

SIXTH DIVISION

[CA-G.R. SP NO. 129747, June 30, 2014]

**HIZON TRANSPORT SERVICES & TRADING INC., & FLORENCIO
HIZON, PETITIONERS, VS. NATIONAL LABOR RELATIONS
COMMISSION AND VICTORINO R. ROGON, RESPONDENTS.**

D E C I S I O N

CRUZ, R.A., J.:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court which seeks to reverse and set aside the (i) Resolution dated February 27, 2013^[1] of the National Labor Relations Commission (NLRC) in NLRC LER Case No. 02-047-13 (NLRC RAB-IV-09-01316- 12-B) and the subsequent (ii) Resolution dated April 4, 2013,^[2] denying petitioners' motion for reconsideration. The dispositive portion of the Resolution dated February 27, 2013 reads:

" xxx xxx xx

WHEREFORE, petition is summarily **DISMISSED** for not complying with the Rules on Extraordinary Remedy and for utter lack of any merit.

SO ORDERED.

xxx xxx xxx "

THE ANTECEDENTS

On October 5, 2012, Victorino Rogon, as complainant, filed a complaint for illegal dismissal, money claims and payment of moral and exemplary damages, docketed as NLRC Case No. RAB IV 09-01316-12-B, against Hizon Transport Services & Trading, Inc. and its Manager/Owner, Florencio Hizon, as respondents.^[3]

In his position paper,^[4] complainant alleged that on January 21, 2012, he was verbally terminated from employment by Florencio Hizon when he inquired about the non-payment of the SSS and was not given 13th month pay, service incentive leave and the amount of P100.00 was deducted from his wages without his consent.

Respondents, on the other hand, deny that they dismissed complainant. They averred that complainant was not an employee because his services was merely contracted and was paid on a per trip basis, hence, they are not liable for 13th month pay, service incentive leave and damages.^[5]

On December 18, 2012, the labor rendered a Decision^[6] finding respondents guilty of illegal dismissal. The labor arbiter ruled that complainant is a regular employee and was dismissed from employment without observance of the twin-notice rule. It

also granted complainant's money claims because respondents failed to show the payrolls and vouchers evidencing payment of 13th month pay and service incentive leave.

Hence, the labor arbiter decreed:

“ xxx xxx xxx

WHEREFORE, premises considered, respondents are hereby declared guilty of illegal dismissal and **ORDERED** to reinstate immediately complainant to his former position without prejudice to seniority rights and other benefits. Further, respondents are jointly and severally liable to pay complainant the following:

1. Full backwages from date of dismissal until actual reinstatement which to date amounts to P218,090.84;
2. 13th month pay for the year 2010 and 2011 in the total sum of P36,400.00;
3. SIL for the years 2010 and 2011 in the total sum of P7,000.00;
4. Moral Damages in the sum of P100,000.00;
5. Exemplary Damages in the sum of P50,000.00

SO ORDERED.

xxx xxx xxx “

Aggrieved, respondents, as petitioners, filed a Petition for Extraordinary Remedies^[7] under Rule XII of the 2011 NLRC Rules of Procedure against the complainant and labor arbiter, as respondents, before the National Labor Relations Commission (NLRC). Petitioners seek to nullify the order of immediate reinstatement of private respondent as pronounced in the labor arbiter's Decision dated 18, 2012 on the following grounds: “(1) the public respondent seriously erred and committed serious/grave abuse of discretion in relying on the *Sinumpaang Salaysay* dated November 28, 2012, in holding that private respondent was illegally dismissed and, consequently, awarding his causes of action; (2) the public respondent seriously erred in holding that private respondent was able to substantiate his cause of action; (3) the public respondent erred in not dismissing the complaint.”

By Resolution dated February 27, 2013,^[8] the NLRC dismissed the petition for non-compliance with the Rules on Extraordinary Remedy. It reasoned that what was contemplated in Rule XII of the 2011 NLRC Rules of Procedure is one which seeks relief from the immediate effect of orders or resolutions and excludes the decisions of the labor arbiter. Also, since petitioners admitted that an appeal has been filed before the NLRC, they have violated the rule on proscription of multiplicity of suits and forum shopping. The dispositive portion of the Resolution reads:

“ xxx xxx xxx

WHEREFORE, the petition is summarily **DISMISSED** for not complying with the Rules on Extraordinary Remedy and for utter lack of merit.

SO ORDERED.

xxx xxx xxx "

Petitioners filed a motion for reconsideration^[9] but the same was denied in the Resolution dated April 4, 2013.^[10]

Now, respondents as petitioners are before Us by way of Petition for Certiorari.

THE ISSUES BEFORE US

In assailing the resolution, petitioners advance the following posers, that:

I. THE PUBLIC RESPONDENT SERIOUSLY ERRED AND COMMITTED SERIOUS/GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE EXTRAORDINARY REMEDY PROVIDED UNDER RULE XII OF THE 2011 NLRC RULES OF PROCEDURE DOES NOT FIND APPLICATION IN THE CASE AT BAR;

II. THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION , IN NOT HOLDING THAT THE *SINUMPAANG SALAYSAY* DATED NOVEMBER 28, 2012, PURPORTEDLY EXECUTED BY PRIVATE RESPONDENT, UPON WHICH THE LABOR ARBITER DREW HIS FINDING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED, WAS ACTUALLY NON-EXISTENT;

III. THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION WHICH IS TANTAMOUNT TO LACK OF JURISDICTION IN DISMISSING THE PETITION FOR EXTRAORDINARY REMEDY.

Petitioners, in their Petition,^[11] fault Public respondent NLRC for dismissing their Petition for Extraordinary Remedy. They assert that while they have availed of the remedy of appeal with respect to the monetary award, said appeal is not adequate, speedy and sufficient remedy insofar as the order of reinstatement is concerned, thus, their recourse was the extraordinary remedy provided under the 2011 NLRC Rules of Procedure.

On the other hand, private respondent, in his Comment,^[12] maintains that the NLRC was correct in dismissing the petition because petitioners have already interposed an appeal before the NLRC.

OUR RULING

It is petitioners' position that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing their Petition for Extraordinary Remedy because an appeal before the NLRC is not an adequate, speedy and sufficient remedy insofar as the labor arbiter's order of reinstatement is concerned.

This posture is weak.

Rule XII of the 2011 NLRC Rules of Procedure has instituted a Verified Petition for Extraordinary Remedy to annul or modify any order or resolution of the labor arbiter including those issued during execution proceedings.^[13] The petition filed under this Rule may be entertained only on any of the following grounds: a) if there is *prima*