

SECOND DIVISION

[G.R. No. 221085, June 19, 2017]

**RAVENGAR G. IBON, PETITIONER, VS. GENGHIS KHAN SECURITY SERVICES AND/OR MARIETTA VALLESPIN, RESPONDENTS.
DECISION**

MENDOZA, J.:

This petition for review on *certiorari* seeks to reverse and set aside the July 3, 2015 Decision^[1] and October 13, 2015 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 125948, which affirmed the April 24, 2012 Decision^[3] and the May 22, 2012 Resolution^[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000503-12(8)/NLRC NCR CN. 05-07463-11, a case for illegal dismissal.

Ravengar G. Ibon (*petitioner*) was employed as a security guard by Genghis Khan Security Services (*respondent*) sometime in June 2008. He was initially assigned to a certain Mr. Solis in New Manila, Quezon City. In July 2008, he was transferred to the 5th Avenue Condominium in Fort Bonifacio, Taguig City, in September 2008 and was posted there until May 2009.^[5]

In June 2009, petitioner was transferred to the Aspen Tower Condominium until his last duty on October 4, 2010. Thereafter, respondent promised to provide him a new assignment, which, however, did not happen.^[6]

On May 10, 2011, petitioner filed a Complaint^[7] against respondent for illegal dismissal, with claims for underpayment of wages, holiday and rest day premiums, service incentive leave pay, non-payment of separation pay, and reimbursement of illegal deductions.^[8] He alleged that he was no longer assigned to a new post after his last duty on October 4, 2010; that he was merely receiving a daily salary of P384.00; and that in the course of his employment, respondent would deduct P200.00 per month as cash bond from September 2008 until September 2010.^[9]

For his part, respondent denied that petitioner was placed on a floating status for more than six (6) months. It claimed that he was suspended on October 4, 2010 for sleeping on the job. Respondent added that petitioner was endorsed to another client for re-assignment, which the latter refused because his license was due for renewal. Since then, petitioner failed to report for work.^[10]

Sometime in November 2010, petitioner went to respondent's office to claim his 13th month pay, but the same was not given to him because it was not yet due. Respondent then received a call from the Department of Labor and Employment (DOLE) regarding petitioner's claim for 13th month pay, which was later on settled during the proceedings before the DOLE. It then sent letters to petitioner requiring him to report for work, but he did not show up. Hence, respondent was surprised to

receive summons regarding the complaint for illegal dismissal.^[11]

The LA Ruling

In its November 29, 2011 Decision,^[12] the Labor Arbiter (LA) declared petitioner to have been constructively dismissed because of respondent's failure to put him on duty for more than six (6) months. It ordered respondent to pay petitioner backwages from May 5, 2011, the effective date of the constructive dismissal. The LA also granted petitioner's prayer for separation pay in view of the parties' strained relationship, as well as his claims for wage differential, service incentive leave pay and reimbursement of his cash bond.

Aggrieved, respondent appealed to the NLRC.

The NLRC Ruling

In its April 24, 2012 Decision, the NLRC *reversed* and *set aside* the decision of the LA. It opined that there was no constructive dismissal because respondent did not intend to indefinitely place petitioner on a floating status. The NLRC noted that respondent sent letters to petitioner requiring him to report back to work within the six-month period. It added that respondent offered to reinstate petitioner during the proceedings before the LA, but the said offer was rejected by the latter.

Further, the NLRC pointed out that even if the letters were not received by petitioner, respondent's act of sending them showed that it did not wish to sever the employer-employee relationship. It, nevertheless, sustained the money claims awarded by the LA.

Petitioner moved for reconsideration, but his motion was denied by the NLRC in a Resolution dated May 22, 2012.

Undaunted, petitioner filed a petition for *certiorari* before the CA.

The CA Ruling

In its assailed Decision, dated July 3, 2015, the CA *affirmed* the NLRC finding that petitioner was not constructively dismissed. It wrote that the evidence on record showed that petitioner was required to report back to work and that on October 21, 2010, he was offered a new assignment, which he refused. The CA concluded that there was no dismissal to speak of as it was petitioner who manifested his lack of interest in going back to work.

Hence, this petition raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RULING OF THE NLRC THAT THE PETITIONER WAS NOT ILLEGALLY DISMISSED FROM EMPLOYMENT; AND

II

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RULING OF THE NLRC THAT THE PETITIONER IS NOT ENTITLED TO HIS MONETARY CLAIMS DUE TO ILLEGAL DISMISSAL.^[13]

Petitioner argues that he did not receive the letters requiring him to report back to work; that a perusal of the letters revealed that the same did not indicate a specific assignment; that respondent had no intention to reinstate him considering that he was placed on a floating status for a long period of time; and that he was entitled to moral damages, exemplary damages and attorney's fees.

In its Comment,^[14] dated March 21, 2016, respondent averred that petitioner's claim of illegal dismissal could not overcome the evidence it presented to show that no dismissal took place; and that moral and exemplary damages could only be awarded only when there is a finding of illegal dismissal and such dismissal is borne out with malice and bad faith on the part of the employer.

In his Reply,^[15] dated January 31, 2017, petitioner contended that the lack of service assignment for a continuous period of six (6) months is an authorized cause for the termination of the employee, who is then entitled to separation pay; and that respondent's offer of reinstatement was meant to negate an otherwise consummated act of illegal dismissal.

The Court's Ruling

The petition is meritorious.

Only questions of law may be raised in a Rule 45 petition; exceptions

Generally, questions of fact are beyond the ambit of a petition for review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein the Court expands the coverage of a petition for review to include a resolution of questions of fact. One of the exceptions is when the findings of fact are conflicting.^[16] The present petition falls under this exception as the findings of fact by the NLRC, as affirmed by the CA, differed from those of the LA. The LA found that petitioner was constructively dismissed whereas, the NLRC and the CA opined that petitioner was never dismissed.

Security guard on floating status vis-a-vis constructive dismissal

Respondent refutes petitioner's constructive dismissal by arguing that the latter was not placed on a floating status for more than six (6) months because he was suspended on October 4, 2010 for sleeping on the job. Further, it asserts that it sent letters to petitioner requiring him to report back to work and that it offered reinstatement during the proceedings before the LA, which petitioner turned down. These arguments, notwithstanding, there is basis to hold that petitioner was constructively dismissed.

In *Reyes v. RP Guardians Security Agency*,^[17] the Court held that temporary off-