Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

VICTORINO OPINALDO,
Petitioner,

- versus -

NARCISA RAVINA,
Respondent.

G.R. No. 196573

Present:

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

Promulgated:
OCT 16 2013

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DECISION

VILLARAMA, JR., *J.*:

On appeal under Rule 45 is the Decision[1] dated October 19, 2010 and Resolution[2] dated March 17, 2011 of the Court of Appeals (CA), Cebu City, in CA-G.R. SP No. 04479 which reversed and set aside the Decision[3] and Resolution[4] of the National Labor Relations Commission (NLRC), Cebu City, and dismissed petitioner's complaint for illegal dismissal against respondent.

The facts follow.

Respondent Narcisa Ravina (Ravina) is the general manager and sole proprietor of St. Louisse Security Agency (the Agency). Petitioner Victorino Opinaldo (Opinaldo) is a security guard who had worked for the Agency until his alleged illegal dismissal by respondent on December 22, 2006. The

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1 *Rollo*, pp. 31-41. Penned by Associate Justice Socorro B. Inting with Associate Justices Portia A. Hormachuelos and Edwin D. Sorongon concurring.
2 Id. at 42-43.
3 Id. at 44-47. The decision was dated April 24, 2009 and penned by NLRC Presiding Commissioner Violeta Ortiz-Bantug and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.
4 Id. at 48-50.

Agency hired the services of petitioner on October 5, 2005, with a daily salary of ₱176.66 and detailed him to PAIJR Furniture Accessories (PAIJR) in Mandaue City.[5]

In a letter dated August 15, 2006, however, the owner of PAIJR submitted a written complaint to respondent stating as follows:

> I have two guard[s] assigned here in my company[,] namely[,] SG. Opinaldo and SGT. Sosmenia. Hence, ... I hereby formalize our request to relieve one of our company guard[s] and I [choose] SG. VICTORINO B. OPINALDO[,] detailed/assigned at PAIJR FURNITURE ACCESSORIES located at TAWASON, MANDAUE CITY. For the reason: He is no longer physically fit to perform his duties and responsibilities as a company guard because of his health condition.
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> Looking forward to your immediate action. Thank [y]ou.[6]

Acceding to PAIJR's request, respondent relieved petitioner from his work. Respondent also required petitioner to submit a medical certificate to prove that he is physically and mentally fit for work as security guard.

On September 6, 2006, respondent reassigned petitioner to Gomez Construction at Mandaue City. After working for a period of two weeks for Gomez Construction and upon receipt of his salary for services rendered within the said two-week period, petitioner ceased to report for work.[7] The records show that petitioner's post at Gomez Construction was the last assignment given to him by respondent.

On November 7, 2006, petitioner filed a complaint[8] against respondent with the Department of Labor and Employment (DOLE) Regional Office in Cebu City for underpayment of salary and nonpayment of other labor standard benefits. The parties agreed to settle and reached a compromise agreement. On November 27, 2006, petitioner signed a Quitclaim and Release[9] before the DOLE Regional Office in Cebu City for the amount of ₱5,000.[10]

After almost four weeks from the settlement of the case, petitioner returned to respondent's office on December 22, 2006. Petitioner claims that when he asked respondent to sign an SSS[11] Sickness Notification which he was going to use in order to avail of the discounted fees for a medical check-up, respondent allegedly refused and informed him that he was no longer an employee of the Agency. Respondent allegedly told him that when he signed the quitclaim and release form at the DOLE Regional Office, she

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5 Id. at 12, 44, 55.
6 Id. at 59.
7 Id. at 32, 44.
8 Records, p. 12.
9 Id. at 13.
10 *Rollo*, p. 32.
11 Social Security System.

already considered him to have quit his employment.[12] Respondent, on the other hand, counterclaims that she did not illegally dismiss petitioner and that it was a valid exercise of management prerogative that he was not given any assignment pending the submission of the required medical certificate of his fitness to work.[13]

On January 26, 2007, petitioner filed a Complaint[14] for Illegal Dismissal with a prayer for the payment of separation pay in lieu of reinstatement against respondent and the Agency before the NLRC Regional Arbitration Branch No. VII, Cebu City. After trial and hearing, Labor Arbiter Maria Christina S. Sagmit rendered a Decision[15] on June 18, 2008 holding respondent and the Agency liable for illegal dismissal and ordering them to pay petitioner separation pay and back wages. The Labor Arbiter ruled,

> In the instant case, respondents failed to establish that complainant was dismissed for valid causes. For one, there is no evidence that complainant was suffering from physical illness which will explain his lack of assignment. Further, there is no admissible proof that Ravina even required complainant to submit a medical certificate. Thus, complainant could not be deemed to have refused or neglected to comply with this order.
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> Considering that there is no evidence that complainant was physically unfit to perform his duties, respondents must be held liable for illegal dismissal. Ordinarily, complainant will be entitled to reinstatement and full backwages. However, complainant has expressed his preference not to be reinstated. Hence, respondents must be ordered to give complainant separation pay *in lieu* of reinstatement equivalent to one month's salary for every year of service. Complainant is also entitled to full backwages from the time he was terminated until the date of this Decision.
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> WHEREFORE, respondents Narcisa Ravina and/or St. Louis[s]e Security Agency are ordered to pay complainant the total amount EIGHTY[-]TWO THOUSAND THREE HUNDRED FORTY PESOS (₱82,340.00), consisting of ₱22,500.00 in separation pay and ₱59,840.00 in full backwages.
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> SO ORDERED.[16]

Respondent appealed to the NLRC which, however, affirmed the decision of the Labor Arbiter and dismissed the appeal for lack of merit.[17] The NLRC ruled that there was no just and authorized cause for dismissal and held that "[w]ithout a certification from a competent public authority

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12 *Rollo*, p. 13.
13 Id. at 107-112.
14 Records, p. 249. Entitled "*Victorino Opinaldo v. Narcisa Ravina/St. Louisse Security Agency,*" and docketed as NLRC RAB Case No. VII-01-0208-2007.
15 *Rollo*, pp. 51-54.
16 Id. at 53-54.
17 Id. at 44-47.

that [petitioner] suffers from a disease of such nature or stage that cannot be cured within a period of six (6) months even with proper medical attendance, respondents are not justified in refusing [petitioner's] presence in [the] workplace."[18] The NLRC also ruled that neither did petitioner abandon his job as his failure to work was due to "respondents turn[ing] him down."[19] Respondent moved for reconsideration but the motion was denied in a Resolution[20] dated June 30, 2009 where the NLRC reiterated its finding of illegal dismissal given the absence of any just or authorized cause for the termination of petitioner and the failure to prove abandonment on his part.

Respondent elevated the case to the CA on a Petition for Certiorari.[21] On October 19, 2010, the appellate court ruled for respondent and reversed and set aside the decision and resolution of the NLRC. Ruling on the issue raised by petitioner that respondent's petition should have been dismissed outright as her motion for reconsideration before the NLRC was filed out of time, the appellate court held that the issue was rendered moot and academic when the NLRC gave due course to the motion and decided the case on the merits. The appellate court further held that petitioner should have filed his comment or opposition upon the filing of the subject motion for reconsideration and not after the termination of the proceedings before the NLRC. As to the issue of illegal dismissal, the appellate court ruled that it was petitioner himself who failed to report for work and therefore severed his employment with the Agency. The CA further held that petitioner's claims relative to his alleged illegal dismissal were not substantiated. The pertinent portions of the assailed Decision reads,

> Based from the evidence on record, the chain of events started when PAIJR sent to Ravina its 15 August 2006 letter-complaint to relieve Opinaldo. This led to Opinaldo's reassignment to work for Engr. Gomez on 06 September 2006. Upon his failure to continue working for Engr. Gomez due to his refusal to obtain a medical certificate, Opinaldo filed the complaint for money claims on 07 November 2006. This was however settled when Opinaldo and Ravina signed a quitclaim on 27 November 2006. Still, Opinaldo did not obtain the medical certificate required by Ravina. Then, Opinaldo's hasty filing of a complaint for illegal dismissal against Ravina on 26 January 2007.
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> The requirement to undergo a medical examination is a lawful exercise of management prerogative on Ravina's part considering the charges that Opinaldo was not only suffering from hypertension but was also sleeping while on duty. The management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, **supervision** of workers, working regulations, transfer of employees, work supervision, lay off of workers and discipline, dismissal and recall of workers.

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18 Id. at 46.
19 Id. at 47.
20 Id. at 48-50.
21 CA *rollo*, pp. 4-36.

> Besides, as a security guard, the need to be physically fit cannot be downplayed. If at all, Opinaldo's obstinate refusal to submit his medical certificate is equivalent to willful disobedience to a lawful order. x x x.
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> x x x x
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> Verily, the totality of Opinaldo's acts justifies the dismissal of his complaint for illegal dismissal against Ravina. While it is true that the state affirms labor as a primary social economic force, we are also mindful that the management has rights which must also be respected and enforced.[22]

Petitioner moved for reconsideration of the Decision but his motion was denied in the questioned Resolution of March 17, 2011 on the ground that there are neither cogent reasons nor new and substantial grounds which would warrant a reversal of the appellate court's findings. Hence, petitioner filed this petition alleging that:

> [I]
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> THE HONORABLE COURT OF APPEALS ERRED AND DECIDED THE CASE NOT IN ACCORDANCE WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT GAVE DUE COURSE TO THE RESPONDENT'S PETITION FOR CERTIORARI UNDER RULE 65 DESPITE BEING FILED OUT OF TIME AND NOT PROPERLY VERIFIED
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> [II]
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> THE HONORABLE COURT OF APPEALS ERRED AND DECIDED THE CASE NOT IN ACCORDANCE WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT REVERSED AND SET ASIDE THE DECISION AND RESOLUTION OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION, BY DECLARING THAT THE DISMISSAL OF PETITIONER WAS LEGAL AND PROPER[23]

We first rule on the procedural issue.

Petitioner questions the appellate court for ruling that the issue of the timeliness of the filing of respondent's motion for reconsideration of the NLRC decision has become moot and academic when the NLRC dismissed the said motion based on the merits and affirmed its decision. It is the opinion of petitioner that "[this] should not and cannot be understood to mean that the motion for reconsideration was filed within the period allowed," and that "[t]he Commission may have accommodated the motion for reconsideration although belatedly filed and had chosen to decide it based on its merits x x x but it does not change the fact that the motion for reconsideration before the Commission was filed beyond the reglementary period."[24] Petitioner believes that respondent's filing of the motion for

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22 *Rollo*, pp. 37-38, 40.
23 Id. at 15-16.
24 Id. at 17.

reconsideration on time is a precondition to the application of the rule that a petition for certiorari must be filed within 60 days from the notice of the denial of the motion for reconsideration. As petitioner puts it, "the counting of the sixty (60)[-]day period from the notice of the denial of the motion for reconsideration is proper only when the motion was filed on time."[25]

The CA, ruling that the procedural issue is already moot and academic, ratiocinated as follows:

> Anent the first issue, Ravina argues that the issue of timeliness of filing a Motion for Reconsideration with the NLRC has been dispensed with when it resolved to dismiss said Motion based on the merits and not on the mere technical issue of timeliness. Ravina further insists that had the NLRC denied said Motion based on the issue of timeliness, it would have just outrightly dismissed it based on said ground and not on the merits she raised in her Motion for Reconsideration.
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> The period within which to file a certiorari petition is 60 days as provided under Section 4, Rule 65 of the 1997 Rules of Civil Procedure as amended by Circular No. 39-98 and further amended by A.M. No. 00-2-03-SC, thusly:
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> > SECTION 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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> To reiterate, the NLRC promulgated its challenged Decision on 24 April 2009. Ravina alleged that her former counsel received a copy of said decision on 08 June 2009. However, she changed her counsel who, in turn, obtained a copy of the decision on 17 June 2009. The NLRC then promulgated its assailed Resolution on 30 June 2009 which Ravina received on 29 July 2009. Ravina's Petition for Certiorari, dated 28 August 2009, was filed on 09 September 2009.
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> The reckoning period for the filing of a certiorari petition is sixty (60) days counted from notice of the denial of said motion. **Prescinding from the foregoing, the Petition for Certiorari was filed within the 60-day period.**
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> At this stage of the proceeding, it is futile to belabor on the timeliness of the Motion for Reconsideration. This is due to the fact that the issue of timeliness has become moot and academic considering that Ravina's Motion for Reconsideration was given due course by the NLRC. In fact, the NLRC even decided the motion on the merits and not merely on technicality.
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> Moreover, Opinaldo should have filed a Comment or Opposition

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[25] Id. at 19.

> as soon as the Motion for Reconsideration was filed. Opinaldo should not have waited for the termination of the proceedings before the NLRC. In point of fact, the belated questioning of the issue of timeliness even operated to estop Opinaldo.[26] (Emphasis ours.)

Time and again, we have ruled and it has become doctrine that the perfection of an appeal within the statutory or reglementary period and in the manner prescribed by law is mandatory and jurisdictional. Failure to do so renders the questioned decision final and executory and deprives the appellate court of jurisdiction to alter the final judgment, much less to entertain the appeal.[27] In labor cases, the underlying purpose of this principle is to prevent needless delay, a circumstance which would allow the employer to wear out the efforts and meager resources of the worker to the point that the latter is constrained to settle for less than what is due him.[28]

In the case at bar, the applicable rule on the perfection of an appeal from the decision of the NLRC is Section 15, Rule VII of the 2005 Revised Rules of Procedure of the National Labor Relations Commission:

> **Section 15. Motions for Reconsideration.** – Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.
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> Should a motion for reconsideration be entertained pursuant to this SECTION, the resolution shall be executory after ten (10) calendar days from receipt thereof.

We are not, however, unmindful that the NLRC is not bound by the technical rules of procedure and is allowed to be liberal in the application of its rules in deciding labor cases. Thus, under Section 2, Rule I of the 2005 Revised Rules of Procedure of the National Labor Relations Commission it is stated:

> **Section 2. Construction.** – These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes.

It is significant that the 2011 NLRC Rules of Procedure, under Section 2, Rule I thereof, also carries exactly the same provision. Further, the 2005 Revised Rules and the 2011 Rules carry identical provisions

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[26] Id. at 35-36.
[27] *Bunagan v. Sentinel Watchman & Protective Agency, Inc.*, 533 Phil. 283, 290-291 (2006).
[28] Id. at 291, citing *Kathy-O Enterprises v. NLRC*, 350 Phil. 380, 389 (1998).

appearing under Section 10, Rule VII of both laws:

> **Section 10. Technical rules not binding.** – The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.
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> In any proceeding before the Commission, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner to exercise complete control of the proceedings at all stages.

All said, despite this jurisdiction's stance towards the exercise of liberality, the rules should not be relaxed when it would render futile the very purpose for which the principle of liberality is adopted.[29] The liberal interpretation stems from the mandate that the workingman's welfare should be the primordial and paramount consideration.[30] We are convinced that the circumstances in the case at bar warranted the NLRC's exercise of liberality when it decided respondent's motion for reconsideration on the merits.

The subject motion for reconsideration of the NLRC decision was filed on June 25, 2009. The evidence on record shows that the decision of the NLRC dated April 24, 2009 was received by respondent herself on June 17, 2009. The same decision was, however, earlier received on June 8, 2009 by respondent's former counsel who allegedly did not inform respondent of the receipt of such decision until respondent went to his office on June 23, 2009 to get the files of the case. If we follow a strict construction of the ten-day rule under the 2005 Revised Rules of Procedure of the National Labor Relations Commission and consider notice to respondent's former counsel as notice to respondent herself, the expiration of the period to file a motion for reconsideration should have been on June 18, 2009. The NLRC, however, chose a liberal application of its rules: it decided the motion on the merits. Nevertheless, it denied reconsideration.

We defer to the exercise of discretion by the NLRC and uphold its judgment in applying a liberal construction of its procedural and technical rules to this case in order to ventilate and resolve the issues raised by respondent in the motion for reconsideration and fully resolve the case on the merits. It would be purely conjectural to challenge the NLRC's exercise of such liberality for being tainted with grave abuse of discretion especially that it did not reverse, but even affirmed, its questioned decision – which sustained the ruling of the Labor Arbiter – that respondent illegally dismissed petitioner. In view of such disposition, that the NLRC gave due course to the motion in the interest of due process and to render a full resolution of the case on the merits is the more palpable explanation for the liberal application of its rules. It is significant to note that neither did

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[29] Supra note 27, at 291.

[30] Id., citing *Santos v. Velarde*, 450 Phil. 381, 390-391 (2003).

petitioner ever raise the issue of the NLRC's ruling on the merits of the subject motion for reconsideration. And the reason is clear: the motion for reconsideration was resolved in favor of petitioner. Furthermore, if the NLRC accorded credibility to the explanation proffered by respondent for its belated filing of the motion, we cannot now second-guess the NLRC's judgment in view of the circumstances of the case and in the absence of any showing that it gravely abused its discretion.

In light of the foregoing, we cannot uphold the stand of petitioner that the petition for certiorari before the CA was filed out of time, and at the same time rule that the NLRC acted in the proper exercise of its jurisdiction when it liberally applied its rules and resolved the motion for reconsideration on the merits. To so hold would nullify the latitude of discretion towards liberal construction granted to the NLRC under the 2005 Revised Rules of Procedure of the National Labor Relations Commission – including the decisions and resolutions rendered in the exercise of such discretion.

Petitioner also claims that the verification in respondent's petition for certiorari before the CA suffers from infirmity because it was based only on "personal **belief** and information." As it is, petitioner argues that it does not comply with Section 4,[31] Rule 7 of the 1997 Rules on Civil Procedure, as amended, which requires a pleading to be verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal **knowledge** or based on authentic records.[32] The petition must therefore be considered as an unsigned pleading producing no legal effect under Section 3,[33] Rule 7 of the Rules and should have resulted in the outright dismissal of the petition.

It is a matter of procedural consequence in the case at bar that whether we strictly or liberally apply the technical rules on the requirement of verification in pleadings, the disposition of the case will be the same. If we sustain petitioner's stance that the petition before the CA should have been outrightly dismissed, the NLRC decision finding the dismissal of petitioner as illegal would have reached finality. On the other hand, if we adopt respondent's view that the defect in the verification of the petition is merely

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31 SEC. 4. *Verification.* – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading is required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading." (As amended by A.M. No. 00-2-10-SC, May 1, 2000.)

32 Id. Emphasis ours.

33 SEC. 3. *Signature and address*. – Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

The signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.

a formal defect and is neither jurisdictional nor fatal, we will be sustaining the appellate court's giving due course to the petition. However, on substantive grounds, we reverse the appellate court's decision and reinstate the finding of illegal dismissal by the NLRC and the Labor Arbiter.

The appellate court reversed both the NLRC and the Labor Arbiter in consideration of the following factors: that petitioner did not counter respondent's receipt of the letter-complaint of PAIJR relative to his work performance; that petitioner did not refute the fact that respondent required him to submit a medical certificate; and, that petitioner failed to comply with the requirement to submit the medical certificate. Hence, when petitioner failed to submit the required medical certificate, the appellate court found it to be a valid exercise of management prerogative on the part of respondent not to give petitioner any work assignment pending its submission.

We do not agree.

Jurisprudence is replete with cases recognizing the right of the employer to have free reign and enjoy sufficient discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. This is a management prerogative where the free will of management to conduct its own affairs to achieve its purpose takes form.[34] Even labor laws discourage interference with the exercise of such prerogative and the Court often declines to interfere in legitimate business decisions of employers.[35] However, the exercise of management prerogative is not unlimited. Managerial prerogatives are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[36] Hence, in the exercise of its management prerogative, an employer must ensure that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction.[37]

In the case at bar, we recognize, as did the appellate court, that respondent's act of requiring petitioner to undergo a medical examination and submit a medical certificate is a valid exercise of management prerogative. This is further justified in view of the letter-complaint from one of respondent's clients, PAIJR, opining that petitioner was "no longer physically fit to perform his duties and responsibilities as a company guard because of his health condition."[38] To be sure, petitioner's job as security

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34 *The Coca-Cola Export Corporation v. Gacayan*, G.R. No. 149433, December 15, 2010, 638 SCRA 377, 398-399, citing *St. Michael's Institute v. Santos*, G.R. No. 145280, December 4, 2001, 371 SCRA 383, 391.

35 *Supreme Steel Corporation v. Nagkakaisang Manggagawa ng Supreme Independent Union (NMS-IND-APL)*, G.R. No. 185556, March 28, 2011, 646 SCRA 501, 525.

36 Id., citing *Dole Philippines, Inc. v. Pawis ng Makabayang Obrero (PAMAO-NFL)*, 443 Phil. 143, 149 (2003).

37 *The Coca-Cola Export Corporation v. Gacayan*, supra note 34, at 399.

38 Supra note 6.

guard naturally requires physical and mental fitness under Section 5 of Republic Act No. 5487,[39] as amended by Presidential Decree No. 100.[40]

While the necessity to prove one's physical and mental fitness to be a security guard could not be more emphasized, the question to be settled is whether it is a valid exercise of respondent's management prerogative to prevent petitioner's continued employment with the Agency unless he presents the required medical certificate. Respondent argues, *viz.*:

> Thus, respondents in the exercise of their MANAGEMENT PREROGATIVE required Complainant to submit a Medical Certificate to prove that he is "PHYSICALLY AND MENTALLY FIT" for work as Security Guard. Unfortunately, however, up to the present time, complainant failed to submit said Medical Examination and Findings giving him clean bill of health, to respondents. Herein respondents are ready and willing to accept him as such Security Guard once he could submit said Medical Examination and Findings.
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> The requirement anent the presentation of such MEDICAL CERTIFICATE by Complainant to Respondents is but a Management Measure of ensuring Respondents including Complainant that Complainant is physically and mentally fit for continued Employment and will not in any manner pose a danger or, threat to the respondents' properties and lives of their customers and other employees as well as to the person and life of Complainant himself.[41]

It is utterly significant in the case at bar that a considerably long period has lapsed from petitioner's last day of recorded work on September 21, 2006 until he was informed by respondent on December 22, 2006 that he was no longer an employee of the Agency. In the words of petitioner, he had been on a "floating status"[42] for three months. Within this period, petitioner did not have any work assignment from respondent who proffers the excuse that he has not submitted the required medical certificate. While it is a management prerogative to require petitioner to submit a medical certificate, we hold that respondent cannot withhold petitioner's employment without observing the principles of due process and fair play.

The Labor Arbiter and the CA have conflicting findings with respect to the submission of the medical certificate. The Labor Arbiter observed that "there is no admissible proof that [respondent] even required [petitioner] to submit a medical certificate. Thus, [petitioner] could not be deemed to have refused or neglected to comply with this order."[43] The CA countered that while there is no documentary evidence to prove it, the admission of both parties establishes that there is a pending requirement for a medical

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39 Otherwise known as AN ACT TO REGULATE THE ORGANIZATION AND OPERATION OF PRIVATE DETECTIVE, WATCHMEN OR SECURITY GUARDS AGENCIES, as amended by Presidential Decree No. 11, October 3, 1972.

40 Issued on January 17, 1973, entitled "AMENDING FURTHER CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED FIFTY-FOUR HUNDRED EIGHTY-SEVEN, OTHERWISE KNOWN AS 'THE PRIVATE SECURITY AGENCY LAW,' AS AMENDED BY PRESIDENTIAL DECREE NO. 11, DATED OCTOBER 3, 1972."

41 *Rollo*, p. 57.

42 Id. at 13.

43 Id. at 53.

certificate and it was not complied with by petitioner. We agree with the appellate court that despite the lack of documentary evidence, both parties have admitted to respondent's medical certificate requirement. We so hold despite petitioner's protestations that what respondent required of him was to submit himself to a medical check-up, and not to submit a medical certificate. Even if petitioner's allegation is to be believed, the fact remains that he did not undergo the medical check-up which he himself claims to have been required by respondent.

All said, what behooves the Court is the lack of evidence on record which establishes that respondent informed petitioner that his failure to submit the required medical certificate will result in his lack of work assignment. It is a basic principle of labor protection in this jurisdiction that a worker cannot be deprived of his job without satisfying the requirements of due process.[44] Labor is property and the right to make it available is next in importance to the rights of life and liberty.[45] As enshrined under the Bill of Rights, no person shall be deprived of life, liberty or property without due process of law.[46] The due process requirement in the deprivation of one's employment is transcendental that it limits the exercise of the management prerogative of the employer to control and regulate the affairs of the business. In the case at bar, all that respondent employer needed to prove was that petitioner employee was notified that his failure to submit the required medical certificate will result in his lack of work assignment – and eventually the termination of his employment – as a security guard. There is no iota of evidence in the records, save for the bare allegations of respondent, that petitioner was notified of such consequence for non-submission. In truth, the facts of the case clearly show that respondent even reassigned petitioner to Gomez Construction from his PAIJR post despite the non-submission of a medical certificate. If it was indeed the policy of respondent not to give petitioner any work assignment without the medical certificate, why was petitioner reassigned despite his noncompliance?

That is not all. In addition to invoking management prerogative as a defense, respondent also alleges abandonment. Respondent claims that after petitioner received his last salary from his assignment with Gomez Construction, he no longer reported for work. The assailed Decision found that petitioner indeed abandoned his work, *viz.*:

> It was only when Opinaldo refused to report for work on his assignment for Engr. Gomez after having received his salary for work rendered starting on 06 September 2006 that Ravina became firm that the medical certificate should be submitted. But, Opinaldo did not heed Ravina's order. It was Opinaldo who altogether failed to report for work.[47]

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44 *Polsotin, Jr., v. De Guia Enterprises, Inc.*, G.R. No. 172624, December 5, 2011, 661 SCRA 523, 524, citing the 1987 CONSTITUTION, Article III, Section 1.

45 *Sagales v. Rustan's Commercial Corporation*, G.R. No. 166554, November 27, 2008, 572 SCRA 89, 91, citing *Slaughter House Cases*, 16 Wall. (83 US) 36, 127.

46 Supra note 44.

47 *Rollo*, p. 39.

We disagree.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[48] To constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[49] None of these elements is present in the case at bar. As succinctly stated by the NLRC:

> From respondents' own admission in their position paper, it is clear that they prevented [petitioner's] continued employment with them unless the latter presents a medical certificate that he is physically and mentally fit for work x x x.
>
> x x x x
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> Moreover, if it was really true that complainant abandoned his work, then why have not respondents sent him a notice to report back for work? It is evident then that respondents found an excuse to decline complainant's continued stay with them on the pretext that he has to submit first a medical certificate before he could be allowed to resume employment.[50]

Finally, respondent harps that she could not be held liable for illegal dismissal because, in the first place, she did not dismiss petitioner. Respondent maintains that she merely refused to give petitioner any work assignment until the submission of a medical certificate. On this issue, the CA concurred with respondent and ruled that petitioner failed to "establish the facts which would paint the picture that [respondent] terminated him."[51]

We need not reiterate that respondent did not properly exercise her management prerogative when she withheld petitioner's employment without due process. Respondent failed to prove that she has notified petitioner that her continuous refusal to provide him any work assignment was due to his non-submission of the medical certificate. Had respondent exercised the rules of fair play, petitioner would have had the option of complying or not complying with the medical certificate requirement – having full knowledge of the consequences of his actions. Respondent failed to do so and she cannot now hide behind the defense that there was no illegal termination because petitioner cannot show proof that he had been illegally dismissed. It is a time-honored legal principle that the employer has the *onus probandi* to show that the dismissal or termination was for a just and authorized cause under the Labor Code. Respondent failed to show that the termination was justified and authorized, nor was it done as a valid exercise of management prerogative.

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48 *NEECO II v. National Labor Relations Commission*, 499 Phil. 777, 789 (2005).

49 *Northwest Tourism Corporation v. Former Special 3rd Division of Court of Appeals*, 500 Phil. 85, 95 (2005).

50 *Rollo*, pp. 45-46.

51 Id. at 39.

Given the circumstances in the case at bar, it is not fair to shift the burden to petitioner, and rule that he failed to prove his claim, when respondent had successfully terminated the employer-employee relationship without leaving a paper trail in a clear case of illegal dismissal.

WHEREFORE, the petition for review on certiorari is **GRANTED**. The assailed Decision dated October 19, 2010 and Resolution dated March 17, 2011 of the Court of Appeals in CA-G.R. SP No. 04479 dismissing petitioner's Complaint for Illegal Dismissal are hereby **REVERSED** and **SET ASIDE**. The Decision and Resolution dated April 24, 2009 and June 30, 2009, respectively, of the NLRC in NLRC Case No. VAC 01-000081-2009 (RAB Case No. VII-01-0208-2007) requiring respondent Narcisa Ravina and/or St. Louisse Security Agency to pay petitioner Victorino Opinaldo the total amount of ₱82,340 consisting of ₱22,500 in separation pay and ₱59,840 in full back wages, are hereby **REINSTATED and UPHELD**.

No costs.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 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