Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 18, 2021** *which reads as follows:*

"G.R. No. 229917 (Jose Entigoy Andaya, Alex De Guzman, Arnold Crisostomo, Marvin Abando And John Anthony D. Lazona, *Petitioners,* **v. National Labor Relations Commission, The Manila Peninsula Hotel, Inc., Sonja Vodusek Vecchio, FVA Manpower Training Center And Services, and Florante V. Alviz,** *Respondents.***)** – Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court, which seeks to reverse and set aside the Decision[2] dated 09 November 2016 and Resolution[3] dated 16 February 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 144705. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, premises considered, the instant petition for certiorari is hereby **DISMISSED.**
>
> SO ORDERED.[4]

Antecedents

The National Labor Relations Commission (NLRC) summarized the factual antecedents as follows:

- over – seven (7) pages ...

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1 *Rollo*, pp. 3- 22.

2 *Id.* at 23-38-A. Penned by Justice Ramon R. Garcia, with the concurrence of Justices Leoncia R. Dimagiba and Marie Christine Azcarraga-Jacob.

3 *Id.* at 39-40. Also penned by Justice Ramon R. Garcia, with the concurrence of Justices Leoncia R. Dimagiba and Marie Christine Azcarraga-Jacob. The dispositive portion of the Resolution reads:

> "WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby DENIED.
>
> SO ORDERED."

4 *Id.* at 38.

Complainants Jose E. Andaya, Alex G. De Guzman, Arnold S. Crisostomo, John Anthony D. Lazona and Marvin C. Abando were engaged by respondent FVA Manpower Training and Services (FVA) as waiters/barmen at the Manila Peninsula Hotel.

On 11 June 2014, complainants Andaya, De Guzman, Crisostomo and Abando filed a complaint against the respondents for illegal dismissal with a prayer for reinstatement, backwages, regularization, underpaid money claims (salaries, overtime pay, holiday pay, holiday pay premium, rest day premium, service incentive leave, service charges, 13th month pay), moral and exemplary damages, and attorney's fees. On 14 July 2014, complainant Lazona filed a complaint against respondents for the same causes of action, except illegal dismissal.

They alleged that they are regular employees of the respondents The Peninsula Manila, Hongkong & Shanghai Hotels Ltd. (Hotels). They further insisted that complainants De Guzman, Crisostomo and Abando were illegally dismissed and should be entitled to moral and exemplary damages and attorney's fees.

Respondent Hotels, and Sonja Vodusek, countered that no employer-employee relationship existed between them and the complainants. The latter are rather the employees of their contractor, FVA Manpower Training Center and Services. Thus, they are not entitled to regularization, backwages, and money claims.

Respondents FVA Manpower Training and Services and Florante Alviz argued that the complainants are their employees, that they are operating as a legitimate job contractor, and that they did not dismiss the complainants.[5]

Ruling of the Labor Arbiter

In his Decision dated 15 May 2015,[6] Labor Arbiter Adolfo C. Babiano (LA Babiano) dismissed the consolidated complaints for lack of merit. It found FVA Manpower Training Center and Services (FVA) to be an independent contractor, and is deemed to be the employer of herein petitioners, who were merely assigned at the Manila Peninsula Hotel to fulfill FVA's contractual obligation under the Service Agreement between FVA and the Hotel. In addition, LA Babiano pointed out that petitioners failed to establish their dismissal from employment.

[5] *Id.* at 251-252.
[6] *Id.* at 203-216.

Ruling of the NLRC

On appeal, the NLRC dismissed the case for lack of merit and affirmed the Decision of LA Babiano in its Decision[7] dated 16 December 2015. It held that herein petitioners are not employees of the Manila Peninsula Hotel but of FVA, which is a legitimate business entity with substantial capitalization. The finding of LA Babiano that herein petitioners Andaya and Lazona were still employed with FVA at the time of the filing of the complaint was not disputed. The records show that petitioner Abando was under a subsisting employment contract with FVA at the time he filed his complaint. Meanwhile, the engagement of petitioners Crisostomo and De Guzman merely expired with the cessation of FVA's Service Agreements with its clients, and thus they were waiting for their new work schedules.

The Motion for Reconsideration was denied in the Resolution dated 17 February 2016.[8] Hence, petitioners filed a Petition for *Certiorari*[9] under Rule 65 of the Rules of Court before the CA.

Ruling of the CA

The CA dismissed the Petition for *Certiorari* and affirmed the NLRC Decision. It held that based on the records and the evidence presented by the parties, FVS is a legitimate job contractor and that it hired petitioners on various dates. It also held that petitioners failed to establish by competent evidence that they were dismissed from employment.

The Motion for Reconsideration was denied in its Resolution dated 16 February 2017. Hence, the instant Petition.

Ruling of the Court

The petition lacks merit.

The Petition is substantially factual

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7 *Id.* at 250-257. Penned by Commissioner Gina F. Cenit-Escoto, with the concurrence of Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go. The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, the Appeal is DISMISSED for lack of merit. The Decision of Labor Arbiter Adolfo C. Babiano dated 15 May 2015 is AFFIRMED.

SO ORDERED."

8 *Id.* at 279-281.

9 *Id.* at 282-296.

Preliminarily, the Petition calls for re-evaluation of evidence which is not appropriate in a petition for review under Rule 45 of the Rules of Court, where the Court's jurisdiction is limited only to errors of law.[10] In *Bank of the Philippine Islands vs. Mendoza*,[11] the Court instructed that:

> "As a general rule, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts. Case law provides that "there is a 'question of law' when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a 'question of fact' when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of 'law' or 'fact' is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact. Where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual."

Although there are several exceptions to these rules, exceptions must be alleged, substantiated, and proved by the parties so this Court may evaluate and review the facts of the case. Parties praying that this Court review the factual findings of the CA must demonstrate and prove that the case clearly falls under the exceptions to the rule. They have the burden of proving to this Court that a review of the factual findings is necessary. Mere assertion and claim that the case falls under the exceptions do not suffice. [12]

The recognized exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion;(4) when the judgment is based on a misapprehension of facts;(5) when the findings of facts are conflicting;(6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are

[10] *Gatan v. Vinarao*, G.R. No. 205912, 18 October 2017 [Per J. (later CJ) Leonardo-De Castro].
[11] G.R. No. 198799, 20 March 2017 [Per J. Perlas-Bernabe].
[12] *Pascual v. Burgos*, G.R. No. 171722, 11 January 2016 [Per J. Leonen].

conclusions without citation of specific evidence on which they are based;(9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[13] None of these are present in this case.

Findings of facts of the administrative and quasi-judicial bodies are accorded respect and finality especially when affirmed by the Court of Appeals

Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the CA. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified, or reversed.[14]

On this score, We find no reason to grant the petition. We quote with approval the following disquisitions of the CA:

> "After a judicious review of the records and the evidence presented by the parties, We agree with the Labor Arbiter's finding, as affirmed by the NLRC, that indeed x x x FVA is a legitimate job contractor. FVA was able to substantially prove that it was registered with the DOLE as specifically required by Department Order No. 18-A, Series of 2011. It is likewise registered with the DTI and has been issued by the City Government of Manila a local government permit to operate business. It has an independent business and provides bartending, waitering and other services to various hotels and clients like the Hyatt Hotel and Casino Manila, Westin Philippine Plaza, Mandarin Oriental Manila and Pearl Garden Hotel. It has a substantial capitalization of P3,103,309.51 and earned a gross income of P12,693,703.37 as shown in its audited financial statement as of December 31, 2013. It has a valid service agreement with private respondent hotel for the supply of bartending, waitering and housekeeping services among others. x x x FVA likewise provides the uniforms, lockers and identification cards of petitioners. Moreso, the fact that x x x FVA is a legitimate

[13] *De Castro v. Office of the Ombudsman*, G.R. No. 192723, 05 June 2017 [Per J. Caguioa].
[14] *Diversified Security Agency, Inc. vs. Bautista*, G.R. No. 152234, 15 April 2010 [Per J. Peralta].

job contractor has long been established in the case of *Oregas vs. NLRC,* where FVA supplied valet parking and door attendant services to therein respondent Dusit Hotel Nikko.

By the same token, We sustain the NLRC in ruling that petitioners' real employer is x x x FVA and not private respondent hotel. x x x

In the case at bench, the records indubitably show that petitioners were hired by x x x FVA. Petitioners admitted that they were recruited and employed on various dates by x x x FVA. They themselves filled-out and signed their respective Job Contractor Application Form and employment contracts providing for a fixed period within which they would be assigned to FVA's clients. A perusal of the said documents further show that petitioners were likewise assigned to other hotels like Holiday Inn Hotel, Renaissance Hotel, Heritage Hotel and others. They were engaged by FVA for a fixed term of five (5) months. The records further reveal that petitioners were being paid their wages by x x x FVA. They are likewise included in the payroll of FVA and the latter even pays their contributions to the SSS, Philhealth and Pag-ibig. The power to discipline and dismiss its employees are also being exercised by FVA through their assigned representatives at private respondent hotel. The most important element of control was also being exercised by FVA through its assigned supervisors Gemma Peñalosa and Richard Bartolay. x x x.

x x x

We likewise sustain the NLRC in finding that there was no illegal dismissal in this case. We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment. x x x The records are bereft of any indication that petitioners were prevented from returning to work or otherwise deprived of any work assignment by FVA. As aptly found by the NLRC, petitioners Andaya, Lazona and Abando still has subsisting employment contract with x x x FVA. On the other hand, petitioners De Guzman and Crisostomo who are deemed to be fixed-term employees, cannot be considered as illegally dismissed. Their respective contracts of employment had already expired on June 15, 2013. The relationship between the parties is governed by the employment contract which petitioners voluntarily signed before being deployed at private respondent hotel. There was no showing that they were forced or pressured into affixing their signatures thereon. The terms and conditions thereof specifically the stipulation that their employment was not permanent, but would expire at the end of the fixed period should thus be considered as binding upon them. [15]

[15] *Rollo*, pp. 34-37.

In fine, petitioners have failed to show that the CA committed reversible error that would warrant the exercise of this Court's appellate jurisdiction.

WHEREFORE, the Petition is hereby **DENIED.** The Decision dated 09 November 2016 and Resolution dated 16 February 2017 of the Court of Appeals in CA-G.R. SP No. 144705, are **AFFIRMED.**

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
163-B$_2$

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(NLRC LAC No. 09-002418-15)

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