Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HERMA SHIPPING AND TRANSPORT CORPORATION and HERMINIO S. ESGUERRA,* Petitioners,	**G.R. No. 244144**
- versus -	
CALVIN JABALLA CORDERO, Respondent,	
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CALVIN JABALLA CORDERO, Petitioner,	**G.R. No. 244210**
- versus -	Present:
HERMA SHIPPING AND TRANSPORT CORPORATION and HERMINIO S. ESGUERRA, Respondents.	PERLAS-BERNABE, *S.A.J.*, Chairperson, REYES, A., JR.,** HERNANDO,*** INTING, and DELOS SANTOS, *JJ.*
	Promulgated: 27 JAN 2020

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D E C I S I O N

PERLAS-BERNABE, *J.*:

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* "Hermenio S. Esquera" in some parts of the records.
** On official leave.
*** On official leave.

Assailed in these consolidated cases[1] are the Decision[2] dated April 20, 2018 and the Resolution[3] dated January 14, 2019 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 151737 which affirmed with modification the February 28, 2017 Decision[4] and the April 27, 2017 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000457-17 NLRC NCR Case No. 05-05780-16, directing Herma Shipping and Transport Corporation (HSTC) and Herminio S. Esguerra (Esguerra) to pay Calvin Jaballa Cordero (Cordero) separation pay equivalent to one (1) month salary for every year of service.

The Facts

Cordero was employed on March 31, 1992 as Able Seaman by HSTC, a corporation engaged in the business of hauling, shipping and/or transporting oil and petroleum products in Philippine waters, on board one of its vessels. During his employment, Cordero was part of the complement of *M/Tkr Angat*, where one of his primary duties entailed being a Helmsman or a duty look-out during vessel navigation.[6]

Sometime in 2015, HSTC discovered significant losses of the oil and petroleum products transported by *M/Tkr Angat* during its past twelve (12) voyages. Consequently, HSTC conducted an investigation and sent a Notice to Explain/Show Cause Memo on January 28, 2016 to five (5) crew members, including Cordero, requiring them to submit a written explanation for allegedly committing: (*a*) violation of HSTC's Code of Discipline; (*b*) Serious Misconduct; and (*c*) Willful Breach of Trust and Confidence. Pending the investigation, the five (5) crew members were placed on preventive suspension.[7]

In his defense, Cordero denied the allegations against him and claimed that he did not see anything unusual or suspicious during the voyages, and that if there were any such case, he did not see them due to his poor eyesight.[8] After HSTC found Cordero's explanation insufficient, he was dismissed from employment through a Notice of Termination dated March 8, 2016.[9] This prompted Cordero to file a complaint[10] for illegal dismissal and payment of

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1 See petition, *rollo* (G.R. No. 244144), pp. 3-52; and petition, *rollo* (G.R. No. 244210), pp. 23-52.
2 *Rollo* (G.R. No. 244144), pp. 60-69; and *rollo* (G.R. No. 244210), pp. 57-66. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Sesinando A. Villon and Rafael Antonio M. Santos, concurring.
3 *Rollo* (G.R. No. 244144), pp. 71-74; and *rollo* (G.R. No. 244210), pp. 68-71.
4 *Rollo* (G.R. No. 244144), pp. 103-121; and *rollo* (G.R. No. 244210), pp. 100-118. Penned by Commissioner Bernardino B. Julve, with Commissioner Leonard Vinz O. Ignacio and Presiding Commissioner Grace M. Venus, concurring.
5 *Rollo* (G.R. No. 244144), pp. 123-129; and *rollo* (G.R. No. 244210), pp. 120-126.
6 See *rollo* (G.R. No. 244144), pp. 60-61.
7 See id. See also id. at 149 and 174.
8 See id. at 62.
9 See id. at 237.
10 Id. at 130-131.

13th month pay, separation pay, damages, and attorney's fees against HSTC and Esguerra, as its Chief Executive Officer,[11] before the NLRC.

For their part, HSTC and Esguerra contended that the significant losses in the oil and petroleum products were confirmed after using a Four Point Analysis, an accepted formula adopted in the oil shipping industry to determine oil/petroleum loss during a sea voyage. Moreover, a suspicious event was captured and recorded by *M/Tkr Angat*'s CCTV camera, showing an unknown boat navigating its way at the side of the vessel, crew members coming out of their quarters, examining/investigating, and waving off the boat, and the blocking/covering of the CCTV camera for three (3) hours between December 26 and 27, 2015.[12] They maintained that Cordero, as *M/Tkr Angat*'s Helmsman/Watchman, was undoubtedly aware of the oil pilferage; having had a vantage point from the bridge of the vessel, he would not have missed any boat or vessel that will approach *M/Tkr Angat* from the side. Likewise, Cordero would have seen who removed the cover of the CCTV camera that was blocked. However, despite the incident, Cordero did not report any irregularity to HSTC.[13]

The Labor Arbiter Ruling

In a Decision[14] dated November 21, 2016, the Labor Arbiter (LA) found Cordero's employment to have been validly terminated and thus, dismissed the complaint for lack of merit.[15] The LA ruled that there was substantial evidence to show that Cordero participated in the oil pilferage while navigating at sea. Hence, he committed Serious Misconduct and Willful Breach of Trust and Confidence when he perpetrated a serious infraction amounting to theft of property entrusted to him.[16]

Aggrieved, Cordero appealed[17] to the NLRC.

The NLRC Ruling

In a Decision[18] dated February 28, 2017, the NLRC affirmed the LA's dismissal of the complaint[19] upon a finding that Cordero was validly dismissed for a just cause. It explained that for failure to call out the irregularity during his duty and report the same to HSTC, Cordero committed

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11 Id. at 61.
12 See id. at 62 and 388-389.
13 See id. at 389-390.
14 Id. at 382-398. Penned by Labor Arbiter Nicolas B. Nicolas.
15 Id. at 398.
16 Id. at 395-398.
17 See Notice of Appeal and Memorandum of Appeal dated January 13, 2017; id. at 399-416.
18 Id. at 103-121.
19 See id. at 121.

a dereliction of duty that amounted to Serious Misconduct.[20] Moreover, Cordero also committed Willful Breach of Trust and Confidence, since he was considered as a fiduciary rank-and-file employee who was entrusted with the care and custody of HSTC's vessel and the oil it transported.[21] Finally, the NLRC found that HSTC and Esguerra complied with the procedural due process rule in terminating Cordero's employment, having been apprised of the charges against him and given the opportunity to be heard.[22]

Dissatisfied, Cordero moved for reconsideration,[23] which was denied in a Resolution[24] dated April 27, 2017. Hence, the matter was elevated to the CA *via* a petition for *certiorari*.[25]

The CA Ruling

In a Decision[26] dated April 20, 2018, the CA affirmed the NLRC Decision with a modification directing HSTC and Esguerra to pay Cordero separation pay equivalent to one (1)-month salary for every year of service from March 1992 until finality of judgment.[27] While the CA concurred with the labor tribunals' finding that Cordero's employment was validly terminated for a just cause, it found that the penalty of dismissal was too harsh under the following circumstances: (*a*) Cordero worked for HSTC for twenty-four (24) years; (*b*) the incident while he was on duty was his first offense; (*c*) he had no derogatory record; and (*d*) he was already preventively suspended for the infractions he committed.[28] Accordingly, the CA remanded the case to the LA for the proper computation of separation pay.[29]

Undeterred, both parties respectively moved for reconsideration.[30] In their motion for reconsideration, HSTC and Esguerra maintained that Cordero was validly dismissed; hence, there was no basis for the CA's award of separation pay. They likewise took exception to the CA's observation that the penalty of dismissal was "too harsh" under the circumstances, considering that there was just cause for the termination of Cordero's employment.[31] On the other hand, Cordero insisted in his motion for partial reconsideration that there was no just cause for dismissal, hence, he was illegally dismissed.[32]

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20 See id. at 112-113.
21 See id. at 115-117.
22 See id. at 118-119.
23 See motion for reconsideration dated March 31, 2017; id. at 475-490.
24 Id. at 123-129.
25 Dated July 20, 2017. Id. at 75-100.
26 Id. at 60-69.
27 Id. at 68.
28 Id. at 64-68.
29 Id. at 68.
30 See motion for reconsideration of HSTC and Esguerra dated May 17, 2018; *rollo* (G.R. No. 244144), pp. 906-938. See motion for partial reconsideration of Cordero dated May 17, 2018; id. at 941-946.
31 See id. at 909-923.
32 See id. at 942-944.

Both motions were denied in a Resolution[33] dated January 14, 2019; hence, this petition.

The Issue Before the Court

The present controversy revolves around the CA's award of separation pay in favor of Cordero.

In the petition docketed as **G.R. No. 244144**, HSTC and Esguerra submit that the CA erred in awarding separation pay in favor of Cordero, considering that there was just cause to validly dismiss him. Further, they disagree with the CA's ruling that the penalty of dismissal was "too harsh" under the circumstances for being contrary to law and prevailing jurisprudence. On the other hand, in the petition docketed as **G.R. No. 244210**, Cordero insists that the CA erred in affirming the labor tribunals' finding that he was validly dismissed and that he is not entitled to his monetary claims.

The Court's Ruling

The petition in **G.R. No. 244144** is granted, while the petition in **G.R. No. 244210** is denied.

At the outset, the settled rule is that the Court's jurisdiction in a petition for review on *certiorari* is limited to resolving only questions of law. A question of law arises when doubt exists as to what the law is on a certain state of facts, while there is a question of fact when doubt arises as to the truth or falsity of the alleged facts.[34]

In this case, Cordero's petition in G.R. No. 244210 is anchored on his factual allegations that no just cause existed for HSTC and Esguerra to dismiss him validly from employment, as he continuously denies participation in the oil pilferage that transpired during the significant voyages in 2015.

Considering that questions of fact are generally proscribed in a Rule 45 petition, and that although there are jurisprudentially recognized exceptions[35]

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33 *Rollo* (G.R. No. 244144), pp. 71-74.

34 *Heirs of Teresita Montoya v. National Housing Authority*, 730 Phil. 120, 132-133 (2014).

35 In *Naguit v. San Miguel Corporation*, 761 Phil. 184, 193 (2015), the Court noted the following exceptions to the general rule that questions of fact can no longer be raised in a Rule 45 petition: "(1) the findings are grounded entirely on speculations, surmises, or conjectures; (2) the inference made is manifestly mistaken, absurd, or impossible; (3) there is a grave abuse of discretion; (4) the judgment is based on misappreciation of facts; (5) the findings of fact are conflicting; (6) in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record."

to this rule, none exists in the present case. The correctness of the labor tribunals' factual finding that he had, in fact, participated in the oil pilferage while navigating at sea, which resulted in losses for HSTC, as affirmed by the CA, is upheld.

In this regard, it deserves mentioning that factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA, as in this case.

Accordingly, in view of the existence of a just cause for termination, Cordero's dismissal was valid and his petition in G.R. No. 244210 is denied for lack of merit.

That being said, the Court now determines whether or not the CA correctly awarded separation pay in favor of Cordero "as a measure of compassionate justice" in the exercise of its "equity jurisdiction,"[36] which is the issue in G.R. No. 244144.

In *Manila Water Company v. Del Rosario* (*Manila Water Company*),[37] the Court succinctly explained:

> **As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay**. Section 7, Rule I, Book VI of the Omnibus Rules implementing the Labor Code provides:
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> > Sec. 7. *Termination of employment by employer.* — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.
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> **In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee**.[38] (Emphases and underscoring supplied)

Hence, in the cases of *Philippine Long Distance Telephone Company v. NLRC*[39] and subsequently, *Toyota Motor Phils. Corp. Workers Association*

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36 *Rollo* (G.R. No. 244144), p. 73.
37 725 Phil. 513 (2014).
38 Id. at 521; citations omitted.
39 247 Phil. 641, 649 (1988); emphasis and underscoring supplied.

v. NLRC,[40] the Court stressed that "separation pay shall be allowed as a measure of social justice only in the instances where the employee is validly dismissed for causes **other than serious misconduct or those reflecting on his moral character**." As the Court declared:

> Where the reason for the valid dismissal is, for example, habitual intoxication or **an offense involving moral turpitude, like theft** or illicit sexual relations with a fellow worker, **the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice**.
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> **A contrary rule would, as the petitioner correctly argues, have the effect of rewarding rather than punishing the erring employee for his offense**. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.
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> **The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged**. At best[,] it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[41] (Emphases and underscoring supplied)

Applying the foregoing principles, the Court, in the case of *Daabay v. Coca-Cola Bottlers Phils., Inc.*,[42] disallowed the grant of separation pay to an employee who was found guilty of stealing the company's property. Likewise, in *Manila Water Company*,[43] the Court similarly denied the award of separation pay to the employee who was found responsible for the loss of the water meters in flagrant violation of the company's policy. Indeed, equity as an exceptional extenuating circumstance does not favor, nor may it be used to reward, the indolent or the wrongdoer for that matter. This Court will not allow a party, in guise of equity, to benefit from his own fault.[44]

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40 562 Phil. 759, 810 (2007); emphasis and underscoring supplied.

41 *Toyota Motor Phils. Corp. Workers Association v.* NLRC; id. at 810; and *Philippine Long Distance Telephone Company v. NLRC*, supra note 39, at 649-650.

42 See 716 Phil. 806 (2013).

43 Supra note 37.

44 Id. at 524.

Considering the foregoing, the CA erred in awarding separation pay to Cordero "as a measure of compassionate justice."

That Cordero had been employed with HSTC for twenty-four (24) years does not serve to mitigate his offense nor should it be considered in meting out the appropriate penalty therefor. In fact, it may be reasonably argued that the infraction that he committed against HSTC, *i.e.,* theft of invaluable company property, demonstrates the highest degree of ingratitude to an institution that has been the source of his livelihood for twenty-four (24) years, constitutive of disloyalty and betrayal of the trust and confidence reposed upon him.[45] Indeed, HSTC's full trust and confidence in him, coupled with the fact that he occupied a position that allowed him full access to HSTC's property, aggravated the offense. In *Manila Water Company,*[46] the Court refused to take into account the errant employee's length of service of more than twenty (20) years, considering that his violation reflects "a regrettable lack of loyalty and worse, betrayal of the company,"[47] *viz.*:

> Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity under the Labor Code nor under our prior decisions. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. **If an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables**.[48] (Emphasis and underscoring supplied)

Further, it would appear that the offense for which Cordero was validly dismissed in 2016 was not his first offense, thereby negating the CA's finding[49] that he had no previous derogatory record. The fact that Cordero had been given Notices to Explain in 2003 and another in 2013[50] for entirely different offenses only proves that he had committed infractions against HSTC even prior to the present incident of oil pilferage. Moreover, while it is true that Cordero remained in the employ of HSTC until his dismissal in 2016, HSTC's right as an employer to call out, investigate, and eventually, dismiss him for just cause must still be recognized. On this score, it must be pointed out that the last offense that Cordero committed against HSTC constitutes Serious Misconduct, which resulted in the latter's loss of trust and confidence in him. Hence, the penalty of dismissal cannot be considered as "too harsh" under the circumstances.

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45 See *Duque III v. Veloso*, 688 Phil. 318, 326 (2012).
46 Supra note 37.
47 Id. at 525.
48 Id. at 524-525; citing *Central Pangasinan Electric Cooperative, Inc. v. NLRC*, 555 Phil. 134, 139-140 (2007).
49 See *rollo* (G.R. No. 244144), pp. 67-68 and 73.
50 See id. at 30-31 and 372-373.

Having established that Cordero's employment was terminated for just cause and that he was therefore validly dismissed, as well as the fact that the infractions he committed against HSTC involve moral turpitude and constitute Serious Misconduct, the award of separation pay in his favor is devoid of basis in fact and in law. Accordingly, the same must be deleted.

WHEREFORE, the petition in **G.R. No. 244144** is **GRANTED**, while the petition in **G.R. No. 244210** is **DENIED**. Accordingly, the Decision dated April 20, 2018 and the Resolution dated January 14, 2019 rendered by the Court of Appeals in CA-G.R. SP No. 151737 are hereby **AFFIRMED** with **MODIFICATION** deleting the award of separation pay in favor of Calvin Jaballa Cordero. The rest of the Decision stands.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

WE CONCUR:

On official leave
ANDRES B. REYES, JR.
Associate Justice

On official leave
RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

ATTESTATION

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

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second 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 cases were assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice