Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BEST WEAR GARMENTS and/or WARREN PARDILLA, Petitioners,	**G.R. No. 191281**
	Present:
- versus -	LEONARDO-DE CASTRO, *Acting Chairperson,* BERSAMIN, VILLARAMA, JR., PEREZ,* and REYES, *JJ.*
ADELAIDA B. DE LEMOS and CECILE M. OCUBILLO, Respondents.	Promulgated: DEC 05 2012

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DECISION

VILLARAMA, JR., *J.*:

This is a petition for review on certiorari under Rule 45 assailing the Decision[1] dated February 24, 2009 and Resolution[2] dated February 10, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 102002. The CA reversed the Decision[3] dated August 28, 2007 of the National Labor Relations Commission (NLRC) and reinstated the September 5, 2005 Decision[4] of the Labor Arbiter.

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* Designated additional member per Special Order No. 1385 dated December 4, 2012.

1 *Rollo*, pp. 49-57. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Amelita G. Tolentino and Myrna Dimaranan Vidal concurring.

2 Id. at 58-59. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Amelita G. Tolentino and Francisco P. Acosta concurring.

3 Id. at 182-188. Penned by Presiding Commissioner Lourdes C. Javier with Commissioners Tito F. Genilo and Gregorio O. Bilog III concurring.

4 Id. at 113-120. Penned by Labor Arbiter Arden S. Anni.

Petitioner Best Wear Garments is a sole proprietorship represented by its General Manager Alex Sitosta. Respondents Cecile M. Ocubillo and Adelaida B. De Lemos were hired as sewers on piece-rate basis by petitioners on October 27, 1993 andJuly 12, 1994, respectively.

On May 20, 2004, De Lemos filed a complaint[5] for illegal dismissal with prayer for backwages and other accrued benefits, separation pay, service incentive leave pay and attorney's fees. A similar complaint[6] was filed by Ocubillo on June 10, 2004. Both alleged in their position paper that in August 2003, Sitosta arbitrarily transferred them to other areas of operation of petitioner's garments company, which they said amounted to constructive dismissal as it resulted in less earnings for them.

De Lemos claimed that after two months in her new assignment, she was able to adjust but Sitosta again transferred her to a "different operation where she could not earn [as] much as before because by-products require long period of time to finish." She averred that the reason for her transfer was her refusal "to render [overtime work] up to 7:00 p.m." Her request to be returned to her previous assignment was rejected and she was "constrained not to report for work as Sitosta had become indifferent to her since said transfer of operation." She further alleged that her last salary was withheld by petitioner company.[7]

On her part, Ocubillo alleged that her transfer was precipitated by her having "incurred excessive absences since 2001." Her absences were due to the fact that her father became very sick since 2001 until his untimely demise on November 9, 2003; aside from this, she herself became very sickly. She claimed that from September to October 2003, Sitosta assigned her to different machines "whichever is available" and that "there were times, she could not earn for a day because there was no available machine to work for *[sic]*." Sitosta also allegedly required her to render overtime

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5 CA *rollo*, p.209.
6 Id. at 210-211.
7 Id. at 48.

work up to 7:00 p.m. which she refused "because she was only paid up to 6:25 p.m."[8]

Petitioners denied having terminated the employment of respondents who supposedly committed numerous absences without leave (AWOL). They claimed that sometime in February 2004, De Lemos informed Sitosta that due to personal problem, she intends to resign from the company. She then demanded the payment of separation pay. In March 2004, Ocubillo likewise intimated her intention to resign and demanded separation pay. Sitosta explained to both De Lemos and Ocubillo that the company had no existing policy on granting separation pay, and hence he could not act on their request. De Lemos never reported back to work since March 2004, while Ocubillo failed to report for work from October 2004 to the present.

As to the allegation of respondents that the reason for their transfer was their refusal to render overtime work until 7:00 p.m., petitioners asserted that respondents are piece-rate workers and hence they are not paid according to the number of hours worked.

On September 5, 2005, Labor Arbiter Arden S. Anni rendered a Decision granting respondents' claims, as follows:

> WHEREFORE, ALL THE FOREGOING CONSIDERED, judgment is rendered, as follows:
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> 1. Declaring that complainants were constructively, nay, illegally dismissed from employment;
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> 2. Ordering respondents to pay each of the complainants SEPARATION PAY equivalent to one-month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year;
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> 3. Ordering respondents to pay each of the complainants BACKWAGES computed from the time of their dismissal up to the finality of this decision.
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> For this purpose, both parties are directed to submit their respective computations of the total amount awarded for approval by this office.
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> All other claims are dismissed for lack of merit.

[8] Id. at 49.

SO ORDERED.[9]

Labor Arbiter Anni ruled that since respondents neither resigned nor abandoned their jobs, the ambiguities in the circumstances surrounding their dismissal are resolved in favor of the workers. It was emphasized that respondents could no longer be deemed terminated for reason of AWOL because this prerogative should have been exercised before the dismissals have been effected. Moreover, it would have been illogical for respondents to resign and then file a complaint for illegal dismissal.

Petitioners appealed to the NLRC which reversed the Labor Arbiter's decision and dismissed respondents' complaints. The NLRC found no basis for the charge of constructive dismissal, thus:

> Complainants' alleged demotion is vague. They simply allege that by reason of their transfer in August 2003, *they did not earn as much as they earned in their previous assignments.* They failed to state how much they earned before and after their transfer, if only to determine whether or not there was indeed a diminution in their earnings. Further, it is to be stressed that complainants were paid on a piece rate basis, which simply means that the more output, they produced the more earnings they will have. In other words, the earning is dependent upon complainants.
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> We find more credible respondents' assertion that **complainants' transfer was a valid exercise of management prerogative**. Respondent company points out that it is engaged in the business of garments manufacturing as a sub-contractor. That, **the kind of work it performs is dependent into with its client which specifies the work it has to perform**. And, that corollary thereto, **the work to be performed by its employees will depend on the work specifications in the contract**. **Thus, if complainants have been assigned to different operations, it was pursuant to the requirements of its contracts**. x x x.
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> In furtherance of their defense that complainants were not dismissed, either actual or constructive in August 2003, respondents allege that complainants continued to report for work until February 2004 for complainant De Lemos and August 2004 for complainant Ocubillo. We lend credence to this allegation of respondents because it remains unrebutted by complainants.
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> It is to be noted that **it was only** [on] **May 20, 2004 and June 10, 2004 that the instant consolidated cases were filed** by complainant De Lemos and Ocubillo, respectively. It may not be amiss to state that the date of filing jibe with respondents' allegation that sometime in February and March 2004, complainants intimated their intention to resign and demanded for payment of separation pay but was not favorably acted upon by management.

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9 *Rollo*, p. 120.

> Be that as it may, considering that complainants were not dismissed by respondents, they should be ordered to report back to work without backwages and for the respondents to accept them.
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> WHEREFORE, premises considered, the Decision dated September 5, 2005 is hereby SET ASIDE and a new one entered dismissing complainants' charge of illegal dismissal for lack of merit. However, there being no dismissal, complainants Adelaida B. De Lemos and Cecile M. Ocubillo are hereby directed to report back to work without backwages within ten (10) days from receipt of this Resolution and for the respondent Company to accept them under the same terms and conditions at the time of their employment.
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> SO ORDERED.[10] (Italics in the original; emphasis supplied)

Respondents filed a motion for reconsideration which the NLRC denied. Thus, they elevated the case to the CA alleging grave abuse of discretion on the part of the NLRC.

By Decision dated February 24, 2009, the CA granted the petition for certiorari, reversed the ruling of the NLRC and reinstated the Labor Arbiter's decision with modification that the service incentive leave pay shall be excluded in the computation of the monetary award. The CA found no valid and legitimate business reason for the transfer order which entailed the reduction of respondents' earnings. Because respondents' plea to be returned to their former posts was not heeded by petitioners, no other conclusion "is discernible from the attendant circumstances except the fact that [respondents'] transfer was unreasonable, inconvenient and prejudicial to them which [is] tantamount to a constructive dismissal."[11]Moreover, the unauthorized absences of respondents did not warrant a finding of abandonment in view of the length of their service with petitioner company and the difficulty in finding similar employment. The CA further invoked the rule that an employee who forthwith takes steps to protest his layoff cannot by any logic be said to have abandoned his work.

Petitioners filed a motion for partial reconsideration which was denied by the CA.

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10 Id. at 186-187.
11 Id. at 55.

Hence, this petition alleging that the CA has glaringly overlooked and clearly erred in its findings of fact and in applying the law on constructive dismissal.

At the outset, it must bestated that the main issue in this case involves a question of fact. It is an established rule that the jurisdiction of the Supreme Court in cases brought before it from the CA via Rule 45 of the 1997 Rules of Civil Procedure is generally limited to reviewing errors of law. This Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding and consequently, it is not our function to analyze or weigh evidence all over again.[12]

There are, however, recognized exceptions[13] to this rule such as when there is a divergence between the findings of facts of the NLRC and that of the CA.[14]In this case, the CA's findings are contrary to those of the NLRC. There is, therefore, a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[15]

The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. Thus, an employer may transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by

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12 *Suguev. Triumph International (Phils.), Inc.,* G.R. Nos. 164804 & 164784, January 30, 2009, 577 SCRA 323, 331-332, citing *Rizal Commercial Banking Corporation v. Alfa RTW Manufacturing Corporation,* G.R. No. 133877, November 14, 2001, 368 SCRA 611, 617 and *Gabriel v. Mabanta,* G.R. No. 142403, March 26, 2003, 399 SCRA 573, 579-580.

13 (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjecture; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same are contrary to the admission of both the appellant and the appellee; (7) **when the findings are contrary to those of the trial court;** (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed evidence and contradicted by the evidence on record. (*Sugue v. Triumph International (Phils.), Inc.*, id., citing *Sta. Maria v. Court of Appeals*, G.R. No. 127549, January 28, 1998, 285 SCRA 351, 357-358.)

14 *Dimagan v. Dacworks United, Incorporated,* G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445, citing *Sugue, et al.v. Triumph International (Phils.), Inc.,* supra.

15 *Dimagan v. Dacworks United, Incorporated,* id. at 445-446.

discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[16]

In *Blue Dairy Corporation v. NLRC*,[17] we held that:

> x x x. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.[18]

With the foregoing as guidepost, we hold that the CA erred in reversing the NLRC's ruling that respondents were not constructively dismissed.

Being piece-rate workers assigned to individual sewing machines, respondents' earnings depended on the quality and quantity of finished products. That their work output might have been affected by the change in their specific work assignments does not necessarily implythat any resultingreduction in payis tantamount to constructive dismissal. Workers under piece-rate employment have no fixed salaries and their compensation is computed on the basis of accomplished tasks. As admitted by respondent De Lemos, some garments or by-products took a longer time to finish so they could not earn as much as before. Also,the type of sewing jobs available would depend on the specifications made by the clients of petitioner company. Under these circumstances, it cannot be said that the

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16 *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, 664 SCRA 110, 119-120, citing *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, July 7, 2004, 433 SCRA 756, 766 and *Herida v. F & C Pawnshop and Jewelry Store*, G.R. No. 172601, April 16, 2009, 585 SCRA 395, 401.

17 G.R. No. 129843, September 14, 1999, 314 SCRA 401.

18 Id. at 408-409.

transfer was unreasonable, inconvenient or prejudicial to the respondents. Such deployment of sewers to work on different types of garments as dictated by present business necessity is within the ambit of management prerogative which, in the absence of bad faith, ill motive or discrimination, should not be interfered with by the courts.

The records are bereft of any showing of clear discrimination, insensibility or disdain on the part of petitioners in transferring respondents to perform a different type of sewing job.It is unfair to charge petitioners with constructive dismissal simply because the respondents insist that their transfer to a new work assignment was against their will. We have long stated that "the objection to the transfer being grounded on solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer."[19]That respondents eventually discontinued reporting for work after their plea to be returned to their former work assignment was their personal decision, for which the petitioners should not be held liable particularly as the latter did not, in fact, dismiss them.

Indeed, there was no evidence that respondents were dismissed from employment. In fact, petitioners expressed willingness to accept them back to work. There being no termination of employment by the employer, the award of backwages cannot be sustained. It is well settled that backwages may be granted only when there is a finding of illegal dismissal.[20]In cases where there is no evidence of dismissal, the remedy is reinstatement but without backwages.[21]

The constitutional policy of providing full protection to labor is not intended to oppress or destroy management.[22] While the Constitution is

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19 *Mercury Drug Corporation v. Domingo,* G.R. No. 143998, April 29, 2005, 457 SCRA 578, 592, citing *Phil. Telegraph and Telephone Corp. v. Laplana,* G.R. No. 76645, July 23, 1991, 199 SCRA 485.

20 *J.A.T. General Services v. National Labor Relations Commission,* G.R. No. 148340, January 26, 2004, 421 SCRA 78, 91, citing *Industrial Timber Corp.-Stanply Operations v. NLRC,* G.R. No. 112069, February 14, 1996, 253 SCRA 623, 629.

21 *Exodus International Construction Corporation v. Biscocho,* G.R. No. 166109, February 23, 2011, 644 SCRA 76, 92.

22 *Capili v. National Labor Relations Commission,* G.R. No. 117378, March 26, 1997, 270 SCRA 489, 495.

committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play.[23] Thus, where management prerogative to transfer employees is validly exercised, as in this case, courts will decline to interfere.

WHEREFORE, the petition for review on certiorari is **GRANTED.** The Decision dated February 24, 2009 and Resolution dated February 10, 2010 of the Court of Appeals in CA-G.R. SP No. 102002 are **SET ASIDE.** The Decision dated August 28, 2007 of the National Labor Relations Commission is hereby **REINSTATED and UPHELD.**

No pronouncement as to costs.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

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[23] *Javier v. Fly Ace Corporation,* G.R. No. 192558, February 15, 2012, 666 SCRA 382, 399-400.

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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Acting Chief Justice