Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SALVADOR DELA FUENTE, doing business under the name and style SM SEAFOOD PRODUCTS, and MANUEL SARRAGA,

Petitioners,

- versus -

MARILYN E. GIMENEZ,

Respondent.

G.R. No. 214419

Present:

LEONEN, Chairperson
CARANDANG,
ZALAMEDA,
ROSARIO, and
DIMAAMPAO, *JJ.*

Promulgated:

November 17, 2021

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DECISION

ZALAMEDA, *J.*:

In illegal dismissal cases, when an employer raises the defense of resignation, the burden to establish the voluntariness of such resignation rests on the employer. Through the present case, this Court reiterates that the evidence thereon must be clear, positive and convincing. The employer cannot simply rely on the weakness of the employee's evidence. Further, when the pieces of evidence presented by the employer and the employee

are in equipoise, the scales of justice must be tilted in favor of the latter. This is in line with the policy of the State to afford greater protection to labor.

The Case

This petition for review on *certiorari*[1] seeks to annul and set aside the Decision dated 28 July 2011[2] and the Resolution dated 31 July 2014[3] of the Court of Appeals (CA) in CA-G.R. SP No. 02501. The CA reversed the Decision dated 26 July 2006[4] and the Resolution dated 29 November 2006[5] of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000364-06, and reinstated with modification the Decision dated 16 March 2006[6] of the Labor Arbiter in NLRC RAB VII-10-2182-05.

Antecedents

On 06 October 2005, respondent Marilyn E. Gimenez (Gimenez) filed a complaint for illegal suspension, illegal dismissal, illegal deduction, underpayment, nonpayment of holiday pay, premium pay for rest day, night shift, service incentive leave, separation pay and backwages against petitioners SM Seafood Products (SSP), its owner Salvador dela Fuente (dela Fuente), and SSP's manager Manuel Sarraga (Sarraga).[7]

Gimenez claimed that she started working as a sorter of crab meat for SSP, a sole proprietorship engaged in exporting processed crab meat, on 12 November 2000. She averred that: (1) work begins at 8:00 a.m. and continues until 10:00 p.m., at the earliest, or 12:00 midnight, at the latest; (2) lunch break lasts about an hour or less; and (3) if there is an overtime, dinner break is from 15 to 30 minutes only.[8]

Sometime in 2002, satellite plants were opened in Igbon, Iloilo City and Tiglawigan, Cadiz City. Sorters and other workers, including Gimenez, were assigned to these satellite plants on a rotation basis lasting for a period of two weeks. In 2004, two other plants were opened in Gindakpan, Bohol and Hinigaran, Negros Occidental; in 2005, another plant was opened in Catbalogan, Samar. By then, the rotation assignment lasted a month at a

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1 *Rollo*, pp. 5-23.
2 *Id.* at 166-179; penned by Associate Justice Victoria Isabel A. Paredes, and concurred in by Associate Justices Edgardo L. Delos Santos (now a retired Member of this Court) and Ramon Paul L. Hernando (now a Member of this Court) of the Twentieth Division, Court of Appeals, Cebu City.
3 *Id.* at 188-189.
4 *Id.* at 76-83; penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.
5 *Id.* at 99-101.
6 *Id.* at 48-56; penned by Labor Arbiter Jose G. Gutierrez.
7 *Id.* at 167.
8 *Id.*

time.[9]

Gimenez alleged that she and her co-workers were not furnished copies of their pay slips. Instead, they were made to sign blank papers acknowledging receipt of salary. They were even required to sign a payroll in blank and other blank papers every year and at other times. She also claimed that work would be rendered even during holidays, except during Christmas Day, New Year, All Saints Day, and Good Friday. On Holy Thursday, the Madridejos fiesta, they were required to work for half a day. However, they did not receive holiday pay for work rendered on those days. Gimenez also averred that the 13th month pay she and her co-workers received was less than the legally mandated rate. Their employer also never paid them at the legally mandated minimum wage. A sorter like her received a wage of Php150.00 per day and a worker assigned outside Madridejos, Cebu received an additional allowance, from 2002 to 2003, of Php60.00 per day. Thereafter, the allowance was increased to Php80.00 per day.[10]

According to Gimenez, she was suspended illegally in at least three (3) instances.

In 2002, Gimenez was assigned at Igbon Island, Iloilo. One day, she and two other sorters stopped to have lunch at around 1:45 p.m. Sarraga berated them, telling them that they should have finished their work before eating. Even as they explained that dela Fuente had given them permission to stop and eat so long as the crab meat was covered in ice, Sarraga nonetheless suspended them for two (2) weeks. They were not given notice or hearing before their suspension.[11]

Gimenez further averred that every year on December 08, the main feast in Madridejos, Cebu, they would be required to render half-day work, which would start at 4:00 p.m. instead of 8:00 a.m., and would last until 12:00 midnight. On 07 December 2003, Sarraga held a meeting with the workers emphasizing that those who would be absent on 08 December 2003 would be suspended. Gimenez arrived late on said day because the first trip of the first passenger vehicle from Bantayan, which would usually leave at 6:30 a.m., was delayed. Despite her pleas for understanding, Sarraga still suspended her for two (2) weeks.[12]

From 18 May to 18 June 2005, Gimenez was assigned at the Masbate plant. On June 18, she was informed that she had to report to Bantayan on June 19 and immediately started her work. On June 22, while at the

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9 *Id.*
10 *Id.* at 167-168.
11 *Id.* at 168.
12 *Id.*

Madridejos plant, she was instructed to report to Igbon, Iloilo on June 23. She pleaded to be allowed to report to Iloilo on June 26 instead so that she could attend the burial of her cousin on June 25. On June 23, the workers at the Madridejos plant were given cash advances. Gimenez's cash advance amounted to ₱4,500.00. On June 25, she attended the burial of her cousin. When she returned to work, she asked her supervisor about her Iloilo assignment. She was informed, however, that Sarraga had suspended her for two months due to her refusal to be assigned to Iloilo. Not having received any notice or hearing on the suspension, Gimenez inquired from Sarraga if she was indeed suspended, which the latter confirmed. She accepted the suspension and bided time until her return to work on 25 August 2005.[13]

In the meantime, on 14 August 2005, Gimenez met some of her co-workers by chance and they inquired if she was returning for work because petitioners had required them to pay for her cash advance. It had been standard practice by SSP that once the cash advance of a worker was required to be paid by his or her co-workers, that worker was deemed terminated. When she sought confirmation, Sarraga informed her that she was, indeed, terminated because, according to her co-worker Melissa Rubio, Gimenez's children did not like her being assigned to other plants outside Madridejos. Gimenez refuted this and told Sarraga that she wanted to continue working. Sarraga agreed to reinstate her on the condition that she pay her cash advance in full. When Gimenez explained that she could not pay without being reinstated, and could only do so through salary deductions, Sarraga refused to reinstate her. She was not paid her ₱150.00 per day salary from 19 to 23 June 2005, and her ₱80.00/day allowance for 2 days for being assigned outside Madridejos. Hence, she filed the complaint.[14]

In their defense, petitioners denied that Gimenez was illegally suspended or that she was illegally dismissed. Dela Fuente maintained that he did not authorize anyone, even Sarraga, to suspend or dismiss Gimenez. In fact, Sarraga can only recommend action but cannot suspend or dismiss employees. He claimed that Gimenez had been absent from work without notice or permission since 24 June 2005. Later, Dela Fuente discovered a resignation letter dated 23 June 2005 signed by Gimenez.[15]

Upon receiving a copy of the complaint, Dela Fuente inquired from Gimenez what happened and she merely replied that she was very sorry. When she was asked to return back to work, Gimenez said she was ashamed to report back to work. Dela Fuente further alleged that despite the irregularity of supplies and delivery, Gimenez and her co-workers would be

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[13] *Id.* at 51, 168-169.
[14] *Id.* at 51-52, 169.
[15] *Id.* at 52.

paid their daily wage and allowance. In fact, workers are paid ₱163.00 per 8-hour work day regardless of whether they work the full eight (8) hours, plus ₱80.00 daily allowance. Dela Fuente claimed that he has paid all salaries and wages due to Gimenez; thus, she had no more claims against him. He also averred that due to the numerous vouchers/payrolls duly signed by Gimenez, only representative payrolls for the months of April 2005 until 23 June 2005 could be presented.[16]

As proof, petitioners submitted the aforementioned resignation letter and a Quitclaim and Release (quitclaim) both dated 23 June 2005 signed by Gimenez.[17] The latter, however, insisted that she did not sign said documents and that the same were probably obtained by using the blank documents SSP's employees were made to sign.[18]

Ruling of the Labor Arbiter

On 16 March 2006, the Labor Arbiter rendered a Decision in favor of Gimenez, thus:

> **WHEREFORE**, the foregoing premises considered, judgment is hereby rendered finding complainant illegally dismissed from her employment and directing the respondents to jointly a[n]d solidarily pay complainant the amount of P78,275.00 plus P7,827.50, then (10%) per cent attorney's fees or a total aggregate amount of **PESOS: EIGHTY SIX THOUSAND ONE HUNDRED TWO & 50/100 (P86,102.50).**
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> **SO ORDERED.**[19]

The Labor Arbiter found that Gimenez was illegally suspended from her work in 2002, in December 2003, and in June 2003. Petitioners failed to to furnish Gimenez the written charge of her violation; hence, she was suspended without due process. The Labor Arbiter noted that petitioners'

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16 *Id.* at 169-170.
17 *Id.* at 38-39.
18 *Id.* at 43.
19 *Id.* at 56. *The complainant's monetary award is computed as follows:*
I. Backwages -
(a) Illegal Suspension
Year 2002 for 2 weeks
Year 2003 for 2 weeks
xxx
(b) Illegal Dismissal
II. Separation Pay
III. Holiday Pay for 3 years only
xxx
Service Incentive Leave for 3 years

denial was not substantiated.[20]

Further, the Labor Arbiter ruled that Gimenez was illegally/ constructively dismissed from her employment as proven by Gimenez's resignation letter wherein she stated her reasons for resigning: (1) her assignment to far places, which exposed her to the risks of travel; and (2) Sarraga's continual harassment and insult of SSP's employees.[21]

Based on the payroll and Daily Time Records submitted by Dela Fuente, the Labor Arbiter also granted Gimenez's claim for Holiday Pay and Service Incentive Leave, but denied the claim for Premium Pay for Holiday, Rest Day and Night Shift for lack of specifics.[22] The Labor Arbiter, however, deducted ₱25,000.00 from the monetary awards to answer for Gimenez' unpaid indebtedness to petitioners.[23]

Dissatisfied, petitioners filed a Notice of Appeal on 30 March 2006.[24]

Ruling of the NLRC

In its 26 July 2006 Decision, the NLRC reversed the Labor Arbiter Decision, to wit:

> **WHEREFORE**, premises considered, the appealed Decision dated 16 March 2006 is hereby **REVERSED EN TOTO** declaring that respondents are not guilty to (sic) illegal dismissal. However, respondent SM Seafoods Products and/or Salvador dela Fuente is condemned to pay complainant, Marilyn E. Gimenez the sum **of TEN THOUSAND NINE HUNDRED THIRTY-FIVE (P10,935.00) PESOS**, representing the latter's unpaid holiday pay as granted in this case.
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> **SO ORDERED.**[25]

The NLRC held that Gimenez's resignation letter proved that she voluntarily severed her employment relationship with petitioners. Hence, no backwages and separation pay were due. The NLRC likewise gave weight to the Quitclaim executed by Gimenez in favor of petitioners. It also found that petitioners sufficiently refuted Gimenez' claim of illegal suspension. However, the NLRC sustained the grant of Holiday Pay and Service Incentive Leave since petitioners failed to show that such benefits had

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20 *Id.* at 53-54.
21 *Id.* at 54-55.
22 *Id.* at 55.
23 *Id.*
24 *Id.* at 170.
25 *Id.* at 81-82.

already been paid.[26]

Gimenez's motion for reconsideration was denied by the NLRC in its Resolution dated 29 November 2006.[27] Aggrieved, she filed a petition for *certiorari* with the CA.

Ruling of the CA

The CA granted said appeal and reinstated with modification the Labor Arbiter's Decision in its 28 July 2011 Decision, *viz*:

> **WHEREFORE**, premises considered, the Petition is hereby **GRANTED.** The Decision dated July 26, 2006 and Resolution dated November 29, 2006 of the NLRC are hereby **REVERSED** and **SET ASIDE.** The Decision of the Labor Arbiter dated March 16, 2006 is hereby **REINSTATED** with **MODIFICATION,** in that the amount of ₱25,000.00 shall NOT be deducted from the benefits/monetary awards due to the petitioner.
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> **SO ORDERED.**[28]

It found that petitioners failed to prove the voluntariness of Gimenez's resignation. The CA noted several infirmities with the resignation letter and the Quitclaim, which bolstered Gimenez's contention that she had previously signed blank papers and that petitioners caused the printing of the words on these blank papers after her signature had been procured. It concluded that the documents were not voluntarily signed by Gimenez.[29]

Aside from the lack a of valid resignation letter, the CA noted that Gimenez immediately filed an illegal dismissal complaint when it became apparent to her that she would no longer be employed. This contradicted petitioners' stance that Gimenez had voluntarily resigned. Thus, petitioners' failure to prove that Gimenez's resignation was voluntarily tendered led to the inevitable conclusion that Gimenez was illegally dismissed.[30]

The CA further ruled that petitioners failed to refute Gimenez's claims of illegal suspension. It also affirmed the Labor Arbiter's finding that Gimenez was not paid her Holiday Pay and Service Incentive Leave.[31]

However, the CA disagreed with the Labor Arbiter that the

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[26] *Id.* at 80-81.
[27] *Id.* at 99-101.
[28] *Id.* at 178-179.
[29] *Id.* at 173-175.
[30] *Id.* at 175.
[31] *Id.* at 176-177.

₱25,000.00, representing the cash advance received by Gimenez with 2% interest, should be deducted from the monetary awards due to Gimenez. It explained that it was undisputed that Gimenez owed petitioners ₱4,500.00 only and that said cash advance was already paid by Gimenez's co-worker. Any obligation that Gimenez may have had to return the cash advance would be to her co-workers who paid for the obligation.[32]

Petitioners sought a reconsideration of the CA's ruling but the same was denied by the CA in its Resolution dated 31 July 2014.[33] Hence, this petition for review on *certiorari*.

Issues

Was Gimenez illegally dismissed or did she resign voluntarily from her employment with SSP?[34]

Ruling of the Court

The petition must be denied.

Propriety of Factual Review

At the outset, the issue of whether Gimenez voluntarily resigned or was illegally dismissed involves a question of fact, which the Court does not generally pass upon. This, for it generally accords great weight to the factual findings of labor officials. Even then, the Court is not precluded from making its own factual determination when the factual findings of the tribunals below are conflicting, as in this case.[35]

Voluntary Resignation vis-à-vis Illegal Dismissal

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice or is otherwise compelled to dissociate oneself from employment.[36] It is a formal pronouncement or relinquishment of an office and must be made with the

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32 *Id.* at 178.
33 *Id.* at 188-189.
34 *Id.* at 12.
35 *Jacob v. Villaseran Maintenance Service Corp.*, G.R. No. 243951, 20 January 2021 [Per J. Lazaro-Javier].
36 *See Pascua v. Bank Wise, Inc.*, G.R. Nos. 191460 & 191464, 31 January 2018 [Per J. Leonen] and *Jacob v. Villaseran Maintenance Service Corp.*, G.R. No. 243951, 20 January 2021 [Per J. Lazaro-Javier].

intention of relinquishing the office, accompanied by the act of relinquishment or abandonment. A resignation must be unconditional and with the intent to operate as such.[37] Thus, essential to the act of resignation is voluntariness. It must be the result of an employee's exercise of his or her own will.[38]

To determine whether the employee indeed intended to relinquish his or her employment, the act of the employee before and after the alleged resignation must be considered.[39] In order to determine whether the employees truly intended to resign from their respective posts, We must take into consideration the totality of circumstances in each particular case.[40]

Moreover, settled is the rule that the employer has the burden of proving, in illegal dismissal cases, that the employee was dismissed for a just or authorized cause. Even if the employer claims that the employee resigned, the employer still has the burden of proving that the resignation was voluntary.[41] Further, the evidence thereon must be clear, positive, and convincing. The employer cannot rely on the weakness of the employee's evidence.[42]

In *Torreda v. Investment and Capital Corporation of the Philippines,*[43] We have explained that:

> The act of the employee before and after the alleged resignation must be considered to determine whether in fact, he or she intended to relinquish such employment. **If the employer introduces evidence purportedly executed by an employee as proof of voluntary resignation and the employee specifically denies the authenticity and due execution of said document, the employer is burdened to prove the due execution and genuineness of such document.**

Guided by the above principles, We concur with the Labor Arbiter and the CA that Gimenez was indeed illegally dismissed.

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37 *Jacob v. Villaseran Maintenance Service Corp.*, G.R. No. 243951, 20 January 2021 [per J. Lazaro-Javier].

38 *LBC Express-Vis, Inc. v. Palco,* G.R. No. 217101, 12 February 2020 [Per J. Leonen] citing *Saudi Arabian Airlines (Saudia) v. Rebesencio,* 750 Phil. 791 (2015) [Per J. Leonen].

39 *See Jacob v. Villaseran Maintenance Service Corp.*, G.R. No. 243951, 20 January 2021 [Per J. Lazaro-Javier] and *Carolina's Lace Shoppe v. Maquilan,* G.R. No. 219419, 10 April 2019 [Per J.C. Reyes].

40 *Grande v. Philippine Nautical Training College,* 806 Phil. 601 (2017) [Per J. Peralta].

41 *Pascua v. Bank Wise, Inc.*, G.R. Nos. 191460 & 191464, 31 January 2018 [Per J. Leonen]; *See also Jacob v. Villaseran Maintenance Service Corp.*, G.R. No. 243951, 20 January 2021 [Per J. Lazaro-Javier].

42 *Grande v. Philippine Nautical Training College,* 806 Phil. 601 (2017) [Per J. Peralta].

43 *Torreda v. Investment and Capital Corporation of the Philippines,* G.R. No. 229881, 05 September 2018 [Per J. Gesmundo].

In the instant case, Gimenez specifically denies the authenticity and due execution of the resignation letter and quitclaim she supposedly signed.[44] Consequently, petitioners bore the burden of proving otherwise, which they utterly failed to do.

After a meticulous scrutiny of the records, We agree with the CA that the resignation letter and quitclaim are dubious, to say the least. The CA noted several peculiarities and infirmities apparent on the face of the documents:

> *First*, the resignation letter is typewritten, while the Quitclaim is a printed document. It is disturbing to note that such a personal matter as a resignation letter, written by a penurious and uneducated person such as the petitioner, would be neatly done, without corrections, on a typewriter, an instrument which she can ill-afford or which she cannot manage. It is perturbing to note that the reason for the purported resignation coincides with the "hearsay" reason advanced by respondent Sarraga. On the other hand, the quitclaim is a pro-forma printed document.[45]
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> *Second*, it is common practice for persons to affix their signatures at or near the last line of the printed text of the document. Petitioner must therefore be presumed to have affixed her signature in accord with common practice. The signature of the petitioner in all the documents on record, except for the questioned documents, confirms this observation. The handwritten name and signature of the petitioner in the two (2) questioned documents appear at the very bottom, of these documents, quite some distance from the last printed/typewritten word/sentence of the document. Petitioner's signature appearing in the resignation letter is approximately four (4) inches from the last line of the typewritten text. The signature also appears at the extreme lower right corner of the paper while the typewritten words occupy about half thereof. On the other hand, petitioner's signature in the quitclaim is about two (2) inches from the last line of the printed words. We find it quite unusual, if not contrived, for any person to affix a signature several inches away from the body of the document. At the onset, petitioner had already claimed that she was made to sign blank documents.[46]
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> *Third*, if the body of the document is in printed form, the name of the signatory is usually printed so that the signatory will simply affix his/her signature over the printed name. In both documents, the signature of the petitioner was affixed over her handwritten name. It would appear that the name was written after the signature was already made.
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> *Fourth*, the handwritten-printed name of the petitioner in both

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[44] *Rollo*, p. 45, 85-86.
[45] *Id.* at 38-39, 173.
[46] *Id.* at 38-39, 173-174.

> documents appears to have been written by different persons. The handwritten names of the petitioner in the questioned documents does not contain her middle initial "E", unlike the name she placed in the Complaint, in the verification portion of her petition, she filed before the NLRC. Moreover, the handwritten family name in the resignation letter is spelled "Giminez", when in all the documents filed by the petitioner, she spells her family name as GIMENEZ. Who would misspell his/her name in a personal document as a resignation letter?[47]
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> *Fifth*, and last, the quitclaim and release allegedly signed by the petitioner is in the English language which we seriously doubt is a language known to and understood by the petitioner. Even assuming *arguendo* that petitioner knows the English language, we seriously doubt that she could have written the same on her own. Furthermore, the quitclaim and release document states "after having been sworn to in accordance with law do hereby depose and say that" but the document was not notarized. How could the petitioner have been sworn to in accordance with law if she did not appear before a person authorized to administer oaths and had subscribed to the said quitclaim?[48]
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> With these blatant infirmities appearing on the face of the documents, we are inclined to give credence to the petitioner's contention that she had previously signed blank papers and the respondents caused the printing of the words on these blank papers after her signature had been procured. Under such circumstances, it is therefore obvious that these documents were not voluntarily signed by the petitioner. She signed the blank papers without the intention of having the same used as a resignation letter and/or quitclaim and release. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances.[49]

We concur with the CA's findings. These infirmities cast serious doubt on the validity of the documents and in effect, to the voluntariness of Gimenez's resignation. We simply cannot give credence to documents so surreptitiously executed. Also noteworthy, the practice of compelling Gimenez and her co-workers to sign blank papers were not controverted by petitioners.[50]

This Court also emphasizes that Gimenez immediately filed her complaint against petitioners with the NLRC on 06 October 2005, when it became apparent to her that she would no longer be employed.[51] Indeed, voluntary resignation is difficult to reconcile with the filing of a complaint

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47 *Id.*
48 *Id.*
49 *Id.* at 174-175.
50 *Id.* at 85.
51 *Id.* at 24-25, 175.

for illegal dismissal. Verily, the filing of the complaint belies petitioners' claim that Gimenez voluntarily resigned.[52] It would be irrational for petitioner to resign and thereafter file a case for illegal dismissal since "[r]esignation is inconsistent with the filing of the said complaint." Given that resignation "is a formal pronouncement of relinquishment of an office[,]" it must be concurrent with the intent and the act.[53]

Accordingly, We find that Gimenez's intention to leave SSP, as well as her act of relinquishment, has not been established in this case. On the contrary, she vigorously pursued her complaint against petitioners. It is a clear manifestation that she had no intention of relinquishing her employment. The element of voluntariness in Gimenez's resignation is, therefore, missing.[54]

In addition, resignation letters with quitclaims, waivers, or releases are generally looked upon with disfavor and commonly frowned upon. They are usually contrary to public policy, ineffective, and are meant to bar claims to a worker's legal rights. [55] To be sure, deeds of release, waivers, or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal.[56] Moreover, the burden of proving that Gimenez voluntarily entered into the agreement lies with the employer, herein petitioners.[57]

In order to prevent disputes on the validity and enforceability of quitclaims and waivers of employees under Philippine laws, said agreements should contain the following:

> 1. A fixed amount as full and final compromise settlement;
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> 2. The **benefits** of the employees if possible with the corresponding amounts, **which the employees are giving up in consideration of the fixed compromise amount**;
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> 3. **A statement that the employer has clearly explained to the employee in English, Filipino, or in the dialect known to the employees — that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law**; and
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> 4. **A statement that the employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given without any threat,**

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52 *Grande v. Philippine Nautical Training College,* 806 Phil. 601 (2017) [Per J. Peralta].
53 *Jacob v. First Step Manpower Int'l. Services, Inc.,* G.R. No. 229984, 08 July 2020 [Per J. Leonen].
54 *Grande v. Philippine Nautical Training College,* 806 Phil. 601 (2017) [Per J. Peralta].
55 *Jacob v. Villaseran Maintenance Service Corp.,* G.R. No. 243951, 20 January 2021 [Per J. Lazaro-Javier].
56 *Jacob v. First Step Manpower Int'l. Services, Inc.,* G.R. No. 229984, 08 July 2020 [Per J. Leonen].
57 *Id.*

> **violence, duress, intimidation, or undue influence exerted on their person.**[58] [Emphases supplied.]

These requirements are absent here.

Since Gimenez's resignation was shown to have been forced upon her through petitioners' deceptive scheme, Gimenez is deemed to have been illegally dismissed.[59] At any rate, Gimenez was not dismissed under any of the causes mentioned in Article 279 [282] of the Labor Code. She was not even validly informed of the causes of her dismissal. Therefore, her dismissal was illegal.[60] We stress that denials are weak forms of defenses, particularly when they are not substantiated by clear and convincing evidence.[61]

To reiterate, having based their defense on resignation, it is incumbent upon petitioners to prove that Gimenez voluntarily resigned. From the totality of circumstances and the evidence on record, it is clear that petitioners failed to discharge this burden. If the pieces evidence presented by the employer and the employee are in equipoise, the scales of justice must be tilted in favor of the latter. This is in line with the policy of the State to afford greater protection to labor. Accordingly, the finding of illegal dismissal must be upheld.[62]

Sarraga is not solidarily liable with Dela Fuente

Under the law, in a sole proprietorship, the sole proprietor is personally liable for all the debts and obligations of the business. This is because a sole proprietorship does not possess any juridical personality separate and apart from the personality of the owner of the enterprise.[63]

Such being the case, Dela Fuente as the sole proprietor is liable to Gimenez for backwages and separation pay.[64] Strictly speaking, he is the proper party in this case and the one liable to Gimenez, since SSP has no juridical personality to defend this suit. This Court has held that:

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[58] *Jacob v. Villaseran Maintenance Service Corp.*, G.R. No. 243951, 20 January 2021 [Per J. Lazaro-Javier] citing *Carolina's Lace Shoppe v. Maquilan*, G.R. No. 219419, 10 April 2019 [Per J.C. Reyes].

[59] *See Jacob v. Villaseran Maintenance Service Corp.*, G.R. No. 243951, 20 January 2021 [Per J. Lazaro-Javier].

[60] *See Hubilla v. HSY Marketing Ltd., Co.*, G.R. No. 207354, 10 January 2018 [Per J. Leonen].

[61] *Quinones v. National Labor Relations Commission*, 316 Phil. 360-364 (1995) [Per J. Quiason].

[62] *See Hubilla v. HSY Marketing Ltd., Co.*, G.R. No. 207354, 10 January 2018 [Per J. Leonen] and *Mobile Protective & Detective Agency v. Ompad*, 497 Phil. 621-635 (2005) [Per J. Puno].

[63] *Dela Cruz v. People*, G.R. Nos. 236807 & 236810, 12 January 2021 [Per then CJ Peralta].

[64] *See Erning's Vacìador Shop v. Fernandez*, G.R. No. 234483 (Notice), 10 June 2019 and *AIP Construction v. Marquina*, G.R. No. 229225 (Notice), 11 September 2019.

> A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government. The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court.[65]

Therefore, Sarraga, being merely SSP's manager, cannot be held solidarily liable with SSP.

Monetary Awards

The consequences of a finding of illegal dismissal are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1)-month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[66]

In this wise, We have ruled that reinstatement is no longer feasible when: (a) the former position of the illegally dismissed employee no longer exists; or (b) the employer's business has closed down; or (c) the employer-employee relationship has already been strained as to render the reinstatement impossible. We likewise deem reinstatement to be nonfeasible because a "considerable time" has lapsed between the dismissal and the resolution of the case.[67] Indeed, the Court considers "considerable time," which includes the lapse of eight (8) years or more (from the filing of the complaint up to the resolution of the case) to support the grant of separation pay in lieu of reinstatement. [68]

Given that about sixteen (16) years had passed from the time that Gimenez filed her complaint against petitioners with the NLRC on 06 October 2005, then, her reinstatement is no longer practicable. Thus, instead of reinstatement, the Court grants her separation pay of one month for every year of service until the finality of this Resolution, with a fraction of a year

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65 *Big AA Manufacturer v. Antonio,* 519 Phil. 30-44 (2006) [Per J. Quisumbing] citing *Mangila v. Court of Appeals,* 435 Phil. 870-886 (2002)[Per J. Carpio]; *See also Erning's Vaciador Shop v. Fernandez,* G.R. No. 234483 (Notice), 10 June 2019.

66 *Moll v. Convergys Philippines, Inc.*, G.R. No. 253715, 28 April 2021 [Per J. Lazaro-Javier].

67 *JS Unitrade Merchandise, Inc. v. Samson, Jr.,* G.R. No. 200405, 26 February 2020 [Per J. Lazaro-Javier].

68 *Sta. Ana v. Manila Jockey Club, Inc.*, 805 Phil. 887 (2017) [Per J. Del Castillo].

of at least six (6) months being counted as one (1) whole year.[69] She is also entitled to receive full backwages, which include allowances and other benefits due her or their monetary equivalent, computed from the time her compensation was withheld up to the finality of this Resolution.[70]

Moreover, it is a settled labor doctrine that in cases involving non-payment of monetary claims of employees, the employer has the burden of proving that the employees did receive their wages and benefits and that the same were paid in accordance with law.[71] As We have explained in *Heirs of Ridad v. Gregorio Araneta University Foundation*:[72]

> Well-settled is the rule that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employees to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents — which will show that overtime, differentials, service incentive leave, and other claims of the worker have been paid — are not in the possession of the worker but in the custody and absolute control of the employer.

In this regard, Gimenez averred that she was illegally suspended three (3) times – two (2) weeks in 2002; another two (2) weeks in December 2003; and two (2) months from June to August 2005.[73]

To be sure, suspension from work is a *prima facie* deprivation of this right. Thus, termination and suspension from work must be reasonable to meet the constitutional requirement of due process of law. It will be reasonable if it is based on just or authorized causes enumerated in the Labor Code. The employer has the burden of proof in showing that disciplinary action was made for lawful cause. The employer must consider and show facts adequate to support the conclusion that an employee deserves to be disciplined for his or her acts or omissions. Furthermore, the employee must be given notice and the opportunity to be heard before judgment is rendered.[74] In this case, petitioners did not give Gimenez notice or afforded

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69 *See Saudi Arabian Airlines (Saudia) v. Rebesencio,* 750 Phil. 791 (2015) [Per J. Leonen] and *Dumapis v. Lepanto Consolidated Mining Co.,* G.R. No. 204060, 15 September 2020 [Per J. Lazaro-Javier].

70 *See Sta. Ana v. Manila Jockey Club, Inc.,* 805 Phil. 887 (2017) [Per J. Del Castillo] and *Dumapis v. Lepanto Consolidated Mining Co.,* G.R. No. 204060, 15 September 2020 [Per J. Lazaro-Javier].

71 *Asentista v. JUPP & Co., Inc.,* G.R. No. 229404, 24 January 2018 [Per J. Reyes, Jr.].

72 703 Phil. 531-540 (2013) [Per J. Perez].

73 *Rollo,* p. 176.

74 *See Montinola v. Philippine Airlines,* 742 Phil. 487-513 (2014) [Per J. Leonen].

her an opportunity to defend herself before she was suspended. In fact, no rules were in place to guide the employees as regards the proper conduct in SSP.[75]

The best evidence to prove that Gimenez had not been suspended on the supposed dates of her suspension was the payroll covering these periods or the daily time records showing that Gimenez was present during the dates in question. There is no question that these documents are in the possession of petitioners and their failure to present these documents gives rise to the presumption that the records would be adverse to them if produced.[76] Hence, We agree with the Labor Arbiter and the CA's findings that Gimenez is entitled to wages corresponding to the period when she was illegally suspended.

In the same vein, We agree with the Labor Arbiter, NLRC, and CA, and affirm the grant of Gimenez's claim for Holiday Pay and Service Incentive Leave. Petitioners did not refute this claim and did not present evidence such as the payroll and the daily time records covering Gimenez in order to counter the same. Thus, petitioners failed to discharge the burden of proving that Gimenez did receive said benefits and that the same were paid in accordance with law.

Likewise, We agree with the CA that the amount of ₱25,000.00 should not be deducted from Gimenez's monetary award. Sarraga's affidavit dated 08 December 2005[77] states that:

> On June 23, 2005, Marilyn Gimenez appeared at our workplace and worked on that day. I told her to ask the owner to allow her to return to work and to pay her account of ₱4,500.00 which was paid by her group of co-workers by refunding members of her group who paid her account, believing that she was not returning back to work xxx.

As such, Gimenez only owes ₱4,500.00 and the same had already paid by her co-workers. Gimenez has no more obligation to petitioners. Further, upon scrutinizing the Promissory Note,[78] it seems that the liability of Gimenez is towards Sarraga personally and not to SSP. Even assuming it is an advance from SSP, the same cannot be automatically deducted. For one, Gimenez's outstanding Cash Advances have already been settled by her co-workers. For another, no employer shall make any deduction from the wages of his or her employees except for particular cases,[79] none of which is

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75 *Rollo*, pp. 168-169.

76 *See* Section 3(e), Rule 131, Revised Rules of Court.

77 *Rollo*, p. 37.

78 *Id.* at 40.

79 Under Article 113 of the Labor Code, no employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, **except** for the following cases:

present here.

We also affirm the denial of Gimenez's claim for underpayment of premium pay for Holiday, Rest Day and Night Shift Differential for lack of specifics. Gimenez should have specified the dates she had not been paid said benefits so as to substantiate the claims and to compute for the same.

On this note, the award of ten percent (10%) attorney's fees is also proper since Gimenez was forced to litigate to protect her right and interest.[80]

Finally, the backwages including allowances and benefits or their monetary equivalent which were granted in favor of Gimenez shall, in accordance with Our ruling in *Nacar v. Gallery Frames*,[81] earn legal interest of twelve (12%) percent per *annum* from the time these were withheld until 30 June 2013, and thereafter, six percent (6%) per *annum* from 01 July 2013 until finality of this judgment. Additionally, all monetary awards shall earn interest at the rate of six percent (6%) per *annum* from the date of the finality of this Decision until fully paid.[82]

In fine, the computation of Gimenez's backwages must be from the time of her illegal dismissal from employment on 23 June 2005 until the finality of the Decision ordering the payment thereof. As for her separation pay, it should be computed at one month pay for every year of service reckoned from November 2000 (as found by the Arbiter) until the finality of the Decision in her favor. The ruling of the CA in its assailed Decision dated 28 July 2011 and the Resolution dated 31 July 2014 which reinstated the 30 March 2006 Decision of the Arbiter is thus correct.[83]

WHEREFORE, the instant petition is **DENIED**. The Decision dated 28 July 2011 and the Resolution dated 31 July 2014 of the Court of Appeals in CA-G.R. SP No. 02501 holding that respondent Marilyn E. Gimenez was illegally dismissed and thus entitled to full backwages, separation pay, and

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1. In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;
2. For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and
3. In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

See also Rule VIII, Book 3, Section 10 (b) of IRR: Deductions on wages are allowed if employer received a written authorization from the employee for payment to a third (3rd) person. This is valid only when the employer did not receive any pecuniary benefit directly or indirectly from the transaction.

80 *Moll v. Convergys Philippines, Inc.*, G.R. No. 253715, 28 April 2021 [Per J. Lazaro-Javier].

81 *Angono Medics Hospital, Inc. v. Agabin*, G.R. No. 202542, 09 December 2020 [Per J. Hernando] citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta].

82 *See Angono Medics Hospital, Inc. v. Agabin*, G.R. No. 202542, 09 December 2020 [Per J. Hernando].

83 *Id.*

other monetary awards from the time of her illegal dismissal until finality of the decision in her favor, are **AFFIRMED with MODIFICATIONS,** thus:

1. The complaint against Manuel Sarraga is **DISMISSED;**

2. Petitioner Salvador dela Fuente is **ORDERED** to pay respondent Marilyn E. Gimenez the following:

a. **FULL BACKWAGES**, inclusive of allowances and other benefits or their monetary equivalent from the time these were withheld from her on 23 June 2005 until finality of this Decision;

b. **SEPARATION PAY IN LIEU OF REINSTATEMENT** at one (1) month salary for every year of service, with a fraction of at least six (6) months considered as one (1) whole year computed from the date of the start of her employment on 12 November 2000 until finality of judgment;

c. **HOLIDAY PAY and SERVICE INCENTIVE LEAVE** for three (3) years from 2002 to 2005;[84] and

d. **WAGES FOR PERIOD OF ILLEGAL SUSPENSION** for two (2) weeks in 2002 and for another two (2) weeks in December 2003.

The total monetary award shall earn legal interest at the rate of twelve percent (12%) per *annum* from the time her salary and other benefits were withheld until 30 June 2013; and at the rate of six percent (6%) per *annum* from 01 July 2013 until the date of finality of this judgment. All the said monetary awards shall be subject to legal interest of six percent (6%) per *annum* from the date of finality of this judgment until full satisfaction of the same.

The case is **REMANDED** to the arbitration branch of origin for the computation of separation pay and backwages, other allowances and benefits or their monetary equivalent in accordance with this Decision.[85]

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

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[84] See also *Mejares v. Hyatt Taxi Services, Inc,* G.R. No. 242364 & 242459 (Notice), 17 June 2020.
[85] *Id.* See also *Saudi Arabian Airlines (Saudia) v. Rebesencio,* 750 Phil. 791 (2015) [Per J. Leonen].

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

ROSMARI D. CARANDANG
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JAPAR B. DIMAAMPAO
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution, 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.

ALEXANDER G. GESMUNDO
Chief Justice