



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LINGNAM RESTAURANT,
Petitioner,

G.R. No. 214667

Present:

PERALTA, J., Chairperson,
LEONEN,
GISMUNDO,
REYES, J.C., JR., and
HERNANDO, JJ.

- versus -

SKILLS & TALENT EMPLOYMENT
POOL, INC., and JESSIE COLASTE,
Respondents.

Promulgated:

December 3, 2018

X-----*Wilfredo V. Lapitan*-----X

DECISION

PERALTA, J.:

This is a petition for review on *certiorari* of the Decision¹ of the Court of Appeals dated December 20, 2013 in CA-G.R. SP No. 129856, reversing and setting aside the Decision of the National Labor Relations Commission (NLRC) dated January 31, 2013 and its Resolution dated March 27, 2013, and reinstating the Decision of the Labor Arbiter dated September 26, 2012, finding respondent Jessie Colaste illegally dismissed from employment.

The facts are as follows:

Respondent Skills & Talent Employment Pool, Inc. (STEP) is a domestic corporation engaged in manpower management and technical services, and one of its clients is petitioner Lingnam Restaurant, a business

¹ Penned by Associate Justice Hakim S. Abdulwahid (Chairperson) of the Special Sixth Division of the Court of Appeals, with Associate Justices Manuel M. Barrios and Socorro B. Inting (Members) concurring; *rollo*, pp. 29-41.

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enterprise owned and operated by Liberty C. Nacion. In a contract² of employment, respondent Jessie Colaste is a project employee of respondent STEP assigned to work with petitioner Lingnam Restaurant as assistant cook.

On May 21, 2008, Jessie Colaste filed with the Labor Arbiter an Amended Complaint³ for illegal dismissal against Lingnam Restaurant and STEP.

In his Position Paper,⁴ Jessie Colaste alleged that on December 21, 2006, he started working at Lingnam Restaurant as an assistant cook/general utility with a salary of ₱350.00 a day. He worked six days a week, eight hours a day on two shifts.

On March 5, 2008, at about 10:00 a.m., Colaste reported to the main office of STEP at Ortigas Center, Pasig City. He was informed by one Katherine R. Barrun that his contract with Lingnam Restaurant had expired. He was given a clearance form to be signed by his supervisor at Lingnam Restaurant. However, he reported for work as usual at Lingnam Restaurant from 2:00 p.m. to 10:00 p.m.

On March 6, 2008, he was on day-off. On March 7, 2008, he reported for work at Lingnam Restaurant at Greenhills, San Juan City, Metro Manila. However, the Chief Cook told him not to punch in his time card because he was already terminated from work. After a few minutes, the Chief Cook handed him the telephone, and Supervisor Philipp Prado of the main office of Lingnam Restaurant was on the line and told him, "*finish contract ka na, hindi ka na pwede pumasok sa trabaho mo, tanggal ka na.*" Hence, Jessie Colaste filed this case for illegal dismissal against Lingnam Restaurant and STEP, and prayed for reinstatement, payment of backwages and other employment benefits, moral and exemplary damages and ten percent (10%) attorney's fees based on his total judgment award.

In its Position Paper⁵ dated August 8, 2008, Lingnam Restaurant denied that it is the employer of complainant Jessie Colaste and alleged that STEP is Colaste's real employer. Hence, it is not liable for the claims and causes of action of Colaste, and that the complaint should be dismissed insofar as it is concerned.

STEP filed a Request for Clarification and Cautionary Entry of Appearance⁶ dated July 25, 2008, stating that it had not been served with any summons and a copy of the complaint. It prayed that the entry of appearance

². Rollo, pp. 87-98.

³ CA rollo, p. 72.

⁴ Id. at 74-80.

⁵ Rollo, pp. 82-86.

⁶ CA rollo, p. 103.

of its counsel be duly noted and that STEP'S inclusion in the hearing and/or participation in the case be clarified.

In a Decision⁷ dated September 15, 2008, Labor Arbiter Felipe P. Pati dismissed the complaint for lack of merit. He ruled that Jessie Colaste's real employer is STEP because it directly exercised all powers and responsibilities over Colaste. The Labor Arbiter also dismissed Colaste's money claims for lack of merit.

Jessie Colaste appealed from the Labor Arbiter's decision before the NLRC. In a Resolution⁸ dated September 24, 2009, the NLRC remanded the case to the arbitration branch of origin for further proceedings as the Labor Arbiter failed to rule on the issue of illegal dismissal.

Jessie Colaste submitted a Memorandum,⁹ narrating the same facts as in his Position Paper. He reiterated that he was paid ₱350.00 per day until his illegal dismissal. Hence, he contended that he was underpaid from August 28, 2007 to March 2008 because the minimum wage for the said dates up to June 13, 2008 was already ₱362.00 per day. Aside from underpayment of salary, he was also not paid his benefits such as premium pay for work performed during Sundays, holiday pay, premium pay for holiday and 13th month pay. He was likewise not paid his five days' salary for work performed from March 1, 2008 to March 5, 2008.

STEP filed a Cautionary Pleading,¹⁰ manifesting the lack of service of summons upon it. Nevertheless, it alleged that it is an independent contractor engaged in the business of rendering management and technical services. One of its project employees is complainant Jessie Colaste who was assigned as kitchen helper at Lingnam Restaurant, one of STEP's clients. STEP averred that Colaste's employment was co-terminus and dependent upon its contract with Lingnam Restaurant, and STEP has the right to transfer Colaste to another assignment, project or client. In 2002, STEP and Lingnam Restaurant entered into an agreement wherein the former would provide the latter with manpower to perform activities related to the operation of its restaurant business. However, in 2007, Lingnam Restaurant reneged in paying the agreed contract salary of the manpower staff detailed at its business establishment or areas of operation. STEP was compelled to use its funds to pay the manpower staff until the time Lingnam Restaurant's total unpaid obligation amounted to ₱2,907,690.55 covering the period from March 2007 up to February 19, 2008. Hence, in February 2008, STEP ceased its manpower services to Lingnam Restaurant. Aside from assailing the lack of service of summons, STEP also argued that the complaint for illegal dismissal has no cause of action, since Jessie Colaste is still on floating status and has yet to be

⁷ *Rollo*, pp. 123-129.

⁸ *Id.* at 130-134.

⁹ *CA rollo*, pp. 113-116.

¹⁰ *Id.* at 132-137.

enlisted to its other business clients within a period of six months. STEP alleged that it did not terminate complainant's services. Hence, it prayed that the complaint be dismissed for lack of merit.

Meanwhile, Lingnam Restaurant filed anew its Position Paper,¹¹ stating that it is a franchisor of the business establishment Lingnam Restaurant. The franchisee who hired and retained complainant Jessie Colaste was Ms. Liberty Nacion at its franchise business establishment at Shaw Boulevard, Mandaluyong City. It was at the said business establishment that Jessie Colaste rendered services through STEP. Thus, it is not liable for any claims or causes of action of Jessie Colaste.

In a Decision¹² dated September 26, 2012, Labor Arbiter Pablo A. Gajardo, Jr. held that Lingnam Restaurant was guilty of illegal dismissal. The Labor Arbiter ruled that complainant Jessie Colaste's job as assistant cook is necessary and desirable to the restaurant business of Lingnam Restaurant; thus, he is considered as a regular employee of Lingnam Restaurant. Moreover, the Labor Arbiter found that Colaste was not paid his salary in accordance with applicable wage orders. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring respondent Lingnam Restaurant guilty of illegal dismissal;
2. Ordering respondent Lingnam Restaurant to immediately reinstate complainant to his former position without loss of seniority rights, privileges and other benefits;
3. Directing respondent Lingnam Restaurant to pay complainant his full backwages in the amount of P624,020.81 (computed till promulgation only) from the time he was dismissed on March 5, 2008; salary differential in the sum of P10,042.76; unpaid salary for March 1-5, 2008, P1,810.00; 13th month pay for 2006, 2007 and 2008; P10,235.90 and 10% attorney's fees, P64,610.95;
4. Dismissing all other claims for lack of merit; and
5. Dismissing the instant complaint as against respondent Skills & Talent Employment Pool, Inc. for not being served with the Summons.

SO ORDERED.¹³



¹¹ *Id.* at 128-131.

¹² *Rollo*, pp. 64-77.

¹³ *Id.* at 75-77.

Lingnam Restaurant appealed from the Decision of the Labor Arbiter before the NLRC. In a Decision¹⁴ dated January 31, 2013, the NLRC reversed and set aside the Decision of the Labor Arbiter. The *fallo* of the Decision reads:

WHEREFORE, the foregoing having been duly considered, the assailed decision is hereby SET ASIDE and a new one is hereby promulgated as follows:

1. Dismissing the complaint for illegal dismissal against Lingnam Restaurant;
2. Holding respondent Skills & Talent Employment Pool, Inc. liable for constructive dismissal of complainant due to their failure to assign complainant to other business clients after the lapse of six months;
3. Ordering respondent Skills & Talent Employment Pool, Inc. to immediately reinstate complainant to a position equal to his former position without loss of seniority rights, privileges and other benefits; pay him his full backwages commencing from March 5, 2008 up to finality; and to pay for the other monetary awards contained in the assailed decision plus adjusted attorney's fees.

SO ORDERED.¹⁵

The NLRC held that STEP is an independent contractor providing manpower services to Lingnam Restaurant. An employer-employee relationship existed between STEP and Jessie Colaste, who was assigned to one of STEP's clients, Lingnam Restaurant. As Colaste had been employed with STEP for more than a year and performing duties necessary and desirable to its trade and business, he is considered a regular employee. The failure of STEP to assign Colaste to its other business clients after the lapse of six months rendered him constructively dismissed.

STEP's motion for reconsideration was denied in a Resolution¹⁶ dated April 22, 2013.

STEP filed with the Court of Appeals a petition for *certiorari*, alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in (1) setting aside the Decision of Labor Arbiter Pablo Gajardo, Jr.; (2) ruling that there was constructive dismissal and in considering the said issue not raised in the appeal nor in the Complaint; (3) holding STEP liable for constructive dismissal for its alleged failure to assign

¹⁴ *Id.* at 45-59.

¹⁵ *Id.* at 57.

¹⁶ *Id.* at 62-63.



complainant to other business clients after the lapse of six months; (4) ordering STEP to immediately reinstate complainant Colaste and to pay him full backwages plus other monetary awards; and (5) giving due course to the appeal of Lingnam Restaurant and in completely absolving the latter from any liability in the subject complaint of Jessie Colaste.¹⁷

In a Decision¹⁸ dated December 20, 2013, the Court of Appeals reversed and set aside the Decision and Resolution of the NLRC, and reinstated and affirmed the Decision of the Labor Arbiter holding that Jessie Colaste's employer is Lingnam Restaurant, which illegally dismissed Colaste; hence, Colaste is entitled to reinstatement, payment of full backwages and other monetary benefits.

The Court of Appeals stated that petitioner Lingnam Restaurant, through respondent STEP, employed respondent Jessie Colaste as an assistant cook and his appointment as such was co-terminus, arising from the nature of the agreement of STEP and Lingnam Restaurant. Under the employment contract between STEP and Colaste, the latter's performance shall be under the strict supervision, control and in accordance with the standards *specified by the client*. Hence, although the parties in the employment contract are only STEP and Colaste, the legal consequences of such contract must also be made to apply to Lingnam Restaurant. Under the circumstances, STEP merely acted as a placement agency providing manpower to Lingnam Restaurant. The so-called project was under the management and supervision of Lingnam Restaurant and it was the latter which exercised control over Colaste.

The Court of Appeals found that STEP is a labor-only contractor; hence, the workers it supplied to Lingnam Restaurant, including Jessie Colaste, should be considered employees of Lingnam Restaurant.

The appellate court stated that petitioner Lingnam Restaurant did not offer any explanation for Colaste's dismissal, but instead explained that Colaste's real employer is STEP. Petitioner failed to show any valid or authorized cause under the Labor Code which allowed it to terminate the services of Jessie Colaste. No notice of termination was given to Colaste and he was not afforded due process. Having failed to establish compliance with the requirements for termination of employment under the Labor Code, the dismissal of Colaste was tainted with illegality. Consequently, Colaste is entitled to reinstatement without loss of seniority rights and other privileges and to payment of his full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement.



¹⁷ *Id.* at 34-35.

¹⁸ *Id.* at 29-41.

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the petition is GRANTED. The Decision and Resolution promulgated on January 31, 2013 and on March 27, 2013, respectively, of the NLRC are REVERSED and SET ASIDE. The Decision dated September 26, 2012 of the Labor Arbiter is REINSTATED and AFFIRMED.¹⁹

Lingnam Restaurant's motion for reconsideration was denied for lack of merit by the Court of Appeals in its Resolution²⁰ dated September 24, 2014.

Lingnam Restaurant filed this petition, raising the following issues:

1. THE COURT OF APPEALS ERRED IN ALLOWING HEREIN PETITIONER LINGNAM RESTAURANT TO BE JOINED AS RESPONDENT IN CA-G.R. SP NO. 129856, DESPITE THE FACT THAT THE PETITION FOR CERTIORARI FILED IN THE COURT OF APPEALS BY SKILLS & TALENT EMPLOYMENT POOL, INC. CONTAINED NO ALLEGATION OF CLAIM AND NO PRAYER FOR RELIEF AGAINST LINGNAM RESTAURANT.
2. THE COURT OF APPEALS ERRED IN NOT DECLARING THE PETITION FOR CERTIORARI IN CA-G.R. SP NO. 129856 FILED IN THE COURT OF APPEALS BY SKILLS & TALENT EMPLOYMENT POOL, INC. AS BEING INSUFFICIENT IN FORM AND SUBSTANCE WITH RESPECT TO LINGNAM RESTAURANT, THEREBY PLACING LINGNAM RESTAURANT IN A POSITION WHERE IT CANNOT INTELLIGENTLY IDENTIFY AND DISCERN THE MATTERS WHICH OUGHT TO BE ADDRESSED OR COMMENTED TO IN THE PETITION FOR CERTIORARI, AND THEREFORE VIOLATING THE RIGHT TO DUE PROCESS OF LINGNAM RESTAURANT.
3. THE COURT OF APPEALS ERRED IN SETTING ASIDE THE PORTION OF THE NLRC DECISION DATED JANUARY 31, 2013 AND NLRC RESOLUTION DATED MARCH 27, 2013 WHICH DISMISSED THE CASE AGAINST LINGNAM RESTAURANT AND IN REVIEWING THE ALLEGED LIABILITY OF LINGNAM RESTAURANT TO JESSIE COLASTE, DESPITE THE FACT THAT THE DISMISSAL OF THE CASE AGAINST LINGNAM RESTAURANT HAS BECOME FINAL AND EXECUTORY.
4. THE COURT OF APPEALS VIOLATED THE RULE THAT A PARTY WHO DOES NOT APPEAL CANNOT OBTAIN AFFIRMATIVE RELIEFS, WHEN IT SET ASIDE THE NLRC DECISION DATED JANUARY 31, 2013 AND NLRC RESOLUTION DATED MARCH 27, 2013 IN FAVOR OF JESSIE COLASTE AND AGAINST LINGNAM RESTAURANT, DESPITE

¹⁹ *Id.* at 40.

²⁰ *Id.* at 42.

THE FACT THAT SAID JESSIE COLASTE DID NOT APPEAL THEREFROM AND HAD NEVER PARTICIPATED IN THE COURT OF APPEALS PROCEEDINGS.²¹

The main issue is whether or not the Court of Appeals erred in setting aside the decision of the NLRC and in reinstating the decision of Labor Arbiter Gajardo, Jr. or, stated otherwise, whether or not the Court of Appeals correctly ruled that respondent STEP is engaged in labor-only contracting; hence, petitioner Lingnam Restaurant is the employer of complainant-respondent Jessie Colaste and it is liable for Colaste's illegal dismissal.

As a rule, the Court does not review questions of fact but only questions of law in a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, the rule is not absolute as the Court may review the facts in labor cases where the findings of the Court of Appeals and of the labor tribunals are contradictory.²² In this case, the factual findings of the Labor Arbiter and the Court of Appeals differ from those of the NLRC. Hence, the Court reviewed the evidence on record and hereby affirms the decision of the Court of Appeals.

The ascertainment of the liability of petitioner Lingnam Restaurant and/or respondent STEP toward complainant-respondent Jessie Colaste requires the determination of the nature of the contracts between them, specifically whether respondent STEP is engaged in job-contracting or labor-only contracting.

Article 106 of the Labor Code describes labor-only contracting, thus:

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

The applicable implementing rules contained in Rule VIII-A,²³ Book III of the Amended Rules To Implement The Labor Code define contracting or subcontracting and labor-only contracting as follows:

SECTION 4. *Definition of Basic Terms.* — The following terms as used in these Rules shall mean:

²¹ *Id.* at 15-16.

²² *Alaska Milk Corp. v. Ponce*, G.R. Nos. 228412 & 228439, July 26, 2017.

²³ Per DOLE Order No. 18-02 dated February 21, 2002. (Emphases ours)

(a) **"Contracting" or "subcontracting" refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.**

X X X X

SECTION 5. *Prohibition against labor-only contracting.* — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

- i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or**
- ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.**

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

X X X X

SECTION 7. *Existence of an Employer-Employee Relationship.* — The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases, as declared by a competent authority:



- (a) **where there is labor-only contracting;** or
(b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof.

As stated by the Court in *PCI Automation Center, Inc. v. NLRC*,²⁴ the legitimate job contractor provides services, while the labor-only contractor provides only manpower. The legitimate job contractor undertakes to perform a specific job for the principal employer, while the labor-only contractor merely provides the personnel to work for the principal employer.²⁵

Guided by the provisions of law above, the Court agrees with the Court of Appeals that respondent STEP was engaged in labor-only contracting.

The Court notes that respondent STEP, in its Cautionary Pleading²⁶ filed before the Labor Arbiter, stated that it entered into an agreement with petitioner Lingnam Restaurant in 2002, wherein it agreed to provide Lingnam Restaurant with manpower to perform activities related to the operation of its restaurant business. Thus, as stated by the Court of Appeals, respondent STEP merely acted as a placement agency providing manpower to petitioner Lingnam Restaurant. The service rendered by STEP in favor of Lingnam Restaurant was not the performance of a specific job, but the supply of personnel to work at Lingnam Restaurant. In this case, STEP provided petitioner with an assistant cook in the person of Jessie Colaste.

In the Employment Contract²⁷ between Jessie Colaste and STEP from January 4, 2006 up to June 3, 2007, Colaste was assigned as kitchen helper at petitioner Lingnam Restaurant, while in the subsequent employment contracts²⁸ from November 5, 2007 up to January 5, 2008; and from January 5, 2008 up to March 5, 2008, he was assigned as assistant cook at petitioner Lingnam Restaurant. The three employment contracts state that Jessie Colaste's "*work result performance shall be under the Strict Supervision, Control and make sure that the end result is in accordance with the standard specified by client to STEP Inc.*" Hence, the Court agrees with the Court of Appeals that the work performance of Colaste is under the strict supervision and control of the client (petitioner Lingnam Restaurant) as well as the end result thereof. As assistant cook of petitioner Lingnam Restaurant, respondent Colaste's work is directly related to the restaurant business of petitioner. He works in petitioner's restaurant and presumably under the supervision of its Chief Cook. This falls under the definition of labor-only contracting under Section 5 of Rule VIII-A, Book III of the Amended Rules To Implement The Labor Code, since the contractor, STEP, merely supplied Jessie Colaste as assistant cook to the principal, Lingnam Restaurant; the job of Colaste as

²⁴ 322 Phil. 536 (1996).

²⁵ *Id.* at 550.

²⁶ *Supra* note 9.

²⁷ *Rollo*, pp. 87-89.

²⁸ *Id.* at 90-95.

assistant cook is directly related to the main business of Lingnam Restaurant, and STEP does not exercise the right to control the performance of the work of Colaste, the contractual employee.

As respondent STEP is engaged in labor-only contracting, the principal, petitioner Lingnam Restaurant, shall be deemed the employer of respondent Jessie Colaste, in accordance with Section 7, Rule VIII-A, Book III of the Amended Rules To Implement The Labor Code. Colaste started working with petitioner since 2006 and he should be considered a regular employee of petitioner.

The reason for the termination of Jessie Colaste was his contract with petitioner Lingnam Restaurant through respondent STEP had expired. Lingnam Restaurant explained that Colaste's real employer is STEP. But since respondent STEP is engaged in labor-only contracting, petitioner Lingnam Restaurant is deemed the employer of Colaste. Thus, the reason for Colaste's termination is not a just or authorized cause for his dismissal under Articles 282 to 284 of the Labor Code. Moreover, Colaste was not afforded procedural due process, since petitioner failed to comply with the written-notice requirement under Article 277(b) of the Labor Code. The lack of valid cause for dismissal and petitioner's failure to comply with the twin-notice requirement rendered the dismissal of respondent Colaste illegal.

As respondent Colaste was illegally dismissed, the Court of Appeals correctly held that he is entitled to reinstatement without loss of seniority rights and other privileges and to 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.²⁹

Further, petitioner contends that its right to due process was violated as it could not intelligently identify and discern the matters which it ought to address or oppose in the petition for *certiorari* filed by STEP with the Court of Appeals, because there were no claims and reliefs against it, and the petition was insufficient in form and substance. Petitioner also contends that the NLRC's decision already became final and executory insofar as it is concerned because complainant Jessie Colaste did not appeal from the decision of the NLRC.

The contention is unmeritorious. The essence of due process is simply an opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.³⁰ What the law prohibits is absolute

²⁹ See *Jardin v. National Labor Relations Commission*, 383 Phil. 187, 199 (2000).

³⁰ *Audion Electric Co., Inc. v. National Labor Relations Commission*, 367 Phil. 620, 633 (1999).

absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side.³¹


In this case, petitioner was not denied due process, since it filed with the Court of Appeals a Manifestation/Notice and Comment³² to the petition for *certiorari*, which contained the same arguments as to the insufficiency in form and substance of the petition, among others. Respondent STEP commented that in a petition for *certiorari* under Rule 65 of the Rules of Court, it is not required to state any claim or cause of action, or relief against herein petitioner. What is required is the filing of a verified petition, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of the tribunal, board or officer alleged to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction, and granting such incidental reliefs as law and justice may require.

As regards petitioner's allegation that its right to due process was violated because it "could not intelligently identify and discern the matters which it ought to address or oppose in the Petition for *Certiorari*" filed by STEP with the Court of Appeals, only petitioner can be held responsible for its misapprehension and it could not be attributed to the Court of Appeals, which did not find the petition insufficient in form and substance.

Lastly, the Decision of the NLRC did not become final and executory because respondent STEP timely filed a petition for *certiorari*, assailing the said Decision before the Court of Appeals. Hence, the assailed Decision was subject to review by the Court of Appeals, which was, thus, necessarily empowered to determine whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in its decision. Given this power of judicial review of labor cases under Rule 65 of the Rules of Court, the Court of Appeals has the authority to affirm, modify or reverse the assailed Decision of the NLRC.

WHEREFORE, the Decision of the Court of Appeals dated December 20, 2013 and its Resolution dated September 24, 2014, in CA-G.R. SP No. 129856, reversing and setting aside the Decision of the NLRC dated January 31, 2013 and reinstating and affirming the Decision dated September 26, 2012 of Labor Arbiter Pablo A. Gajardo, Jr., is **AFFIRMED**.

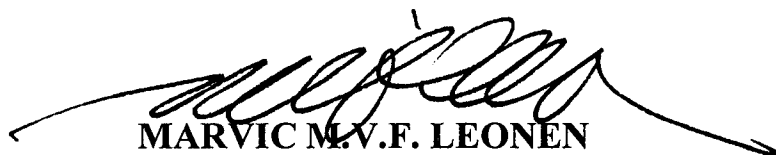
SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

³¹ *Id.*

³² *Rollo*, pp. 159-165.

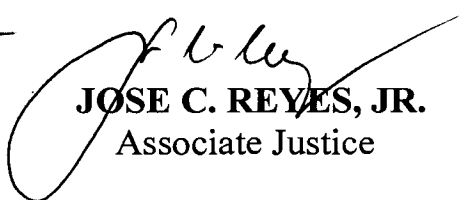
WE CONCUR:



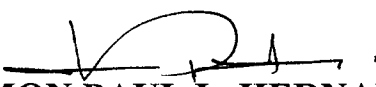
MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



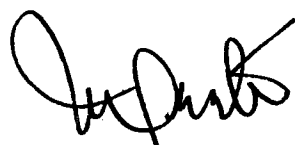
JOSE C. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

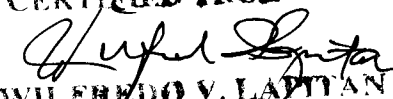
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

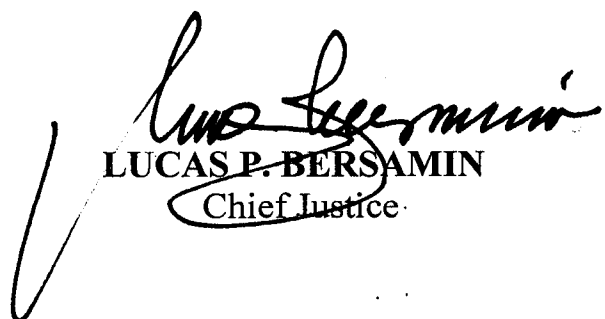


DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

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.

CERTIFIED TRUE COPY

WILFREDO V. LANTIAN
 Division Clerk of Court
 Third Division
 DEC 20 2018



LUCAS P. BERSAMIN
Chief Justice