Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ARIEL L. DAVID, doing business under the name and style "YIELS HOG DEALER,"
Petitioner,

- versus -

JOHN G. MACASIO,
Respondent.

G.R. No. 195466

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JUL 0 2 2014

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DECISION

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] the challenge to the November 22, 2010 decision[2] and the January 31, 2011 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 116003. The CA decision annulled and set aside the May 26, 2010 decision[4] of the National Labor Relations Commission *(NLRC)*[5] which, in turn, affirmed the April 30, 2009 decision[6] of the Labor Arbiter *(LA)*. The LA's decision dismissed respondent John G. Macasio's monetary claims.

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1 *Rollo*, pp. 8-30.
2 Penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias; id. at 32-46.
3 Id. at 47-48.
4 Penned by Presiding Commissioner Herminio V. Suelo; id. at 150-156.
5 In NLRC LAC No. 07-002073-09 (NLRC NCR Case No. 01-00298-09).
6 Penned by Labor Arbiter Daniel J. Cajilig; id. at 119-122.

The Factual Antecedents

In January 2009, Macasio filed before the LA a complaint[7] against petitioner Ariel L. David, doing business under the name and style "Yiels Hog Dealer," for non-payment of **overtime pay**, **holiday pay** and **13th month pay**. He also claimed payment for **moral and exemplary damages** and **attorney's fees**. Macasio also claimed payment for **service incentive leave** *(SIL)*.[8]

Macasio alleged[9] before the LA that he had been working as a butcher for David since January 6, 1995. Macasio claimed that David exercised effective control and supervision over his work, pointing out that David: (1) set the work day, reporting time and hogs to be chopped, as well as the manner by which he was to perform his work; (2) daily paid his salary of ₱700.00, which was increased from ₱600.00 in 2007, ₱500.00 in 2006 and ₱400.00 in 2005; and (3) approved and disapproved his leaves. Macasio added that David owned the hogs delivered for chopping, as well as the work tools and implements; the latter also rented the workplace. Macasio further claimed that David employs about twenty-five (25) butchers and delivery drivers.

In his defense,[10] David claimed that he started his hog dealer business in 2005 and that he only has ten employees. He alleged that he hired Macasio as a butcher or chopper on "*pakyaw*" or task basis who is, therefore, not entitled to overtime pay, holiday pay and 13th month pay pursuant to the provisions of the Implementing Rules and Regulations (*IRR*) of the Labor Code. David pointed out that Macasio: (1) usually starts his work at 10:00 p.m. and ends at 2:00 a.m. of the following day or earlier, depending on the volume of the delivered hogs; (2) received the fixed amount of ₱700.00 per engagement, regardless of the actual number of hours that he spent chopping the delivered hogs; and (3) was not engaged to report for work and, accordingly, did not receive any fee when no hogs were delivered.

Macasio disputed David's allegations.[11] He argued that, *first*, David did not start his business only in 2005. He pointed to the Certificate of Employment[12] that David issued in his favor which placed the date of his employment, albeit erroneously, in January 2000. *Second*, he reported for work every day which the payroll or time record could have easily proved had David submitted them in evidence.

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7 Id. at 61-63.
8 Filed on February 18, 2009; id. at 64-75.
9 Ibid.
10 Position Paper filed on February 18, 2009; id. at 80-86.
11 Reply by the Complainant; id. at 87-91.
12 Id. at 76.

Refuting Macasio's submissions,[13] David claims that Macasio was not his employee as he hired the latter on "*pakyaw*" or task basis. He also claimed that he issued the Certificate of Employment, upon Macasio's request, only for overseas employment purposes. He pointed to the "*Pinagsamang Sinumpaang Salaysay*,"[14] executed by Presbitero Solano and Christopher (Antonio Macasio's co-butchers), to corroborate his claims.

In the April 30, 2009 decision,[15] the LA dismissed Macasio's complaint for lack of merit. The LA gave credence to David's claim that he engaged Macasio on "*pakyaw*" or task basis. The LA noted the following facts to support this finding: (1) Macasio received the fixed amount of ₱700.00 for every work done, regardless of the number of hours that he spent in completing the task and of the volume or number of hogs that he had to chop per engagement; (2) Macasio usually worked for only four hours, beginning from 10:00 p.m. up to 2:00 a.m. of the following day; and (3) the ₱700.00 fixed wage far exceeds the then prevailing daily minimum wage of ₱382.00. The LA added that the nature of David's business as hog dealer supports this "*pakyaw*" or task basis arrangement.

The LA concluded that as Macasio was engaged on "*pakyaw*" or task basis, he is not entitled to overtime, holiday, SIL and 13th month pay.

The NLRC's Ruling

In its May 26, 2010 decision,[16] the NLRC affirmed the LA ruling.[17] The NLRC observed that David did not require Macasio to observe an eight-hour work schedule to earn the fixed ₱700.00 wage; and that Macasio had been performing a non-time work, pointing out that Macasio was paid a fixed amount for the completion of the assigned task, irrespective of the time consumed in its performance. Since Macasio was paid by result and not in terms of the time that he spent in the workplace, Macasio is not covered by the Labor Standards laws on overtime, SIL and holiday pay, and 13th month pay under the Rules and Regulations Implementing the 13th month pay law.[18]

Macasio moved for reconsideration[19] but the NLRC denied his motion in its August 11, 2010 resolution,[20] prompting Macasio to elevate his case to the CA *via* a petition for *certiorari.*[21]

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13 Respondent's Reply; id. at 92-96.
14 Id. at 99-100.
15 *Supra* note 5.
16 *Supra* note 4.
17 *Rollo*, pp. 123-139.
18 Presidential Decree No. 851 - "Requiring All Employers to Pay Their Employees a 13th Month Pay." Enacted on December 16, 1975.
19 *Rollo*, pp. 160-176.
20 Id. at 157-159.

The CA's Ruling

In its November 22, 2010 decision,[22] the CA partly granted Macasio's *certiorari* petition and reversed the NLRC's ruling for having been rendered with grave abuse of discretion.

While the CA agreed with the LA and the NLRC that Macasio was a task basis employee, it nevertheless found Macasio entitled to his monetary claims following the doctrine laid down in *Serrano v. Severino Santos Transit.*[23] The CA explained that as a task basis employee, Macasio is excluded from the coverage of holiday, SIL and 13th month pay *only if* he is likewise a "field personnel." As defined by the Labor Code, a "field personnel" is one who performs the work away from the office or place of work and whose regular work hours cannot be determined with reasonable certainty. In Macasio's case, the elements that characterize a "field personnel" are evidently lacking as he had been working as a butcher at David's "Yiels Hog Dealer" business in Sta. Mesa, Manila under David's supervision and control, and for a fixed working schedule that starts at 10:00 p.m.

Accordingly, the CA awarded Macasio's claim for holiday, SIL and 13th month pay for three years, with 10% attorney's fees on the total monetary award. The CA, however, denied Macasio's claim for moral and exemplary damages for lack of basis.

David filed the present petition after the CA denied his motion for reconsideration[24] in the CA's January 31, 2011 resolution.[25]

The Petition

In this petition,[26] David maintains that Macasio's engagement was on a "*pakyaw*" or task basis. Hence, the latter is excluded from the coverage of holiday, SIL and 13th month pay.

David reiterates his submissions before the lower tribunals[27] and adds that he never had any control over the manner by which Macasio performed his work and he simply looked on to the "end-result." He also contends that he never compelled Macasio to report for work and that under their

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21 Id. at 180-204.
22 *Supra* note 2.
23 G.R. No. 187698, August 9, 2010, 627 SCRA 483.
24 *Rollo*, pp. 49-56.
25 *Supra* note 3.
26 *Supra* note 1.
27 Although he now claims that he engaged Macasio's services in 2000 instead of 2005.

arrangement, Macasio was at liberty to choose whether to report for work or not as other butchers could carry out his tasks. He points out that Solano and Antonio had, in fact, attested to their (David and Macasio's) established "*pakyawan*" arrangement that rendered a written contract unnecessary. In as much as Macasio is a task basis employee – who is paid the fixed amount of ₱700.00 per engagement regardless of the time consumed in the performance – David argues that Macasio is not entitled to the benefits he claims. Also, he posits that because he engaged Macasio on "*pakyaw*" or task basis then no employer-employee relationship exists between them.

Finally, David argues that factual findings of the LA, when affirmed by the NLRC, attain finality especially when, as in this case, they are supported by substantial evidence. Hence, David posits that the CA erred in reversing the labor tribunals' findings and granting the prayed monetary claims.

The Case for the Respondent

Macasio counters that he was not a task basis employee or a "field personnel" as David would have this Court believe.[28] He reiterates his arguments before the lower tribunals and adds that, contrary to David's position, the ₱700.00 fee that he was paid for each day that he reported for work does not indicate a "*pakyaw*" or task basis employment as this amount was paid daily, regardless of the number or pieces of hogs that he had to chop. Rather, it indicates a daily-wage method of payment and affirms his regular employment status. He points out that David did not allege or present any evidence as regards the quota or number of hogs that he had to chop as basis for the "*pakyaw*" or task basis payment; neither did David present the time record or payroll to prove that he worked for less than eight hours each day. Moreover, David did not present any contract to prove that his employment was on task basis. As David failed to prove the alleged task basis or "*pakyawan*" agreement, Macasio concludes that he was David's employee.

Procedurally, Macasio points out that David's submissions in the present petition raise purely factual issues that are not proper for a petition for review on *certiorari.* These issues – whether he (Macasio) was paid by result or on "*pakyaw*" basis; whether he was a "field personnel"; whether an employer-employee relationship existed between him and David; and whether David exercised control and supervision over his work – are all factual in nature and are, therefore, proscribed in a Rule 45 petition. He argues that the CA's factual findings bind this Court, absent a showing that such findings are not supported by the evidence or the CA's judgment was

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[28] *Rollo*, pp. 223-243.

based on a misapprehension of facts. He adds that the issue of whether an employer-employee relationship existed between him and David had already been settled by the LA[29] and the NLRC[30] (as well as by the CA per Macasio's manifestation before this Court dated November 15, 2012),[31] in his favor, in the separate illegal case that he filed against David.

The Issue

The issue revolves around the proper application and interpretation of the labor law provisions on holiday, SIL and 13th month pay to a worker engaged on "*pakyaw*" or task basis. In the context of the Rule 65 petition before the CA, the issue is whether the CA correctly found the NLRC in grave abuse of discretion in ruling that Macasio is entitled to these labor standards benefits.

The Court's Ruling

We **partially grant** the petition.

Preliminary considerations: the Montoya ruling and the factual-issue-bar rule

In this Rule 45 petition for review on *certiorari* of the CA's decision rendered under a Rule 65 proceeding, this Court's power of review is limited to resolving matters pertaining to any perceived legal errors that the CA may have committed in issuing the assailed decision. This is in contrast with the review for jurisdictional errors, which we undertake in an original *certiorari* action. In reviewing the legal correctness of the CA decision, we examine the CA decision based on how it determined the presence or absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision on the merits of the case was correct.[32] In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[33]

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[29] Docketed as NLRC OFW Case No. 06-09181-09. Decision dated January 27, 2010; id. at 260-266.

[30] Docketed as LAC No. 03-000566-10(3)(8)(T-7-10). Resolution dated November 12, 2010; id. at 267-272.

[31] Id. at 334-338. The CA decision dated November 6, 2012 in CA-G.R. SP No. 118736 affirmed the LA and NLRC rulings in the illegal dismissal case (*rollo*, pp. 340-346). On May 6, 2013, David assailed the CA's decision in CA-G.R. SP No. 118736 before this Court *via* a petition for *certiorari*. The case was docketed as G.R. No. 206735. In a Resolution dated July 15, 2013, the Court dismissed David's petition for being a wrong remedy and for failure to show any grave abuse of discretion in the assailed CA decision.

[32] *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

[33] *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 683-684, citing *Montoya v. Transmed Manila Corporation*, *supra* note 30.

Moreover, the Court's power in a Rule 45 petition limits us to a review of questions of law raised against the assailed CA decision.[34]

In this petition, David essentially asks the question – whether Macasio is entitled to holiday, SIL and 13th month pay. This one is a question of law. The determination of this question of law however is intertwined with the largely factual issue of whether Macasio falls within the rule on entitlement to these claims or within the exception. In either case, the resolution of this factual issue presupposes another factual matter, that is, the presence of an employer-employee relationship between David and Macasio.

In insisting before this Court that Macasio was not his employee, David argues that he engaged the latter on "*pakyaw*" or task basis. Very noticeably, David confuses engagement on "*pakyaw*" or task basis with the lack of employment relationship. Impliedly, David asserts that their "*pakyawan*" or task basis arrangement negates the existence of employment relationship.

At the outset, we reject this assertion of the petitioner. Engagement on "*pakyaw*" or task basis does not characterize the relationship that may exist between the parties, *i.e.*, whether one of employment or independent contractorship. Article 97(6) of the Labor Code defines wages as "xxx the **remuneration or earnings**, however designated, capable of being expressed in terms of money, **whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same**, which is **payable by an employer to an employee** under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered[.]"[35] In relation to Article 97(6), Article 101[36] of the Labor Code speaks of workers paid by results or those whose pay is calculated in terms of the quantity or quality of their work output which includes "*pakyaw*" work and other non-time work.

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[34] See *Basay v. Hacienda Consolacion*, G.R. No. 175532, April 19, 2010, 618 SCRA 422, 434. "A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts xxx. In contrast, a question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence[.]" (*Cosmos Bottling Corp. v. Nagrama, Jr.*, 571 Phil. 281, 296 (2008), citing *Republic v. Sandiganbayan*, G.R. No. 135789, January 31, 2002, 375 SCRA 425).

[35] Emphases ours.

[36] Article 101 of the Labor Code reads in full -

> "Art. 101. *Payment by results.*
>
> The Secretary of Labor and Employment shall regulate the payment of wages by results, including pakyaw, piecework, and other non-time work, in order to ensure the payment of fair and reasonable wage rates, preferably through time and motion studies or in consultation with representatives of workers' and employer's organizations."

More importantly, by implicitly arguing that his engagement of Macasio on "*pakyaw*" or task basis negates employer-employee relationship, David would want the Court to engage on a factual appellate review of the entire case to determine the presence or existence of that relationship. This approach however is not authorized under a Rule 45 petition for review of the CA decision rendered under a Rule 65 proceeding.

First, the LA and the NLRC denied Macasio's claim *not* because of the absence of an employer-employee but because of its finding that since Macasio is paid on *pakyaw* or task basis, then he is not entitled to SIL, holiday and 13th month pay. *Second*, we consider it crucial, that in the separate illegal dismissal case Macasio filed with the LA, the LA, the NLRC and the CA uniformly found the existence of an employer-employee relationship.[37]

In other words, aside from being factual in nature, the existence of an employer-employee relationship is in fact a non-issue in this case. To reiterate, in deciding a Rule 45 petition for review of a labor decision rendered by the CA under 65, the narrow scope of inquiry is whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the NLRC. In concrete question form, "did the NLRC gravely abuse its discretion in denying Macasio's claims simply because he is paid on a non-time basis?"

At any rate, even if we indulge the petitioner, we find his claim that no employer-employee relationship exists baseless. Employing the control test,[38] we find that such a relationship exist in the present case.

Even a factual review shows that Macasio is David's employee

To determine the existence of an employer-employee relationship, four elements generally need to be considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. These elements or indicators comprise the so-called "four-fold" test of employment relationship. Macasio's relationship with David satisfies this test.

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[37] This decision lapsed to finality upon the denial of David's petition for review filed with the Court.

[38] Of these elements, the power to control is the most important criterion. Under the "control test," the important question to ask is whether the employer controls or has reserved the right to control the employee not only as to the result of the work but also as to the means and methods by which the result is to be accomplished. We should, however, emphasize that the control test simply calls for the existence of the right to control and not necessarily the actual exercise of this right. To be clear, the test does not require that the employer actually supervises the performance of duties by the employee. (*Javier v. Fly Ace Corporation, supra*, at 397-398; *Chavez v. NLRC,* 489 Phil. 444, 456 (2005); See *Basay v. Hacienda Consolacion*, G.R. No. 175532, April 19, 2010, 618 SCRA 422, 434).

First, David engaged the services of Macasio, thus satisfying the element of "selection and engagement of the employee." David categorically confirmed this fact when, in his "*Sinumpaang Salaysay,*" he stated that "nag apply po siya sa akin at kinuha ko siya na chopper[.]"[39] Also, Solano and Antonio stated in their "*Pinagsamang Sinumpaang Salaysay*"[40] that "[k]ami po ay nagtratrabaho sa Yiels xxx na pag-aari ni Ariel David bilang butcher" and "kilala namin si xxx Macasio na isa ring butcher xxx ni xxx David at kasama namin siya sa aming trabaho."

Second, David paid Macasio's wages. Both David and Macasio categorically stated in their respective pleadings before the lower tribunals and even before this Court that the former had been paying the latter ₱700.00 each day after the latter had finished the day's task. Solano and Antonio also confirmed this fact of wage payment in their "*Pinagsamang Sinumpaang Salaysay.*"[41] This satisfies the element of "payment of wages."

Third, David had been setting the day and time when Macasio should report for work. This power to determine the work schedule obviously implies power of control. By having the power to control Macasio's work schedule, David could regulate Macasio's work and could even refuse to give him any assignment, thereby effectively dismissing him.

And *fourth*, David had the right and power to control and supervise Macasio's work as to the means and methods of performing it. In addition to setting the day and time when Macasio should report for work, the established facts show that David rents the place where Macasio had been performing his tasks. Moreover, Macasio would leave the workplace only after he had finished chopping all of the hog meats given to him for the day's task. Also, David would still engage Macasio's services and have him report for work even during the days when only few hogs were delivered for butchering.

Under this overall setup, all those working for David, including Macasio, could naturally be expected to observe certain rules and requirements and David would necessarily exercise some degree of control as the chopping of the hog meats would be subject to his specifications. Also, since Macasio performed his tasks at David's workplace, David could

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39 *Rollo*, pp. 97-98. In paragraph 1 of David's "Sinumpaang Salaysay," he stated:

> "1. xxx Ang katotohanan po ay **nag apply po siya sa akin at kinuha ko siya na chopper** sa kasunduan na pakyawan. ₱700.00 ang binabayad ko sa kanya sa bawat apat (4) na oras na trabaho bilang chopper na mag-uumpisa ng 10:00 P.M. ng gabi at matatapos sa 2:00 A.M. sa medaling araw o mas maaga pa dito kung kaunti lang ang delivery ng baboy." (emphasis ours)

40 *Supra* note 13; underscores ours.

41 Ibid.

easily exercise control and supervision over the former. Accordingly, whether or not David actually exercised this right or power to control is beside the point as the law simply requires the existence of this power to control [42][43] or, as in this case, the existence of the right and opportunity to control and supervise Macasio.[44]

In sum, the totality of the surrounding circumstances of the present case sufficiently points to an employer-employee relationship existing between David and Macasio.

Macasio is engaged on "pakyaw" or task basis

At this point, we note that all three tribunals – the LA, the NLRC and the CA – found that Macasio was engaged or paid on "*pakyaw*" or task basis. This factual finding binds the Court under the rule that factual findings of labor tribunals when supported by the established facts and in accord with the laws, especially when affirmed by the CA, is binding on this Court.

A distinguishing characteristic of "*pakyaw*" or task basis engagement, as opposed to straight-hour wage payment, is the non-consideration of the time spent in working. In a task-basis work, the emphasis is on the task itself, in the sense that payment is reckoned in terms of completion of the work, not in terms of the number of time spent in the completion of work.[45] Once the work or task is completed, the worker receives a fixed amount as wage, without regard to the standard measurements of time generally used in pay computation.

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42 *Jaime N. Gapayao v. Rosario Fulo, et al.*, G.R. No. 193493, June 13, 2013.

43 Ibid.

44 But, in addition to the above circumstances that clearly meet the "four-fold test," three other circumstances satisfying the "economic dependence test" strengthen the conclusion of the parties' relationship as one of employer and employee (*Dr. Sevilla v. Court of Appeals*, 243 Phil. 340, 348-349 [1988]). For one, Macasio had been performing work that is usually necessary and desirable to the usual trade and business of David. The facts show that David is a hog dealer who sells hog meats to his customers in the wet market. He engages butchers, such as Macasio, to butcher and chop his hogs for distribution to his customers. Clearly, Macasio's work as a butcher qualifies as necessary and desirable to David's hog dealer business.

Another, David had been repeatedly and continuously engaging Macasio's services to perform precisely the same task of butchering hogs or hog meats since 2000. David categorically confirmed, in his various pleadings, his continuous and repeated hiring or engagement of Macasio, albeit, insisting that the engagement is on *"pakyaw"* or task basis.

Lastly, Macasio regularly reported for work to earn the ₱700.00 fee. He would likewise ask for cash advances from David for his and his family's needs. David's *"Sinumpaang Salaysay"*[44] confirms this observation when he stated that he refused to give Macasio another cash advance as the latter already had several unpaid cash advances. These facts clearly show that Macasio looked on to David for the former's daily financial needs in the form of wages.

45 I C.A. Azucena, Jr., The Labor Code, 186 (Ed. 8, 2013).

In Macasio's case, the established facts show that he would usually start his work at 10:00 p.m. Thereafter, regardless of the total hours that he spent at the workplace or of the total number of the hogs assigned to him for chopping, Macasio would receive the fixed amount of ₱700.00 once he had completed his task. Clearly, these circumstances show a "*pakyaw*" or task basis engagement that all three tribunals uniformly found.

In sum, the existence of employment relationship between the parties is determined by applying the "four-fold" test; engagement on "*pakyaw*" or task basis does not determine the parties' relationship as it is simply a method of pay computation. Accordingly, Macasio is David's employee, albeit engaged on "*pakyaw*" or task basis.

As an employee of David paid on *pakyaw* or task basis, we now go to the core issue of whether Macasio is entitled to holiday, 13th month, and SIL pay.

On the issue of Macasio's entitlement to holiday, SIL and 13th month pay

The LA dismissed Macasio's claims pursuant to Article 94 of the Labor Code in relation to Section 1, Rule IV of the IRR of the Labor Code, and Article 95 of the Labor Code, as well as Presidential Decree (*PD*) No. 851. The NLRC, on the other hand, relied on Article 82 of the Labor Code and the Rules and Regulations Implementing PD No. 851. Uniformly, these provisions exempt workers paid on "*pakyaw*" or task basis from the coverage of holiday, SIL and 13th month pay.

In reversing the labor tribunals' rulings, the CA similarly relied on these provisions, as well as on Section 1, Rule V of the IRR of the Labor Code and the Court's ruling in *Serrano v. Severino Santos Transit.*[46] These labor law provisions, when read together with the *Serrano* ruling, exempt those engaged on "*pakyaw*" or task basis only if they qualify as "field personnel."

In other words, what we have before us is largely a question of law regarding the correct interpretation of these labor code provisions and the implementing rules; although, to conclude that the worker is exempted or covered depends on the facts and in this sense, is a question of fact: *first*, whether Macasio is a "field personnel"; and *second*, whether those engaged on "*pakyaw*" or task basis, but who are not "field personnel," are exempted from the coverage of holiday, SIL and 13th month pay.

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46 *Supra* note 23.

To put our discussion within the perspective of a Rule 45 petition for review of a CA decision rendered under Rule 65 and framed in question form, the legal question is whether the CA correctly ruled that it was grave abuse of discretion on the part of the NLRC to deny Macasio's monetary claims simply because he is paid on a non-time basis without determining whether he is a field personnel or not.

To resolve these issues, we need to re-visit the provisions involved.

Provisions governing SIL and holiday pay

Article 82 of the Labor Code provides the *exclusions from the coverage* of Title I, Book III of the Labor Code - provisions governing working conditions and rest periods.

> Art. 82. Coverage. — **The provisions of [Title I] shall apply** to employees in all establishments and undertakings whether for profit or not, **but not to** government employees, managerial employees, **field personnel**, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, **and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations**.
>
> xxxx
>
> *"Field personnel"* shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. [emphases and underscores ours]

Among the Title I provisions are the provisions on holiday pay (under Article 94 of the Labor Code) and SIL pay (under Article 95 of the Labor Code). Under Article 82, "field personnel" on one hand and "workers who are paid by results" on the other hand, *are not covered* by the Title I provisions. The wordings of Article 82 of the Labor Code additionally categorize workers "paid by results" and "field personnel" as separate and distinct types of employees who are exempted from the Title I provisions of the Labor Code.

The pertinent portion of Article 94 of the Labor Code and its corresponding provision in the IRR[47] reads:

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[47] Section 1, Rule IV of Book 3.

> Art. 94. Right to holiday pay. (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than (10) workers[.] [emphasis ours]
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> xxxx
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> SECTION 1. Coverage. – This Rule shall apply to all employees except:
>
> xxxx
>
> (e) **Field personnel <u>and</u> other employees whose time and performance is unsupervised by the employer *including* those who are engaged on task or contract basis**, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof. [emphases ours]

On the other hand, Article 95 of the Labor Code and its corresponding provision in the IRR[48] pertinently provides:

> Art. 95. Right to service incentive. (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.
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> (b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment. [emphases ours]
>
> xxxx
>
> Section 1. Coverage. – This rule shall apply to all employees except:
>
> xxxx
>
> (e) **Field personnel <u>and</u> other employees whose performance is unsupervised by the employer *including* those who are engaged on task or contract basis**, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof. [emphasis ours]

Under these provisions, **the general rule** is that holiday and SIL pay provisions cover all employees. To be excluded from their coverage, an

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[48] Section 1, Rule V of Book 3.

employee must be one of those that these provisions expressly exempt, strictly in accordance with the exemption.

Under the IRR, exemption from the coverage of holiday and SIL pay refer to "field personnel and other employees whose time and performance is unsupervised by the employer including those who are engaged on task or contract basis[.]" Note that ***unlike Article 82 of the Labor Code***, the IRR on holiday and SIL pay do not exclude employees "engaged on task basis" as a separate and distinct category from employees classified as "field personnel." Rather, these employees are altogether merged into one classification of exempted employees.

Because of this difference, it may be argued that the Labor Code may be interpreted to mean that those who are engaged on task basis, *per se*, are excluded from the SIL and holiday payment since this is what the Labor Code provisions, in contrast with the IRR, strongly suggest. The arguable interpretation of this rule may be conceded to be within the discretion granted to the LA and NLRC as the quasi-judicial bodies with expertise on labor matters.

However, as early as 1987 in the case of *Cebu Institute of Technology v. Ople*[49] the phrase "*those who are engaged on task or contract basis*" in the rule has already been interpreted to mean as follows:

> [the phrase] should however, be related with "*field personnel* " applying the rule on *ejusdem generis* that general and unlimited terms are restrained and limited by the particular terms that they follow xxx Clearly, petitioner's teaching personnel cannot be deemed field personnel which refers "to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. [Par. 3, Article 82, Labor Code of the Philippines]. Petitioner's claim that private respondents are not entitled to the service incentive leave benefit cannot therefore be sustained.

In short, the payment of an employee on task or *pakyaw* basis alone is insufficient to exclude one from the coverage of SIL and holiday pay. They are exempted from the coverage of Title I (including the holiday and SIL pay) only if they qualify as "field personnel." The IRR therefore validly qualifies and limits the general exclusion of "workers paid by results" found in Article 82 from the coverage of holiday and SIL pay. This is the only reasonable interpretation since the determination of excluded workers who are paid by results from the coverage of Title I is "determined by the Secretary of Labor in appropriate regulations."

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[49] G.R. No. L- 58870, 18 December 1987.

The *Cebu Institute Technology* ruling was reiterated in 2005 in *Auto Bus Transport Systems, Inc., v. Bautista:*

> A careful perusal of said provisions of law will result in the conclusion that the grant of service incentive leave has been delimited by the Implementing Rules and Regulations of the Labor Code to apply only to those employees not explicitly excluded by Section 1 of Rule V. According to the Implementing Rules, Service Incentive Leave shall not apply to employees classified as "field personnel." The phrase "other employees whose performance is unsupervised by the employer" must not be understood as a separate classification of employees to which service incentive leave shall not be granted. Rather, it serves as an amplification of the interpretation of the definition of field personnel under the Labor Code as those "whose actual hours of work in the field cannot be determined with reasonable certainty."
>
> The same is true with respect to the phrase "*those who are engaged on task or contract basis, purely commission basis."* Said phrase should be related with "field personnel," applying the rule on *ejusdem generis* that general and unlimited terms are restrained and limited by the particular terms that they follow.

The *Autobus* ruling was in turn the basis of *Serrano v. Santos Transit* which the CA cited in support of granting Macasio's petition.

In *Serrano,* the Court, applying the rule on *ejusdem generis*[50] declared that "**employees engaged on task or contract basis** xxx **are not automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel.**"[51] The Court explained that the phrase "*including those who are engaged on task or contract basis, purely commission basis"* found in Section 1(d), Rule V of Book III of the IRR should not be understood as a separate classification of employees to which SIL shall not be granted. Rather, as with its preceding phrase - "other employees *whose performance is unsupervised by the employer*" - the phrase "*including those who are engaged on task or contract basis"* serves to amplify the interpretation of the Labor Code definition of "field personnel" as those "whose actual hours of work in the field cannot be determined with reasonable certainty."

In contrast and in clear departure from settled case law, the LA and the NLRC still interpreted the Labor Code provisions and the IRR as exempting an employee from the coverage of Title I of the Labor Code

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[50] The general and unlimited terms are restrained and limited by the particular terms that they follow.

[51] *Serrano v. Severino Santos Transit, supra* note 22, at 492-493; emphasis supplied, underscore ours.

based simply and solely on the mode of payment of an employee. **The NLRC's utter disregard of this consistent jurisprudential ruling is a clear act of grave abuse of discretion**.[52] In other words, by dismissing Macasio's complaint without considering whether Macasio was a "field personnel" or not, the **NLRC proceeded based on a significantly incomplete consideration of the case**. This action clearly smacks of grave abuse of discretion.

Entitlement to holiday pay

Evidently, the *Serrano* ruling speaks only of SIL pay. However, if the LA and the NLRC had only taken counsel from *Serrano* and earlier cases, they would have correctly reached a similar conclusion regarding the payment of holiday pay since the rule exempting "field personnel" from the grant of holiday pay is identically worded with the rule exempting "field personnel" from the grant of SIL pay. To be clear, the phrase *"employees engaged on task or contract basis"* found in the IRR on both SIL pay and holiday pay should be read together with the exemption of "field personnel."

In short, in determining whether workers engaged on "*pakyaw*" or task basis" is entitled to holiday and SIL pay, the presence (or absence) of employer supervision as regards the worker's time and performance is the key: if the worker is simply engaged on *pakyaw* or task basis, then the **general rule** is that he is entitled to a holiday pay and SIL pay unless exempted from the exceptions specifically provided under Article 94 (holiday pay) and Article 95 (SIL pay) of the Labor Code. However, if the worker engaged on pakyaw or task basis also falls within the meaning of "field personnel" under the law, then he is not entitled to these monetary benefits.

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[52] In case the LA and the NLRC cites a contrary jurisprudential ruling that creates a *real* conflict in our existing case law, this is the only time that the Court may exercise its discretion to have a wider scope of review of a Rule 65 CA decision. In this case, the wider scope of review is necessitated by the need to create a body of harmonious and workable jurisprudence.

Macasio does not fall under the classification of "field personnel"

Based on the definition of field personnel under Article 82, we agree with the CA that Macasio does not fall under the definition of "field personnel." The CA's finding in this regard is supported by the established facts of this case: *first*, Macasio regularly performed his duties at David's principal place of business; *second*, his actual hours of work could be determined with reasonable certainty; and, *third*, David supervised his time and performance of duties. Since Macasio cannot be considered a "field personnel," then he is not exempted from the grant of holiday, SIL pay even as he was engaged on "*pakyaw*" or task basis.

Not being a "field personnel," we find the CA to be legally correct when it reversed the NLRC's ruling dismissing Macasio's complaint for holiday and SIL pay for having been rendered with grave abuse of discretion.

Entitlement to 13th month pay

With respect to the payment of 13th month pay however, we find that the CA legally erred in finding that the NLRC gravely abused its discretion in denying this benefit to Macasio.

The governing law on 13th month pay is PD No. 851.[53] As with holiday and SIL pay, 13th month pay benefits generally cover all employees; an employee must be one of those expressly enumerated to be exempted. Section 3 of the Rules and Regulations Implementing P.D. No. 851[54] enumerates the exemptions from the coverage of 13th month pay benefits. Under Section 3(e), "employers of those who are **paid on** xxx **task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance** thereof"[55] are exempted.

Note that unlike the IRR of the Labor Code on holiday and SIL pay, Section 3(e) of the Rules and Regulations Implementing PD No. 851

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53 Enacted on December 16, 1975.

54 Issued on December 22, 1975.

55 Section 3(e) of the Rules and Regulations Implementing P.D. No. 851 reads in full:

SEC. 3. Employers covered.—The Decree shall apply to all employers except to:

xxxx

e) **Employers of those who are paid on** purely commission, boundary, or **task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof**, except where the workers are paid on piece-rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned. [emphases ours]

exempts employees "paid on task basis" without any reference to "field personnel." This could only mean that insofar as payment of the 13th month pay is concerned, the law did not intend to qualify the exemption from its coverage with the requirement that the task worker be a "field personnel" at the same time.

WHEREFORE, in light of these considerations, we hereby **PARTIALLY GRANT** the petition insofar as the payment of 13th month pay to respondent is concerned. In all other aspects, we **AFFIRM** the decision dated November 22, 2010 and the resolution dated January 31, 2011 of the Court of Appeals in CA-G.R. SP No. 116003.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice