Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOEL G. GUINTO,
Petitioner,

- versus -

STO. NIÑO LONG-ZENY CONSIGNEE, ANGELO SALANGSANG, and ZENAIDA SALANGSANG,
Respondents.

G.R. No. 250987

Present:

GESMUNDO, *CJ., Chairperson,*
CAGUIOA,
INTING,
GAERLAN, and
DIMAAMPAO, *JJ.*

Promulgated:
MAR 29 2022

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DECISION

INTING, *J.*:

This is a Petition for Review on *Certiorari*[1] of the Decision[2] dated May 24, 2019 and the Resolution[3] dated December 12, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 157156. The CA sustained in all aspects the Decision[4] dated May 2, 2018 and the Resolution[5] dated June 20, 2018 of the National Labor Relations Commission (NLRC) which set aside the Decision[6] dated October 18, 2017 of the Labor Arbiter (LA) and entered a new judgment that dismissed the claim for illegal dismissal of Noel G. Guinto (petitioner), directed his reinstatement without backwages, deleted the award of separation pay and 13th month pay, and ordered the payment of service incentive leave pay and 10% attorney's fees in his favor.

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1 *Rollo*, pp. 12-30.
2 Id. at 35-48; penned by Associate Justice Edwin D. Sorongon with Associate Justices Sesinando E. Villon and Germano Francisco D. Legaspi, concurring.
3 Id. at 51-52-A; penned by Associate Justice Edwin D. Sorongon with Associate Justices Jhosep Y. Lopez (now a Member of the Court) and Germano Francisco D. Legaspi, concurring.
4 Id. at 72-81; penned by Commissioner Romeo L. Go with Presiding Commissioner Gerardo C. Nograles and Commissioner Gina F. Cenit-Escoto, concurring.
5 Id. at 83-84.
6 Id. at 135-139; penned by Labor Arbiter Leandro M. Jose.

The Antecedents

On February 6, 2017, petitioner filed a Complaint[7] for illegal dismissal with prayer for the payment of separation pay and attorney's fees against respondents: Sto. Niño Long-Zeny Consignee (the Consignee); its owner Angelo Salangsang (Angelo); and his wife,[8] Zenaida Salangsang (Zenaida), the manager[9] of the Consignee (collectively, respondents).[10] Upon petitioner's Motion to Amend Complaint,[11] the Complaint was amended to include the nonpayment of service incentive leave pay and 13th month pay.[12]

The Consignee is engaged in the brokerage/trading of various aquatic animals, including but not limited to crabs, shrimps, prawns, milkfish, and tilapia; and its place of business is located at the Orani Fishport in Orani, Bataan. Petitioner averred that he was an employee of respondents since August 1997. He initially occupied the position of warehouseman until he was appointed by respondents as a "sizer," or one who selects, sorts, and arranges the aquatic animals according to their respective sizes until his termination in November 2015. From time to time, respondents directed petitioner to clean the trays used for their business, the office, and the warehouse of the Consignee.[13]

Petitioner alleged that on November 27, 2015, at the house of Zenaida, the latter told him: "*Wag ka [nang] papasok at lumayas ka.*" Petitioner, however, could not recall any reason or cause for such termination of his services. He added that the following morning, he received a text message from a certain "*Nam-Nam*," Zenaida's representative, telling him: "*Pare, wag ka* [*nang*] *papasok pati ang anak mo sabi ni Ate.*"[14]

As mediation between the parties proved unsuccessful, petitioner

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7 Id. at 86.

8 Id. at 113 and 144.

9 In the Position Paper of Noel G. Guinto before the Labor Arbiter, he referred to Zenaida Salangsang (Zenaida) as an owner of the Sto. Niño Long-Zeny Consignee together with Angelo Salangsang, id. at 87. On the other hand, in his Petition for *Certiorari* before the CA and in the present petition, he referred to Zenaida as the manager of the Consignee, id. at 13 and 54.

10 Id.

11 Id. at 85.

12 Id.

13 Id. at 36.

14 Id.

filed the Complaint and asserted that he was respondents' regular employee based on the following pieces of evidence: (1) a Certification[15] issued by Angelo, pertinently stating that petitioner has been employed as a warehouseman of the Consignee "from August 1997 up to present;" (2) the work schedule posted at respondents' work premises; (3) the *Sinumpaang Salaysay*[16] of Rizalito G. Alfonso (Rizalito), a dispatcher of JC Garcia Consignee which is a similar and adjacent establishment to the Consignee, attesting that petitioner was respondents' employee; (4) the payslips issued by respondents in favor of petitioner; and (5) a *Katunayan*[17] executed by porters Alejandro Roman, Rodolfo Lopez, Crisanto Pena, Gil Santos, and Edgar Villanueva vouching that petitioner was an employee of respondents and not a member of any of the association of porters in the Orani Fishport. In the same affidavit, they attached a list of porters[18] associated with the Orani Fishport with a statement that petitioner was not included in the list because he was a regular employee of respondents.[19]

Respondents vehemently denied petitioner's allegations. They asserted that: (1) there was no employer-employee relationship existing between them and petitioner; (2) petitioner was a porter at the Orani Fishport; and (3) while porters and sizers normally grouped together and were associated with the consignation of their choice, they have never been considered as under the employ of such consignation.[20]

To prove that petitioner was not their employee, respondents presented the following pieces of evidence: (1) the joint affidavit of porters Romano Lopez and Godofredo Reyes attesting to the fact that petitioner was not an employee of respondents because he was a porter/sizer at the Orani Fishport who rendered his services to other fishpond owners other than herein respondents; (2) the joint affidavit of porters Armando Guinto, Joel Guinto, and Sonny Guinto, petitioner's own father and brothers, who pertinently vouched that petitioner is actually a nephew of Zenaida, and as porters/sizers, they were not employees of the fishpond owners; and (3) the Consignee's applications for mayor's permit for several years which stated that respondents only had two regular employees, namely: Ricardo Salangsang and Donato

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15 Id. at 94.
16 Id. at 95.
17 Id. at 124.
18 Id. at 125.
19 Id. at 36-37
20 Id. at 37.

Decena.[21]

Still, petitioner insisted that he was a regular employee of respondents as clearly stated in the Certification issued by Angelo himself. He argued that a porter is one who transports aquatic animals from the boat or truck of a fishpond owner to the consignation; hence, the position is different from a sizer. As he was respondents' sizer and not a porter, he asserted that he was terminated from his employment in view of Zenaida's verbal instruction for him not to report to work and the subsequent text message he received stating that he was no longer allowed to do so. As such, petitioner argued that his dismissal was illegal because it was made without cause and due process. Thus, he prayed for the payment of separation pay and backwages. On his monetary claims, petitioner averred that as a regular employee, he was entitled to the payment of service incentive leave pay and 13th month pay, from the time he was hired by respondents until his illegal dismissal. He also sought the payment of exemplary damages and attorney's fees.[22]

Respondents countered that: (1) the Certification presented by petitioner was merely an "accommodation document" which was executed by Angelo at petitioner's own request to support the latter's purported application for employment abroad; (2) the identification card (ID) presented by Rizalito effectively disproved petitioner's own claim of employment with respondents as the latter's own employees presented their own IDs while petitioner failed to do so; and (3) the handwritten notes submitted by petitioner did not prove the payment of salaries as the notes are classified as "cuenta," or bills that porters earn as a group which they eventually divide among themselves. Thus, respondents prayed for the dismissal of petitioner's Complaint.[23]

Ruling of the LA

In the Decision[24] dated October 18, 2017, the LA held that petitioner was indeed respondent's employee based on the Certification issued by Angelo that he presented in evidence. The LA discarded respondents' explanation that the certification was issued by way of an accommodation as they cannot vary the very wording of the document

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21 Id.
22 Id. at 37-38.
23 Id. at 38.
24 Id. at 135-139.

without violating the rules on evidence. As to the issue of illegal dismissal, the LA opined that respondents had interposed no other defense aside from their denial that petitioner was not their employee. As such, the LA concluded that petitioner was illegally dismissed from his employment, and was thus entitled to the payment of service incentive leave pay and 13th month pay.[25] The LA decreed:

> WHEREFORE, premises considered, complainant is found to have been illegally dismissed even as respondents are held liable therefor.
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> Thus, respondents are hereby ordered to pay complainant his full backwages from the time of his illegal dismissal until the finality of this decision, initially computed at this time at Php194,652.50.
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> Respondents are likewise ordered to pay complainant's separation pay of Php156,000.00, service incentive leave pay of Php4,500.00, 13th month pay of Php23,400.00 and 10% attorney's fee of Php37,855.25.
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> All other claims are dismissed for lack of merit.
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> So Ordered.[26]

Aggrieved, respondents appealed to the NLRC.[27]

Ruling of the NLRC

In the Decision[28] dated May 2, 2018, the NLRC agreed with the LA that petitioner was a regular employee of respondents considering the certification, affidavits of witnesses, work schedule, attendance sheet, and payslips he submitted in evidence. It pointed out that respondents had exercised control over petitioner who worked within its premises and received instruction and guidance from them; and petitioner occupied a position that was usually necessary or desirable in the usual trade or business of respondents.[29]

However, the NLRC reversed the LA's finding of illegal dismissal in the case because, other than petitioner's bare claims, he failed to

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[25] Id. at 138-139.
[26] Id. at 139. Footnotes omitted.
[27] Id. at 40, 140-149.
[28] Id. at 72-81.
[29] Id. at 77.

adduce corroborating evidence to prove that he was actually dismissed from employment by respondents.[30] Thus, it ruled that the appropriate remedy was petitioner's reinstatement without backwages and the award of service incentive leave pay in his favor as respondents failed to show proof of payment thereof. Anent the matter of the 13th month pay benefit, the NLRC held that petitioner was not entitled thereto as he himself claimed that he was paid on a commission basis. Lastly, it also awarded petitioner attorney's fees equivalent to 10% of the total award considering that he was compelled to litigate and incur expenses to protect his rights and interest.[31]

Hence, the NLRC disposed of the case in this wise:

> WHEREFORE, the Labor Arbiter's decision is set aside and a new one entered dismissing the complaint for illegal dismissal for lack of merit. However, respondents are ordered to reinstate complainant to his former position but without backwages. The awards of separation pay and 13th month pay are deleted. Respondents are ordered to pay complainant his service incentives leave pay in the amount of Php4,500.00 and 10% attorney's fees.
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> SO ORDERED.[32]

Petitioner filed a Motion for Reconsideration,[33] but the NLRC denied it in its Resolution[34] dated June 20, 2018 for lack of merit.

Aggrieved, petitioner filed a Petition for *Certiorari*[35] before the CA.

Ruling of the CA

In the Decision[36] dated May 24, 2019, the CA dismissed the petition and sustained in all aspects the Decision dated May 2, 2018 and the Resolution dated June 20, 2018 of the NLRC.[37]

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30 Id. at 78.
31 Id. at 79-80.
32 Id. at 80-81.
33 Id. at 153-157.
34 Id. at 83-84.
35 Id. at 53-69.
36 Id. at 35-48.
37 Id. at 47.

The CA, quoting the ruling of the NLRC, found no cogent reason to depart from the findings of the LA and the NLRC that petitioner was a regular employee of respondents, *viz.*:

> For the Commission, the pieces of evidence submitted by complainant, taken together, proves that he was a regular employee of complainant since 1997.
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> First, the certificate of employment issued by the respondents clearly states that he was their employee as early as 1997. Second, assuming that [the] certificate of employment was merely an accomodation [*sic*] document, the affidavit of Mr. Alfonso collaborated the contents of the certificate of employment. Third, the affidavits of Messrs. Roman, Lopez, Pena, Santos and Villanueva controverted the affidavits of respondents' witnesses.
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> The affidavits of complainant's witnesses, together with the work schedule, attendance sheet, and payslips submitted by the complainant substantially supported complainant's claim that he was an employee of respondents.
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> Lastly, the element of control was also present because complainant performed his work within the premises of respondents, at the instruction and guidance of the same.
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> In sum, complainant was a regular employee of respondents because he occupied a position that was usually necessary or desirable in the usual business or trade of respondents.[38]

As to the issue of whether petitioner was illegally dismissed, the CA upheld the NLRC's finding that petitioner had failed to discharge his burden of proving his claim of dismissal from work. It pointed out that petitioner's filing of a complaint for illegal dismissal does not *ipso facto* prove that he was actually terminated from his employment.[39]

The CA also affirmed the LA and the NLRC's unanimous ruling that petitioner was entitled to receive his service incentive leave pay considering that respondents failed to present evidence on the issue. However, it agreed with the NLRC that petitioner was not entitled to receive 13th month pay from respondents because he was paid on a purely commission basis.[40]

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[38] Id. at 42-43, 77.
[39] Id. at 43-44.
[40] Id. at 44.

Lastly, the CA affirmed the NLRC's ruling as regards petitioner's reinstatement instead of the award of separation pay in lieu thereof. It relied on the pronouncement of the Court in *Pu-od v. Ablaze Builders, Inc.*[41] citing *Borja v. Miñoza*[42] that "in instances where there was neither dismissal by the employer nor abandonment by the employee, the proper remedy is to reinstate the employee to his former position, but without the award of backwages."[43]

The dispositive portion of the Decision provides:

> WHEREFORE, premises considered, the petition is DISMISSED. Accordingly, the May 2, 2018 Decision and the June 20, 2018 Resolution of public respondent National Labor Relations Commission (First Division) in *NLRC-LAC Case No. 01-000157-18* (*NLRC Case No. RAB-III-02-25235-17*) are hereby SUSTAINED in all aspects.
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> SO ORDERED.[44]

Petitioner filed a Motion for Reconsideration of the CA Decision, but the CA denied it in its Resolution[45] dated December 12, 2019.

Hence, the petition.

The Petition

Petitioner maintains that because respondents did not question the findings of the CA and the NLRC that he was respondents' regular employee, such findings had already attained finality. Thus, petitioner's status as a regular employee can no longer be questioned on appeal.[46]

Petitioner also argues as follows:

First, he was illegally dismissed from employment. Similar to the circumstances in the case of *Fernandez v. Kalookan Slaughterhouse*

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41 820 Phil. 1239 (2017).
42 812 Phil. 133 (2017).
43 *Rollo*, pp. 45-46.
44 Id. at 47.
45 Id. at 51-52-A.
46 Id. at 20-21.

Incorporated[47] (*Fernandez*), herein respondents, too, failed to specifically deny and rebut the allegations as to his dismissal from work. Thus, based on Section 11, Rule 8 of the Rules of Court, respondents' silence on the matter is deemed as an admission that he was actually dismissed on November 27, 2015. He would not have filed a complaint against respondents if not for the fact that he was indeed illegally terminated from his employment.[48]

Second, he is entitled to the payment of his full backwages given his illegal dismissal from work as well as separation pay in lieu of reinstatement, in view of the evident strained relations between the parties and considering that his reinstatement would only perpetuate the unlawful act of respondents against him.[49]

Third, he is entitled to the awards of service incentive leave pay, 13th month pay, moral and exemplary damages, and attorney's fees. Significantly, Presidential Decree No. (PD) 851,[50] which mandates all employers to pay their employees 13th month pay, includes within its coverage those who are paid on a piece-rate basis such as himself.[51] As to attorney's fees, he was compelled to litigate and incur expenses in filing his petition.[52]

Finally, Angelo and Zenaida should be held solidarily liable with the Consignee in the payment of the monetary awards in his favor considering their presumed knowledge of the pertinent labor laws and their assent to his illegal dismissal.[53]

In their Comment,[54] respondents counter as follows:

First, the present petition is outside the scope of an appeal under Rule 45 of the Rules of Court. Besides, petitioner, too, conveniently ignored the basic reason as to why the CA found no grave abuse of discretion on the part of the NLRC in dismissing his Complaint for

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47 G.R. No. 225075, June 19, 2019.
48 *Rollo*, p. 21.
49 Id. at 22-24.
50 Entitled, "Requiring All Employers to Pay Their Employees a 13th Month Pay," approved on December 16, 1975.
51 *Rollo*, p. 24.
52 Id.
53 Id. at 26.
54 Id. at 216-218.

illegal dismissal. In particular, the NLRC found that petitioner had failed to first establish by substantial evidence the fact of his dismissal from work, which was fatal to his cause.[55]

Second, the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed is clearly a *non sequitur* reasoning that can never validly take the place of the evidence of both the employer and the employee.[56]

In his Manifestation (In Lieu of Reply),[57] petitioner states that he was adopting his discussions in the present petition as his Reply to the Comment.

The Issue

Whether the CA erred in not finding grave abuse of discretion on the part of the NLRC when it held that: (1) petitioner was not illegally dismissed; and (2) he was neither entitled to 13th month pay nor separation pay in lieu of reinstatement.

The Court's Ruling

Only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[58] As a general rule, the Court is *not* a trier of facts. Specifically, in labor cases, questions of fact are contextually for the labor tribunals to resolve, and their factual findings, when supported by substantial evidence, are accorded respect and even finality by the Court.[59]

However, the rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court is not without exceptions.

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55 Id. at 217.
56 Id. at 218.
57 Id. at 222-224.
58 Section 1, Rule 45 of the Rules of Court.
59 *Distribution & Control Products, Inc. v. Santos*, 813 Phil. 423, 435 (2017), citing *South Cotabato Communications Corp. v. Hon. Santo Tomas*, 787 Phil. 494, 505 (2016).

The Court in *Cariño v. Maine Marine Phils., Inc.*,[60] as cited in *Fernandez* ruled:

> As a rule, "[i]n appeals by *certiorari* under Rule 45 of the Rules of Court, the task of the Court is generally to review only errors of law since it is not a trier of facts, a rule which definitely applies to labor cases." As the Court ruled in *Scanmar Maritime Services, Inc. v. Conag*: "But while the NLRC and the LA are imbued with expertise and authority to resolve factual issues, the Court has in exceptional cases delved into them where there is insufficient evidence to support their findings, or too much is deduced from the bare facts submitted by the parties, or the LA and the NLRC came up with conflicting findings x x x."[61]

In the present case, the Court finds that a review of the *conflicting* factual findings of the LA *vis-á-vis* the NLRC is warranted.

Equally important, "in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether, [in a petition for *certiorari*,] the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision."[62]

There is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not supported by substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[63] Such grave abuse of discretion on the part of the NLRC warrants the grant of the extraordinary remedy of *certiorari*.[64]

After a judicious review of the records of the case, the Court resolves to partially grant the petition.

The Court holds that the CA erred in not finding grave abuse of discretion on the part of the NLRC when it reversed the LA's Decision and dismissed the Complaint for illegal dismissal for lack of merit. In fine, the CA erred in concluding that the NLRC's appreciation of the evidence before it is supported by substantial evidence.

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[60] G.R. No. 231111, October 17, 2018.

[61] Id.

[62] *Slord Development Corporation v. Noya*, G.R. No. 232687, February 4, 2019; see also *Maricalum Mining Corp. v. Florentino*, 836 Phil. 655, 677 (2018).

[63] *Ace Navigation Company v. Garcia*, 760 Phil. 924, 932 (2015); *Mercado v. AMA Computer College-Paranaque City, Inc.*, 632 Phil. 228 (2010).

[64] *Ace Navigation Company v. Garcia*, id.

As will be discussed below, the conclusion of the NLRC that petitioner failed to prove the fact of his dismissal from employment is not supported by substantial evidence. To be precise, respondents are deemed to have admitted petitioner's specific allegations as to the act of petitioner's dismissal from employment considering their failure to specifically deny these allegations.

The rule is that "in illegal dismissal cases, the burden of proof is on the employer in proving the validity of dismissal. However, the fact of dismissal, *if disputed*, must be duly proven by the complainant."[65]

In relation thereto, Section 3, Rule 1 of the 2011 NLRC Rules of Procedure provides for the suppletory application of the Rules of Court for proceedings before the LA and the NLRC. It states:

> SECTION 3. SUPPLETORY APPLICATION OF THE RULES OF COURT. – In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, as amended, the pertinent provisions of the Rules of Court of the Philippines, as amended, may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.

Section 11, Rule 8 of the Rules of Court, in turn, provides that "[m]aterial averment[s] in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied."

Thus, in illegal dismissal cases, it follows that when the employer fails to specifically deny the complainant employee's material averments as to the circumstances of his dismissal, *the employer is deemed to have admitted the fact of dismissal* and must then discharge his burden of proving that the dismissal of the employee was valid.

In *Fernandez*, the Court deemed as an *admission by silence* the employer's failure to rebut petitioner employee's allegation that on a specific date, he was informed by the employer's personnel, who exercised control over petitioner's means and methods, that he could no

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[65] *Italkarat 18, Inc. v. Gerasmio*, G.R. No. 221411, September 28, 2020. Italics supplied.

longer report for work. The Court held:

> Indeed, Kalookan Slaughterhouse failed to specifically deny that on July 22, 2014, petitioner was informed that he could no longer report for work. De Guzman only alleged that he merely barred petitioner from entering the slaughterhouse in several instances because of his failure to wear his I.D. and uniform but he failed to state that this was done on July 22, 2014. De Guzman's silence on this matter is deemed as an admission by Kalookan Slaughterhouse that petitioner was indeed dismissed on July 22, 2014. As the Court held in *Masonic Contractors*:
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> > x x x By their silence, petitioners are deemed to have admitted the same. Section 11 of Rule 8 of the Rules of Court, which supplements the NLRC Rules, provides that an allegation not specifically denied is deemed admitted. x x x[66]

In the case; respondents did *not* specifically deny and rebut petitioner's allegations as to the fact of his dismissal from employment. To recall, petitioner alleged in his Complaint that: (1) on November 27, 2015, Zenaida told him to leave and not come to work anymore; and (2) the following morning, he received a text message from Zenaida's representative telling him: "*Pare, wag ka [nang] papasok pati ang anak mo sabi ni Ate.*" Meanwhile, in an attempt to relieve themselves from liability, respondents raised the defense that there was no employer-employee relationship between the Consignee and petitioner. In other words, respondents did not specifically deny that Zenaida and her representative, on separate occasions, told petitioner to leave and to stop going to work. Thus, respondents are deemed to have *admitted* petitioner's allegations as to his dismissal from work.

Notably, the NLRC, too, had affirmed the LA's ruling that petitioner was indeed a regular employee of respondents. There being no indication in the records that respondents ever assailed this ruling with the CA, it is clear that the issue has already been resolved *with finality.* Hence, it is no longer a proper subject of dispute with the Court.

Under the circumstances, the Court finds that petitioner, who was a regular employee of respondents, had been illegally dismissed from his employment considering: *first*, the latter's *deemed admission* of the fact of dismissal; and *second*, the absence of any clear showing of a just or valid cause for such dismissal. Consequently, the Court holds that

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[66] *Fernandez v. Kalookan Slaughterhouse Incorporated, supra* note 47, citing *Masonic Contractor, Inc.v. Madjos*, 620 Phil. 737, 744 (2009).

petitioner is entitled to the payment of his full backwages under Article 294[67] of the Labor Code of the Philippines (Labor Code).

Petitioner also prays that he be awarded separation pay in lieu of reinstatement on the ground of the alleged strained relations between him and respondents.

As a general rule, an employee who has been illegally dismissed is entitled to reinstatement. An exception to this rule is the doctrine of strained relations. The Court, in *Rodriguez v. Sintron Systems, Inc.*,[68] explained the doctrine of strained relations, the reason behind it, and the limitations of its appreciation in each and every case, *viz.*:

> Under the doctrine of strained relations, such payment of separation pay is considered an acceptable alternative to reinstatement *when the latter option is no longer desirable or viable*. On the one hand[,] it liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. x x x.
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> Besides, the doctrine of strained relations cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations;" otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. That is human nature. Strained relations must be demonstrated as a fact. The doctrine should not be used recklessly or loosely applied, nor be based on impression alone.[69] (Italics supplied.)

Here, petitioner should have proven the existence of strained relations between him and respondents before the lower tribunals. However, he failed to do so. As such, the Court is constrained to *deny* petitioner's prayer for the award of separation pay in lieu of reinstatement as his illegal dismissal *alone* does not justify a finding of strained relations.

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[67] Article 294 [279] of the Labor Code of the Philippines provides:

> ARTICLE 294. [279] *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.

[68] G.R. No. 240254, July 24, 2019.

[69] Id. Citations omitted.

As to the other monetary claims of petitioner, there is no issue that petitioner is entitled to service incentive leave pay in the amount of ₱4,500.00 as ruled by the LA and affirmed by the NLRC. It bears emphasis that the NLRC ruling on this matter has already attained finality considering respondents' failure to assail it before the CA by way of their own petition for *certiorari.*

With respect to petitioner's prayer for the award of 13th month pay, the CA is correct that the NLRC did not gravely abuse its discretion when it ruled against his entitlement thereto.

Under Section 3(e) of the Rules and Regulations Implementing PD 851,[70] employers of those who are paid on *purely commission,* boundary, or task basis, among others, are *exempted* from the payment of 13th month pay to its employees.[71]

Significantly, petitioner alleged in his Complaint that he was *paid on a commission basis.*[72] Seemingly realizing his mistake, it appears that he changed his theory in the present petition, alleging instead that he was paid on a piece-rate basis in an effort to make himself qualified to receive 13th month pay under PD 851.

As a matter of fairness, petitioner *cannot* now be allowed to change his theory of the case on appeal before the Court. After all, it is settled that "[p]oints of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppel and cannot be considered by a reviewing court, as these cannot be raised for the first time on appeal."[73]

Given the foregoing, the Court finds that petitioner is entitled to the payment of his full backwages and service incentive leave pay, with attorney's fees equivalent to 10% of the judgment awards considering that he was compelled to litigate to enforce his rights and protect his interests. This is in accordance with Article 111[74] of the Labor Code, as

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[70] Approved on December 22, 1975.

[71] See also *Roxas v. Baliwag Transit, Inc.*, G.R. No. 231859, February 19, 2020.

[72] *Rollo*, p. 36.

[73] *Ballesteros v. People*, G.R. No. 235579 (Notice), January 28, 2019, citing *Canoy v. People*, G.R. No. 214648 (Notice), January 21, 2015.

[74] Article 111 of the Labor Code of the Philippines provides:

amended, and Article 2208[75] of the Civil Code of the Philippines.[76]

As to who among respondents are liable to pay petitioner, the applications for mayor's permit for the years 2012 and 2014 show that the Consignee is a sole proprietorship with Angelo as the declared owner.[77] Thus, the Consignee, being a sole proprietorship, has no juridical personality to defend the lawsuit, and Angelo, as the owner, is liable to petitioner for the entirety of the monetary awards in the case.[78]

As to Zenaida's personal liability, the records show that respondents' *own* averments in their Memorandum of Appeal represented her as a *co-owner* of the Consignee. Specifically, respondents quoted Angelo's Affidavit dated April 17, 2017 which states:

> For better appreciation, the exact words of appellant Angelo Salangsang in his affidavit is hereunder quoted in full:
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> "Ako si ANGELO A. SALANGSANG, may sapat na gulang, may asawa, at naninirahan sa 113 Masantol, Orani, Bataan, matapos makapanumpang naayon sa batas ay malaya at kusang loob na nagsasalaysay:
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> *1. Na kami ng aking may bahay na si Zenaida G.*

Article 111. *Attorney's fees.* — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered

[75] Article 2208 of the Civil Code of the Philippines provides:

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

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

x x x x

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

See also *Alva v. High Capacity Security Force, Inc.*, 820 Phil. 677, 687-688 (2017).

[76] *Roxas v. Baliwag Transit, Inc.*, G.R. No. 231859, February 19, 2020, citing *Reyes v. RP Guardians Security Agency, Inc.*, 708 Phil. 598, 606 (2013) and *Aguilar v. Burger Machine Holdings Corporation*, 536 Phil. 985, 997 (2006).

[77] *Rollo*, pp. 113-117, 120-121.

[78] See *Big AA Manufacturer v. Antonio*, 519 Phil. 30 (2006).

Salangsang ang may-ari ng Sto. Nino Consignacio sa Fish Port ng Orani, Bataan;[79] (Italics supplied.)

Given the foregoing, the Court finds Zenaida solidarily liable with Angelo to pay petitioner the entirety of the monetary awards.

Lastly, the totality of the monetary awards shall earn legal interest at the rate of 6% *per annum* from the finality of this Decision until full satisfaction as compensatory interest arising from the final judgment.[80]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated May 24, 2019 and the Resolution dated December 12, 2019 of the Court of Appeals in CA-G.R. SP No. 157156 are hereby **SET ASIDE**. Let a new judgment be entered as follows:

Petitioner Noel G. Guinto is found to have been illegally dismissed. Respondents Angelo Salangsang and Zenaida Salangsang are **ORDERED** to:

1. reinstate petitioner Noel G. Guinto to his former position without loss of seniority rights; and

2. solidarily pay petitioner Noel G. Guinto his full backwages from the time of his illegal dismissal until the finality of this Decision, his service incentive leave pay in the amount of ₱4,500.00, 10% attorney's fees of the total amount due to petitioner, and legal interest of 6% *per annum* on the total monetary awards computed from the time of finality of this Decision until fully paid.

The Labor Arbiter is **DIRECTED** to recompute the monetary awards in favor of petitioner Noel G. Guinto in accordance with this Decision.

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[79] *Rollo*, p. 144.

[80] *Consolidated Distillers of the Far East, Inc. v. Zaragoza*, 833 Phil. 888, 899 (2018), citing *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 97 (2013); see also *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
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
Chairperson