



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 26, 2021** which reads as follows:*

“G.R. No. 214288 (Jerwil C. Gava, Michael Santos, Rommel Matalang, and Nicomedes B. Canales, Jr., Petitioners, v. ABS-CBN Broadcasting Corporation¹ and Eugenio Lopez III, Respondents). – Before the Court is a Petition for Review under Rule 45 which seeks to reverse and set aside the Decision² dated 06 January 2014 and Resolution³ dated 29 August 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 126763. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the assailed Resolutions of the public respondent are **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack of or excess of jurisdiction. NLRC LAC No. 02-000851-12(8) (NLRC NCR CN, 07-10531-10) are hereby ordered **DISMISSED** with prejudice.

SO ORDERED.”⁴

Antecedents

The CA quoted the National Labor Relations Commission (NLRC) with respect to the respective positions of petitioners and ABS-CBN Broadcasting Corporation (ABS-CBN), *viz*:

Complainants alleged that they were regular employees of respondent ABS-CBN, having been hired directly by the company on the following dates with their respective positions and monthly salaries:

- over – ten (10) pages ...

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¹ Now ABS-CBN Corporation.

² *Rollo* ((Volume I), pp. 26-35; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla (now retired members of this Court) of the Court of Appeals, Manila.

³ *Id.* at 37-38.

⁴ *Rollo* (Vol. I), p. 34.

Michael Santos	Nov. 16, 2001	Sound Engineer	P32,000.00
Rommel Matalang	Nov. 16, 2001	Sound Engineer	P32,000.00
Nicomedes Canales Jr.	August 1999	Sound Engineer	P30,000.00
Jerwil Gava	Sept. 1, 2004	VTR Man/Video System Technician	P50,000.00

They alleged that upon their employment, they were required to undergo training to equip them with the necessary skills and knowledge and thereafter, they were assigned to the company's different television programs. They were part of the production group continuously tapped to film new programs to replace the concluded ones. They were supervised by ABS-CBN personnel; their work schedules were dictated by ABS-CBN and they were to follow strictly the company's rules and regulations. Complainants claimed that their employment records, such as their Certificates of Compensation/ Tax Withheld (BIR Form 2346), Social Security System and Pag-ibig Fund papers, Health Maintenance Cards and HDMF records, all indicated that ABS-CBN was their employer.

Being employees of ABS-CBN under the Internal Job Market (IJM) Workpool, complainants joined the ABS-CBN IJM Workers' Union. This move irked the respondents. ABS-CBN then allegedly coerced members of the union to sign a lopsided contract waiving their right to be regular employees of the latter. As a condition for signing said contract, complainants' pending case for regularization before the Court of Appeals should be withdrawn. Complainants refused to sign the contract. As a result, complainant Matalang was dismissed on August 16, 2010, while complainants Santos and Canales were dismissed on September 2, 2010. Complainant Gava was also dismissed in August 2010.

x x x

Traversing the complaint, respondent ABS-CBN explained that volatility in viewer preferences pushes the company to resort every now and then to production, although broadcasting remains to be its primary conditions, it adopted and implemented the Internal Job Marker (IJM) in 2002. The IJM is a database which provides the user with a list of accredited technical or creative manpower and/or talents who offer their services for a fee, the competency rating of the technical manpower and their corresponding professional rates. The IJM System thus eliminated or minimized the rigors of the recruitment and negotiation process between independent contractors/talents and internal producers. With the introduction of the IJM System, the producer is able to view information on the talent or technical/creative manpower, and his/her availability for projects by logging into the system or

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database. The talent or technical/creative manpower is then notified of the particular project/s for which his services are sought. If he accepts the offer, he communicated his agreement thereto and reports on the production date.

Talents or independent contractors who want to offer their services to ABS-CBN have to undergo accreditation under the IJM. Upon accreditation, they are not bound to exclusively or perpetually render services to ABS-CBN. They may offer their services to other networks or production companies, and are even free to disengage from the IJM with or without notice or reason.

Complainants were not subject to the same control which ABS-CBN exercises over its regular employees. Their fees are paid based on the services they rendered per program. They are not subject to disciplinary action but are, of course, expected to follow basic standards of good conduct because of their association with ABS-CBN and access to its facilities, equipment, premises, employees and officers. Supervision over their work is only as to the results and not the method they adopt to perform the same. They proceed on their own with the operation of their respective equipment or work performance. No supervision or training is necessary with regard to the performance of the tasks as they were engaged precisely because of their already acquired skill, experience and expertise.

Since complainants were not attached to a specific program, their professional fees varied. Their income depended on the number of programs they worked on, the latter's budget as well as the number of hours worked for the said programs. Complainants did not receive a fixed amount since there were times when their services were not required in any program. Complainants were well aware that their accreditation under the IJM did not make them regular employees of ABS-CBN.

Respondent ABS-CBN subsequently realized the need to adjust with the recent developments in the broadcast industry particularly the move towards a multi-media landscape. This triggered a review of the company's operations. It then started to identify jobs required by its business vis-à-vis the technological advancement. Consequently, it decided to offer employment contracts to independent contractors who manifested their interest to join the company towards this new direction. The company was thus surprised that complainants filed a case for illegal dismissal and other claims on September 9, 2010.⁵

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⁵ *Id.* at 27-28.



Rulings of the Labor Arbiter and the NLRC

Labor Arbiter Enrique L. Flores, Jr. (LA Flores) dismissed for lack of merit the consolidated complaints in his Decision⁶ dated 29 December 2011. On appeal, the NLRC dismissed the appeal and affirmed the Decision of LA Flores in its Resolution⁷ dated 24 April 2012. Petitioners filed a Motion for Reconsideration,⁸ which the NLRC denied in its Resolution⁹ dated 27 July 2012.

Thus, petitioners filed a Petition for *Certiorari*¹⁰ under Rule 65 of the Rules of Court, contending that the NLRC committed grave abuse of discretion when it found that there was no employer-employee relationship between the parties and in affirming the Decision of LA Flores.

Ruling of the CA

The CA annulled and set aside the assailed issuances of the NLRC in its Decision dated 06 January 2014. However, the CA ruled that the consolidated complaints filed by petitioners should remain dismissed, albeit on a different ground. To recall, the LA and the NLRC found petitioners' consolidated complaints without merit. The CA, however, found that the dismissal should be premised on forum shopping instead.

By instituting multiple complaints involving substantially the same issues before different Labor Arbiters, the CA held that petitioners committed forum shopping. It noted that "a similar case involving petitioners Santos, Malalang, and Canales" was long assigned to the Former Seventh Division of the Court of Appeals, docketed as CA-GR SP Nos. 108552 and 108976, captioned as "*Payonan, et al. vs. National Labor Relations Commission, et al.*" In the said case, CA Associate Justice Manuel M. Barrios found that all the elements of an employer-employee relationship were present, and the petitioners therein were regular employees of ABS-CBN.

Petitioners filed a Motion for Reconsideration¹¹ but it was denied by the CA in its Resolution dated 29 August 2014.

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⁶ *Id.* at 1460-1494.

⁷ *Id.* at 1663-1673

⁸ *Id.* at 1674- 1680

⁹ *Id.* at 1713-1715.

¹⁰ *Id.* at 64-100.

¹¹ *Id.* at 39-42.

Issue

The Court is presented with the issue of whether or not petitioners committed forum shopping when they filed the illegal dismissal case against ABS-CBN while the regularization case was still pending. Petitioners pray that in view of the pendency of the regularization case, this Court should at least suspend the proceedings in the illegal dismissal case so that the cause of action for illegal dismissal will not prescribe.

Ruling of the Court

The petition is meritorious.

*Petitioners did not commit
forum shopping*

Forum shopping exists when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court. It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It also degrades the administration of justice and adds to the already congested court dockets.¹²

There is forum shopping when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another. They are as follows: (a) identity of parties, or at least such parties that represent the same interests in both actions, (b) identity of rights or causes of action, and (c) identity of reliefs sought.¹³ Identity of causes of action, like identity of parties, does not mean absolute identity.¹⁴

Indeed, the parties in the regularization case and the illegal dismissal case are identical. However, there is no identity of rights or causes of action and the reliefs sought are different. Otherwise stated, the last two elements mentioned above are conspicuously absent. In

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¹² *Villamor & Victolero Construction Co. v. Sogo Realty and Development Corp.*, G.R. Nos. 218771 & 220689, 03 June 2019 [Per Justice (now CJ) Peralta].

¹³ *Villanueva v. Alentajan*, A.C. No. 12161, 08 June 2020 [Per J. Hernando].

¹⁴ *Philippine College of Criminology, Inc. v. Bautista*, G.R. No. 242486, 10 June 2020 [Per J. Leonen].

order to determine whether the causes of action are identical, the recent case of *Spouses De Guzman vs. Republic*¹⁵ is instructive:

The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint.

Here, the pieces of evidence that would determine whether the petitioners were illegally dismissed are not the same as those that would support their regularization case. The cause of action in the second case (illegal dismissal) did not exist at the time of the filing of the first complaint. It should be remembered that before the illegal dismissal case, petitioners were only asking ABS-CBN to recognize them as regular employees and to give them the benefits concomitant with regular employment.

In any event, the issue is laid to rest, in fact, by the Court *En Banc* in the consolidated cases of *Del Rosario vs. ABS-CBN Broadcasting Corporation*.¹⁶

Simply stated, in a regularization case, the question is whether the employees are entitled to the benefits enjoyed by regular employees even as they are treated as talents by ABS-CBN. On the other hand, in the illegal dismissal case, the workers likewise need to prove the existence of employer-employee relationship, but ABS-CBN must likewise prove that validity of the termination of the employment. Clearly, the evidence that will be submitted in the regularization case will be different from that in the illegal dismissal case.

Remand of the case is not necessary

Ordinarily, this case would have been remanded to the Court of Appeals in order to determine whether or not the NLRC committed grave abuse of discretion when it affirmed the Decision of LA Flores

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¹⁵ G.R. No. 199423, 09 March 2020 [Per J. Carandang].

¹⁶ G.R. No. 202481, 25 August 2020 [Per Curiam].

which dismissed the case after finding that herein petitioners are not employees of ABS-CBN but are independent contractors.

It is an established rule for this Court not to remand cases where it is in a position to resolve the dispute based on the records before it.¹⁷ Considering that the records of this case have been elevated to the Court¹⁸ plus the parties have attached copies of documents in their pleadings, coupled with the fact that the case has been pending for so long already, not to mention that the Court had recently rendered decisions,¹⁹ which are substantially of the same factual milieu, We deem it to look into the merits of the illegal dismissal case in the interest of substantial justice.

Petitioners are regular employees of ABS-CBN

It must be noted that petitioners, except Jerwil C. Gava, are parties to the *Payonan* case penned by Justice Barrios, and which recently was decided in the consolidated cases of *Del Rosario vs. ABS-CBN Broadcasting Corporation*.²⁰ In the Decision, the Court *En Banc* held that the workers are regular employees and the IJM System of ABS-CBN is a workpool of regular employees.

While not a party to the case, the ruling applies in equal force to petitioner Jerwil C. Gava, as the records show that he has the same arguments and similar pieces of evidence to prove his being an employee of ABS-CBN.

Petitioners were illegally dismissed.

Having ruled by no less than the Court *En Banc* that petitioners are regular employees of ABS-CBN, the only issue left for the Court to decide is whether they were illegally dismissed. We answer in the affirmative.

Employees may not be terminated from their regular employment except for just or authorized causes under the Labor

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¹⁷ *Pfleider v. People*, G.R. No. 208001, 19 June 2017, 811 Phil. 151 (2017) [Per J. (now CJ) Peralta].

¹⁸ In the Resolution dated 09 August 2017, the Court noted the letter of Aurora A. Mua, transmitting to the Court, the CA rollo and original records of the case.

¹⁹ See *Del Rosario vs. ABS-CBN Broadcasting Corporation*, G.R. No. 202481, 25 August 2020 [Per J. Caguioa]; *ABS-CBN Corporation vs. Concepcion*, G.R. No. 230576, 05 October 2020.

²⁰ *Del Rosario vs. ABS-CBN Broadcasting Corporation*, G.R. No. 202481, 25 August 2020 [Per Curiam].

Code since security of tenure is a constitutionally guaranteed right.²¹ In this case, petitioners were illegally dismissed, because their dismissal do not fall under the just²² or authorized causes.²³

Except for the claim that petitioners are not its employees but are independent contractors, it is not shown that the termination of petitioners by ABS-CBN fall under the just or authorized causes. It appears that they were simply denied access to the company.

Employees, like herein petitioners, who are unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to their full backwages, inclusive of allowances, and to their other benefits or their monetary equivalent computed from the time their compensation were withheld from them up to the time of their actual reinstatement.²⁴

In computing the backwages of herein petitioners, the recent case of *ABS-CBN Corporation vs. Jaime Concepcion*²⁵ is instructive:

In computing for the backwages, this Court deems it wise to apply the case of *Maraguinot*,²⁶ where this Court aptly discussed:

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²¹ *SME Bank, Inc. vs. De Guzman*, G.R. No. 184517, 08 October 2013, 719 Phil. 103 (2013) [Per CJ Sereno].

²² LABOR CODE, Article 297. *Termination by Employer*. -An employer may terminate an employment for any of the following causes:

- a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b) Gross and habitual neglect by the employee of his duties;
- c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- e) Other causes analogous to the foregoing. (As renumbered by Republic Act No. 10151.)

²³ LABOR CODE, Article 298. *Closure of Establishment and Reduction of Personnel*. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at months shall be considered one (1) whole year. (As renumbered by Republic Act No. 10151.)

²⁴ *Philippine National Oil Company- Energy Development Corporation vs. Buenviaje*, G.R. No. 183200-01, 29 June 2016 [Per J. Jardeleza].

²⁵ G.R. No. 230576, 05 October 2020.

²⁶ G.R. No. 120969, 22 January 1998, 348 Phil. 580 (1998) [Per J. Davide, Jr.].

In closing then, as petitioners had already gained the status of regular employees, their dismissal was unwarranted, for the cause invoked by private respondents for petitioners' dismissal, viz.: completion of project, was not, as to them, a valid cause for dismissal under Article 282 of the Labor Code. As such, petitioners are now entitled to back wages and reinstatement, without loss of seniority rights and other benefits that may have accrued. Nevertheless, following the principles of "suspension of work" and "no pay" between the end of one project and the start of a new one, in computing petitioners' back wages, the amounts corresponding to what could have been earned during the periods from the date petitioners were dismissed until their reinstatement when petitioners' respective Shooting Units were not undertaking any movie projects, should be deducted.

In addition to backwages, petitioners are entitled to 13th month pay, and holiday pay, computed by deducting the amounts corresponding to the periods that petitioners' production group was not engaged in the shooting of programs. Likewise, petitioners are entitled to attorney's fees equivalent to ten percent of the total monetary award. All amounts due shall earn legal interest pursuant to *Nacar v. Gallery Frames*.²⁷

There is, however, a need to remand the case to the Labor Arbiter for the computation of the monetary awards. In this regard, ABS-CBN is directed to provide the necessary data to enable the Labor Arbiter to compute such awards, in the light of this Decision.

WHEREFORE, the Petition is hereby **GRANTED**. The Decision dated 06 January 2014 and Resolution dated 29 August 2014 of the Court of Appeals in CA-G.R. SP No. 126763, are **REVERSED and SET ASIDE**. The case is **REMANDED** to the Labor Arbiter, through the National Labor Relations Commission, for the computation of backwages and other monetary benefits. Respondents ABS-CBN Corporation and Eugenio Lopez III are **DIRECTED** to furnish the Labor Arbiter the necessary and relevant data to fast track the computation.

The letter dated March 3, 2020 of Commissioner Greco Belgica, Office of the President, Presidential Anti-Corruption Commission, addressed to the Court Administrator, this Court, forwarding the letter from "mga dating manggagawa ng ABS-CBN Broadcasting Corporation" for appropriate action; and the petitioners'

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²⁷ G.R. No. 189871, 13 August 2013, 716 Phil. 267 (2013) [Per J. (now CJ) Peralta].



undated letter, addressed to Commissioner Greco Belgica, Presidential Anti-Corruption Commission, Office of the President, Palacio del Gobernador, Intramuros, Manila, seeking assistance in the instant case, are both **NOTED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *m 6/4*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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