Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

GENERAL MILLING CORPORATION,
Petitioner,

- versus -

VIOLETA L. VIAJAR,
Respondent.

G.R. No. 181738

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

JAN 30 2013

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DECISION

REYES, *J.*:

This is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner General Milling Corporation (GMC), asking the Court to set aside the Decision[2] dated September 21, 2007 and the Resolution[3] dated January 30, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 01734; and to reinstate the Decision[4] dated October 28, 2005 and Resolution[5] dated January 31, 2006 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000416-05.

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1 *Rollo*, pp. 3-23.

2 Penned by Associate Justice Antonio L. Villamor, with Associate Justices Isaias P. Dicdican and Stephen C. Cruz, concurring; id. at 26-38.

3 Id. at 40-43.

4 Id. at 212-225.

5 Id. at 257-258.

The antecedent facts are as follows:

GMC is a domestic corporation with principal office in Makati City and a manufacturing plant in Lapu-Lapu City.

In October 2003, GMC terminated the services of thirteen (13) employees for redundancy, including herein respondent, Violeta Viajar (Viajar). GMC alleged that it has been gradually downsizing its Vismin (Visayas-Mindanao) Operations in Cebu where a sizeable number of positions became redundant over a period of time.[6]

On December 2, 2003, Viajar filed a Complaint[7] for Illegal Dismissal with damages against GMC, its Human Resource Department (HRD) Manager, Johnny T. Almocera (Almocera), and Purchasing Manager, Joel Paulino before the Regional Arbitration Branch (RAB) No. VII, NLRC, Cebu City.

In her Position Paper,[8] Viajar alleged that she was employed by GMC on August 6, 1979 as Invoicing Clerk. Through the years, the respondent held various positions in the company until she became Purchasing Staff.

On October 30, 2003, Viajar received a Letter-Memorandum dated October 27, 2003 from GMC, through Almocera, informing her that her services were no longer needed, effective November 30, 2003 because her position as Purchasing Staff at the Purchasing Group, Cebu Operations was deemed redundant. Immediately thereafter, the respondent consulted her immediate superior at that time, Thaddeus Oyas, who told her that he too was shocked upon learning about it.[9]

When Viajar reported for work on October 31, 2003, almost a month before the effectivity of her severance from the company, the guard on duty barred her from entering GMC's premises. She was also denied access to her office computer and was restricted from punching her daily time record in the bundy clock.[10]

On November 7, 2003, Viajar was invited to the HRD Cebu Office where she was asked to sign certain documents, which turned out to be an "Application for Retirement and Benefits." The respondent refused to sign and sought clarification because she did not apply for retirement and instead asserted that her services were terminated for alleged redundancy. Almocera

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6 Id. at 6.
7 Id. at 61.
8 Id. at 90-122.
9 Id. at 27-28.
10 Id. at 28.

told her that her signature on the Application for Retirement and Benefits was needed to process her separation pay. The respondent also claimed that between the period of July 4, 2003 and October 13, 2003, GMC hired fifteen (15) new employees which aroused her suspicion that her dismissal was not necessary.[11] At the time of her termination, the respondent was receiving the salary rate of ₱19,651.41 per month.[12]

For its part, the petitioner insisted that Viajar's dismissal was due to the redundancy of her position. GMC reasoned out that it was forced to terminate the services of the respondent because of the economic setbacks the company was suffering which affected the company's profitability, and the continuing rise of its operating and interest expenditures. Redundancy was part of the petitioner's concrete and actual cost reduction measures. GMC also presented the required "Establishment Termination Report" which it filed before the Department of Labor and Employment (DOLE) on October 28, 2003, involving thirteen (13) of its employees, including Viajar. Subsequently, GMC issued to the respondent two (2) checks respectively amounting to ₱440,253.02 and ₱21,211.35 as her separation pay.[13]

On April 18, 2005, the Labor Arbiter (LA) of the NLRC RAB No. VII, Cebu City, rendered a Decision, the decretal portion of which reads:

> ***WHEREFORE,*** foregoing considered, judgment is hereby rendered declaring that respondents acted in good faith in terminating the complainant from the service due to redundancy of works, thus, complainant's refusal to accept the payment of her allowed separation pay and other benefits under the law is ***NOT JUSTIFIED*** both in fact and law, and so, therefore complainant's case for illegal dismissal against the herein respondents and so are complainant's monetary claims are hereby ordered ***DISMISSED*** for lack of merit.
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> ***SO ORDERED.***[14]

The LA found that the respondent was properly notified on October 30, 2003 through a Letter-Memorandum dated October 27, 2003, signed by GMC's HRD Manager Almocera, that her position as Purchasing Staff had been declared redundant. It also found that the petitioner submitted to the DOLE on October 28, 2003 the "Establishment Termination Report." The LA even faulted the respondent for not questioning the company's action before the DOLE Regional Office, Region VII, Cebu City so as to compel the petitioner to prove that Viajar's position was indeed redundant. It ruled that the petitioner complied with the requirements under Article 283 of the Labor Code, considering that the nation was then experiencing an economic downturn and that GMC must adopt measures for its survival.[15]

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11 Id. at 102.
12 Id. at 91.
13 Id. at 28.
14 Id. at 176.
15 Id. at 172-176.

Viajar appealed the aforesaid decision to the NLRC. On October 28, 2005, the NLRC promulgated its decision, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the Decision of the Labor Arbiter declaring the validity of complainant's termination due to redundancy is hereby **AFFIRMED.** Respondent General Milling Corporation is hereby ordered to pay complainant's separation pay in the amount of [₱]461,464.37.
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> **SO ORDERED.**[16]

The NLRC, however, stated that it did not agree with the LA that Viajar should be faulted for failing to question the petitioner's declaration of redundancy before the DOLE Regional Office, Region VII, Cebu City. It was not imperative for Viajar to challenge the validity of her termination due to redundancy.[17] Notwithstanding, the NLRC affirmed the findings of the LA that Viajar's dismissal was legal considering that GMC complied with the requirements provided for under Article 283 of the Labor Code and existing jurisprudence, particularly citing *Asian Alcohol Corporation v. NLRC*.[18] The NLRC further stated that Viajar was aware of GMC's "reduction mode," as shown in the GMC Vismin Manpower Complement, as follows:

Year	Manpower Profile	No. of Employees Terminated (Redundancy)
2000	795	
2001	782	
2002	736	41
2003	721	24
2004	697	16
2005	696 (As of June 2005)	06[19]

The NLRC stated that the characterization of positions as redundant is an exercise of the employer's business judgment and prerogative. It also ruled that the petitioner did not exercise this prerogative in bad faith and that the payment of separation pay in the amount of ₱461,464.37 was in compliance with Article 283 of the Labor Code.[20]

Respondent Viajar filed a Motion for Reconsideration which was denied by the NLRC in its Resolution dated January 31, 2006.

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16 Id. at 224-225.
17 Id. at 222.
18 364 Phil. 912 (1999).
19 *Rollo*, p. 223.
20 Id. at 223-224.

Undaunted, Viajar filed a petition for *certiorari* before the CA. In the now assailed Decision dated September 21, 2007, the CA granted the petition, reversing the decision of the NLRC in the following manner:

> **WHEREFORE,** premises considered, this Petition for Certiorari is **GRANTED**. The *Decision*, dated 28 October 2005, and *Resolution*, dated 31 January 2006 respectively, of public respondent National Labor Relations Commission-Fourth Division, Cebu City, in NLRC Case No. V-000416-05 (RAB VII-12-2495-03) are **SET ASIDE**. A new judgment is entered DECLARING the dismissal ILLEGAL and ordering respondent to reinstate petitioner without loss of seniority rights and other privileges with full backwages inclusive of allowances and other benefits computed from the time she was dismissed on 30 November 2003 up to the date of actual reinstatement. Further, moral and exemplary damages, in the amount of Fifty Thousand Pesos ([₱]50,000.00) each; and attorney's fees equivalent to ten percent (10%) of the total monetary award, are awarded.
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> Costs against respondent.
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> **SO ORDERED.**[21]

Aggrieved by the reversal of the NLRC decision, GMC filed a motion for reconsideration. However, in its Resolution dated January 30, 2008, the CA denied the same; hence, this petition.

The petitioner raises the following issues, to wit:

> I. THE DECISION OF SEPTEMBER 21, 2007 AND THE RESOLUTION OF JANUARY 30, 2008 OF THE COURT OF APPEALS ARE CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE.
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> II. THE DECISION OF SEPTEMBER 21, 2007 AND THE RESOLUTION OF JANUARY 30, 2008 OF THE COURT OF APPEALS VIOLATE THE LAW AND ESTABLISHED JURISPRUDENCE ON THE OBSERVANCE OF RESPECT AND FINALITY TO FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION.
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> III. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN ITS DECISION OF SEPTEMBER 21, 2007 AND RESOLUTION OF JANUARY 30, 2008 AS THE SAME ARE CONTRARY TO THE EVIDENCE ON RECORD.[22]

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21 Id. at 37-38.

22 Id. at 10.

The petition is denied.

The petitioner argues that the factual findings of the NLRC, affirming that of the LA must be accorded respect and finality as it is supported by evidence on record. Both the LA and the NLRC found the petitioner's evidence sufficient to terminate the employment of respondent on the ground of redundancy. The evidence also shows that GMC has complied with the procedural and substantive requirements for a valid termination. There was, therefore, no reason for the CA to disturb the factual findings of the NLRC.[23]

The rule is that factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times, even finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction.[24] It is also settled that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial.[25] This rule, however, allows for exceptions. One of these exceptions covers instances when the findings of fact of the trial court, or of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA. When there is a variance in the factual findings, it is incumbent upon the Court to re-examine the facts once again.[26]

Furthermore, another exception to the general rule is when the said findings are not supported by substantial evidence or if on the basis of the available facts, the inference or conclusion arrived at is manifestly erroneous.[27] Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness.[28] In the instant case, the Court agrees with the CA that the conclusions arrived at by the LA and the NLRC are manifestly erroneous.

GMC claims that Viajar was validly dismissed on the ground of redundancy which is one of the authorized causes for termination of employment. The petitioner asserts that it has observed the procedure provided by law and that the same was done in good faith. To justify the respondent's dismissal, the petitioner presented: (i) the notification Letter-Memorandum dated October 27, 2003 addressed to the respondent which was received on October 30, 2003;[29] (ii) the "Establishment Termination

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23 Id. at 11.

24 *Eureka Personnel & Management Services, Inc. v. Valencia*, G.R. No. 159358, July 15, 2009, 593 SCRA 36, 44.

25 Id.; see also *Bernarte v. Philippine Basketball Association (PBA)*, G.R. No. 192084, September 14, 2011, 657 SCRA 745.

26 *Janssen Pharmaceutica v. Silayro*, G.R. No. 172528, February 26, 2008, 546 SCRA 628, 640.

27 *Sunset View Condominium Corporation v. NLRC*, G.R. No. 87799, December 15, 1993, 228 SCRA 466, 470-471; *Arc-Men Food Industries Corp. v. NLRC*, 436 Phil. 371, 379 (2002).

28 *Fujitsu Computer Products Corp. of the Phils. v. Court of Appeals*, 494 Phil. 697, 716 (2005).

29 *Rollo*, p. 58.

Report" as prescribed by the DOLE;[30] (iii) the two (2) checks issued in the respondent's name amounting to ₱440,253.02 and ₱21,211.35 as separation pay;[31] and (iv) the list of dismissed employees as of June 6, 2006 to show that GMC was in a "reduction mode."[32] Both the LA and the NLRC found these sufficient to prove that the dismissal on the ground of redundancy was done in good faith.

The Court does not agree.

Article 283 of the Labor Code provides that redundancy is one of the authorized causes for dismissal. It reads:

> Article 283. *Closure of establishment and reduction of personnel*. – The employer may also terminate the employment of any employee due to the installment 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 worker 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 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. (Emphasis supplied)

From the above provision, it is imperative that the employer must comply with the requirements for a valid implementation of the company's redundancy program, to wit: (a) the employer must serve a written notice to the affected employees and the DOLE at least one (1) month before the intended date of retrenchment; (b) the employer must pay the employees a separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (c) the employer must abolish the redundant positions in good faith; and (d) the employer must set fair and reasonable criteria in ascertaining which positions are redundant and may be abolished.[33]

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30 Id. at 60.
31 Id. at 59.
32 Id. at 361.
33 *Lopez Sugar Corp. v. Franco*, 497 Phil. 806, 818 (2005); *Culili v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 165381, February 9, 2011, 642 SCRA 338, 355; *Caltex (Phils.), Inc. v. NLRC*, G.R. No. 159641, October 15, 2007, 536 SCRA 175, 187.

In *Smart Communications, Inc., v. Astorga,*[34] the Court held that:

> The nature of redundancy as an authorized cause for dismissal is explained in the leading case of *Wiltshire File Co., Inc. v. National Labor Relations Commission, viz*:
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> > "x x x **redundancy in an employer's personnel force necessarily or even ordinarily refers to duplication of work.** That no other person was holding the same position that private respondent held prior to termination of his services does not show that his position had not become redundant. Indeed, in any well organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person. **We believe that redundancy, for purposes of the Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise**."
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> The characterization of an employee's services as superfluous or no longer necessary and, therefore, properly terminable, is an exercise of business judgment on the part of the employer. The wisdom and soundness of such characterization or decision is not subject to discretionary review provided, of course, that a violation of law or arbitrary or malicious action is not shown.[35] (Emphasis supplied and citations omitted)

While it is true that the "characterization of an employee's services as superfluous or no longer necessary and, therefore, properly terminable, is an exercise of business judgment on the part of the employer,"[36] the exercise of such judgment, however, must not be in violation of the law, and must not be arbitrary or malicious. The Court has always stressed that a company cannot simply declare redundancy without basis. To exhibit its good faith and that there was a fair and reasonable criteria in ascertaining redundant positions, a company claiming to be over manned must produce adequate proof of the same.

We reiterate what was held in *Caltex (Phils.), Inc. v. NLRC*:[37]

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34 G.R. No. 148132, January 28, 2008, 542 SCRA 434.
35 Id. at 448.
36 Id.
37 Supra note 33.

> In *Asufrin, Jr. v. San Miguel Corporation*, we ruled that it is not enough for a company to merely declare that it has become overmanned (sic). **It must produce adequate proof of such redundancy to justify the dismissal of the affected employees**.
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> In *Panlilio v. National Labor Relations Commission*, we held that **evidence must be presented to substantiate redundancy such as but not limited to the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring**.[38] (Emphasis supplied and citations omitted)

In the instant case, the Court agrees with the CA when it held that the petitioner failed to present substantial proof to support GMC's general allegations of redundancy. As shown from the records, the petitioner simply presented as its evidence of good faith and compliance with the law the notification letter to respondent Viajar;[39] the "Establishment Termination Report" it submitted to the DOLE Office;[40] the two (2) checks issued in the respondent's name amounting to ₱440,253.02 and ₱21,211.35;[41] and the list of terminated employees as of June 6, 2006.[42] We agree with the CA that these are not enough proof for the valid termination of Viajar's employment on the ground of redundancy.

The letter-memorandum which contains general allegations is not enough to convince this Court that Viajar's termination of employment due to redundancy was warranted under the circumstances. There is no showing that GMC made an evaluation of the existing positions and their effect to the company. Neither did GMC exert efforts to present tangible proof that it was experiencing business slow down or over hiring. The "Establishment Termination Report" it submitted to the DOLE Office did not account for anything to justify declaring the positions redundant. The Court notes that the list of terminated employees presented by GMC was a list taken as of June 6, 2006 or almost three years after the respondent was illegally dismissed and almost a year after the LA promulgated its decision. While the petitioner had been harping that it was on a "reduction mode" of its employees, it has not presented any evidence (such as new staffing pattern, feasibility studies or proposal, viability of newly created positions, job description and the approval of the management of the restructuring,[43] audited financial documents like balance sheets, annual income tax returns and others)[44] which could readily show that the company's declaration of redundant positions was justified. Such proofs, if presented, would suffice to show the good faith on the part of the employer or that this business

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38 Id. at 187.
39 *Rollo*, p. 58.
40 Id. at 60.
41 Id. at 59.
42 Id. at 361.
43 *Andrada v. NLRC*, G.R. No. 173231, December 28, 2007, 541 SCRA 538, 562.
44 See *Asian Alcohol Corp. v. NLRC*, supra note 18, at 927.

prerogative was not whimsically exercised in terminating respondent's employment on the ground of redundancy. Unfortunately, these are wanting in the instant case. The petitioner only advanced a self-serving general claim that it was experiencing business reverses and that there was a need to reduce its manpower complement.

On the other hand, the respondent presented proof that the petitioner had been hiring new employees while it was firing the old ones,[45] negating the claim of redundancy. It must, however, be pointed out that in termination cases, like the one before us, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It was incumbent upon the petitioner to show by substantial evidence that the termination of the employment of the respondent was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.[46]

Furthermore, the Court cannot overlook the fact that Viajar was prohibited from entering the company premises even before the effectivity date of termination; and was compelled to sign an "Application for Retirement and Benefits." These acts exhibit the petitioner's bad faith since it cannot be denied that the respondent was still entitled to report for work until November 30, 2003. The demand for her to sign the "Application for Retirement and Benefits" also contravenes the fact that she was terminated due to redundancy. Indeed, there is a difference between voluntary retirement of an employee and forced termination due to authorized causes.

In *Quevedo v. Benguet Electric Cooperative, Incorporated*,[47] this Court explained the difference between retirement and termination due to redundancy, to wit:

> While termination of employment and retirement from service are common modes of ending employment, they are mutually exclusive, with varying juridical bases and resulting benefits. **Retirement from service is contractual (*i.e.* based on the bilateral agreement of the employer and employee), while termination of employment is statutory (*i.e.* governed by the Labor Code and other related laws as to its grounds, benefits and procedure).** The benefits resulting from termination vary, depending on the cause. For retirement, Article 287 of the Labor Code gives leeway to the parties to stipulate above a floor of benefits.
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> x x x x
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> The line between voluntary and involuntary retirement is thin but it is one which this Court has drawn. **Voluntary retirement cuts employment ties leaving no residual employer liability; involuntary retirement amounts to a discharge, rendering the employer liable for**

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45 Copy of Newsmill, Official Newsletter of GMC, July-December 2003 Issues; *rollo*, p. 170.

46 *Columbus Philippines Bus Corp. v. NLRC*, 417 Phil. 81, 100 (2001).

47 G.R. No. 168927, September 11, 2009, 599 SCRA 438.

> **termination without cause.** The employee's intent is the focal point of analysis. In determining such intent, the fairness of the process governing the retirement decision, the payment of stipulated benefits, and the absence of badges of intimidation or coercion are relevant parameters.[48] (Emphasis supplied and citations omitted)

Clearly, the instant case is not about retirement since the term has its peculiar meaning and is governed by Article 287 of the Labor Code. Rather, this is a case of termination due to redundancy under Article 283 of the Labor Code. Thus, the demand of GMC for the respondent to sign an "Application for Retirement and Benefits" is really suspect.

Finally, the Court agrees with the CA that the award of moral and exemplary damages is proper. The Court has awarded moral damages in termination cases when bad faith, malice or fraud attend the employee's dismissal or where the act oppresses labor, or where it was done in a manner contrary to morals, good customs or public policy.[49] We quote with favor the findings of the CA:

> We also award moral and exemplary damages to petitioner. While it is true that good faith is presumed, the circumstances surrounding the dismissal of petitioner negate its existence. Moral damages may be recovered only where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner. To reiterate, immediately after receipt of her termination letter which was effective on 30 November 2003, petitioner was no longer treated as an employee of respondent as early as the 31st of October 2003; she was already barred from entering the company premises; she was deprived access to her office computer; and she was excluded from the bandy [sic] clock. She was also made to sign documents, including an "APPLICATION FOR RETIREMENT AND BENEFITS" in the guise of payment of her separation pay. When petitioner confronted her immediate superior regarding her termination, the latter's shock aggravated her confusion and suffering. She also learned about the employment of a number of new employees, several of whom were even employed in her former department. Petitioner likewise suffered mental torture brought about by her termination even though its cause was not clear and substantiated.[50] (Citations omitted)

WHEREFORE, the petition is **DENIED**. The Decision dated September 21, 2007 of the Court of Appeals, as well as its Resolution dated January 30, 2008 in CA-G.R. SP No. 01734, are hereby **AFFIRMED**.

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48 Id. at 444-446.

49 *San Miguel Properties Philippines, Inc., v. Gucaban*, G.R. No. 153982, July 18, 2011, 654 SCRA 18, 33.

50 *Rollo*, pp. 36-37.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
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.

MARIA LOURDES P. A. SERENO
Chief Justice