

SARI-SARI GROUP OF COMPANIES, INC. (FORMERLY MARIKO NOVEL WARES, INC.), PETITIONER, VS. PIGLAS KAMAO (SARI-SARI CHAPTER), RONNIE S. TAMAYO, JOSE DEL CARMEN, JOCYLENE PADUA, VICK...

G.R. No. 164624. August 11, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the March 1, 2004 Decision[1] and July 22, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 51381.

The antecedents of the case are as follows:

In December 1990, Mariko Novel Wares, Inc. (petitioner) began its retail outlet operations under the name "Sari-Sari" in the basement of Robinson's Galleria in Quezon City.[3] Among its employees were: Head Checker Ronnie Tamayo, Checker Jose del Carmen, Section Heads Jocylene Padua, Vicky Bermeo, and Elizabeth Matutina (respondents), all of whom were assigned at the Robinsons Galleria branch.[4]

On November 30, 1993, respondents organized a union known as Piglas Kamao (Sari-Sari Chapter). At the time of the formation, the officers of the union were respondents Ronnie Tamayo, President; Jose del Carmen, Vice-President; and Jocylene Padua, Secretary.[5] Respondents claim that petitioner, through its President, Rico Ocampo,[6] interfered with the formation of the union.

On December 14, 1993, respondent union filed a petition for certification elections with the Department of Labor and Employment (DOLE). On the next day, December 15, 1993, petitioner issued a policy statement pertaining to "Employee Complaints/Grievance Procedure," stating, among others, that it "supports an 'open communication policy' both vertical and horizontal within the organization." [7]

Meanwhile, respondents were informed of the petitioner's plan to close the basement level store to give way to the opening of a Sari-Sari outlet on the third floor of Robinson's Galleria. Respondents were supposed to be absorbed in other Sari-Sari store branches.[8] However, on January 9, 1994, petitioner put up an advertisement in the Manila Bulletin, announcing its need for inventory, accounting, and sales clerks. Applicants were requested to apply personally at the Robinson's Galleria branch.[9]

During the month of January 1994, petitioner's managerial staff approached union members to express disapproval of the union membership.[10]

On January 26, 1994, as a result of the aforementioned events, respondent union filed an unfair labor practice case with the Labor Arbiter (LA) against the petitioner for harassment, coercion, and interference with the worker's right to self-organization.

On the next day, January 27, 1994, petitioner notified DOLE and the respondents of the closure of the Galleria

branch due to irreversible losses and non-extension of the lease of the store premises, to be effective on February 28, 1994. Moreover, the respondents were told that they would not be absorbed in the other branches of the petitioner because of redundancy.[11]

On February 11, 1994, respondents Tamayo, Del Carmen, and Padua filed amended complaints of unfair labor practice and illegal dismissal against petitioner. On March 28, 1994, respondents filed six supplemental complaints for illegal dismissal, non-payment of premium pay for holiday and rest day for the years 1992 and 1993, and non-payment of 13th month pay for the year 1994 as well as for moral and exemplary damages.[12]

In its defense, petitioner denied that the closure of the Galleria branch was intended to prevent the formation of the union, saying that the closure was due to consistent losses the branch was incurring. Petitioner further alleged in its position paper submitted to the LA that:

On rentals expenses alone it was already paying its lessor P341,760.38, excluding other charges for the use of the Robinsons Galleria common areas, not to mention water and electric consumption x x x. The premises being leased by Petitioner was too large. Worse, it was located at the Park Avenue area of the Robinsons Galleria which has the lowest shopper traffic in the Robinsons Galleria.

When the 3-year lease of the Petitioner was about to expire, it was therefore deemed more prudent to cease operations.[13]

Furthermore, petitioner claimed that it consistently failed to reach sales quota, forcing it to pay penalties to Robinson's Galleria and that it was the decision of the Board of Directors to close the branch.[14]

On April 27, 1997, the LA rendered his decision dismissing the complaint for illegal dismissal, unfair labor practices and damages for lack of merit. However, the LA ordered the petitioner to pay the respondents separation pay and proportionate 13th month pay.[15] The LA ruled that the presence of respondent union officers Tamayo, Del Carmen and Padua in the Robinson's Galleria branch was merely coincidental and that the closure of the branch was due to the expiration of the lease contract and the increasing expenses of maintaining the branch.[16] The decision was appealed to the National Labor Relations Commission (NLRC).

During the pendency of the appeal, respondents Bermeo, Matutina, and Padua separately filed their respective manifestations and Motions to Dismiss, praying that the appeal be dismissed as to them due to their having already executed their respective quitclaims releasing Mariko from liability.[17]

The NLRC affirmed the decision of the LA but dismissed the claims of Bermeo, Matutina and Padua as they had executed quitclaims. Respondents filed a Motion for Reconsideration which was denied by the NLRC. Respondents then appealed to the CA.

The CA ruled that petitioner failed to discharge its burden of submitting competent proof to show the irreversible substantial losses it suffered warranting the closure of the Galleria branch. The CA ruled:

While the notice of termination stated that the closure of the branch was due to irreversible losses and the non-extension of the lease contract, Mariko did not present any audited financial statements or documents to substantiate its irreversible losses. Its mere allegation thereof is not enough. Also, that the affected branch failed to reach the sales quota was not a factor to justify retrenchment, since the failure of the affected branch to reach the sales quota did not amount to a substantial loss which met the requisites of a valid retrenchment.[18]

Anent the issue of unfair labor practice the CA ruled that such was a question of fact that was beyond the ambit of the present recourse for certiorari.

We cannot disturb, therefore, the findings of the NLRC on the matter which were based on substantial evidence for our task is only to determine whether the NLRC committed grave abuse of discretion in applying the law to the established facts. xxx. That manner of abuse did not attend the conclusion of the NLRC that the respondents [petitioner herein] were not involved in union-busting or anti-union activities.[19]

Lastly, the CA ruled that the release and quitclaims executed by respondents Padua, Bermeo and Matutina did not preclude them from assailing their termination.

The dispositive part of the CA decision reads:

WHEREFORE, the PETITION FOR CERTIORARI is PARTLY GRANTED.

The resolution dated November 17, 1998 of the National Labor Relations Commission is PRO TANTO MODIFIED, ordering respondent MARIKO NOVEL WARES, INC., to pay all individual petitioners their full backwages from the time of their illegal dismissal on February 28, 1994 up to the finality of this judgment.

SO ORDERED.[20]

The CA denied petitioner's motion for reconsideration.

Hence, herein petition raising the following issue:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN GRANTING RESPONDENT'S PETITION FOR CERTIORARI AND IN SETTING ASIDE THE FINDINGS OF BOTH THE NLRC AND THE LABOR ARBITER A QUO.

Petitioner claims that:

- The Court of Appeals committed palpable error in setting aside both the factual findings made by both the Labor Arbiter and the NLRC that respondents had been validly dismissed from employment on the ground of closure.[21]
- The Court of Appeals committed serious error in requiring petitioner to prove substantial losses. Dismissal on the ground of closure does not require proof of substantial business reverses.[22]
- If an employer can validly cease operation even when not incurring losses, with more reason can it close down if it is suffering from financial reverses, as what happened in this case.[23]
- Article 283 of the Labor Code which permits closure or cessation of operation of an establishment likewise governs cases of partial closure. It was therefore serious error on the part of the Court of Appeals to have applied the rules on retrenchment to the case at bar.[24]
- Assuming the Lopez Sugar Corporation case applies, the requisites stated therein were complied with in this case.[25]
- The Court of Appeals seriously erred in invalidating the quitclaims of respondents Bermeo, Matutina and Padua.[26]
- The Court of Appeals seriously erred in taking cognizance of the petition insofar as the four other alleged petitioners therein were concerned, considering only Jose Del Carmen signed and verified the petition.[27]

As general rule, a petition for review on certiorari under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions,[28] such as in this case where the findings of the LA and the NLRC vary from the findings of the CA.

Before discussing the substantive merits of the case, we will first discuss the procedural matters raised.

Effect of Non-Verification by All Parties

Section 1 of Rule 65[29] in relation to Section 3 of Rule 46[30] of the Rules of Court requires that a petition for review filed with the CA should be verified and should contain a certificate of non-forum shopping.

The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct, not merely speculative.[31] On the other hand, the rule against forum shopping is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to orderly judicial procedure.[32]

A distinction must be made between non-compliance with the requirements for Verification and noncompliance with those for Certification of Non-Forum Shopping. As to Verification, non-compliance therewith does not necessarily render the pleading fatally defective; hence, the court may order a correction if Verification is lacking; or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the Rules may be dispensed with in order that the ends of justice may thereby be served.[33]

A pleading which is required by the Rules of Court to be verified may be given due course even without a verification of the circumstances warranting the suspension of the rules in the interest of justice.[34] When circumstances warrant, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules in order that the ends of justice may thereby be served.[35] Moreover, many authorities consider the absence of Verification a mere formal, not jurisdictional defect, the absence of which does not of itself justify a court in refusing to allow and act on the case.[36]

In *Torres v. Specialized Packing Development Corporation*,[37] the problem was not lack of Verification, but the adequacy of one executed by only two of the twenty-five petitioners, similar to the case at bar. The Court ruled:

These two signatories are unquestionably real parties in interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the Petition. This verification is enough assurance that the matters alleged therein have been made in good faith or are true and correct, not merely speculative. The requirement of verification has thus been substantially complied with.[38]

Based on the foregoing, the lone Verification of respondent Jose del Carmen is sufficient compliance with the requirements of the law.

On the other hand, the lack of a Certificate of Non-Forum Shopping, unlike that of Verification is generally not curable by the submission thereof after the filing of the petition.[39] The submission of a certificate against forum shopping is thus deemed obligatory, albeit not jurisdictional.[40]

The rule on certification against forum shopping may, however, be also relaxed on grounds of "substantial compliance" or "special circumstances or compelling reasons." [41]

Applicable to this case is *Cavile v. Heirs of Clarita Cavile*. [42] Finding that the petitioners were relatives and co-owners jointly sued over property in which they had common interest, this Court in that case held that the signature of just one co-owner on the Certificate of Non-Forum Shopping in the petition before the Court substantially complied with the rule in this wise:

We find that the execution by Thomas George Cavile, Sr. in behalf of all the other petitioners of the certificate of non-forum shopping constitutes substantial compliance with the Rules. All the petitioners, being relatives and co-owners of the properties in dispute, share a common interest thereon. They also share a common defense in the complaint for partition filed by the respondents. Thus, when they filed the instant petition, they filed it as a collective, raising only one argument to defend their rights over the properties in question. There is sufficient basis, therefore, for Thomas George Cavili, Sr. to speak for and in behalf of his co-petitioners that

they have not filed any action or claim involving the same issues in another court or tribunal, nor is there other pending action or claim in another court or tribunal involving the same issues.[43]

In the case at bar, respondent Jose del Carmen shares a common interest with the other respondents as to the resolution of the labor dispute between them and the petitioner. They collectively sued the petitioner for illegal dismissal and unfair labor practices and have collectively appealed the NLRC decision. Similarly, there is sufficient basis for Jose del Carmen to speak on behalf of his co-respondents in stating that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there any other pending action or claim in another court or tribunal involving the same issues. Thus, even if only respondent Jose del Carmen signed the Certificate of Non-Forum Shopping, the rule on substantial compliance applies. The CA therefore did not commit any error in entertaining the appeal of the respondents.

Effect of Quitclaims

Petitioner asserts that the CA erred in invalidating the quitclaims of respondents Bermeo, Matutina and Padua on the ground that there was an absence of showing that their execution was not voluntary;[44] and that the record was devoid of any showing that the terms of the settlement were not fair and just.[45]

Under prevailing jurisprudence, a deed of release or quitclaim cannot bar an employee from demanding benefits to which he is legally entitled.[46] Similarly, employees who received their separation pay are not barred from contesting the legality of their dismissal, and the acceptance of such benefits would not amount to estoppel.[47]

It is well-established that quitclaims and/or complete releases executed by the employees do not estop them from pursuing their claims arising from the unfair labor practice of the employer. The basic reason for this is that such quitclaims and/ or complete releases are against public policy and, therefore, null and void. The acceptance of termination pay does not divest a laborer of the right to prosecute his employer for unfair labor practice acts.[48]

As observed in *Cariño v. Agricultural Credit and Cooperative Financing Administration*: [49]

Acceptance of those benefits would not amount to estoppel. The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice.[50]

Review of Facts by the CA under Rule 65

As a general rule, in certiorari proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh the sufficiency of evidence upon which the LA and the NLRC based their conclusion. The query in the proceeding before the CA is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.[51] We find this exception applicable to the case at bar.

Main Issue : Closure or Retrenchment?

Petitioner and respondents seem to be at variance as to what the theory of the case is. In its Memorandum, petitioner claims that evidence of substantial business reverses is not required in terminating employees on the ground of closure.[52] On the other hand, respondents in their Memorandum claim that evidence of substantial business reverses is required in the termination of employees on the ground of retrenchment.[53] Thus, the resolution of the case at bar depends on whether we consider the act of petitioner in terminating respondents as one grounded on closure or as one grounded on retrenchment.

The initial notice of the petitioner to DOLE did not clearly state whether petitioner was retrenching workers or simply closing its branch. Petitioner merely stated that they were closing the Galleria branch due to irreversible losses and the non-extension of the lease,[54] as a consequence of which the employees of the said branch were terminated.

In the position paper of the petitioner submitted to the LA, we find that the theory of the case as far as it was concerned was that it had retrenched employees. This finding is bolstered by the fact that the term "retrenchment" was used in a number of paragraphs, to wit:

Accordingly, all the employees of the respondent's Robinsons Galleria branch were terminated/retrenched.[55]

The separation pay of the employees concerned, and whatever other benefits they were entitled to were tendered to the retrenched employees.[56]

It would later appear that certain union officers were among those terminated/retrenched by the respondent pursuant to the closure of its Robinsons Galleria branch.[57]

Neither was respondent aware that there were union officers among its retrenched employees of the Robinsons Galleria branch.[58]

x x x then the lawful and legitimate retrenchment of the employees of the respondent's Robinsons Galleria branch negates any notion of illegal dismissal on the part of the petitioner.[59] (Emphasis supplied)

Moreover, one of the arguments raised by the petitioner in its position paper was that it had "complied with all the requirements of the Labor Code relative to retrenchment." [60] In addition, petitioner cited *Caffco International Limited v. Office of the Minister-Ministry of Labor and Employment* [61] as reference. A reading of the case will show that the issue presented involved the legality of a retrenchment measure in order to minimize business losses.

Later, in its Formal Offer of evidence, petitioner submitted Exhibit "5", described as the Notice to Department of Labor and Employment, for the purpose of proving that the employees concerned were not illegally dismissed, because the closure of the Robinson's Galleria Branch was due to business losses which resulted in the retrenchment of employees who could not be absorbed by the company.[62] Furthermore, petitioner submitted Exhibit "4", described as the Affidavit of Luis Getuela, to prove that the employees concerned were not illegally dismissed, because Mario-Novel closed down its Robinson's Galleria branch due to business losses which resulted in the retrenchment of employees.[63] In his affidavit, Luis Getuela made the following declaration: "As a result of its closure due to business losses, the personnel assigned thereat were retrenched." [64] (Emphasis supplied)

The decision of the LA, although not categorical in its pronouncement, disposed of the issue by stating that the decision to close the Robinson's branch was a management prerogative. However, the Court notes that the cases cited by the LA, namely: *Dangan v. National Labor Relations Commission* and *Catatista v. National Labor Relations Commission*, both involved cases that tackled the issue of retrenchment. Cited was the pertinent portion of the LA decision:

The above factors lead us to conclude that the closure of the Robison's Galleria branch was indeed prompted by the expiration of the contract of lease and that Mariko simply saw this as an opportunity to assess its business position in the light of the circumstances surrounding the situation. With the spiraling cost of rental, other incidental charges coupled with its failure to achieve the sales quota required by the lessor, it would be foolhardy for the respondents to continue doing business under the circumstances. Well settled is the principle that it is the prerogative of management to close its business provided it complies with the requirements of the law. In the case at bar, if respondent Mariko opted to cease the operations of its Robinson's Galleria branch due to the expiration of its lease contract and on account of economic reasons, such decision must be respected as

entirely within its prerogative. Labor tribunals are not authorized to substitute the judgment of the employer on purely business matters. If an employer has the right to close the entire establishment altogether and cease operations due to economic condition, the closure of a part thereof to minimize expenses and reduce capitalization should also be recognized (*Dangan v. NLRC*, 127 SCRA 706). The prerogative to continue a business or a part thereof, belongs to the employer, even, if he is not suffering from serious business losses (*Catatista v. NLRC*, 247 SCRA 46), so long as the requirements of law are complied with. In this connection, records reveal that a written notice was served upon the affected workers and the Department of Labor and Employment on January 28, 1994 (Exhibit "B") and their dismissal was made effective February 28, 1994 or one month hence Mariko tendered the amounts of one-half month salary for every year of service or one month pay whichever is higher, to the individual complainants by way of separation pay, but the individual complainants, except Evangeline dela Cruz who executed a Release Waiver and Quitclaim (Annex "A", respondents' reply), refused to accept the same. Clearly, therefore, respondents also complied with the requirements of the law in affecting the dismissal of the complainants. Respondents cannot be forced to absorb the complainants in the other branches which are already filled up by other Mariko employees. Otherwise, they will be over-staffed. As explained by the respondents, redundancy will result if they are made to absorb the complainants, as there will be surplus employees.[65] (Emphasis supplied)

x x x x

Consonant with the above, we find the termination of the services of the individual complainants were anchored on valid grounds.

WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for illegal dismissal, unfair labor practice and damages for lack of merit, but ordering the respondent MARIKO NOVEL WARES, INC. to pay complainants Ronnie Tamayo, Jose del Carmen, Vicky Bermeo, Jocelyn Padua ad Elizabeth Matutina the amount of SIXTY-SIX THOUSAND EIGHT HUNDRED FOUR PESOS AND 74/100.

x x x x

Representing their separation pay and proportionate 13[th] month pay for the year 1994 within ten days from receipt hereof

All other issues are dismissed for lack of merit

SO ORDERED.

Thereafter, in its Opposition to Memorandum of Appeal, petitioner, contrary to its earlier allegation that it had validly retrenched workers, raised the argument that an employer may close or cease his business operations or undertaking even if he is not suffering from serious business losses or financial reverses as long as he pays employees their termination pay.[66]

Afterwards, the NLRC after re-stating the facts, ruled in this wise:

In a nutshell, the Labor Arbiter below did not commit serious error in ruling for the complainant. "Well entrenched is the rule that when the conclusion of the Labor Arbiter are sufficiently corroborated by the evidence on record, the same should be respected by the appellate tribunals since, he is in a better position to assess and evaluate the credibility of the contending parties. Findings of labor tribunals which are substantially supported by evidence and in the absence of grave abuse of discretion are not only accorded respect but with finality.

WHEREFORE, the assailed Decision is AFFIRMED as far as complainants Ronie Tamayo and Jose del Carmen are concerned while the complaint of Vicky Bermeo, Jocelyne Padua and Elizabeth Matutina are dismissed pursuant to the Receipt, Release and Quitclaim executed and signed by them.

Accordingly, the appeal is dismissed for lack of merit.

SO ORDERED.[67]

Throughout the entire proceedings before the LA and the NLRC, respondents were adamant that petitioner failed to present sufficient and convincing evidence of the alleged losses to justify a retrenchment of workers.[68] It pursued the same argument in the CA,[69] which ruled in their favor.

After a perusal of the records of the case and pleadings submitted, we find that petitioner had in fact retrenched workers. All the pleadings submitted to the LA by the petitioner clearly showed that what it had in mind when it terminated the services of respondents was that it had retrenched workers. It was only when respondents appealed the LA decision that petitioner pursued a new theory, that is, that what was involved was a simple closure of business which did not require proof of substantial losses. This we cannot allow.

The Court's ruling in *Nielson & Company, Inc. v. Lepanto Mining Co.*,[70] is instructive and may be applied by analogy:

We have taken note that Lepanto is advancing a new theory. We have carefully examined the pleadings filed by Lepanto in the lower court, its memorandum and its brief on appeal, and never did it assert the theory that it has the right to terminate the management contract because that contract is one of agency which it could terminate at will. While it is true that in its ninth and tenth special affirmative defenses, in its answer in the court below, Lepanto pleaded that it had the right to terminate the management contract in question, that plea of its right to terminate was not based upon the ground that the relation between Lepanto and Nielson was that of principal and agent but upon the ground that Nielson had allegedly not complied with certain terms of the management contract. If Lepanto had thought of considering the management contract as one of agency it could have amended its answer by stating exactly its position. It could have asserted its theory of agency in its memorandum for the lower court and in its brief on appeal. This, Lepanto did not do.[71]

When a party deliberately adopts a certain theory, and the case is tried and decided on that theory in the court below, the party will not be permitted to change his theory on appeal. To permit him to change his theory will be unfair to the adverse party.[72] It is the rule, and the settled doctrine of this Court, that a party cannot change his theory on appeal; that is, that a party cannot raise in the appellate court any question of law or of fact that was not raised in the court below or which was not within the issue raised by the parties in their pleadings.[73]

Having concluded that petitioner retrenched workers, we now decide as to whether or not petitioner had complied with the requisites of retrenchment. For retrenchment to be valid, the following requisites must be satisfied:

- The losses expected should be substantial and not merely de minimis in extent;
- The substantial losses apprehended must be reasonably imminent;
- The retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and
- The alleged losses, if already incurred, and the expected imminent losses sought to be forestalled, must be proven by sufficient and convincing evidence.[74] (Emphasis supplied)

Petitioner claimed to have suffered irreversible loss. To substantiate this, petitioner cites the following factors: (1) that when the lease was about to expire, it was already paying Robinson's Land Corporation almost Three Hundred Forty-One Thousand Seven Hundred Sixty Six Pesos and Thirty-Eight Centavos (P341,766.38) in monthly rental, excluding other charges for the use of Robinson's Galleria common areas, not to mention water and electric consumption;[75] (2) that from the inception of its operation at the Robinson's Galleria, the Sari-Sari branch continually suffered losses in its operations;[76] (3) that it consistently failed to reach the sales quota assigned to it under the lease contract with Robinson's Land Corporation such that it was even forced to pay

penalties;[77] (4) that in September 1993, when the lease contract was about to expire, its board of directors decided to close the Robinson's outlet; (5) that Robinson's Land Corporation was not too keen on renewing the lease contract considering its failure to reach sales quota.[78]

The CA was correct in finding that petitioner failed to discharge its duty of showing that the dismissal of the employees was legal, to wit:

While the notice of termination stated that the closure of the branch was due to irreversible losses and the non-extension of the lease contract, Mariko did not present any audited financial statements or documents to substantiate its irreversible losses. Its mere allegation thereof is not enough.

x x x x

Without competent and sufficient proof to show that irreversible losses suffered, the legality of the dismissal of the petitioners [herein respondents] cannot be sustained.[79]

In the case of *Uichico v. National Labor Relations Commission*,[80] this Court affirmed the finding of the NLRC as to the kind of evidence needed to prove irreversible loss:

We observe that the basis of the Labor Arbiter in sustaining the argument of financial reverses is the Statement of Profit and Losses submitted by respondent employer. The same, however, does not bear the signature of a certified public accountant or audited by an independent auditor. Briefly stated, it has no evidentiary value.[81] (Emphasis supplied)

In the case at bar, as pointed out by the respondents, petitioner failed to submit its audited financial statements to the Securities and Exchange Commission for the years 1991 and 1992.[82] Thus, other than petitioner's bare allegation of irreversible loss, there is no evidence to prove and substantiate it.

Retrenchment is a management prerogative, a means to protect and preserve the employer's viability and ensure his survival. This Court has always respected this prerogative during trying times, but there must be faithful compliance by management with the substantive and procedural requirements laid down by law and jurisprudence.[83]

Petitioner having failed in discharging its burden of submitting sufficient and convincing evidence required by law, we hold that respondents Ronnie Tamayo, Jose del Carmen, Jocylene Padua, Vicky Bermeo and Elizabeth Matutina were illegally dismissed.

An illegally dismissed employee is entitled to either (1) reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages.[84] In the case at bar, since fourteen years have already lapsed since the termination of the respondents, we deem it proper that separation pay in lieu of reinstatement be awarded. Since petitioner has already paid respondents their separation pay, it is only liable to pay the respondents their backwages computed from the time of their illegal dismissal up to the time of the finality of this judgment.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated March 31, 2004 and its Resolution dated July 2, 2004 in CA-G.R. SP No. 51381 are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Justice Lucas P. Bersamin with the concurrence of Justices Godardo A. Jacinto and Elvi John S. Asuncion; rollo, pp. 51-62.

[2] Id. at 64.

[3] Id. at 52.

[4] Rollo, pp.76-86.

[5] Id. at 382.

[6] Id. at 383.

[7] Id. at 52.

[8] Id. at 53.

[9] Id. at 383.

[10] Id. at 383-384.

[11] Rollo, pp. 53.

[12] Id.at 75-88.

[13] Id. at 92-93.

[14] Rollo, pp. 54.

[15] Id. at 54.

[16] Id. at 55.

[17] Id. at 56.

[18] Rollo, pp. 57.

[19] Id. at 60.

[20] Id. at 62.

[21] Rollo, pp. 27.

[22] Id. at 31.

[23] Id. at 37.

[24] Id. at 37-38.

[25] Id. at 39.

[26] Id. at 41.

[27] Id at 43.

[28] Eastern Communications Philippines, Inc. v. Diamse, G.R. No. 169299, June 16, 2006, 491 SCRA 239, 243

[29] Section 1. Petition for certiorari. When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course

of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

[30] Section 3. Contents and filing of petition; effect of noncompliance with requirements.

x x x The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

x x x x

The failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition. (n; Bar Matter No. 803, 21 July 1998).

[31] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6, 2004, 433 SCRA 455, 463.

[32] *Uy v. Land Bank of the Philippines*, 391 Phil 303, 312 (2000).

[33] *Uy v. Land Bank of the Philippines*, supra note 32.

[34] *Precision Electronics Corporation v. National Labor Relations Commission*, G.R. No. 86657, October 23, 1989, 178 SCRA 667.

[35] *Vda. de Gabriel v. Court of Appeals*, G.R. No. 103883, November 14, 1996, 264 SCRA 137.

[36] *Uy v. Workmen's Compensation Commission*, No. L-43389, April 28, 1980, 97 SCRA 255.

[37] Supra note 31, at 455.

[38] Id. at 464.

[39] *Torres v. Specialized Packaging Development Corporation*, supra note 31, at 465.

[40] Supra at 465.

[41] *Mamaril v. Civil Service Commission*, G.R. No. 164929, April 10, 2006, 487 SCRA 65, 73.

[42] 448 Phil 302 (2003).

[43] supra note 42, at 311-312.

[44] Rollo, p. 42.

[45] Id.

[46] *Fuentes v. National Labor Relations Commission*, No. L-76835, November 24, 1988, 167 SCRA 767.

- [47] Mercury Drug Co., Inc. v. Court of Industrial Relations, No. L-23357, April 30, 1974, 56 SCRA 694.
- [48] Philippine Sugar Institute v. Commissioner on Internal Revenue, 109 Phil. 452 (1960); Mercury Drug Co. v. Commissioner on Internal Revenue, No. L-23357, April 30, 1974, 56 SCRA 694, 706.
- [49] No. L-19808, September 29, 1966, 18 SCRA 183.
- [50] Cariño v. Agricultural Credit and Cooperative Financing Administration, *supra* note 49, at 190.
- [51] Danzas Intercontinental, Inc. v. Daguman, G.R. No. 154368, April 15, 2005, 456 SCRA 382, 395-396.
- [52] Rollo, pp. 422.
- [53] *Id.* at 387.
- [54] Rollo, p. 104.
- [55] *Id.* at 91.
- [56] *Id.*
- [57] *Id.* at 92.
- [58] *Id.* at 97.
- [59] *Id.* at 98.
- [60] *Id.* at 95. Emphasis supplied.
- [61] *Id.* at 95, 97; G.R. No. 76966, August 7, 1992, 212 SCRA 357.
- [62] Rollo, p. 152.
- [63] *Id.*
- [64] *Id.* at 156.
- [65] Rollo, pp. 172-174.
- [66] *Id.* at 213-215
- [67] Rollo, pp. 228-229.
- [68] *Id.* at 191-192, 233.
- [69] *Id.* at 252.
- [70] No. L-21601, December 28, 1968, 26 SCRA 540.
- [71] Nielson and Company, Inc. v. Lepanto Mining Co., *supra* note 70, at 544-545.
- [72] FMIC v. Court of Appeals, G.R. No. 85141, November 28, 1989, 179 SCRA 638.
- [73] Section 19, Rule 49 of the old Rules of Court, and also Section 18 of the new Rules of Court; Hautea v. Magallon, 120 Phil. 1306 (1964); Northern Motors, Inc. v. Prince Line, 107 Phil. 253 (1960).
- [74] Lopez Sugar Corp. v. Federation of Free Workers, G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 186-187.
- [75] Rollo, p. 90.

[76] Id. at 90.

[77] Id. at 91.

[78] Id.

[79] Id. at 59.

[80] G.R. No. 121434, June 2, 1997, 273 SCRA 35.

[81] Id. at 44.

[82] Records, pp. 97.

[83] Central Azucarera de la Carlota v. National Labor Relations Commission, G.R. No. 100092, December 29, 1995, 251 SCRA 589, 595.

[84] Masagana Concrete Products v. National Labor Relations Commission, G.R. No. 106916, September 3, 1999, 313 SCRA 576, 595-596.

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