Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

EMMANUEL H. BERALDE, HAYDEE B. OCHE, EDGAR E. FERNANDEZ, RONALD M. DUMADAUG, WENCESLAO L. CAMPORENDONDO, OCTAVE BRENDAN N. MARTINEZ, AVELINA C. NAVA, ALSADOM P. CIRILO, OSCAR H. GALARAGA, IGNACIO R. ALMARIO, JR., MISAMBO D. LLEJES, ERNESTO M. MOVILLA, SR., RONALD R. PANUGALING, NICHOLS M. SULTAN, SR., FRANCISCO M. VELASCO, SAMUEL G. WENCESLAO, EDMONDO B. ELECCION, SANNY L. ABDUL, JOEL T. AUTIDA, ANTONIO C. BAG-O, RODOLFO C. BARTIDO, NECTOR B. BASILISCO, GREGORIO Y. CANAMO, TOMAS M. CANSECO, REYSALVIO M. CARREON, ALEJANDRO A. CELIS, EMERISA S. BLANCADA, FELIX E. BUGWAT, RENIE N. BURGOS, DESIDERIO C. CABONITA, RICARDO P. DAG-UMAN, RUBEN B. DAVIDE, FELIPE G. DEMETILA, EDUARDO B. DIAL, EFREN L. ENCALLADO, GETULIO A. GOHIL, GUMERSINDO C. HAPE, DOMINGO M. LABTON,	**G.R. Nos. 205685-86** **Present:** VELASCO, JR., *J.*, *Chairperson,* PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.*

ARNOLD B. LIM, LEONARDO G. LOPEZ, SR., ALBINO M. LECERNAS, JOEL B. LUMERAN, MARTIN C. MAGLINTE, FOL A. MALAYA, ALFREDO D. MARAVILLAS, MARTINO R. MENDEZ, MAURO B. NAVAREZ, JR., CARLITO R. NAVARRO, AGUSTIN C. NOTARTE, JR., GONZALO G. OCHE, CARLITO G. OTOM, WALTER S. PANOY, ALEJANDRO T. PADOJAN, SR., GLESERIA L. PELDEROS, WILSON C. RODRIGUEZ, ARMAN A. ROSALINDA, ISIDRO M. RUSGAL, ISMAEL M. SANDANG, SR., WEA MAE B. SALATAN, EDWIN L. SARDIDO, PAULINO T. SEDIMO, CESARIO A. TANGARO, PABLITO B. TAYURAN, EDUARDO D. TUBURAN, ARMANDO I. VARGAS, JR., RENATO E. LUMANAS, WILFREDO C. PAUSAL, ALFREDO R. RAMIS, JOSE V. TUGAP, MANUEL G. WENCESLAO, MARIO D. ALBARAN, EDGAR P. ALSADO, SANTOS T. AMADO, JR., CHRISBEL A. ANG, BERNARDO C. AYUSTE, JR., RONALD B. BARTIDO, REYNALDO R. BAURA, SR., ANGELITO A. BIMBO, REYNALDO N. CAPUL, SONNY M. DAVIDE, REYNALDO A. LANTICSE, SR., MARIO M. LIMPIO, ARGIE A. OTOM, DANILO V. PABLIO, CARLITO H. PELLERIN, DANILO L. QUIMPAN, MARK ANTHONY M. SALATAN, DANTE S. SERAFICA, BUENVENTURA J. TAUB, JENRITO S. VIA, ROMULO A. LANIOHAN,

JORGE L. QUIMPAN, ANTONIO C. SALATAN, ARLON C. AYUSTE, ERNESTO P. MARAVILLAS, DANIEL B. ADONA, and WILFREDO M. ALGONES,

Petitioners,

- versus -

LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION (GUIHING PLANTATION OPERATIONS), RICA REGINA L. DAVILA (Chairman), EDWIN T. FABREGAR, JR. (VP-Banana Production); GERARDO IGNACIO B. ONGKIKO, (Senior VP-HR), CELSO S. SANCHEZ (Production Manager); and JESSEPEHINE O. ALEGRE (Area Administrative Manager),

Respondents.

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PRESCO A. FUENTES and BRIAN TAUB,

Petitioners,

- versus -

LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION, (GUIHING PLANTATION OPERATIONS) RICA REGINA L. DAVILA, Chairman; EDWIN T. FABREGAR, JR., VP-Banana Production; GERARDO IGNACIO B. ONGKIKO, Vice-President-Human Resources; CELSO S. SANCHEZ, Production Manager,

Respondents.

Promulgated:

June 22, 2015

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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 Consolidated Decision[1] dated June 29, 2012 and Consolidated Resolution[2] dated November 14, 2012 of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP No. 03588[3] and CA-G.R. SP No. 04646.[4]

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

Lapanday Agricultural and Development Corporation (*Lapanday*) is engaged in the business of Banana plantation and exporting of the same to its clientele abroad. Petitioners are employees in the said corporation.

Between the years 1992-1994, Lapanday retrenched and paid separation pay to some of its employees in a downsizing effort. Thereafter, Lapanday allegedly re-hired some of their former employees with a promise that the land they worked on will be eventually turned-over to them, since the land was covered by the Comprehensive Agrarian Reform Program (*CARP*). The employees including several of the petitioners agreed to be retrenched and re-hired.

Sometime in 1999, Lapanday again retrenched all its employees and offered to pay separation pay for their years of service. Meanwhile, the land was not turned-over to them as promised since the Department of Agrarian Reform (*DAR*) issued an Order Dated February 8, 1999, exempting said land from the coverage of the CARP.

On March 29, 1999, Lapanday and the employees, including petitioners, signed a new employment contract. However, upon learning of the DAR's order of exemption, the employees filed a petition to revoke said order.

On January 4, 2008, Lapanday issued a Notice of Termination to all its employees, including herein petitioners. In the said notice of termination, it was stated that the company is instituting a retrenchment program pursuant to Section 5, Article 1 of the Collective Bargaining Agreement (*CBA*) to

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1 *Rollo*, pp. 7-19.
2 *Id.* at 20-27.
3 *Lapanday , et.al. v. NLRC, Emmanuel H. Beralde, et al.*
4 *Lapanday, et.al. v. NLRC, Presco A. Fuentes, et al.*

prevent losses as a result of the dramatical increase in production costs and lower productivity. The termination date for all employees was effective February 4, 2008.

Several employees signed the notice, in the hopes of getting their separation pay and other benefits. Petitioners, however, claimed that their separation pay was not given to them. They further alleged that those who refused to sign the notice were not allowed to enter the work premises unless they would sign the notice. Lapanday, on the other hand, claimed that despite its financial predicament, separation pay was offered to its employees.

Hence, without any recourse, petitioners filed a complaint for illegal dismissal. Emmanuel Beralde, *et al*. filed their Complaint on February 5, 2008,[5] while Fuentes and Taub filed their Complaint on October 6, 2008.[6]

Lapanday claimed that in 2006, it was beset with financial reverses due to very low productivity, an onslaught of banana diseases, the adverse effects of the imposition of the aerial spraying ban, the reduction of leased areas due to CARP, the refusal of the landowners to renew petitioner's lease contracts, increase in production costs, and the extraordinary fluctuation in foreign exchange. They averred to have implemented numerous saving measures; however, its financial condition continued to decline, thus, they opted to implement a retrenchment program. Lapanday further claimed that it consulted with the employee's union (*Samahan Manggagawa ng Lapanday Guihing-SAMALAG*), and filed the required notice with the Department of Labor and Employment (*DOLE*) before the implementation of said program.

CA-G.R. SP No. 03588[7]

On August 15, 2008, in NLRC RAB XI-02-00135-08,[8] the Labor Arbiter rendered a Decision[9] which reads, thus:

> **WHEREFORE**, foregoing considered, judgment is hereby rendered as follows:
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> 1. Dismissing the complaint for illegal dismissal and unfair labor practice;

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5 *Emmanuel H. Beralde vs. Lapanday et.al.,* docketed as NLRC RAB XI-02-00135-08.

6 *Presco A. Fuentes and Brian Taub vs. Lapanday et.al.,* docketed as NLRC RAB XI-10-00891-08.

7 *Lapanday v. NLRC, Emmanuel H. Beralde, et al.*

8 *Entitled Emmanuel H. Beralde v. Lapanday et al.*

9 *Rollo*, pp. 216-217.

> 2. Declaring that the retrenchment is valid; and
>
> 3. Ordering respondent LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION to pay complainants the sum of EIGHT MILLION TWO HUNDRED EIGHTY-SIX THOUSAND ONE HUNDRED SEVENTY-FOUR AND 53/100 PESOS (₱8,286,174.53) representing their separation pays.
>
> **SO ORDERED.**[10]

Undaunted, before the NLRC, petitioners insisted that they were illegally dismissed. On September 22, 2009, the NLRC reversed and set aside the appealed decision.[11] The dispositive portion reads, thus:

> **WHEREFORE**, foregoing premises considered, the appealed decision is Reversed and Set Aside. In lieu thereof, a new judgment is rendered declaring the complainants, less Presco Fuente and Brian Taub, to have been illegally dismissed from employment, and thus ordering respondent Lapanday Agricultural Development Corporation to reinstate the said complainants to their former positions without loss of seniority rights and other privileges and to pay them full backwages from the dates they were dismissed until they are actually reinstated plus attorney's fees equivalent to ten (10%) percent of the aggregate monetary award due them, subject to computation by the Regional Arbitration Branch of origin during execution proceedings.
>
> **SO ORDERED.**[12]

Lapanday filed a motion for reconsideration, but the NLRC denied the same in a Resolution[13] dated February 12, 2010.

CA-G.R. SP No. 04646[14]

Meanwhile, in NLRC RAB XI-10-00881-08,[15] the Labor Arbiter rendered a Decision[16] dated July 30, 2009, which reads:

> **WHEREFORE**, foregoing premises considered, judgment is hereby rendered declaring the dismissal of complainants Presco A. Fuentes and Brina Taub as illegal:

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10 *Id.* at 226.
11 *Id.* at 232-238..
12 *Id.* at 237-238.
13 CA *rollo*, p. 510.
14 *Lapanday v. NLRC, Presco Fuentes and Brian Taub.*
15 *Entitled Presco A. Fuentes and Brian Taub vs. Lapanday et al.*
16 CA *rollo*, pp. 156-167.

> Accordingly, Lapanday Agricultural Development Corporation (Guihing Plantation Operation), represented by its authorized officers, is hereby (ordered) to pay complainants' backwages, to wit:
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> | | | | |
> |---|---|---|---|
> | 1. | Presco A. Fuentes | - | ₱160,632.21 |
> | 2. | Brian M. Taub | - | ₱160,632.21 |
> | | | | ₱321,264.42 |
>
> Respondent is further ordered (to) reinstate complainants to their former positions, either physically or in the payroll, without loss of seniority rights and other privileges, and to submit a report of compliance thereon within ten (10) days from receipt of Decision. This order of reinstatement is immediately executory.
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> All other claims are denied for insufficiency of evidence.
>
> SO ORDERED.[17]

Lapanday appealed to the NLRC, however, the NLRC dismissed the same for non-perfection due to failure of petitioner to post a cash bond or surety bond within the reglementary period. Petitioner moved for reconsideration but was denied.

Fuentes and Taub filed a petition for *certiorari* under Rule 65 alleging that the NLRC gravely abuse its discretion when it denied its appeal. On April 20, 2011, the Court of Appeals granted the petition and reinstated NLRC RAB XI-10-00881-08,[18] and the proceedings continued before the NLRC.

On July 29, 2011, the NLRC dismissed[19] the complaint for lack of merit, affirming the assailed Decision of the Labor Arbiter which ruled in favor of petitioners' reinstatement after finding their dismissal to be illegal. It likewise echoed its Decision dated September 22, 2009 but included Fuentes and Taub as they were not parties in the earlier case since they filed the complaint several months thereafter.

The motion for reconsideration was filed, but was denied on October 26, 2011 for lack of merit.[20]

Thus, Lapanday filed petitions on *certiorari* against the appellate court.

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17 *Id.* at 167.
18 *Id.* at 169-189 (Vol. 1).
19 *Id.* at 30-34.
20 *Id.* at 37.

In CA-G.R. SP No. 03588,[21] Lapanday assailed the NLRC's Resolutions claiming that it gravely abused its discretion amounting to lack or excess of jurisdiction when it reversed the decision of the Labor Arbiter.

In CA-G.R. SP No. 04646, Lapanday raised the same issue of whether the NLRC committed grave abuse of discretion in concluding that the retrenchment program it had undertaken was a mere ploy to ease out petitioners from their employment.

In a Resolution[22] dated March 13, 2012, upon motion, the appellate court ordered that CA-G.R. SP No. 04646 be consolidated with CA-G.R. No. SP 03588.

In the disputed Consolidated Decision[23] dated June 29, 2012, the Court of Appeals-Cagayan de Oro City, 23rd Division, granted the petitions for *certiorari*, the dispositive portion of which reads:

> **WHEREFORE**, the instant consolidated Petitions are GRANTED.
>
> In CA-G.R. [SP] No. 03588: the National Labor Relations Commission, 8th Division's (NLRC) Resolution promulgated on September 22, 2009 and February 12, 2010 are SET ASIDE. The Decision of Labor Arbiter Henry F. Te promulgated on August 15, 2008 is hereby REINSTATED.
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> In CA-G.R. [SP] No. 04646: the National Labor Relations Commission, 8th Division's (NLRC) Decision promulgated on July 29, 2011 and the Resolution promulgated on October 26, 2011 are SET ASIDE and a new judgment is entered DISMISSING the instant complaints for lack of merit. Let this case be remanded to the arbitration branch of origin for the computation of private respondents' separation pay to be based on each private respondent's number of years of service.
>
> **SO ORDERED.**[24]

Petitioners' moved for reconsideration, but was denied in a Resolution[25] dated November 14, 2012.

Hence, petitioners filed the instant appeal questioning the appellate court's pronouncement of the legality of their dismissal due to retrenchment.

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21 *Id.* at 7-28 (Vol. II).
22 *Id.* at 7-28.
23 *Rollo*, pp. 7-19.
24 *Id.* at 18.
25 *Id.* at 20-27.

The petition is without merit.

Considering the conflicting findings of the Labor Arbiter and the NLRC, it behooved upon the Court of Appeals in the exercise of its *certiorari* jurisdiction to determine which findings are more in conformity with the evidentiary facts.[26]

As a rule, a petition for *certiorari u*nder Rule 65 is valid only when the question involved is an error of jurisdiction, or when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court or tribunals exercising quasi-judicial functions. Hence, courts exercising *certiorari* jurisdiction should refrain from reviewing factual assessments of the respondent court or agency. However, the Court of Appeals cannot be faulted in reviewing the correctness of the factual findings, considering that the NLRC and the Labor Arbiter came up with conflicting findings. Thus, we shall now proceed to review whether the appellate court's decision was in accord with law and evidentiary facts.[27]

Retrenchment is the termination of employment initiated by the employer through no fault of the employees and without prejudice to the latter, resorted to by management during periods of business recession; industrial depression; or seasonal fluctuations, during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or the introduction of new methods or more efficient machinery or automation. Retrenchment is a valid management prerogative. It is, however, subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence. In the discharge of these requirements, it is the employer who bears the *onus*, being in the nature of affirmative defense.[28]

The pertinent provision of the Labor Code on the subject of retrenchment is instructive:

> Art. 283. *Closure of establishment and reduction of personnel.* - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, **retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking** unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one

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26 See *Lambert Pawnbrokers vs. Helen Binamira*, 639 Phil. 1, 11 (2010).

27 *Id.*

28 *Manatad v. Phil. Telegraphic and Telephone Corporation*, 571 Phil. 494, 505 (2008).

> (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

Therefore, for a valid retrenchment, the following requisites must be complied with: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.

Likewise, jurisprudence laid down the following standards to justify retrenchment in order to prevent the management from abusing this prerogative. In *Ariola v. Philex Mining Corporation*,[29] the Court summarized the requirements for retrenchment, as follows:

> Thus, the requirements for retrenchment are: (1) it is undertaken to prevent losses, which are not merely *de minimis*, but substantial, serious, actual, and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) the employer serves written notice both to the employees and the DOLE at least one month prior to the intended date of retrenchment; and (3) the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher. The Court later added the requirements that the employer must use fair and reasonable criteria in ascertaining who would be dismissed and x x x retained among the employees and that the retrenchment must be undertaken in good faith. Except for the written notice to the affected employees and the DOLE, non-compliance with any of these requirements renders the retrenchment illegal.[30]

In the instant case, Lapanday's financial condition before and at the time of petitioners' retrenchment, justified petitioners retrenchment. The audited financial report presented in evidence was found to conclusively show that Lapanday has indeed suffered serious financial losses for the last three years prior to its retrenchment. We quote the findings of the appellate court, to wit:

> Petitioner-company's financial condition before and at the time of the retrenchment clearly paints a picture of a losing business. An independent auditor confirmed its claim of financial losses, finding that is suffered a net loss of Php26,297,297. in 2006 as compared to its net

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29 G.R. No. 147756, August 9, 2005.

30 *Ariola v. Philex Mining Corporation, supra,* at 784-785.

> income of Php14,128,589. in 2005. This net loss ballooned to Php72,363,879. in 2007. To be sure, these financial statements cannot be whimsically assailed as self-serving, as these documents were prepared and signed by SGV & Co., a firm of reputable independent external auditors.[31]

Lapanday instituted a retrenchment program as a result of the management's decision to limit its operation and streamline positions and personnel requirements and arrest its increasing financial losses by downsizing its workforce. Lapanday then was justified in implementing a retrenchment program since it was undergoing financial reverses, not only for a single fiscal year, but for several years prior to and even after the program. We likewise quote the Labor Arbiter's findings:

> Per audit report of Sycip, Gorres Velayo & Co (SGV), an independent accounting firm and credible external auditor, dated April 17, 2007, for 2006 Financial Statement of Lapanday Agriculture and Development Corporation, it shows that respondent's revenue for sales of bananas in 2005 was PhP724,200,596.00. In 2006, it dropped to Php607,186,264.00. A difference or loss of Php117,013,332.00 was incurred by the respondent company. Also, per audit report dated March 28, 2008 of same accounting firm x x x for the year 2007, it shows that respondent's revenue for sales of bananas from Php607,186,264.00 further went down to PhP539,979,711.00 or a loss of ₱67,207,753.00.
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> Recovering from other aspects of respondent's business, summary of respondent net loss was at PhP26,297,297.00 for 2006 from PhP14,128,589.00 for 2005. The net loss ballooned to Php72,363,879.00 in 2007.[32]

We cannot ignore the audited financial reports of independent and reputable external auditors such as Sycip Gorres Velayo & Co., as no evidence can best attest to a company's economic status other than its financial statement. We defined the evidentiary weight accorded to audited financial statements in *Asian Alcohol Corporation v. National Labor Relations Commission*,[33] thus:

> The condition of business losses is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. It is our ruling that financial statements must be prepared and signed by independent auditors. Unless duly audited, they can be assailed as self-serving documents. But it is not enough that only the financial statements for the year during which retrenchment was undertaken, are presented in evidence. For it may happen that while the company has indeed been losing, its losses may be on a downward trend, indicating that business is picking up and

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31 *Id.* at 26.
32 *Rollo*, p. 11.
33 364 Phil. 912 (1999).

> retrenchment, being a drastic move, should no longer be resorted to. Thus, the failure of the employer to show its income or loss for the immediately preceding year or to prove that it expected no abatement of such losses in the coming years, may bespeak the weakness of its cause. It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future.[34]

Verily, the fact that the financial statements were audited by independent auditors settles any doubt on the financial condition of Lapanday. As reported by SGV & Co., the financial statements presented fairly, in all material aspects, the financial position of the respondent as of December 31, 2006 and 2005.[35] However, even assuming *arguendo* that Lapanday was not experiencing losses, it is still authorized by Article 283[36] of the Labor Code to terminate the employment of any employee due to retrenchment to prevent losses or the closing provided that the projected losses are not merely *de minimis*, but substantial, serious, actual, and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer.

We also find that Lapanday complied with the requisite notices to the affected employees and the DOLE to effect a valid retrenchment. As found by the Labor Arbiter and Court of Appeals:[37]

> Records show that the one (1) written notice requirement was duly filed by the respondent with the Office of the Department of Labor and Employment on December 27, 2007 and the Notices of Termination were duly served to its workers on January 4, 2008 to take effect thirty (30) days from their receipt or on February 4, 2008. By reason of the hard "no retrenchment" stand of herein complainants, the latter refused to receive the notices of termination, thus, copies of the Letters of Retrenchment were sent through registered mail on January 8, 2008 to the last known addresses of the complainants. It appears also that respondent submitted to the Department of Labor and Employment its Reports on Employee Termination. On the matter of separation pay, it is established that respondent company is willing to comply with the same.

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34 *Asian Alcohol Corporation v. NLRC, supra*, at 927-928.

35 CA *rollo*, pp. 124-125 (Vol. 1).

36 Art. 283.*Closure of establishment and reduction of personnel.* The employer may also terminate the employment of any employee due to the *installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment* or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year

37 CA *rollo*, p. 328. (vol. II).

We likewise cannot sustain petitioners' argument that their dismissal was illegal on the basis that Lapanday did not actually cease its operation, or that they have re-hired some of the dismissed employees and even hired new set of employees to replace the retrenched employees.

The law acknowledges the right of every business entity to reduce its work force if such measure is made necessary or compelled by economic factors that would otherwise endanger its stability or existence. In exercising its right to retrench employees, the firm may choose to close all, or a part of, its business to avoid further losses or mitigate expenses. In *Caffco International Limited v. Office of the Minister-Ministry of Labor and Employment,*[38] the Court has aptly observed that —

> Business enterprises today are faced with the pressures of economic recession, stiff competition, and labor unrest. Thus, businessmen are always pressured to adopt certain changes and programs in order to enhance their profits and protect their investments. Such changes may take various forms. Management may even choose to close a branch, a department, a plant, or a shop.

In the same manner, when Lapanday continued its business operation and eventually hired some of its retrenched employees and new employees, it was merely exercising its right to continue its business. The fact that Lapanday chose to continue its business does not automatically make the retrenchment illegal. We reiterate that in retrenchment, the goal is to prevent impending losses or further business reversals- it therefore does not require that there is an actual closure of the business. Thus, when the employer satisfactorily proved economic or business losses with sufficient supporting evidence and have complied with the requirements mandated under the law to justify retrenchment, as in this case, it cannot be said that the subsequent acts of the employer to re-hire the retrenched employees or to hire new employees constitute bad faith. It could have been different if from the beginning the retrenchment was illegal and the employer subsequently hired new employees or rehired some of the previously dismissed employees because that would have constituted bad faith. Consequently, when Lapanday continued its operation, it was merely exercising its prerogative to streamline its operations, and to re-hire or hire only those who are qualified to replace the services rendered by the retrenched employees in order to effect more economic and efficient methods of production and to forestall business losses. The rehiring or reemployment of retrenched employees does not necessarily negate the presence or imminence of losses which prompted Lapanday to retrench.[39]

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[38] G.R. No. 76966, August 7, 1992, 212 SCRA 351, 356, cited in *Edge Aparrel v. NLRC*, 349 Phil. 972, 985 (1998). (Citations omitted)

[39] See *Atlantic Gulf and Pacific Co. of Manila, Inc. v. NLRC*, 367 Phil. 223, 234 (1999).

In spite of overwhelming support granted by the social justice provisions of our Constitution in favor of labor, the fundamental law itself guarantees, even during the process of tilting the scales of social justice towards workers and employees, "the right of enterprises to reasonable returns of investment and to expansion and growth." To hold otherwise would not only be oppressive and inhuman, but also counter-productive and ultimately subversive of the nation's thrust towards a resurgence in our economy which would ultimately benefit the majority of our people. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the work force to forestall business losses, the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.[40]

AWARD OF SEPARATION PAY

The payment of separation pay would be due when a dismissal is on account of an *authorized cause* as in this case, and the amount of separation pay depends on the ground for the termination of employment. When the termination of employment is due to retrenchment to prevent losses, or to closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay is only an equivalent of "one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher." In the above instances, a fraction of at least six (6) months is considered as one (1) whole year.[41]

Consequently, petitioners are not entitled to backwages as it is well settled that backwages may be granted only when there is a finding of illegal dismissal.[42] Nevertheless, petitioners are entitled to separation pay as provided under the law, equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher,[43] and those other benefits that petitioners may be entitled thereto under the retrenchment program.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The Court of Appeals Consolidated Decision dated June 29, 2012 and its Resolution dated November 14, 2012 in CA-G.R. SP No. 03588 are hereby **AFFIRMED**.

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40 *Uichico v. National Labor Relations Commission*, 339 Phil. 242, 247 (1997).
41 Labor Code, Art. 283.
42 *Entitled Presco A. Fuentes and Brian Taub vs. Lapanday, et al.*
43 *J.A.T. General Services v. NLRC*, 465 Phil. 785, 799 (2004).

Let the records of the case be remanded to the Labor Arbiter for proper computation of the award in accordance with this decision.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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.

MARIA LOURDES P. A. SERENO
Chief Justice