Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SITE FOR EYES, INC. (formerly DELOS REYES OPTICAL CITY, INC.),	**G.R. No. 241814**
Petitioner,	**Present:**
	LEONEN, *J.*, *Chairperson*,
	HERNANDO,
	INTING,
- versus -	ROSARIO,* and
	LOPEZ, J., *JJ.*
	Promulgated:
DR. AMOR F. DAMING,	
Respondent.	June 30, 2021
	Mis-DeBatt

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DECISION

LOPEZ, J., *J.*:

This Court resolves the Petition for Review on Certiorari[1] assailing the Decision[2] dated May 10, 2018 and the Resolution[3] dated August 7, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 08314, which affirmed the findings of the National Labor Relations Commission (NLRC) in NLRC Case No. MAC-02-014783-2017 (RAB-10-05-00399-2016).

The Antecedents

Petitioner Site for Eyes, Inc. (formerly Delos Reyes Optical City, Inc.) is a domestic corporation engaged in dispensing optical lenses, solutions, and equipment necessary to the operation and conduct of its business.[4]

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* Designated additional member, per Special Order No. 2833 dated June 29, 2021.

1 *Rollo*, pp. 14-43A.

2 Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Ruben Reynaldo G. Roxas and Walter S. Ong, concurring; *id.* at 45-54.

3 *Id.* at 56-57.

4 *Rollo*, p. 66, see also p. 158.

On November 20, 2012, petitioner hired Dr. Amor F. Daming (respondent) as an Optometrist for its shop located at the Ayala Centro Mall in Cagayan de Oro City. She worked there until October 15, 2013. On April 8, 2014, she was rehired when she signed an employment contract for one (1) year with a monthly salary of ₱28,000.00. Her employment was again renewed on April 20, 2015 which was supposed to end on April 20, 2016 for an increased monthly salary of ₱33,000.00. However, she was not given the ₱5,000.00 salary increase despite repeated demands. Hence, on March 22, 2016, respondent, along with two (2) of her co-employees, filed a request for assistance before the Department of Labor and Employment under the Single Entry Approach (SEnA) to recover her unpaid salary, salary differential, overtime pay, 13th month pay, separation pay, damages, attorney's fees, and cost of suit.[5] Subsequently, petitioner conducted an audit of its optical shops whereby missing items were discovered. During the SEnA hearing scheduled on April 20, 2016, petitioner gave respondent a show cause notice threatening to file a lawsuit should the latter fail to account for the allegedly missing items. Respondent accepted the notice on the condition that she would be able to examine the store receipts covered by the audit. However, respondent was forbidden entry into the shop, effectively terminating her employment. As such, she filed a complaint for illegal dismissal with money claims.[6]

For petitioner, it denied having granted respondent a salary increase. It added that even if respondent were granted one, her claim was already barred by laches. Also, petitioner alleged that respondent was a fixed-term employee, having signed a fixed-term contract. Being so, petitioner argued that respondent was not dismissed from employment; rather, her contract merely expired.[7]

In reply, respondent countered that she cannot be guilty of laches as she had text messages to prove the pursuit of her claim. Respondent also presented a contract of employment which contained, *inter alia*, the duration of her employment, probationary status, and standards for regularization.[8]

Ruling of the Labor Arbiter

Due proceedings were conducted, and in a Decision[9] dated November 14, 2016, Labor Arbiter Joan M. Jabar-Waga found respondent as a regular employee of petitioner, considering that she was continuously hired as an optometrist, and performed activities necessary and desirable to respondent's optical business. The Labor Arbiter also concluded that petitioner's act of barring respondent from entering the shop premises amounted to a constructive dismissal.

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5 *Id.* at 76-78.
6 *Id.* at 156-157.
7 *Id.* at 225-226.
8 *Id.* at 225.
9 *Id.* at 155-163.

The dispositive portion of the Decision reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered, as follows:
>
> 1. Declaring complainant as a regular employee of Site for Eyes, Inc.;
> 2. Declaring complainant to have been illegally dismissed (constructive dismissal) from employment;
> 3. Ordering respondent Site for Eyes Incorporated to pay complainant the following:
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> a. Full backwages, inclusive of allowances, and to (sic) her other benefits or their monetary equivalent computed from the time she was illegally dismissed on April 20, 2016 until the finality of this Decision which, as of this date, tentatively amounted to Php244,020.77;
>
> b. Separation Pay, equivalent to one (1) month pay for every year of service until the finality of this Decision, which, as of this date, tentatively amounted to Php132,000.00;
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> c. The amount of Php8,587.86 as unpaid salary and Php2,683.70 as overtime pay for the period April 11-19, 2016;
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> d. The amount of Php8,121.93 as proportionate 13th month pay for 2016;
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> e. The amount of Php60,000.00 representing wage differential, the amount of Php18,013.15 as overtime pay differential, and the amount of Php4,808.30 as 13th month pay differential, all for the period from April 20, 2015 to April 19, 2016;
>
> f. The amount of Php47,825.37 representing 10% attorney's fees based on the total judgment award of Php478,253.71;
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> It is understood that the monetary awards are subject to re-computation upon the finality of this Decision.
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> A copy of the approved computation of the Fiscal Examiner is attached as Annex "A" hereof;
>
> The claims for actual, moral[,] and exemplary damages are dismissed for lack of merit.
>
> SO ORDERED.[10]

Ruling of the NLRC

On appeal, the NLRC affirmed the assailed Decision. In so ruling, it fortified the Labor Arbiter's conclusion that respondent was a regular employee and that petitioner circumvented the law on regularization when it asked respondent to sign a yearly contract. The NLRC noted that the yearly

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10 *Id.* at 162.

contracts signed by respondent were actually contracts of employment for regular employees. Thus, for the two contracts (for the years 2014 and 2015) which respondent signed, the latter had long attained the status of a regular employee. Thus, when she was barred entry to the optical shop, she was effectively dismissed without cause.[11]

Ruling of the Court of Appeals

Thereafter, petitioner elevated its case to the CA. In a Decision[12] dated May 10, 2018, the CA recognized respondent's status as a regular employee when it held that her employment fit the four-fold test of the existence of employer-employee relationship.

Issues

Undeterred by the consistent rulings of the Labor Arbiter, the NLRC, and the CA, petitioner filed the present petition raising the following issues:

> I. THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDINGS OF THE NLRC AND THE LABOR ARBITER THAT THE PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED. THERE WAS NO CONSTRUCTIVE DISMISSAL AND NEITHER WAS THE EXECUTION OF THE FIXED-PERIOD EMPLOYMENT CONTRACT RESORTED TO IN ORDER TO CIRCUMVENT THE LAW ON REGULARIZATION;
>
> II. THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDINGS AND CONCLUSION OF THE NLRC AND THE LABOR ARBITER ON THE STATUS OF EMPLOYMENT OF THE PRIVATE RESPONDENT. NO LESS THAN THE PRIVATE RESPONDENT DID NOT RAISE AS AN ISSUE HER STATUS AS A FIXED-PERIOD EMPLOYEE. MOREOVER, ALL THE ELEMENTS OF A VALID FIXED-PERIOD EMPLOYMENT ARE PRESENT;
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> III. THE COURT OF APPEALS ERRED IN AFFIRMING THE MONETARY AWARDS INCLUDING BACKWAGES AND SEPARATION PAY. BACKWAGES [ARE] NOT [AMONG] THE RELIEFS PRAYED FOR BY THE [RESPONDENT]. MOREOVER, THE AWARDS FOR BACKWAGES AND SEPARATION PAY [HAVE] NO BASIS SINCE PRIVATE RESPONDENT WAS NOT ILLEGALLY DISMISSED.[13]

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11 Decision dated May 12, 2017, *id.* at 223-230.
12 *Supra* note 2.
13 *Rollo*, pp. 18-19.

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Ruling

In every petition filed under Rule 45 of the Revised Rules of Court, we are mindful of the nature of the petition resolved by the CA in its assailed rulings. The CA reviewed the decision of the NLRC through a special civil action for *certiorari* under Rule 65 of the Rules of Court — the sole mode of review of NLRC decisions, as the law and jurisprudence stand now. Being so, its jurisdiction was confined to errors of jurisdiction committed by the NLRC, whose decision might only be set aside if it committed grave abuse of discretion amounting to lack or excess of jurisdiction.[14]

This limitation in the CA's review powers greatly affects the scope of the Court's review in the present Rule 45 petition. In the case of *The Heritage Hotel v. Sio*,[15] which cited *Montoya v. Transmed Manila Corp.*,[16] we laid down the procedure in dealing with Rule 45 petitions of Rule 65 decisions of the CA and stressed the need to view the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion by the NLRC, as opposed to whether the NLRC decision was correct on the case's merits, thus:

> x x x In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. **In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it**. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: **Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?** (Emphasis supplied)[17]

Simply put, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. As such, we are not obliged to re-examine conflicting evidence, reevaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.

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14 *The Heritage Hotel v. Sio*, G.R. No. 217896, June 26, 2019.
15 *Supra.*
16 613 Phil. 696 (2009).
17 *The Heritage Hotel v. Sio*, *supra* note 15.

The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.[18]

Applying these legal parameters, the Court finds that the CA was correct in its determination that the NLRC did not commit grave abuse of discretion because its disposition was in accord with the evidence on record as well as the settled legal principles of labor law.

The employment status of a person is prescribed by law and not by what the parties say it should be. But while petitioner insists that respondent was engaged under a fixed-term employment agreement, the circumstances and evidence on record, and the provision of law, dictate that respondent was its regular employee.[19]

Article 280 of the Labor Code classifies employees into regular, project, seasonal, and casual, *viz.*:

> Art. 280. *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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> 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.

The above provision classifies regular employees into two kinds: (1) those engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) casual employees who have rendered at least one year of service, whether such service is continuous or broken.

Interestingly, the Labor Code does not mention another employment arrangement – the contractual or fixed-term employment (or employment for a term) – which, if not for the fixed-term, should fall under the category of regular employment in view of the nature of the employee's engagement, which is to perform an activity usually necessary or desirable in the

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18 *Ebuenga v. Southfield Agencies, Inc.*, 828 Phil. 122, 139 (2018).

19 See *Regala v. Manila Hotel*, G.R. No. 204684, October 5, 2020.

employer's business.[20] It was only in *Brent School, Inc. v. Zamora*[21] where the Court, for the first time, recognized the existence of a fixed-term employment arrangement.

The case of *Tuppil v. LBP Service Corporation*,[22] citing *Pure Foods Corporation v. NLRC*,[23] laid down the criteria of a valid fixed-term employment, to wit:

> 1. The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
>
> 2. It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.

In *Brent*, we said that the decisive factor in a term employment contract was not the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be that which must necessarily come, although it may not be known when,[24] and that the indispensability or desirability of the activity performed by the employee will not preclude the parties from entering into an otherwise valid fixed term employment agreement. However, in *Fuji Network Television, Inc. v. Espiritu*,[25] we clarified that the repeated engagement under contract of hire is indicative of the necessity and desirability of the [employee's] work in respondent's business and where the employee's contract has been continuously extended or renewed for the same position, with the same duties, and remained in the employ without any interruption, then such employee is a regular employee. In fact, in *Samonte v. La Salle Greenhills, Inc.*,[26] we deemed the employees as having attained regular employment status not only because of the repeated renewal of their employment contracts and the necessity of the work they performed, but more importantly, their employer wielded control over the means and method of their work performance.

Here, the labor tribunals and the appellate court identified the existence of an employer-employee relationship between petitioner and respondent and unanimously recognized respondent's regular status of employment. *First*, respondent performed activities that are necessary and desirable in the optical business of petitioner. Without optometrists on site,

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20 *Universal Robina Corporation v. Acibo*, 724 Phil. 489, 502 (2014).
21 260 Phil. 747 (1990).
22 G.R. No. 228407, June 10, 2020.
23 347 Phil. 434 (1997).
24 *Brent School, Inc. v. Zamora*, *supra* note 21.
25 749 Phil. 388, 439 (2014).
26 780 Phil. 778, 793-794 (2016).

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petitioner could hardly dispense optical lenses, solutions, and equipment to the buying public. As an optical store located at various malls, its enterprise largely depends on the general diagnostic interpretation and prescription of optometrists to sell contact lenses, eyeglasses, solutions, and other visual aids. *Second*, the renewal of respondent's contract is indicative of the necessity of her functions to petitioner's business as it signifies the continuing need for her services. *Third*, petitioner exercises control over the means and method pursued by respondent in the performance of her work. It was petitioner who provided the equipment used in the conduct of patient's diagnostic tests and the manner by which respondent carried her work. Respondent was also required to render overtime work even during her rest days.

Further, it does not escape our attention that while respondent is a medical professional, a dearth of evidence exists that would show that she dealt with petitioner on an arm's length basis, whereby neither of them had an undue ascendancy and influence over the other.[27] The contracts, which respondent agreed to sign, failed to specify the terms and conditions of employment that would indicate that she stood with petitioner on an equal footing in negotiating it. Notably though, the contracts were unilaterally prepared by petitioner and merely contained provisions which can only be seen in an employment contract for optometrists as regular employees. On this score, it appears that the contracts signed by respondent were devised by petitioner to preclude respondent from acquiring tenurial security. This Court will not hesitate to strike down or disregard this arrangement as contrary to law, public policy, and morals. In such a case, the general restrictive rule under Article 280 of the Labor Code will apply and the employee shall be deemed regular. Being a regular employee of petitioner, respondent is entitled to security of tenure. As such, she cannot be dismissed from employment except for just or authorized causes.

As pointed out by the lower tribunals, respondent was barred entry into the optical store. This happened despite petitioner's reassurance during the SEnA hearing that respondent would be allowed to examine the store's sales invoice/receipts and other documents necessary to explain and account for the missing items brought about by petitioner's impromptu audit.

In *Al-Masiya Overseas Placement Agency, Inc. v. Viernes*,[28] the Court defined constructive dismissal as follows:

> x x x An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee as to leave him or her with no option but to forego his or her continued employment. From this definition, it can be inferred that various situations, whereby the employer intentionally places the employee in a situation which will result

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27 See *Regala v. Manila Hotel*, *supra* note 19.

28 680 Phil. 112 (2012).

> in the latter's being coerced into severing his ties with the former, can result in constructive dismissal.[29]

Clearly, the only conceivable reason why respondent was not allowed to enter the optical shop was to restrict her access to the files that may aid her in defending herself from the result of the audit. Clearly, petitioner deliberately employed such strategy to place respondent in a precarious situation, which eventually led her to end her employment. The Court, thus, finds that the CA did not err in declaring respondent constructively and illegally dismissed. With this, we affirm the award of backwages and separation pay.

Pursuant to our ruling in *Dumapis v. Lepanto Consolidated Mining Company*,[30] the award of backwages and/or separation pay due to illegally dismissed employees shall include all salary increases and benefits granted under the law and other government issuances, collective bargaining agreements, employment contracts, established company policies and practices, and analogous sources which the employees would have been entitled to, had they not been illegally dismissed. On the other hand, salary increases and other benefits which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status shall not be included in the award. The monetary award shall be subject to the legal interest rate of six percent (6%) *per annum* until full satisfaction, pursuant to *Nacar v. Gallery Frames*.[31]

This ruling is consistent with the constitutional command that the State shall afford full protection to labor, *viz.*:

> SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. (Article XII)

and the edict under Article 3, Chapter I of the New Labor Code, thus:

> ARTICLE 3. *Declaration of Basic Policy.* The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

Most important, it conforms to the purpose to restore illegally dismissed employees to the same status as if their employment was not illegally severed by allowing them to continuously enjoy the salary, benefits,

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29 G.R. No. 216132, January 22, 2020.
30 G.R. No. 204060, September 15, 2020.
31 716 Phil. 267 (2013).

and allowances they were assured to receive during the term of their employment.[32]

In sum, this Court finds that the rulings of the LA, the NLRC, and the CA were predicated on the evidence on record and prevailing jurisprudence. We also found no compelling reason to depart from the general rule that the unanimous findings of these three tribunals are binding upon this Court.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated May 10, 2018 and the Resolution dated August 7, 2018 of the Court of Appeals in CA-G.R. SP No. 08314 are **AFFIRMED**.

Petitioner Site for Eyes, Inc. is **ORDERED** to **PAY** respondent Dr. Amor F. Daming backwages and separation pay based on her salary rate at the time of her termination, inclusive of guaranteed salary increases and other benefits and bonuses which she was entitled to receive under the law and other government issuances, collective bargaining agreements, employment contracts, established company policies and practices, and analogous sources had she not been illegally dismissed.

The monetary award shall be computed from April 20, 2016 when she was illegally dismissed up to the finality of this Decision.

Such monetary award shall exclude salary increases and other benefits or bonuses which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status.

Respondent is also entitled to attorney's fees equivalent to ten percent (10%) of the judgment award.

Further, petitioner Site for Eyes, Inc. is **ORDERED** to **PAY** respondent Dr. Amor F. Daming legal interest of six percent (6%) *per annum* on the total monetary award from the finality of the Decision until fully paid.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

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32 *Dumapis v. Lepanto Consolidated Mining Company, supra* note 30.

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RICARDO R. ROSARIO
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
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