

## THIRD DIVISION

[ G.R. Nos. 205685-86, June 22, 2015 ]

**EMMANUEL H. BERALDE, HAYDEE B. OCHE, EDGAR E. FERNANDEZ, RONALD M. DUMADAUG, WENCESLAO L. CAMPORENDONDO, OCTAVE BRENDAN N. MARTINEZ, AVELINA C. NAVA, ALSADOM P. CIRILO, OSCAR H. GALARAGA, IGNACIO R. ALMARIO, JR., MISAMBO D. LLEJES, ERNESTO M. MOVILLA, SR., RONALD R. PANUGALING, NICHOLS M. SULTAN, SR., FRANCISCO M. VELASCO, SAMUEL G. WENCESLAO, EDMONDO B. ELECCION, SANNY L. ABDUL, JOEL T. AUTIDA, ANTONIO C. BAG-O, RODOLFO C. BARTIDO, NECTOR B. BASILISCO, GREGORIO Y. CANAMO, TOMAS M. CANSECO, REYSALVIO M. CARREON, ALEJANDRO A. CELIS, EMERISA S. BLANCADA, FELIX E. BUGWAT, RENIE N. BURGOS, DESIDERIO C. CABONITA, RICARDO P. DAGUMAN, RUBEN B. DAVIDE, FELIPE G. DEMETILA, EDUARDO B. DIAL, EFREN L. ENCALLADO, GETULIO A. GOHIL, GUMERSINDO C. HAPE, DOMINGO M. LABTON, ARNOLD B. LIM, LEONARDO G. LOPEZ, SR., ALBINO M. LECERNAS, JOEL B. LUMERAN, MARTIN C. MAGLINTE, FOL A. MALAYA, ALFREDO D. MARAVILLAS, MARTINO R. MENDEZ, MAURO B. NAVAREZ, JR., CARLITO R. NAVARRO, AGUSTIN C. NOTARTE, JR., GONZALO G. OCHE, CARLITO G. OTOM, WALTER S. PANOY, ALEJANDRO T. PADOJAN, SR., GLESERIA L. PELDEROS, WILSON C. RODRIGUEZ, ARMAN A. ROSALINDA, ISIDRO M. RUSGAL, ISMAEL M. SANDANG, SR., WEA MAE B. SALATAN, EDWIN L. SARDIDO, PAULINO T. SEDIMO, CESARIO A. TANGARO, PABLITO B. TAYURAN, EDUARDO D. TUBURAN, ARMANDO I. VARGAS, JR., RENATO E. LUMANAS, WILFREDO C. PAUSAL, ALFREDO R. RAMIS, JOSE V. TUGAP, MANUEL G. WENCESLAO, MARIO D. ALBARAN, EDGAR P. ALSADO, SANTOS T. AMADO, JR., CHRISBEL A. ANG, BERNARDO C. AYUSTE, JR., RONALD B. BARTIDO, REYNALDO R. BAURA, SR., ANGELITO A. BIMBO, REYNALDO N. CAPUL, SONNY M. DA VIDE, REYNALDO A. LANTICSE, SR., MARIO M. LIMPIO, ARGIE A. OTOM, DANILO V. PABLIO, CARLITO H. PELLERIN, DANILO L. QUIMPAN, MARK ANTHONY M. SALATAN, DANTE S. SERAFICA, BUENVENTURA J. TAUB, JENRITO S. VIA, ROMULO A. LANIOHAN, JORGE L. QUIMPAN, ANTONIO C. SALATAN, ARLON C. AYUSTE, ERNESTO P. MARAVILLAS, DANIEL B. ADONA, AND WILFREDO M. ALGONES, PETITIONERS, VS. LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION (GUIHING PLANTATION OPERATIONS), RICA REGINA L. DAVILA (CHAIRMAN), EDWIN T. FABREGAR, JR. (VP-BANANA PRODUCTION); GERARDO IGNACIO B. ONGKIKO, (SENIOR VP-HR), CELSO S. SANCHEZ (PRODUCTION MANAGER); AND JESSEPEHINE O. ALEGRE (AREA ADMINISTRATIVE MANAGER), RESPONDENTS.**

**PRESCO A. FUENTES AND BRIAN TAUB, PETITIONERS, VS.  
LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION,  
(GUIHING PLANTATION OPERATIONS) RICA REGINA L. DAVILA,  
CHAIRMAN; EDWIN T. FABREGAR, JR., VP-BANANA  
PRODUCTION; GERARDO IGNACIO B. ONGKIKO, VICE-  
PRESIDENT-HUMAN RESOURCES; CELSO S. SANCHEZ,  
PRODUCTION MANAGER, RESPONDENTS.**

**D E C I S I O N**

**PERALTA, J.:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Consolidated Decision<sup>[1]</sup> dated June 29, 2012 and Consolidated Resolution<sup>[2]</sup> dated November 14, 2012 of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP No. 03588<sup>[3]</sup> and CA-G.R. SP No. 04646.<sup>[4]</sup>

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

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

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

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

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

On January 4, 2008, Lapanday issued a Notice of Termination to all its employees, including herein petitioners. In the said notice of termination, it was stated that the company is instituting a retrenchment program pursuant to Section 5, Article 1 of the Collective Bargaining Agreement (*CBA*) to prevent losses as a result of the dramatical increase in production costs and lower productivity. The termination date for all employees was effective February 4, 2008.

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

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

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

**CA-G.R. SP No. 03588<sup>[7]</sup>**

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

**WHEREFORE**, foregoing considered, judgment is hereby rendered as follows:

1. Dismissing the complaint for illegal dismissal and unfair labor practice;
2. Declaring that the retrenchment is valid; and
3. Ordering respondent LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION to pay complainants the sum of EIGHT MILLION TWO HUNDRED EIGHTY-SIX THOUSAND ONE HUNDRED SEVENTY-FOUR AND 53/100 PESOS (P8,286,174.53) representing their separation pays.

**SO ORDERED.<sup>[10]</sup>**

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

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

**SO ORDERED.**<sup>[12]</sup>

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

**CA-G.R. SP No. 04646**<sup>[14]</sup>

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

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

Accordingly, Lapanday Agricultural Development Corporation (Guihing Plantation Operation), represented by its authorized officers, is hereby (ordered) to pay complainants' backwages, to wit:

1. Fresco A. Fuentes - P160,632.21
2. Brian M. Taub - P160,632.21  
P321,264.42

Respondent is further ordered (to) reinstate complainants to their former positions, either physically or in the payroll, without loss of seniority rights and other privileges, and to submit a report of compliance thereon within ten (10) days from receipt of Decision. This order of reinstatement is immediately executory.

All other claims are denied for insufficiency of evidence.

**SO ORDERED.**<sup>[17]</sup>

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

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

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

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

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

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

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

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

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

**WHEREFORE**, the instant consolidated Petitions are GRANTED.

In CA-G.R. [SP] No. 03588: the National Labor Relations Commission, 8<sup>th</sup> Division's (NLRC) Resolution promulgated on September 22, 2009 and February 12, 2010 are SET ASIDE. The Decision of Labor Arbiter Henry F. Te promulgated on August 15, 2008 is hereby REINSTATED.

In CA-G.R. [SP] No. 04646: the National Labor Relations Commission, 8<sup>th</sup> Division's (NLRC) Decision promulgated on July 29, 2011 and the Resolution promulgated on October 26, 2011 are SET ASIDE and a new judgment is entered DISMISSING the instant complaints for lack of merit. Let this case be remanded to the arbitration branch of origin for the computation of private respondents' separation pay to be based on each private respondent's number of years of service.

**SO ORDERED.**<sup>[24]</sup>

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

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

The petition is without merit.

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

As a rule, a petition for *certiorari* under Rule 65 is valid only when the question involved is an error of jurisdiction, or when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court or tribunals exercising quasi-judicial functions. Hence, courts exercising *certiorari* jurisdiction should refrain from reviewing factual assessments of the respondent court or