Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

HACIENDA LEDDY/RICARDO GAMBOA, JR., Petitioner,	**G.R. No. 179654**
	Present:
	VELASCO, JR., *J.*, *Chairperson*, PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.*
- versus -	
	Promulgated:
PAQUITO VILLEGAS, Respondent.	September 22, 2014

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D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated May 25, 2007 and Resolution[2] dated August 10, 2007 of the Court of Appeals in CA-G.R. SP No. 01923,[3] which granted the Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure filed by Villegas, and reversed the January 26, 2006 and March 31, 2006 Orders of the National Labor Relations Commission (*NLRC*). These two Orders issued by the NLRC reversed the December 3, 2003 Decision of Executive Labor Arbiter Danilo Acosta.

The facts, as culled from the records, are as follows:

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1 *Rollo*, pp. 10-20.
2 *Id.* at 23-27.
3 Entitled *NFSW-FGT/Paquito Villegas v. NLRC, HDA. Leddy/Ricardo Gamboa, Jr.*

Villegas is an employee at the Hacienda Leddy as early as 1960, when it was still named Hacienda Teresa. Later on named Hacienda Leddy owned by Ricardo Gamboa Sr., the same was succeeded by his son Ricardo Gamboa, Jr. During his employment up to the time of his dismissal, Villegas performed sugar farming job 8 hours a day, 6 days a week work, continuously for not less than 302 days a year, and for which services he was paid ₱45.00 per day. He likewise worked in petitioner's coconut lumber business where he was paid ₱34.00 a day for 8 hours work.

On June 9, 1993, Gamboa went to Villegas' house and told him that his services were no longer needed without prior notice or valid reason. Hence, Villegas filed the instant complaint for illegal dismissal.

Gamboa, on the other hand, denied having dismissed Villegas but admitted in his earlier position paper that Villegas indeed worked with the said farm owned by his father, doing casual and odd jobs until the latter's death in 1993.[4] He was even given the benefit of occupying a small portion of the land where his house was erected. He, however, maintained that Villegas ceased working at the farm as early as 1992, contrary to his allegation that he was dismissed.[5]

However, later, Gamboa apparently retracted and instead insisted that the farm records reveal that the only time Villegas rendered service for the hacienda was only in the year 1993, specifically February 9, 1993 and February 11, 1993 when he was contracted by the farm to cut coconut lumber which were given to regular workers for the repairs of their houses.[6] Gamboa added that they informed Villegas that they need the property, hence, they requested that he vacate it, but he refused. Thus, Gamboa surmised that Villegas filed the instant complaint to gain leverage so he would not be evicted from the land he is occupying. He further argued that during his employment, Villegas was paid in accordance with the rate mandated by law and that his claim for illegal dismissal was merely a fabrication as he was the one who opted not to work.

The Labor Arbiter found that there was illegal dismissal.[7] The dispositive portion of the decision reads:

> WHEREFORE, in view of all the foregoing, respondent Ricardo Gamboa, Jr., is hereby ordered to pay complainant Paquito Villegas the amount of One Hundred Forty Thousand Three Hundred Eight Pesos and

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4 CA *rollo*, p. 35; Gamboa's Position Paper dated October 24, 1994.
5 *Id.*
6 *Id.*
7 *Rollo*, pp. 117-122.

> Eighty-Four/00 (₱140,308.84), representing his wage differential, backwages and separation pay, the award to be deposited with this office within ten (10) days from receipt of this decision.
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> SO ORDERED.[8]

On appeal, on January 26, 2006, the NLRC set aside and vacated the Labor Arbiter's decision.[9] Complainant moved for reconsideration, but was denied.[10]

Thus, *via* petition for *certiorari* under Rule 65 of the Rules of Court, raising grave abuse of discretion as ground, Villegas appealed before the Court of Appeals and sought the annulment of the Resolutions of the NLRC.

In the disputed Decision[11] dated May 25, 2007, the Court of Appeals granted the petition and annulled and set aside the NLRC Decision dated January 26, 2006 and Resolution dated March 31, 2006. It further reinstated the Labor Arbiter's Decision dated December 3, 2003.

Hence, this appeal anchored on the following grounds:

> I
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> WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR, BASED ON SUBSTANTIAL QUESTIONS OF LAW, IN REVERSING THE DECISION OF THE NLRC AND AFFIRMING THE DECISION OF the EXECUTIVE LABOR ARBITER DECLARING THAT RESPONDENT IS A REGULAR WORKER, THE FINDINGS NOT BEING IN ACCORD WITH LAW;
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> II
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> WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR, BASED ON SUBSTANTIAL QUESTIONS OF LAW, IN REVERSING THE DECISION OF THE NLRC AND AFFIRMING THE DECISION OF THE EXECUTIVE LABOR ARBITER AND FAILED TO CONSIDER THE MOTIVE OF THE RESPONDENT IN FILING THE CASE AND THE CREDIBILITY OF HIS WITNESS;

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8 *Id.* at 117-122.
9 *Id.* at 107-112.
10 *Id.* at 114-115.
11 *Supra* note 1.

III

THAT ASSUMING WITHOUT ADMITTING THAT RESPONDENT IS A REGULAR WORKER, THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR, BASED ON SUBSTANTIAL QUESTIONS OF LAW, IN REVERSING THE DECISION OF THE NLRC AND AFFIRMING THE DECISION OF THE EXECUTIVE LABOR ARBITER IN DIRECTING A STRAIGHT COMPUTATION FOR WAGE DIFFERENTIALS, BACKWAGES AND SEPARATION PAY, THE FINDINGS NOT BEING IN ACCORD WITH LAW.

Petitioner disputed that there exists an employer-employee relationship between him and Villegas. He claimed that respondent was paid on a piece-rate basis without supervision.[12] Petitioner added that since his job was not necessary or desirable in the usual business or trade of the hacienda, he cannot be considered as a regular employee. Petitioner insisted that it was Villegas who has stopped working in the hacienda and that he was not dismissed.

We deny the petition.

The issue of Villegas' alleged illegal dismissal is anchored on the existence of an employer-employee relationship between him and Gamboa; thus, essentially a question of fact. Generally, the Court does not review errors that raise factual questions. However, when there is conflict among the factual findings of the antecedent deciding bodies like the LA, the NLRC and the CA, "it is proper, in the exercise of Our equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings."[13]

A perusal of the records would show that respondent, having been employed in the subject Hacienda while the same was still being managed by petitioner's father until the latter's death in 1993, is undisputed as the same was even admitted by Gamboa in his earlier pleadings.[14] While refuting that Villegas was a regular employee, petitioner however failed to categorically deny that Villegas was indeed employed in their hacienda albeit he insisted that Villegas was merely a casual employee doing odd jobs.

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12 *Rollo*, p. 44.

13 *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012, 666 SCRA 382, 394-395.

14 CA *rollo*, p. 15.

The rule is long and well settled that, in illegal dismissal cases like the one at bench, the burden of proof is upon the employer to show that the employee's termination from service is for a just and valid cause. The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[15]

In the instant case, if we are to follow the length of time that Villegas had worked with the Gamboas, it should be more than 20 years of service. Even Gamboa admitted that by act of generosity and compassion, Villegas was given a privilege of erecting his house inside the hacienda during his employment.[16] While it may indeed be an act of good will on the part of the Gamboas, still, such act is usually done by the employer either out of gratitude for the employee's service or for the employer's convenience as the nature of the work calls for it. Indeed, petitioner's length of service is an indication of the regularity of his employment. Even assuming that he was doing odd jobs around the farm, such long period of doing said odd jobs is indicative that the same was either necessary or desirable to petitioner's trade or business. Owing to the length of service alone, he became a regular employee, by operation of law, one year after he was employed.

Article 280 of the Labor Code, describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

In *Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission*,[17] we held that the test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability

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15 *Functional, Inc., v. Granfil*, GR No. 176377, November 16, 2011, 660 SCRA 279, 284-285.
16 *Rollo*, p. 44.
17 503 Phil. 875 (2005).

of that activity to the business. Clearly, with more than 20 years of service, Villegas, without doubt, passed this test to attain employment regularity.

While length of time may not be the controlling test to determine if Villegas is indeed a regular employee, it is vital in establishing if he was hired to perform tasks which are necessary and indispensable to the usual business or trade of the employer. If it was true that Villegas worked in the hacienda only in the year 1993, specifically February 9, 1993 and February 11, 1993, why would then he be given the benefit to construct his house in the hacienda? More significantly, petitioner admitted that Villegas had worked in the hacienda until his father's demise. Clearly, even assuming that Villegas' employment was only for a specific duration, the fact that he was repeatedly re-hired over a long period of time shows that his job is necessary and indispensable to the usual business or trade of the employer.

Gamboa likewise argued that Villegas was paid on a piece-rate basis.[18] However, payment on a piece-rate basis does not negate regular employment. "The term 'wage' is broadly defined in Article 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis. Payment by the piece is just a method of compensation and does not define the essence of the relations."[19]

We are likewise unconvinced that it was Villegas who suddenly stopped working. Considering that he was employed with the Gamboas for more than 20 years and was even given a place to call his home, it does not make sense why Villegas would suddenly stop working therein for no apparent reason. To justify a finding of abandonment of work, there must be proof of a deliberate and unjustified refusal on the part of an employee to resume his employment. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment. Mere absence is not sufficient. It must be accompanied by manifest acts unerringly pointing to the fact that the employee simply does not want to work anymore.[20]

Petitioner failed to discharge this burden. Other than the self-serving declarations in the affidavit of his employee, petitioner did not adduce proof of overt acts of Villegas showing his intention to abandon his work. Abandonment is a matter of intention; it cannot be inferred or presumed from equivocal acts. On the contrary, the filing of the instant illegal dismissal complaint negates any intention on his part to sever their

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18 *Rollo*, p. 44.

19 *Lambo v. NLRC*, 375 Phil. 855, 862 (1999).

20 *Id*. at 863.

employment relationship. The delay of more than 1 year in filing the instant illegal dismissal case likewise is non-issue considering that the complaint was filed within a reasonable period during the three-year period provided under Article 291 of the Labor Code.[21] As aptly observed by the appellate court, Villegas appeared to be without educational attainment. He could not have known that he has rights as a regular employee that is protected by law.

The Labor Code draws a fine line between regular and casual employees to protect the interests of labor. We ruled in *Baguio Country Club Corporation v. NLRC*[22] that "its language evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient." Thus, notwithstanding any agreements to the contrary, what determines whether a certain employment is regular or casual is not the will and word of the employer, to which the desperate worker often accedes, much less the procedure of hiring the employee or the manner of paying his salary. It is the nature of the activities performed in relation to the particular business or trades considering all circumstances, and in some cases the length of time of its performance and its continued existence.[23]

All these having discussed, as a regular worker, Villegas is entitled to security of tenure under Article 279 of the Labor Code and can only be removed for cause. We found no valid cause attending to his dismissal and found also that his dismissal was without due process.

Article 277(b) of the Labor Code provides that:

> x x x Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x

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21 *Padilla v. Javilgas*, 569 Phil. 673, 683 (2008) .

22 G.R. No. 71664, February 28, 1992, 206 SCRA 643, 649.

23 See *De Leon v. NLRC*, 257 Phil. 626 (1989).

The failure of the petitioner to comply with these procedural guidelines renders its dismissal of Villegas illegal. An illegally dismissed employee should be entitled to either reinstatement – if viable, or separation pay if reinstatement is no longer viable, plus backwages in either instance.[24] Considering that reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay should be granted. The basis for computing separation pay is usually the length of the employee's past service, while that for backwages is the actual period when the employee was unlawfully prevented from working.[25] It should be emphasized, however, that the finality of the illegal dismissal decision becomes the reckoning point. In allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point. The decision also becomes a judgment for money from which another consequence flows – the payment of interest in case of delay.[26]

WHEREFORE, premises considered, the Decision dated May 25, 2007 and Resolution dated August 10, 2007 of the Court of Appeals are hereby **AFFIRMED**. The Decision dated December 3, 2003 of the Labor Arbiter in RAB Case No. 06-08-10480-94 is hereby **REINSTATED.** This case is hereby **REMANDED** to the Labor Arbiter for the recomputation of respondent's separation pay and backwages with legal interest.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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[24] *Wenphil Corporation v. Elmer R. Abing*, G.R. No. 207983, April 7, 2014.

[25] *Id.*

[26] See *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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.

ANTONIO T. CARPIO
Acting Chief Justice