

SECOND DIVISION

[G.R. No. 159390, June 10, 2004]

**GALLERA DE GUISON HERMANOS, INC., CARLO REYES AND
PACITA REYES, PETITIONERS, VS. MA. ASUNCION C. CRUZ,
RESPONDENT.**

R E S O L U T I O N

TINGA, J.:

This *Petition*^[1] seeks a review of the decision^[2] and resolution^[3] of the Court of Appeals dismissing the petitioners' petition for certiorari^[4] and affirming the decision^[5] of the Labor Arbiter which found that the respondent was illegally dismissed and therefore entitled to separation pay, backwages and attorney's fees.

The appellate court's findings of fact, undisputed by the petitioners, are as follows:

"Private respondent Ma. Asuncion G. Cruz was a cashier and stockholder of Petitioner Gallera de Guison Hermanos, Inc. ('Gallera' for brevity) since 1976. Gallera is engaged in the operation and maintenance of a cockpit arena in Quezon City and petitioners Carlos H. Reyes, Sr. and Pacita G. Reyes are the chairman of the Board of Directors and President, respectively thereof.

On February 15, 1998, private respondent wrote Gallera requesting that she be assigned as Liaison Officer, which is a more challenging job than as a cashier.

Subsequently, Atty. Sumawang, Gallera's counsel, wrote a letter dated February 16, 1998 addressed to the private respondent informing her that the Board is not in a legal position to consider the request because an employee cannot be appointed to another position which would result in the reduction of his existing salary and that the duties and responsibilities of a Liaison Officer are already being performed by some of the management staff.

On February 24, 1998, due to the alleged ill treatment and harassment perpetrated by Gallera's (sic) management against the private respondent, the latter procured a medical certificate and went on sick leave until March 5, 1998.

While on leave, petitioners appointed one Antonio G. Reyes, a relative of the former, as cashier.

On February 26, 1998, private respondent wrote Atty. Sumawang that her request for transfer has no legal implication and stated that the real

reason for the request for transfer is the ill treatment and harassment perpetuated by the management of Gallera's management (sic) on her person.

The following day, Gallera, thru Atty. Sumawang; wrote private respondent advising her that upon her return to work on March 6, 1998, she shall cease and desist from occupying and performing the duties of cashier and instead she shall report for work on a no work no pay basis in the meantime that the management is studying to which position private respondent will be transferred.

Meanwhile, private respondent was designated as liaison officer as shown in 22 payrolls dating from October 1, 1999 up to November 13, 1999.

On November 13, 1999, the salary of private respondent was withheld allegedly due to her absence on the said date. Private respondent's designation as liaison officer in the payroll on even date was likewise removed. Thereafter, the private respondent did not report for work.

On December 2, 1999, Gallera, thru its board chairman Carlos Reyes wrote private respondent informing the latter that the position of liaison officer still holds and that private respondent is still welcome to work with Galera (sic) on a "no work, no pay basis," except the allowances and other cash entitlements to the position.

On March 8, 2000, private respondent filed with the Department of Labor, NCR, a complaint for illegal dismissal, docketed as NLRC NCR Case No. 00-03-01416-2000.

Meanwhile, Galera (sic) notified private respondent thru a letter dated April 16, 2000, that the latter should report for work on April 23, 2000 and explain why private respondent has not been reporting for work since November 18, 1999.

On October 15, 2000, labor arbiter issued a decision declaring private respondent to have been illegally dismissed by petitioners, the dispositive portion of which, reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant to have been illegally dismissed by respondent corporation.

Respondents are ordered to pay complainant the following:

- (1) Separation pay in lieu of reinstatement for twenty four (24) years in the amount of P460,800.00;
- (2) Backwages from November 13, 1999 up to the date of this decision in the amount of P211,200.00; and
- (3) Attorneys fees in the amount of ten (10%) percent of the total amount awarded.