Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BERNILO M. AGUILERA,
Petitioner,

- versus-

COCA-COLA FEMSA PHILIPPINES, INC.
Respondent.

G.R. No. 238941

Members:

GESMUNDO, *C.J., Chairperson*
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., *JJ.*

Promulgated:

SEP 29 2021

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DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on Certiorari seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 148377:

1) Decision[1] dated October 20, 2017 which reversed the finding of the labor tribunals that petitioner Bernilo M. Aguilera was illegally dismissed; and

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[1] Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Sesinando E. Villon and Renato C. Francisco; *rollo*, pp. 190-201.

2) Resolution[2] dated March 8, 2018 which denied petitioner's motion for reconsideration.

Antecedents

In his complaint for illegal dismissal and money claims against COCA-COLA FEMSA, PHILS., INC. (CCFPI), petitioner Bernilo M. Aguilera averred that on July 1, 1995, CCFPI, formerly COCA-COLA BOTTLERS PHILIPPINES, INC. hired him as Refrigeration Technician with assignment at the company's South Luzon Cold Drink Equipment Group. He later on got promoted as Trade Asset Controller and Maintenance Coordinator, and much later, as Cold Drink Associate. He was principally tasked to supervise the maintenance work of third-party service providers on the electric coolers of the company installed in the stores of its customers.[3]

In May 2013, a new management group took over the company's operations. It marked the change of the company name to CCFPI. On May 6, 2013, CCFPI's Regional Director Chuck Jereos notified him that the new management would review the existing positions and performance of all plant employees.[4]

On August 6, 2013, the Human Resource (HR) Manager of the company's Canlubang Plant, Marge Del Rosario (Del Rosario), informed him that he failed the assessment, albeit the results were not disclosed to him. On even date, he received a notice of termination due to redundancy purportedly brought about by changes in the company's organizational structure and the consequent abolition of his position as Cold Drink Associate. His termination was to take effect on September 6, 2013.[5]

The company's supposed redundancy program was tainted with bad faith. It failed to justify why he had to be terminated as a consequence of its implementation. What it did was simply split his existing Cold Drink Associate position into Cold Drink Operation Supervisor[6] position and Cold Drink Equipment Analyst position. Though the salary scale for each of these positions is lower than what he was getting, the duties were the same.[7]

He had been employed with CCFPI for eighteen (18) years[8] and was one of the senior employees in his team. He too was receiving the highest monthly salary rate of ₱39,367.00 in his team. The company had previously given him citations for excellent work as well as a merit increase[9] of 2% of

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2 *Rollo*, pp. 162-164.
3 *Id.* at 191.
4 *Id.* at 125.
5 *Id.* at 6, 125 and 191.
6 Appears as "Cold Drink Equipment Supervisor" in some parts of the record.
7 *Rollo*, pp. 191-192.
8 *Id.* at 8.
9 *Id.* at 102.

his salary which took effect on April 1, 2013, hence, he was surprised to suddenly receive a notice of termination from the management.

He pleaded with the company to reconsider his termination or at least just transfer him to another position, but his plea fell on deaf ears. Prior to his dismissal or sometime in August 2013, the company informed him that there were several vacancies available for Cold Drink Equipment Analyst. Thus, he immediately applied for this position but he failed to get the job.[10] He later discovered that the company hired new employees for the position whose assigned tasks he used to do as a Cold Drink Associate.[11]

Since he had already been unemployed starting September 6, 2013, he was forced to accept the separation package offer and execute a Deed of Receipt, Waiver and Quitclaim on September 11, 2013.[12]

For its part, CCFPI countered that it had been compliant with all the requirements for redundancy under the Labor Code.[13] It did a regular review of its organizational structure for the purpose of achieving improved business efficiency and profitability. In the exercise of its management prerogative, it decided to outsource services for its non-core activities or activities other than manufacturing. This consequently rendered certain existing positions in the company redundant, including the position of Cold Drink Associate which petitioner used to hold. It did assess petitioner's performance to determine his qualifications for another available position in the company. Unfortunately, he was one of those who scored a below satisfactory rating, hence, the company had no choice but to let him go.[14]

It adopted fair and reasonable criteria in determining who among the employees should go or stay. It considered the employees' assessment profiles, backgrounds, experiences, performance ratings for the last three (3) years, current salary bases, and locations.[15]

In keeping with due process, it served a notice of termination on petitioner. Also, in compliance with Article 298[16] of the Labor Code, it

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10 *Rollo*, pp. 85-86 and 109-112.
11 *Id.* at 192.
12 *Id.* at 48 and 136.
13 Article 298 of the Labor Code.
14 *Rollo*, p. 128.
15 *Id.* at 194-193.
16 Former Article 283 of the Labor Code, as renumbered under DOLE's Department Advisory No. 1, Series of 2015.

> **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

submitted an Employment Termination Report to the Department of Labor and Employment (DOLE) a month before petitioner's dismissal took effect.[17] It also paid petitioner a total separation package of ₱1,840,681.72 comprising a) two hundred percent (200%) separation pay per year of service; b) commutation of earned and unused sick and vacation leaves; c) proportionate thirteenth (13th) month pay; and d) HMO coverage for five (5) years (effective September 6, 2013 to September 5, 2018) or upon turning sixty-five (65) years old, whichever comes first.[18]

Petitioner readily accepted the offer and executed a Deed of Receipt, Waiver and Quitclaim on September 11, 2013. Thus, he was already precluded from assailing the legality of his dismissal.[19]

In support of the company's position, it submitted the affidavit of HR Manager Del Rosario pertaining to petitioner's dismissal due to redundancy, *viz*:[20]

> x x x x
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> 4. Sometime in July 2013, the Southern Luzon Commercial Unit team was informed of the new structure for Cold Drink Equipment and was tasked to staff this new structure considering (the) incumbent's profile based on the assessment; background/experience as against the new role; performance ratings for the last three (3) years; current location and salary relative to the budget for the position;
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> 5. After a lengthy process of assessment and exhaustive meetings participated by the Commercial Unit Director, Marketing Manager, Region Managers and myself as HR Manager, a recommendation was reached wherein the position of the (petitioner) will be [redundated], considering the parameters given by the new management, primarily his profile, historical performance ratings and qualitative assessment of the managers present in said meeting. x x x
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> 6. We then called the (petitioner) for a meeting. Said meeting was also attended by the Marketing Manager and Commercial Unit Director. In said meeting, we provided the (petitioner) with the drivers or reasons for the change, fully describing to him the new structure and roles. The marketing manager then proceeded to read through the content of the letter indicating the decision of management terminating the employment of the (petitioner), specifically that his current position has been

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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 least six (6) months shall be considered one (1) whole year.

17 *Rollo*, p. 193.
18 *Id.* at196.
19 *Id.* at pp. 136, 246 and 253.
20 *Id.* at pp. 253-256.

made redundant and that management could not find a suitable role for him in the new structure. It was further explained to the (petitioner) what he would get as part of the separation pay;

7. After a while, (petitioner) asked how management determined that he supposedly did not fit any of the roles available. We then shared the aforementioned factors considered by management in reaching its decision. (Petitioner) voluntarily accepted and understood the decision of management. He further signed the letter terminating his employment.[21] x x x

x x x x

It tried to match petitioner with the other available positions in the company, but he was not qualified.[22]

The Ruling of the Labor Arbiter

Under Decision[23] dated September 30, 2014, Labor Arbiter Melchisedek A. Guan (Labor Arbiter Guan) ruled in petitioner's favor and found the company guilty of illegal dismissal, *viz*:

WHEREFORE, undersigned renders judgment:

1. Declaring that complainant was illegally dismissed;

2. Directing respondent Coke to REINSTATE complainant to his former or equivalent position within ten days from receipt hereof; and to submit compliance with this directive for reinstatement within the same number of days; and to pay him the amount of **EIGHT HUNDRED SEVENTEEN THOUSAND SIX HUNDRED NINETY SEVEN PESOS & 65/100 (₱817,697.65)** as and for payment of his partial backwages, moral and exemplary damages and attorney's fees; and

3. Directing the parties to arrange a reasonable scheme of payment where the monetary awards here would be offset from the separation pay already received by complainant.

SO ORDERED."[24]

Labor Arbiter Guan noted that the company did not show good faith in abolishing petitioner's position as Cold Drink Associate. Nor did it follow fair and reasonable criteria in determining the positions to be declared redundant and the employees who ought to go or stay. The mere fact that petitioner got

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21 *Id.* at pp. 254-255.
22 *Id.* at pp. 245, 255 and 256.
23 *Id.* at pp. 124-133.
24 *Id.* at pp. 132-133.

served with a notice of termination and signed a quitclaim did not automatically make the supposed redundancy valid.[25]

In fine, the Labor Arbiter ordered the company to reinstate petitioner, with backwages and moral and exemplary damages. It further directed the parties to devise a scheme to offset the monetary award against the separation pay already received by petitioner.[26]

The Ruling of the National Labor Relations Commission

By Decision[27] dated June 30, 2016, the National Labor Relations Commission (NLRC) affirmed with modification. It deleted the award of moral and exemplary damages for lack of basis but granted attorney's fees.

It echoed the Labor Arbiter's finding that the company failed to show good faith and the existence of fair and reasonable criteria it supposedly followed in determining the positions to be declared redundant and the employees to be affected thereby.[28]

In the company's partial motion for reconsideration, for the first time, it submitted the result of petitioner's psychometric examination to prove that his Intelligence Quotient (IQ) score does not match the prescribed qualifications for the newly created positions.[29]

Under Resolution dated September 26, 2016, the company's partial motion for reconsideration was denied.[30]

The Proceedings before the Court of Appeals

Undaunted, the company went to the Court of Appeals *via* a petition for *certiorari*. It claimed to have acted in good faith and adhered to fair and reasonable criteria in determining the positions to be abolished and the employees to be dismissed under its redundancy program. Petitioner's performance for the last three (3) years of his employment was unsatisfactory and the result of his psychometric evaluation did not satisfy the requirements of the newly created positions in the company. Lastly, petitioner's quitclaim precludes him from pursuing any further claims against it.[31]

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25 *Id.* at pp. 128-129.
26 *Id.* at pp. 131-132.
27 Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Gina F. Cenit-Escoto. Commisioner Romeo L. Go, dissenting; *rollo*, pp. 134-150.
28 *Rollo*, pp. 146-147.
29 *Id.* at p. 46.
30 *Id.* at p. 194.
31 *Id.* at pp. 54-77 and 194.

In refutation, petitioner challenged anew the company's lack of good faith and fair and reasonable criteria in the implementation of its redundancy program, the alleged creation of new positions which had essentially similar, if not exactly the same functions as those attached to his abolished position, and the self-serving affidavit of HR Manager Del Rosario. In addition, he took a jab on the belated submission of the alleged result of his psychometric examination results which could have just been fabricated. On this score, he mentioned that he was even granted a merit increase on April 1, 2013, just a few months before he got dismissed,[32] and that he was merely forced to accept the separation package and execute his quitclaim. [33]

The Ruling of the Court of Appeals

In its assailed Decision[34] dated October 20, 2017, the Court of Appeals reversed. It found that CCFPI did comply with all the requisites for a valid redundancy program: 1) it sent a timely notice of termination to petitioner and submitted an Establishment Termination Report to the DOLE; 2) petitioner's separation pay was more than what the Labor Code requires; 3) it acted in good faith in abolishing petitioner's position, impelled by the streamlining of its organizational structure with the end in view of maximizing its workforce at a lesser operating cost - a valid exercise of management prerogative. The reorganization was demanded by the need to boost efficiency and increase profitability in accordance with the new plans of the company under the new management; and 4) it used fair and reasonable standards in determining the positions to be abolished or declared redundant. It was done only after consultation and deliberation with the other department heads of the company. Petitioner was properly informed of the basis of abolishing his position during a meeting held for that purpose.[35]

Finally, the Court of Appeals ordained that petitioner's quitclaim bars him from pursuing any further action against the company.[36]

Petitioner's motion for reconsideration was denied under Resolution[37] dated March 8, 2018.

The Present Petition

Petitioner now seeks affirmative relief *via* Rule 45 of the Rules of Court. He claims anew that he was illegally dismissed by CCFPI in the guise of a supposedly valid redundancy program. CCFPI acted in bad faith when it abolished his Cold Drink Associate position since immediately thereafter it

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32 *Id.* at pp. 41-47.
33 *Id.* at p. 48.
34 Supra note at 1.
35 *Rollo*, pp. 196-199.
36 *Id.* at pp. 199-201.
37 *Id.* at pp. 162-164.

created a supposed new position called Cold Drink Equipment Analyst position which essentially carried the same functions assigned to his abolished position. A change in the job title is not synonymous to a change in the functions attached thereto. He did object to his dismissal through the letter he sent to the management signifying his intention to continue working with the company. He was simply forced to accept the separation package offer and execute a quitclaim due to economic constraints and because the management did not offer him any other job in the company.[38]

In refutation, CCFPI reiterates that it acted in good faith when it implemented the redundancy program affecting petitioner's position.[39] As a result of the company's restructuring plan, it redesigned the abolished position and created a new one which, while including some of the tasks petitioner used to do as a Cold Drink Associate, the newly created position is actually broader in terms of scope, functions, and responsibilities. The new position was precisely created to avoid overlapping of functions attached to existing positions prior to the redundancy program.[40] Finally, in view of petitioner's availment of the separation package with quitclaim, he is estopped from pursuing any further claim against the company.[41]

Issue

Was petitioner validly dismissed on the ground of redundancy?

Ruling

The Court is not a trier of facts, hence, as a rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45. Consequently, the Court does not calibrate anew the evidence presented by the parties which is primarily the function of trial courts. Their factual findings are conclusive and binding on this Court, especially when affirmed by the Court of Appeals. As an exception, however, the Court may resolve factual issues presented before it when the findings of the Court of Appeals and the labor tribunals are conflicting, as in this case.[42]

Redundancy is one of the authorized causes for termination of employment under Article 298[43] of the Labor Code:

> **Article 298.** *Closure of Establishment and Reduction of Personnel.* - The employer may also terminate the employment of any

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38 *Id.* at pp. 9-13.
39 *Id.* at pp. 250-256.
40 *Id.* at pp. 258-259.
41 *Id.* at pp. 266-272.
42 *3M Philippines, Inc. v. Yuseco*, G.R. No. 248941, November 9, 2020.
43 Former Article 283 of the Labor Code, as renumbered under DOLE's Department Advisory No. 1, Series of 2015.

> 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 least six (6) months shall be considered one (1) whole year.
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> x x x x

Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A position is redundant where it had become superfluous. Superfluity of a position or positions may be the outcome of a number of factors such as over-hiring of workers, decrease in volume of business, or dropping a particular product line or service activity previously manufactured or undertaken by the enterprise.[44]

The characterization of an employee's services as redundant, and therefore, properly terminable, is an exercise of management prerogative, considering that an employer has no legal obligation to keep more employees than are necessary for the operation of its business. But the exercise of such prerogative "must not be in violation of the law, and must not be arbitrary or malicious."[45]

For a redundancy program to be valid, the following requisites must concur: (a) written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (b) payment of separation pay equivalent to at least one (1) month pay for every year of service; (c) good faith in abolishing the redundant positions; and (d) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (i) preferred status; (ii) efficiency; and (iii) seniority, among others.[46]

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44 Supra note at 42.

45 *Yulo v. Concentrix Daksh Services Philippines, Inc.*, G.R. No. 235873, January 21, 2019.

46 Supra note at 42.

The burden is on the employer to prove by substantial evidence the factual and legal basis for the dismissal of its employees on the ground of redundancy.[47]

Here, both the Labor Arbiter and the NLRC held that CCFPI failed to prove by substantial evidence that it exercised good faith and applied fair and reasonable criteria in abolishing petitioner's position supposedly due to redundancy.[48] On the other hand, the Court of Appeals differed and found CCFPI compliant with all the requisites for a valid redundancy, including the observance of good faith and use of fair and reasonable criteria in its implementation.

The presence of the first two (2) requisites is not in issue here. Both parties agree that petitioner and the DOLE were notified of the redundancy; and that petitioner was paid his corresponding separation pay.

As for third and fourth requisites, however, the parties sharply disagree. On one hand, petitioner claims that although CCFPI supposedly abolished his position, it thereafter, simply adopted a different name therefor and hired new employees, albeit, in reality, the position carried essentially the same functions attached to his abolished position. On the other hand, CCFPI asserts that it did adopt a program to restructure its organization and streamline its workforce, the implementation of which called for the abolition of petitioner's position.

We find for petitioner.

CCFPI did not follow any set of criteria in determining the positions to be abolished and the employees to be dismissed

An employer cannot simply claim that it has become overmanned and thereafter declare the abolition of an employee's position without adequate proof of such redundancy. Nor can the employer just claim that it has reviewed its organizational structure and decided that a certain position has become redundant. Adequate proof of redundancy and criteria in the selection of the employees to be affected must be presented to dispel any suspicion of bad faith on the part of the employer.[49]

Here, CCFPI claims that its redundancy program called for organizational restructuring and streamlining of the then existing positions in

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47 *Abbot Laboratories Inc. v. Torralba*, 820 Phil. 196, 212 (2017).
48 *Rollo*, pp. 128-129 and 146-149.
49 See *Feati University v. Pangan*, G.R. No. 202851, September 9, 2019.

the company.[50] One of the positions it abolished was that of petitioner, in lieu of which, it opted to outsource its non-manufacturing activities.

In ***Feati University v. Pangan,***[51] the Court rejected the bare claim of Feati that the decision to declare Pangan's position as Assistant Coordinator redundant came only after a review of its organizational structure. This did not establish good faith, much less, the use of fair and reasonable criteria in declaring the redundancy. Neither did the employer's general averment that Pangan's position was no longer necessary in the university in view of the reduced number of enrollees there at that time. The Court emphasized that proof of such alleged review and specific criteria used by ***Feati*** must be presented, otherwise, the dismissal of the employee cannot be sustained.

Similarly, in ***Yulo v. Concentrix Daksh Services Philippines, Inc.,***[52] the Court ruled that a general statement borne in a one-page document that there was a need to downsize the business unit of Concentrix is not sufficient to demonstrate its claim of good faith in declaring redundancy, *viz.*:

> x x x x
>
> Particularly, respondent attempted to justify its purported redundancy program by claiming that on December 18, 2014, it received an e-mail from Amazon informing it of the latter's plans to "right size the headcount of the account due to business exigencies/requirements." However, such e-mail — much less, any sufficient corroborative evidence tending to substantiate its contents — was never presented in the proceedings *a quo*. At most, respondent submitted, in its motion for reconsideration before the NLRC, an internal document, which supposedly explained Amazon's redundancy plans. **However, the Court finds that this one (1)-page document hardly demonstrates respondent's good faith not only because it lacks adequate data to justify a declaration of redundancy, but more so, because it is clearly self-serving since it was prepared by one Vivek Tiku, the requestor/business unit head of respondent, and not by any employee/representative coming from Amazon itself. Notably, parallel to the entry "Narrative of the current situation of the business unit, what triggered the downsizing[,] and what is the preferred outcome," the requestor merely stated that "[w]e have just finished our seasonal ramp and would need to decrease our headcount due to low call volume based on the long term forecast by the client (Dec-Feb EOM LTF)." However, outside of this general conclusion, no evidence was presented to substantiate the alleged low call volume and the forecast from which it is based on so as to truly exhibit the business exigency of downsizing the business unit assigned to Amazon.** (Emphasis supplied)
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> x x x x

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50 *Rollo*, p. 142.

51 Supra note at 49.

52 G.R. No. 235873, January 21, 2019.

Here, CCFPI presented the self-serving affidavit of its HR Manager Del Rosario that the department where petitioner belonged was restructured and that after assessments and meetings, petitioner's position was found to be redundant, *viz.*:

> x x x x
>
> 4. Sometime in July 2013, the Southern Luzon Commercial Unit team was informed of the new structure for Cold Drink Equipment (CDE) and was tasked to staff this new structure considering (the) incumbent's profile based on the assessment; background/experience as against the new role; performance ratings for the last three (3) years; current location and salary relative to the budget for the position;
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> 5. After a lengthy process of assessment and exhaustive meetings participated by the Commercial Unit Director, Marketing Manager, Region Managers and myself as HR Manager, a recommendation was reached wherein the position of the complainant will be redundated, considering the parameters given by the new management, primarily his profile, historical performance ratings and qualitative assessment of the managers present in said meeting.[53]
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> x x x x

The company also submitted, albeit belatedly on appeal the result of petitioner's psychometric examination which merely showed the numerical equivalent of the latter's IQ sans the accompanying interpretation as to his ability to comprehend or the lack thereof. This would have served as a competent basis of the management's decision to retain him or to let him go as an employee.

Applying ***Feati University*** and ***Yulo***, the bare declaration of CCFPI's HR Manager, without more, does not comply with the requirements of good faith and necessity. Neither does petitioner's "below ideal" IQ score conform with the presence of criteria in determining who among the employees should be dismissed. To repeat, CCFPI did not bother laying down the import of petitioner's psychometric examination on his chances of being retained in the company. No comparison was even drawn between petitioner's IQ score *vis-à-vis* the scores of the retained employees to show that indeed there are more qualified employees other than him. The validity of the company's action is further negated by the fact that just barely two (2) months before he was dismissed, petitioner was even given a merit increase in recognition of his successful work performance.

Notably, for the longest time since 2014, starting when the complaint here was filed until seven years later, CCFPI never presented any single substantiating evidence of good faith and necessity. This notwithstanding

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[53] *Rollo*, p. 254.

petitioner's vigorous and relentless protestation that the company's so called redundancy program was tainted with bad faith and was not necessary at all.

In any event, based on the documents submitted by the company itself, the so-called newly created Cold Drink Equipment Analyst position and petitioner's abolished Cold Drink Associate position have essentially similar, if not exactly the same functions.

A Cold Drink Equipment Analyst has the following responsibilities:

> 1) Responsible for Accuracy of System vs. Trade reports;
>
> 2) Responsible for updating of [Cold Drinks Equipment] movements and physical conditions in system (Equipment Master);
>
> 3) Release work orders for [Cold Drinks Equipment] (placement, repair, maintenance, retirement); and
>
> 4) Processes finished work orders by 3rd party as approved by [Cold Drink Equipment] Supervisor.[54]

Meanwhile, petitioner's tasks as a Cold Drink Associate are as follows:

1. Shipment	Actual receiving & Checking to (sic) [Cold Drink Equipment] storage coordination
2. Enrollment	Encoding (GR) (sic) of invoice to [Cold Drink Equipment to SAP (sic)
3. Warehousing	Loading & unloading of the [Cold Drink Equipment] and releasing to [Third-Party Service Providers]
4. Placement	Preparation of Work Order to (sic) releasing to [Third Party Service Providers], Updating in SAP (sic)
5. Removal	Preparation of Work Order to releasing to [Third-Party Service Providers], Updating in SAP (sic)
6. Service Calls	Preparation of Work Order to (sic) updating in SAP (sic) & Portal
7. [Preventive] Maintenance	Preparation of [Work Orders] to dispatching to Tech. (sic), Updating to SAP (sic)
8. Refurbishment	Evaluation to (sic) preparation of [Work Orders], awarding, releasing and receiving to [Third Party Service Providers], Updating to SAP (sic)
9. Billings	Preparation of billings/[Work Orders], review & PO (sic) creation, GR (sic), Updating in SAP

54 *Rollo*, p. 259.

10. Backchecking	[Cold Drink Equipment Visit/Backchecking of TS/PM activities	in Trade Tech (sic)
11. Route Riding	Technician in-field coaching	
12. Scraping	Inventory, Evaluation, preparation, Updating to SAP (sic)	Documents
13.Review Meeting	[Third Party Service Providers] & [Technician's] performance review meeting[55]	

As a Cold Drink Associate, petitioner was responsible for updating CCFPI's data system on transactions and actions involving its cold drink equipment. He prepares and releases work orders to third party service providers. He also processes the work done by third party service providers. He prepares the inventories, evaluates documents, and conducts performance review meetings for all the services rendered. All these functions are basically the same, if not identical with the four (4) responsibilities attached to the newly created Cold Drink Equipment Analyst position (*i.e.* responsible for Accuracy of System and Trade reports; updates logistics on Cold Drinks Equipment; releases work orders; and processes finished work orders by third party). Clearly, the former position was simply replaced by another albeit the latter carried a different name and with a much lower compensation.

On this score, ***Abbott Laboratories (Philippines), Inc. v. Torralba***[56] ordained that an employer's subsequent creation of new positions or the hiring of additional employees is inconsistent with the termination on the ground of redundancy; it exhibits the employer's intent to circumvent the employee's right to security of tenure.

In ***Abbott***, the company merged its PediaSure Division and Medical Nutrition Division pursuant to a study which recommended the restructuring of the sales force of its Specialty Nutrition Group. The Medical Nutrition Division allegedly generates a larger share in the Philippine market, as compared to the PediaSure Division, and for this reason Abbott retained the structure of the former division. As a result, Almazar, Navarro and Torralba's respective positions as National Sales Manager and Regional Sales Managers under the PediaSure Division were declared redundant.

The trio rejected Abbott's offer to assume the new District Sales Manager positions with reduced pay and benefits. They, nonetheless accepted their separation pay and signed separate quitclaims.

The Court found that Abbott failed to prove that it followed a set of criteria in determining the positions to be abolished and the employees to be

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55 *Rollo*, p. 100.
56 Supra note at 47.

dismissed or retained. Meanwhile, its bad faith was manifested by its subsequent creation of new positions in the company, thus:

x x x x

Evidence that this job appraisal was actually conducted is severely wanting in the records of this case. Rather, Abbott relied on general averments about logic and reason to justify its choice of division to retain. Absent substantial evidence tending to prove that the employees that would have been affected by the merger of the two departments were measured against specific criteria, the termination of the redundated employees cannot be sustained. On the contrary, such terminations are products of caprice and whimsy, and do not constitute a valid exercise of management prerogative beyond the Court's power of review.

Bad faith in implementing the redundancy program and the consequence thereof

To dispel any lingering doubt, we have invariably held in a plethora of cases that the employer's subsequent act of hiring additional employees is inconsistent with the termination on the ground of redundancy. x x x

x x x x

In the notice furnished by Abbott to the DOLE, the company declared that the reason for the redundancy program, affecting four (4) of its employees, is to reduce the company's manpower by eliminating positions that were allegedly superfluous. However, this proffered justification is readily contradicted by the fact that the affected employees were offered newly-created District Sales Manager positions that were entitled to lower pay and benefits. To Our mind, the redundancy program is then a mere subterfuge to circumvent respondents' right to security of tenure. Hence, just as uniformly found by the Labor Arbiter, NLRC, and the CA, the redundancy program cannot be considered lawful.

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Consequently, the Deeds signed by the respondents could not therefore be deemed valid, premised as they were on an invalid termination. The case of *Philippine Carpet Manufacturing Corporation v. Tagvamon (Philippine Carpet)* is illustrative on this point.

In the said case, the Court listed three specific instances wherein a waiver cannot estop a terminated employee from questioning the validity of his or her dismissal, to wit: (1) the employer used fraud or deceit in obtaining the waivers; x x x

In the extant case, Abbott's bad faith in implementing the redundancy program places it squarely under the first recognized

> exception. For perspective, Abbott had already decided to sever respondents' employment with the company. Faced with no other option than to sign the Deeds, respondents acceded to the terms of petitioners' proposal. The Deeds, however, could not automatically be taken at face value to preclude respondents from asserting their right to security of tenure, and neither would their acceptance of the benefits thereunder automatically operate as the full satisfaction of their claims.
>
> x x x x

In the same view, CCFPI here did not have an honest to goodness redundancy program. It did not have a definite set of criteria in determining who among its employees should stay and who should go. It abolished petitioner's position for being supposedly redundant only to later on recreate it assigning it another name and a reduced salary rate. If this is not bad faith, what is?

Petitioner's quitclaim was void

Quitclaims and waivers are oftentimes frowned upon and are considered as ineffective in barring recovery for the full measure of the worker's rights and that acceptance of the benefits therefrom does not amount to estoppel. The reason being that the employer and employee, obviously do not stand on the same footing. But not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of change of mind.[57]

There are three (3) instances, however, where a waiver cannot preclude a dismissed employee from questioning the validity of his or her dismissal: (1) if the employer used fraud or deceit in obtaining the waivers; (2) if the consideration the employer paid is incredible and unreasonable; or (3) if the terms of the waiver are contrary to law, public order, public policy, morals, or good customs or prejudicial to a third person with a right recognized by law.[58]

Before the courts can consider a waiver valid, the legality of the termination itself should be able to withstand judicial scrutiny. Should the court find that either of the foregoing exceptions is attendant, the dismissed employee cannot be deemed barred from contesting the validity of the termination.[59]

Here, as early as one (1) month before the effectivity of his dismissal, petitioner already got informed by CCFPI of his separation package following

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57 *Spouses Dalen v. Mitsui O.S.K. Lines*, G.R. No. 194403, July 24, 2019.
58 See supra note at 47.
59 *Id.*

the abolition of his position due to its redundancy.[60] But despite the enticing package, petitioner signified his interest to continue working with the company even in a different capacity or for another position. He did so not once but twice - first, before he got dismissed, and second, after he got dismissed already. But he was never considered for any of the newly created positions.[61]

Notably, his dismissal took effect on September 6, 2013, but it was only on September 11, 2013 that he executed the Deed of Receipt, Waiver, and Quitclaim in favor of CCFPI.[62] This speaks volumes of his hesitation to be dismissed under the redundancy program and his fervent desire to be retained for any other available position, whether existing or newly created. It is not difficult to see how he got simply compelled to accept his fate especially the separation package he badly needed to tide his family over while he was looking for another job.

In ***Becton Dickinson Phils., Inc. v. National Labor Relations Commission***,[63] the Court declared as invalid the quitclaims signed by the dismissed employees due to a supposed redundancy. The Court recognized the fact that the risk of not receiving anything, whatsoever, coupled with the probability of not being able to immediately secure a new job or means of income, constitutes enough pressure upon anyone who is asked to sign a release and quitclaim in exchange for some amount of money. That the employee may have held a supervisory position did not make him any less susceptible to accept the separation package forced as he is with the real threat of unemployment. So must it be.

All told, the termination of petitioner's employment on ground of redundancy is declared void. He was illegally dismissed.

Article 294[64] of the Labor Code states:

> **Article 294**. *Security of tenure.* - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to **reinstatement without loss of seniority rights** and other privileges and to his **full backwages**, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis supplied)

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60 *Rollo*, p. 107.
61 *Rollo*, pp. 85-86 and 109-112.
62 *Rollo*, p. 136.
63 511 Phil. 566, 589 (2005).
64 Former Article 279 of the Labor Code, as renumbered under DOLE's Department Advisory No. 1, Series of 2015.

Genuino Agro-Industrial Development Corp. v. Romano[65] decreed that in cases where reinstatement is no longer feasible, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to the payment of backwages. Moral damages may also be awarded when, as in this case, the employer acted (a) in bad faith or fraud; (b) in a manner oppressive to labor; or (c) in a manner contrary to morals, good customs, or public policy. Finally, the Court may impose exemplary damages by way of example or correction for the public good.

Here, CCFPI is liable to reinstate petitioner to his former position or to any similar or equivalent position. If reinstatement is no longer feasible, petitioner shall be entitled to separation pay equivalent to one (1) month salary for every year of service which shall be offset against the separation pay he initially received from CCFPI. In either case, he shall receive full backwages computed from the time compensation was withheld up to the date of actual reinstatement.[66] Since petitioner had been momentarily reinstated pursuant to the labor arbiter's order of actual reinstatement, albeit he was again subsequently dismissed on November 13, 2017 following the contrary ruling of the Court of Appeals, the award of backwages shall be reckoned from November 13, 2017 until actual reinstatement or payment of separation pay, as the case may be.

As for moral and exemplary damages, the Court in ***Logwin Air Ocean Philippines, Inc. v. Taki***[67] awarded moral damages and exemplary damages of ₱50,000.00 each to respondent employee after he was arbitrarily dismissed by the employer in the guise of an invalid redundancy program.

Petitioner here is also entitled to moral damages and exemplary damages of ₱50,000.00 each. For CCFPI terminated his employment on the supposed ground of redundancy which turned out to be invalid, being tainted with bad faith, nay, devoid of factual and legal bases. As it was, his eighteen (18) years of dedicated service to the company was abruptly severed without any valid or just cause.

Finally, petitioner is entitled to attorney's fees equivalent to ten percent (10%) of the total monetary award as he was compelled to litigate to protect his rights and interests.[68]

The total monetary award shall earn six percent (6%) interest per annum from finality of this Decision until full payment.[69]

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65 G.R. No. 204782, September 18, 2019.
66 Date of Actual Reinstatement not mentioned in the case records.
67 G.R. No. 252259, August 26, 2020.
68 See *Intercontinental Broadcasting Corp. v. Guerrero*, G.R. No. 229013, July 15, 2020.
69 See *Feati University v. Pangan*, G.R. No. 202851, September 9, 2019.

ACCORDINGLY, the petition is **GRANTED.** The Decision dated October 20, 2017 and Resolution dated March 8, 2018 of the Court of Appeals in CA-G.R. SP No. 148377 are **REVERSED** and **SET ASIDE.** Petitioner Bernilo M. Aguilera is declared to have been illegally dismissed.

Respondent Coca-Cola FEMSA Philippines, Inc. is ordered to **REINSTATE** petitioner Bernilo M. Aguilera to his former position or to any similar or equivalent position **without loss of seniority rights and other privileges** and to **PAY** him full backwages inclusive of allowances and other benefits, computed from the time he was illegally dismissed on November 13, 2017 until actual reinstatement. The award of backwages shall be offset against the separation package earlier received by Bernilo M. Aguilera from the company.

In case reinstatement is no longer feasible, respondent Coca-Cola FEMSA Philippines, Inc. is ordered to **PAY** Bernilo M. Aguilera **separation pay** equivalent to one (1) month salary for every year of service reckoned from the time he was employed in July 1995 until finality of the Decision, less the amount he already earlier received as separation package from the company. This is in addition to the award of backwages to Bernilo M. Aguilera computed from November 13, 2017 until full payment.

Lastly, Coca-Cola FEMSA Philippines, Inc. is ordered to **PAY** Bernilo M. Aguilera the following amounts:

1) ₱50,000.00 moral damages;
2) ₱50,000.00 exemplary damages; and
3) Attorney's fees equivalent to ten percent (10%) of the total monetary award.

These monetary awards shall earn six percent (6%) legal interest per annum from the finality of this Decision until fully paid.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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