLRC in its assailed Resolution.[25]

Unperturbed, Polintan elevated the case to the CA.[26]

The CA rendered a Decision,[27] which affirmed the ruling of the NLRC that Malabanan was illegally terminated from employment. Nonetheless, it deleted the awards for moral and exemplary damages and service incentive leave.[28] The dispositive portion of the CA Decision states:

> WHEREFORE, the instant petition is PARTLY GRANTED. The 27 June 2022 Decision and 29 July 2022 Resolution of the National Labor Relations Commission, Sixth Division, in NLRC LAC No. 05-001612-22, are AFFIRMED WITH MODIFICATION. As modified, the following awards are DELETED:
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> 1) Moral and exemplary damages; and
> 2) Service incentive leave.
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> SO ORDERED.[29]

Polintan filed a Motion for Partial Reconsideration, which was denied by the CA in its Resolution.[30]

Undaunted, Polintan filed the instant Petition.

Polintan argues that Malabanan is not a regular employee because her work is merely incidental to her business.[31] She asserts that DOLE Department Order No. 215-20, which limits the suspension of employment for a period not exceeding six months in case of a pandemic, does not apply

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24 *Id.* at 114.
25 *Id.* at 117–119. The July 29, 2022 Resolution in NLRC LAC No. 05-001612-22/NLRC NCR Case No. 05-00775-21 was penned by Presiding Commissioner Joseph Gerard E. Mabilog and concurred in by Commissioners Agnes Alexis A. Lucero-De Grano and Donna Caluag Ramos of the Sixth Division, National Labor Relations Commission, Quezon City.
26 *Id.* at 65.
27 *Id.* at 65–73.
28 *Id.* at 72.
29 *Id.* at 72–73.
30 *Id.* at 335–336.
31 *Id.* at 37–38.

to Malabanan because she works on-call or on a per-need basis.[32] More, Malabanan failed to prove the fact of her dismissal.[33]

Malabanan filed her Comment,[34] maintaining that she is a regular employee because her work is necessary and desirable to Polintan's business.[35] Polintan placed her on floating status beyond six months in violation of DOLE Department Order No. 215-20, which amounted to constructive dismissal.[36]

Issue

Whether petitioner Erika Karizza T. Polintan, as sole proprietor of Kariz Polintan Atelier, illegally dismissed respondent Arlene C. Malabanan from employment.

This Court's Ruling

The Petition lacks merit.

At the outset, this Court underscores that "[t]he regular employment status of a person is defined and prescribed by law and not by what the parties say it should be."[37] In other words, "what determines regular employment is not the employment contract, written or otherwise, but the nature of the job."[38]

Article 295 (formerly Article 280) of the Labor Code defines regular employment in this manner:

> Article 295. *Regular and Casual employment.* — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

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32 *Id.* at 40–45.
33 *Id.* at 54–55.
34 *Id.* at 338–353.
35 *Id.* at 340–342.
36 *Id.* at 343–345.
37 *Parayday v. Shogun Shipping Co., Inc.*, 876 Phil. 25, 52 (2020) [Per J. Hernando, Second Division]. (Citation omitted)
38 *Laurente v. Helenar Construction*, 902 Phil. 500, 505 (2021) [Per J. M. Lopez, Second Division]. (Citation omitted)

> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Article 295 of the Labor Code enumerates two types of regular employees. They are "(a) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (b) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed."[39]

Here, Malabanan served as a bead worker at Kariz Polintan Atelier for four months before the business ceased its operations due to health quarantine protocols implemented by the government.[40] To determine whether she was hired as a regular employee, "the standard supplied by the law itself is whether the work undertaken is necessary or desirable in the usual business or trade of the employer."[41] This can be assessed by looking into the nature of the services rendered by the employer and the particular activity performed by the employee in relation to the usual business of the employer.[42]

Undoubtedly, Kariz Polintan Atelier is a business engaged in the production of custom-made wedding gowns. Malabanan, as a bead worker, sews embellishments on these bridal wears, which enhance the over-all aesthetic design of these gowns.[43] While not all gowns require decorative elements, it suffices that Malabanan's work has a reasonable connection or impact on Polintan's core business, since the law uses the term necessary *or* desirable to the business of the employer. In this case, Malabanan incorporates decorative elements on the bridal wear, which completes the look of the product and certainly adds to its market value. Therefore, Malabanan, as a bead worker, is engaged in work that is necessary or desirable in the usual trade or business of Polintan, which makes her a regular employee of Kariz Polintan Atelier.

Even on the assumption that Malabanan was only needed when a bridal wear required bead work, the records are bereft of any evidence to prove that she signed an agreement or contract specifically indicating that she was hired only for this specific undertaking. In *Regala v. Manila Hotel Corp.*,[44] this Court held that employees enjoy the presumption of regular employment in their favor, in the absence of an agreement, whether written or otherwise, that

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39 *Regala v. Manila Hotel Corp.*, 887 Phil. 1, 27 (2020) [Per J. Hernando, Second Division]. (Citation omitted)

40 *Rollo*, p. 66.

41 *Laurente v. Helenar Construction*, 902 Phil. 500, 506 (2021) [Per J. M. Lopez, Second Division].

42 *Id.*

43 *Rollo*, p. 70.

44 887 Phil. 1 (2020) [Per J. Hernando, Second Division].

would establish that they were sufficiently informed of their employment status at the onset.[45] Consequently, the presumption of regular employment is accorded to Malabanan because there was no evidence on record that she was informed of the nature and status of her employment at the beginning.[46]

As a regular employee, Malabanan could only be dismissed for just or authorized cause after she had been accorded due process.[47]

At this juncture, it is well to note that Kariz Polintan Atelier had to suspend its operations due to government-imposed lockdowns on March 15, 2020. The shop reopened when the government eased health quarantine protocols on June 1, 2020. With this, Polintan recalled her employees back to work, except for Malabanan.[48] Consequently, Malabanan continued to be on floating status when Kariz Polintan Atelier resumed its business operations but did not recall her back to work.

When Kariz Polintan Atelier suspended its business operations, there was a temporary lay-off of its employees, including Malabanan. "[W]hen a lay-off is only temporary, the employment status of the employee is not deemed terminated, but merely suspended."[49] In *Pasig Agricultural Development and Industrial Supply Corp. v. Nievarez*,[50] this Court held that in the absence of a specific provision of law which treats of temporary retrenchment or lay-off, Article 301 (formerly Article 286) of the Labor Code may be applied by analogy to fill the hiatus.[51] Article 301 of the Labor Code, states:

> Article 301. *When Employment Not Deemed Terminated.* — The *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

In *Airborne Maintenance and Allied Services, Inc. v. Egos*,[52] this Court underscored that under Article 301 of the Labor Code, the suspension or temporary lay-off should not exceed six months. Employees should either be recalled to work or permanently retrenched after the said period. Failure to

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45 *Id.* at 26.
46 *Rollo*, p. 70.
47 *Parayday v. Shogun Shipping Co., Inc.*, 876 Phil. 25, 53 (2020) [Per J. Hernando, Second Division].
48 *Rollo*, p. 66.
49 *Pasig Agricultural Development and Industrial Supply Corp. v. Nievarez*, 771 Phil. 478, 487 (2015) [Per J. Peralta, Third Division]. (Citation omitted)
50 771 Phil. 478 (2015) [Per J. Peralta, Third Division].
51 *Id.* at 488.
52 851 Phil. 123 (2019) [Per J. Caguioa, Second Division].

comply with this rule constitutes illegal dismissal.[53] In *Airborne*, this Court explained:

> x x x Article 286 [now Article 301] may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status. Six months is the period set by law that the operation of a business or undertaking may be suspended thereby suspending the employment of the employees concerned. The temporary lay-off wherein the employees likewise cease to work should also not last longer than six months. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law, and that failing to comply with this would be tantamount to dismissing the employees and the employer would thus be liable for such dismissal.[54] (Citation omitted)

Significantly, on October 23, 2020, the DOLE issued DOLE Department Order No. 215-20,[55] which provides for the rules on suspension of employment relationship in case of a pandemic, among others. It states:

> SECTION 12. *Suspension of relationship.* — The employer-employee relationship shall be deemed suspended in case of suspension of operation of the business or undertaking of the employer for a period not exceeding six (6) months, unless the suspension is for the purpose of defeating the rights of the employees under the Code, and in case of mandatory fulfillment by the employee of a military or civic duty. The payment of wages of the employee as well as the grant of other benefits and privileges while he is **ON SUSPENDED EMPLOYMENT OR** on a military or civic duty shall be subject to **EXISTING** laws and decrees and to the applicable individual or collective bargaining agreement and voluntary employer practice or policy.
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> **IN CASE OF DECLARATION OF WAR, PANDEMIC AND SIMILAR NATIONAL EMERGENCIES, THE EMPLOYER AND THE EMPLOYEES, THROUGH THE UNION, IF ANY, OR WITH THE ASSISTANCE OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, SHALL MEET IN GOOD FAITH FOR THE PURPOSE OF EXTENDING THE SUSPENSION OF EMPLOYMENT FOR A PERIOD NOT EXCEEDING SIX (6) MONTHS: PROVIDED, THAT THE EMPLOYER SHALL REPORT TO THE DEPARTMENT OF LABOR AND EMPLOYMENT, THROUGH THE REGIONAL OFFICES, THE EXTENSION OF SUSPENSION OF EMPLOYMENT TEN (10) DAYS PRIOR TO THE EFFECTIVITY THEREOF SUBJECT TO INSPECTION; PROVIDED,HOWEVER, THAT THE EMPLOYEES SHALL NOT LOSE EMPLOYMENT IF THEY FIND ALTERNATIVE EMPLOYMENT DURING THE EXTENDED SUSPENSION OF EMPLOYMENT EXCEPT IN CASES OF WRITTEN, UNEQUIVOCAL AND VOLUNTARY RESIGNATION; PROVIDED FURTHER,THAT SHOULD RETRENCHMENT BE NECESSARY BEFORE OR AFTER THE EXPIRATION OF THE EXTENSION OF**

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53 *Id.* at 131.
54 *Id.*
55 *Rollo*, p. 107.

> **SUSPENSION OF EMPLOYMENT, THE AFFECTED EMPLOYEE SHALL BE ENTITLED TO SEPARATION PAY AS PRESCRIBED BY THE LABOR CODE, COMPANY POLICIES OR COLLECTIVE BARGAINING AGREEMENT, WHICHEVER IS HIGHER; PROVIDED, FINALLY, THAT THE RETRENCHED EMPLOYEES SHALL HAVE PRIORITY IN THE RE-HIRING IF THEY INDICATE THEIR DESIRE TO RESUME THEIR WORK NOT LATER THAN ONE (1) MONTH FROM THE RESUMPTION OF OPERATIONS.**
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> **THIS NOTWITHSTANDING, BY MUTUAL AGREEMENT OF THE EMPLOYER AND THE EMPLOYEES, THROUGH THE UNION, IF ANY, OR WITH THE ASSISTANCE OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, EMPLOYEES MAY BE RECALLED TO WORK OR RETRENCHED SUBJECT TO THE REQUIREMENT OF NOTICE AND SEPARATION PAY, ANYTIME BEFORE THE EXPIRATION OF THE EXTENSION OF SUSPENSION OF EMPLOYMENT.**
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> **THE EXTENSION OF SUSPENSION OF EMPLOYMENT SHALL NOT AFFECT THE RIGHT OF THE EMPLOYEES TO SEPARATION PAY. THE FIRST SIX (6) MONTHS OF SUSPENSION OF EMPLOYMENT SHALL BE INCLUDED IN THE COMPUTATION OF THE EMPLOYEES' SEPARATION PAY.** (Emphasis in the original)

In DOLE Department Order No. 215-20, the DOLE allowed the extension of the suspension of the employer-employee relationship when the operation of a business or undertaking is also bona fide suspended. While Article 301 of the Labor Code originally provides that the period of suspension shall not exceed six months, DOLE Department Order No. 215-20 provides that in case of pandemic and other similar national emergencies, the employer and employee shall meet in good faith to discuss the extension of the suspension of employment. Such extension of the suspension of the employment relationship shall not exceed six months. Should both reach an agreement, the employer must report such agreement to extend the suspension to the DOLE 10 days prior to its effectivity.[56]

Clearly, the rules on the temporary suspension of the employer-employee relationship were promulgated to recognize that while the employer may temporarily suspend its business operations during a pandemic, it must be carried out in such a manner that will not defeat the rights of the employees under the Labor Code.[57]

In the present case, Polintan suspended the operations of Kariz Polintan Atelier on March 15, 2020 due to government-imposed lockdowns, and

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56 DOLE Department Order No. 215 (2020), sec. 1.

57 *Keng Hua Paper Products Co., Inc. v. Ainza*, G.R. No. 224097, February 22, 2023 [Per J. Zalameda, First Division] at 8. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

resumed business on June 1, 2020 when the government eased health quarantine protocols. However, Malabanan remained on floating status from the time Kariz Polintan Atelier re-opened on June 1, 2020 until Malabanan filed her complaint for illegal dismissal on May 21, 2021.[58] There was nothing on record that would show that the parties filed for an extension of suspension of their employment relationship. Even so, Malabanan's floating status continued far beyond the six-month threshold permitted under Article 301 of the Labor Code and its extension under DOLE Department Order No. 215-20. Given that her temporary lay-off lasted for more than the threshold period permitted, she was, in effect, constructively dismissed from her employment.[59]

When there is constructive dismissal, the employee is entitled to reinstatement without loss of seniority rights and other privileges, and to backwages from the time they were unjustly dismissed from employment up to the time of actual reinstatement.[60] These twin reliefs of reinstatement and backwages accorded to an illegally dismissed employee was aptly discussed by this Court in *Advan Motor, Inc. v. Veneracion*,[61] in this manner:

> Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.[62] (Citations omitted)

Given that Malabanan was constructively dismissed from work, her reinstatement and award of backwages are in order. Her backwages should be computed from September 16, 2020, or the first day after the lapse of the six-month threshold period, up to the day of her actual reinstatement.

On Malabanan's claims for salary differential and 13th month pay, the burden rests on the employer to prove payment of these benefits, rather than for the employee to prove nonpayment.[63] The reason for this rule is "that all pertinent personnel files, payrolls, records, remittances and other similar documents—which will show that the differentials, Service Incentive Leave and other claims of workers have been paid—are not in the possession of the worker but are in the custody and control of the employer."[64]

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58 *Rollo*, p. 71.
59 *Superior Maintenance Services, Inc. v. Bermeo*, 844 Phil. 766, 772 (2018) [Per J. Reyes, Jr., Second Division].
60 LABOR CODE, as renumbered in 2015, art. 294.
61 822 Phil. 596 (2017) [Per J. Leonardo-De Castro, First Division].
62 *Id.* at 608.
63 *Bajaro v. Metro Stonerich Corp.*, 830 Phil. 714, 729 (2018) [Per J. Reyes Jr., Second Division].
64 *Id.* (Citation omitted)

During the material period, the prevailing minimum wage in the National Capital Region was PHP 537.00 per day, yet Malabanan was only paid PHP 500.00 per day. Polintan never refuted the fact that she only paid her PHP 500.00 per day, which is below minimum wage. She then claims that Kariz Polintan Atelier had less than 10 employees, and thus exempt from paying minimum wage to its employees.[65]

This Court is not persuaded.

As aptly pointed out by the NLRC, Polintan failed to present any evidence to substantiate her claim that she was exempted from compliance with the minimum wage law under Rule VII of NWPC Guidelines No. 03, Series of 2020 entitled Omnibus Rules on Minimum Wage Determination. Neither did she present a Barangay Micro Business Enterprise (BMBE) Certificate to prove such exemption.[66] "Mere allegation, without more, is not evidence and is not equivalent to proof."[67] Consequently, Malabanan is entitled to salary differentials from November 14, 2019 to March 15, 2020, because she was underpaid during her employment.[68]

More, Polintan also failed to prove that she paid Malabanan her pro-rated 13th month pay. While Polintan attached a Palawan Express *Pera Padala* Receipt Form for PHP 2,102.00, there was nothing in the form to indicate that it was for Malabanan's 13th month pay. Polintan also failed to explain why the Palawan Express *Pera Padala* Receipt Form was not submitted to the labor arbiter.[69]

In addition, this Court affirms the award of attorney's fees to Malabanan, pursuant to Article 2208[70] of the Civil Code because she was compelled to litigate to protect her rights.

Nonetheless, Malabanan is not entitled to receive service incentive leave pay, since she rendered service for only four months prior to her termination. Article 95 of the Labor Code states, "every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay." Hence, Malabanan is not entitled to

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65 *Rollo*, p. 110.

66 *Id.*

67 *South Cotabato Communications Corp. v. Hon. Sto. Tomas*, 787 Phil. 494, 511 (2016) [Per J. Velasco, Jr., Third Division]. (Citation omitted)

68 *Rollo*, p. 110.

69 *Id.* at 110–111.

70 CIVIL CODE, art. 2208, par. 2 states:
Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

. . . .

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest[.]

receive service incentive leave pay because she has not rendered service for at least one year.

Likewise, this Court affirms the need to delete the award of moral and exemplary damages. "Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor[.]"[71] Meanwhile, exemplary damages are awarded "when the dismissal was done in a wanton, oppressive, or malevolent manner."[72] To this Court, although the dismissal of Malabanan was illegal, it was not done in a malevolent or oppressive manner. Hence, the deletion of the award of moral and exemplary damages in her favor is in order.

ACCORDINGLY, the Petition is **DENIED.** The February 9, 2023 Decision and August 2, 2023 Resolution of the Court of Appeals in CA-G.R. SP No. 175641 are **AFFIRMED**.

Respondent Arlene C. Malabanan is a regular employee of petitioner Erika Karizza T. Polintan, as sole proprietor of Kariz Polintan Atelier. Petitioner Erika Karizza T. Polintan is **ORDERED to REINSTATE** respondent Arlene C. Malabanan to her former position without loss of seniority rights or diminution of benefits.

Petitioner Erika Karizza T. Polintan, as sole proprietor of Kariz Polintan Atelier, is **ORDERED to PAY** respondent Arlene C. Malabanan her salary differentials from November 14, 2019 to March 15, 2020, her pro-rated 13th month pay, attorney's fees, and backwages computed from September 16, 2020 up to the day of her actual reinstatement.

The monetary awards shall earn interest at the rate of 6% per annum from the date of finality of this Decision until full payment.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

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71 *Philippine Clearing House Corp. v. Magtaan*, 914 Phil. 305, 316–317 (2021) [Per J. Inting, Second Division].

72 *Id.* at 317.

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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