

**CATHAY PACIFIC STEEL CORPORATION, BENJAMIN CHUA JR.,
VIRGILIO AGERO, AND LEONARDO VISORRO, JR., PETITIONERS, VS.
HON. COURT OF APPEALS, CAPASCO UNION OF SUPERVISORY
EMPLOYEES (C...**

G.R. NO. 164561. August 30, 2006

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CHICO-NAZARIO, J.:

This is a special civil action for Certiorari under Rule 65 of the Rules of Court seeking to annul and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, (1) the Decision[1] of the Court of Appeals in CA-G.R. SP No. 57179 dated 28 October 2003 which annulled the Decision[2] of the National Labor Relations Commission (NLRC) in NLRC Case No. 017822-99 dated 25 August 1999, thereby, reinstating the Decision[3] of Acting Executive Labor Arbiter Pedro C. Ramos dated 7 August 1998; and (2) the Resolution[4] of the same court, dated 3 June 2004, which denied the petitioners' Motion for Reconsideration.

Herein petitioners are Cathay Pacific Steel Corporation (CAPASCO), a domestic corporation engaged in the business of manufacturing steel products; Benjamin Chua, Jr. (now deceased), the former CAPASCO President; Virgilio Agero, CAPASCO's Vice-President; and Leonardo Visorro, Jr., CAPASCO's Administrative-Personnel Manager. Herein private respondents are Enrique Tamondong III, the Personnel Superintendent of CAPASCO who was previously assigned at the petitioners' Cainta Plant, and CAPASCO Union of Supervisory Employees (CUSE), a duly registered union of CAPASCO.

The facts of the case are as follows:

Four former employees of CAPASCO originally filed this labor case before the NLRC, namely: Fidel Lacambra, Armando Dayson, Reynaldo Vacalares, and Enrique Tamondong III. However, in the course of the proceedings, Fidel Lacambra[5] and Armando Dayson[6] executed a Release and Quitclaim, thus, waiving and abandoning any and all claims that they may have against petitioner CAPASCO. On 3 November 1999, Reynaldo Vacalares also signed a Quitclaim/Release/Waiver.[7] Hence, this Petition shall focus solely on issues affecting private respondent Tamondong.

Petitioner CAPASCO, hired private respondent Tamondong as Assistant to the Personnel Manager for its Cainta Plant on 16 February 1990. Thereafter, he was promoted to the position of Personnel/Administrative Officer, and later to that of Personnel Superintendent. Sometime in June 1996, the supervisory personnel of CAPASCO launched a move to organize a union among their ranks, later known as private respondent CUSE. Private respondent Tamondong actively involved himself in the formation of the union and was even elected as one of its officers after its creation. Consequently, petitioner CAPASCO sent a memo[8] dated 3 February 1997, to private respondent Tamondong requiring him to explain and to discontinue from his union activities, with a warning that a continuance thereof shall adversely affect his employment in the company. Private respondent Tamondong ignored said warning and made a reply letter[9] on 5 February 1997, invoking his right as a supervisory employee to join and organize a labor union. In view of that, on 6 February 1997, petitioner CAPASCO through a

memo[10] terminated the employment of private respondent Tamondong on the ground of loss of trust and confidence, citing his union activities as acts constituting serious disloyalty to the company.

Private respondent Tamondong challenged his dismissal for being illegal and as an act involving unfair labor practice by filing a Complaint for Illegal Dismissal and Unfair Labor Practice before the NLRC, Regional Arbitration Branch IV. According to him, there was no just cause for his dismissal and it was anchored solely on his involvement and active participation in the organization of the union of supervisory personnel in CAPASCO. Though private respondent Tamondong admitted his active role in the formation of a union composed of supervisory personnel in the company, he claimed that such was not a valid ground to terminate his employment because it was a legitimate exercise of his constitutionally guaranteed right to self-organization.

In contrast, petitioner CAPASCO contended that by virtue of private respondent Tamondong's position as Personnel Superintendent and the functions actually performed by him in the company, he was considered as a managerial employee, thus, under the law he was prohibited from joining a union as well as from being elected as one of its officers. Accordingly, petitioners maintained their argument that the dismissal of private respondent Tamondong was perfectly valid based on loss of trust and confidence because of the latter's active participation in the affairs of the union.

On 7 August 1998, Acting Executive Labor Arbiter Pedro C. Ramos rendered a Decision in favor of private respondent Tamondong, decreeing as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding [petitioner CAPASCO] guilty of unfair labor practice and illegal dismissal. Concomitantly, [petitioner CAPASCO] is hereby ordered:

- To cease and desist from further committing acts of unfair labor practice, as charged;
- To reinstate [private respondent Tamondong] to his former position without loss of seniority rights and other privileges and his full backwages inclusive of allowances, and to his other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement, and herein partially computed as follows:

- a) P167,076.00 - backwages from February 7, 1997 to August 7, 1998;
 - b) P18,564.00 - 13th month pay for 1997 and 1998;
 - c) P4,284.00 - Holiday pay for 12 days;
 - d) P3,570.00 - Service Incentive Leave for 1997 and 1998.
- P 193,494.00 - Total partial backwages and benefits.[11]

Aggrieved, petitioners appealed the afore-quoted Decision to the NLRC. On 25 August 1999, the NLRC rendered its Decision modifying the Decision of the Acting Executive Labor Arbiter Pedro C. Ramos, thus:

WHEREFORE, premises all considered, the decision appealed from is hereby MODIFIED:

- a) Dismissing the Complaint for Illegal Dismissal filed by [private respondent Tamondong] for utter lack of merit;
- b) Dismissing the Complaint for Unfair Labor Practice for lack of factual basis;
- c) Deleting the awards to [private respondent Tamondong] of backwages, moral and exemplary damages, and attorney's fees;
- d) Affirming the awards to [private respondent Tamondong], representing 13th month pay for 1997 and 1998, holiday pay for 12 days, and service incentive leave for 1997 totaling P26,418.00; and
- e) Ordering the payment of backwages to [private respondent Tamondong] reckoned from 16 September 1998

up to the date of this Decision.[12]

Petitioners filed a Motion for Clarification and Partial Reconsideration, while, private respondent Tamondong filed a Motion for Reconsideration of the said NLRC Decision, but the NLRC affirmed its original Decision in its Resolution[13] dated 25 November 1999.

Dissatisfied with the above-mentioned Decision of the NLRC, private respondents Tamondong and CUSE filed a Petition for Certiorari under Rule 65 of the Rules of Court before the Court of Appeals, alleging grave abuse of discretion on the part of the NLRC. Then, the Court of Appeals in its Decision dated 28 October 2003, granted the said Petition. The dispositive of which states that:

WHEREFORE, premises considered, the instant Petition for Certiorari is GRANTED and the herein assailed Decision dated August 25, 1999 of the NLRC, Third Division is ANNULLED and SET ASIDE. Accordingly, the Decision dated August 7, 1998 of NLRC, RAB IV Acting Executive Labor Arbiter Pedro C. Ramos, insofar as [private respondent Tamondong] is concerned is hereby REINSTATED.[14]

Consequently, petitioners filed a Motion for Reconsideration of the aforesaid Decision of the Court of Appeals. Nonetheless, the Court of Appeals denied the said Motion for Reconsideration for want of convincing and compelling reason to warrant a reversal of its judgment.

Hence, this present Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure.

In the Memorandum[15] filed by petitioners, they aver that private respondent Tamondong as Personnel Superintendent of CAPASCO was performing functions of a managerial employee because he was the one laying down major management policies on personnel relations such as: issuing memos on company rules and regulations, imposing disciplinary sanctions such as warnings and suspensions, and executing the same with full power and discretion. They claim that no further approval or review is necessary for private respondent Tamondong to execute these functions, and the notations "NOTED BY" of petitioner Agerro, the Vice-President of petitioner CAPASCO, on the aforesaid memos are nothing but mere notice that petitioner Agerro was aware of such company actions performed by private respondent Tamondong. Additionally, private respondent Tamondong was not only a managerial employee but also a confidential employee having knowledge of confidential information involving company policies on personnel relations. Hence, the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it held that private respondent Tamondong was not a managerial employee but a mere supervisory employee, therefore, making him eligible to participate in the union activities of private respondent CUSE.

Petitioners further argue that they are not guilty of illegal dismissal and unfair labor practice because private respondent Tamondong was validly dismissed and the reason for preventing him to join a labor union was the nature of his position and functions as Personnel Superintendent, which position was incompatible and in conflict with his union activities. Consequently, it was grave abuse of discretion on the part of the Court of Appeals to rule that petitioner CAPASCO was guilty of illegal dismissal and unfair labor practice.

Lastly, petitioners maintain that the Court of Appeals gravely abused its discretion when it reinstated the Decision of Executive Labor Arbiter Pedro C. Ramos holding CAPASCO liable for backwages, 13th month pay, service incentive leave, moral damages, exemplary damages, and attorney's fees.

On the other hand, private respondents, assert that the assailed Decision being a final disposition of the Court of Appeals is appealable to this Court by a Petition for Review on Certiorari under Rule 45 of the Rules of Court and not under Rule 65 thereof. They also claim that petitioners new ground that private respondent Tamondong was a confidential employee of CAPASCO, thus, prohibited from participating in union activities, is not a valid ground

to be raised in this Petition for Certiorari seeking the reversal of the assailed Decision and Resolution of the Court of Appeals.

Now, given the foregoing arguments raise by both parties, the threshold issue that must first be resolved is whether or not the Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure is the proper remedy for the petitioners, to warrant the reversal of the Decision and Resolution of the Court of Appeals dated 28 October 2003 and 3 June 2004, respectively.

The petition must fail.

The special civil action for Certiorari is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.[16]

The essential requisites for a Petition for Certiorari under Rule 65 are: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial function; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[17] Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting.[18] Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.[19] Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[20]

In the case before this Court, petitioners fail to meet the third requisite for the proper invocation of Petition for Certiorari under Rule 65, to wit: that there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. They simply alleged that the Court of Appeals gravely abuse its discretion which amount to lack or excess of jurisdiction in rendering the assailed Decision and Resolution. They did not bother to explain why an appeal cannot possibly cure the errors committed by the appellate court. It must be noted that the questioned Decision of the Court of Appeals was already a disposition on the merits; this Court has no remaining issues to resolve, hence, the proper remedy available to the petitioners is to file Petition for Review under Rule 45 not under Rule 65.

Additionally, the general rule is that a writ of certiorari will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of certiorari under Rule 65 of the Revised Rules of Court are mutually exclusive and not alternative or cumulative.[21] Time and again this Court reminded members of the bench and bar that the special civil action of Certiorari cannot be used as a substitute for a lost appeal[22] where the latter remedy is available. Such a remedy will not be a cure for failure to timely file a Petition for Review on Certiorari under Rule 45. Nor can it be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own negligence or error in the choice of remedies.[23]

In the case at bar, petitioners received on 9 June 2004 the Resolution of the Court of Appeals dated 3 June 2004 denying their Motion for Reconsideration. Upon receipt of the said Resolution, they had 15 days or until 24 June

2004 within which to file an appeal by way of Petition for Review under Rule 45, but instead of doing so, they just allowed the 15 day period to lapse, and then on the 61[st] day from receipt of the Resolution denying their Motion for Reconsideration, they filed this Petition for Certiorari under Rule 65 alleging grave abuse of discretion on the part of the appellate court. Admittedly, this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a Petition for Certiorari as a Petition for Review on Certiorari under Rule 45, especially if filed within the reglementary period for filing a Petition for Review.[24] However, in the present case, this Court finds no compelling reason to justify a liberal application of the rules, as this Court did in the case of *Delsan Transport Lines, Inc. v. Court of Appeals*. [25] In the said case, this Court treated the Petition for Certiorari filed by the petitioner therein as having been filed under Rule 45 because said Petition was filed within the 15-day reglementary period for filing a Petition for Review on Certiorari. Petitioner's counsel therein received the Court of Appeals Resolution denying their Motion for Reconsideration on 26 October 1993 and filed the Petition for Certiorari on 8 November 1993, which was within the 15-day reglementary period for filing a Petition for Review on Certiorari. It cannot therefore be claimed that the Petition was used, as a substitute for appeal after that remedy has been lost through the fault of the petitioner.[26] Conversely, such was not the situation in the present case. Hence, this Court finds no reason to justify a liberal application of the rules.

Accordingly, where the issue or question involves or affects the wisdom or legal soundness of the decision, and not the jurisdiction of the court to render said decision, the same is beyond the province of a petition for certiorari.[27] It is obvious in this case that the arguments raised by the petitioners delved into the wisdom or legal soundness of the Decision of the Court of Appeals, therefore, the proper remedy is a Petition for Review on Certiorari under Rule 45. Consequently, it is incumbent upon this Court to dismiss this Petition.

In any event, granting arguendo, that the present petition is proper, still it is dismissible. The Court of Appeals cannot be said to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction in annulling the Decision of the NLRC because the findings of the Court of Appeals that private respondent Tamondong was indeed a supervisory employee and not a managerial employee, thus, eligible to join or participate in the union activities of private respondent CUSE, were supported by evidence on record. In the Decision of the Court of Appeals dated 28 October 2003, it made reference to the Memorandum[28] dated 12 September 1996, which required private respondent Tamondong to observe fixed daily working hours from 8:00 am to 12:00 noon and from 1:00 pm to 5:00 pm. This imposition upon private respondent Tamondong, according to the Court of Appeals, is very uncharacteristic of a managerial employee. To support such a conclusion, the Court of Appeals cited the case of *Engineering Equipment, Inc. v. NLRC*[29] where this Court held that one of the essential characteristics[30] of an employee holding a managerial rank is that he is not subjected to the rigid observance of regular office hours or maximum hours of work.

Moreover, the Court of Appeals also held that upon careful examination of the documents submitted before it, it found out that:

[Private respondent] Tamondong may have possessed enormous powers and was performing important functions that goes with the position of Personnel Superintendent, nevertheless, there was no clear showing that he is at liberty, by using his own discretion and disposition, to lay down and execute major business and operational policies for and in behalf of CAPASCO. [Petitioner] CAPASCO miserably failed to establish that [private respondent] Tamondong was authorized to act in the interest of the company using his independent judgment. x x x. Withal, [private respondent] Tamondong may have been exercising certain important powers, such as control and supervision over erring rank-and-file employees, however, x x x he does not possess the power to hire, transfer, terminate, or discipline erring employees of the company. At the most, the record merely showed that [private respondent] Tamondong informed and warned rank-and-file employees with respect to their violations of CAPASCO's rules and regulations. x x x. [Also, the functions performed by

private respondent such as] issuance of warning[31] to employees with irregular attendance and unauthorized leave of absences and requiring employees to explain regarding charges of abandonment of work, are normally performed by a mere supervisor, and not by a manager.[32]

Accordingly, Article 212(m) of the Labor Code, as amended, differentiates supervisory employees from managerial employees, to wit: supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions, if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment; whereas, managerial employees are those who are vested with powers or prerogatives to lay down and execute management policies and/or hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees. Thus, from the foregoing provision of the Labor Code, it can be clearly inferred that private respondent Tamondong was just a supervisory employee. Private respondent Tamondong did not perform any of the functions of a managerial employee as stated in the definition given to it by the Code. Hence, the Labor Code[33] provisions regarding disqualification of a managerial employee from joining, assisting or forming any labor organization does not apply to herein private respondent Tamondong. Being a supervisory employee of CAPASCO, he cannot be prohibited from joining or participating in the union activities of private respondent CUSE, and in making such a conclusion, the Court of Appeals did not act whimsically, capriciously or in a despotic manner, rather, it was guided by the evidence submitted before it. Thus, given the foregoing findings of the Court of Appeals that private respondent is a supervisory employee, it is indeed an unfair labor practice[34] on the part of petitioner CAPASCO to dismiss him on account of his union activities, thereby curtailing his constitutionally guaranteed right to self-organization.[35]

With regard to the allegation that private respondent Tamondong was not only a managerial employee but also a confidential employee, the same cannot be validly raised in this Petition for Certiorari. It is settled that an issue which was not raised in the trial court cannot be raised for the first time on appeal. This principle applies to a special civil action for certiorari under Rule 65.[36] In addition, petitioners failed to adduced evidence which will prove that, indeed, private respondent was also a confidential employee.

WHEREFORE, premises considered, the instant Petition is DISMISSED. The Decision and Resolution of the Court of Appeals dated 28 October 2003 and 3 June 2004, respectively, in CA-G.R. SP No. 57179, which annulled the Decision of the NLRC in NLRC Case No. 017822-99 dated 25 August 1999, thereby, reinstating the Decision of Acting Executive Labor Arbiter Pedro C. Ramos dated 7 August 1998, is hereby AFFIRMED. With costs against petitioners.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Callejo, Sr., JJ., concur.

[1] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr., concurring; rollo, pp. 27-35.

[2] Penned by Commissioner Ireneo B. Bernardo with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring; id. at 151-161.

[3] Penned by Acting Executive Labor Arbiter Pedro C. Ramos, id. at 128-150.

[4] Id. at 36-37.

[5] Id. at 50.

[6] Id. at 51.

[7] Id. at 52.

[8] Id. at 73.

[9] Id. at 74-75.

[10] Id. at 94-95.

[11] Id. at 149-150.

[12] Id. at 160-161.

[13] Id. at 163-164.

[14] Id. at 34.

[15] Id. at 241-260.

[16] *People v. Court of Appeals*, G.R. No. 142051, 24 February 2004, 423 SCRA 605, 612.

[17] *Rivera v. Espiritu*, 425 Phil. 169, 179-180 (2002).

[18] *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 785 (2003).

[19] Id.

[20] Id. at 481.

[21] Id. at 480.

[22] *Land Bank of the Philippines v. Continental Watchman Agency Incorporated*, G.R. No. 136114, 22 January 2004, 420 SCRA 624, 630.

[23] *Land Bank of the Philippines v. Court of Appeals*, *supra* note 21.

[24] *Land Bank of the Philippines v. Continental Watchman Agency Incorporated*, *supra* note 22.

[25] 335 Phil. 1066 (1997).

[26] Id.

[27] *A.F. Sanchez Brokerage, Inc. v. Court of Appeals*, G.R. No. 147079, 21 December 2004, 447 SCRA 427, 436, citing *Land Bank of the Philippines v. Court of Appeals*, *supra* note 18 at 482.

[28] *Rollo*, p. 103.

[29] 218 Phil. 719, 726 (1984).

[30] Among the characteristics of the managerial rank are: (1) he is not subject to the rigid observance of regular office hours; (2) his work requires the consistent exercise of discretion and judgment in its performance; (3) the output produced or the result accomplished cannot be standardized in relation to a given period of time; (4) he manages a customarily recognized department or subdivision of the establishment, customarily and regularly directing the work of other employees therein; (5) he either has the authority to hire or discharge other employees or his suggestions and recommendations as to hiring and discharging, advancement and promotion or other change of status of other employees are given particular weight; and (6) as a rule, he is not paid hourly wages nor subjected to maximum hours of work.

[31] *Rollo*, pp. 97-99; p. 102.

[32] Id. at 32-33.

[33] Article 245. Ineligibility of Managerial Employees to join any labor organization; Right of Supervisory Employees. – Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.

[34] Article 248(a) of the Labor Code as amended.

[35] Article 13, Section 3 of the 1987 Philippine Constitution.

[36] *Buñag v. Court of Appeals*, 363 Phil. 216 (1999).

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