

SECOND DIVISION

[CA-G.R. SP. NO. 134538, November 13, 2014]

**MAY LYN TIBIO, PETITIONER, VS. DEPARTMENT OF LABOR AND
EMPLOYMENT AND INNOVATIVE MANPOWER SERVICES, INC.,
RESPONDENTS.**

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari^[1] under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Order dated August 7, 2013^[2] and the Resolution dated December 23, 2013^[3] of the Department of Labor and Employment (DOLE) in OS-POEA-0031-0110-2013 (POEA Case No. DAE 09-08-1496) entitled "Innovative Manpower Services, Inc., *Complainant*, vs. Around the World Services (AWS)/Proactive HR Solutions and May Lyn Tibio, *Respondents*, May Lyn Tibio, *Respondent-Petitioner*.", the dispositive portions of which read:

Order dated August 7, 2013:

"**WHEREFORE**, the Appeal, herein treated as Petition for Review filed by May Lyn Tibio is hereby **DISMISSED** for lack of merit. Accordingly, the Order of the POEA Administrator dated 26 November 2012 is **AFFIRMED**.

SO ORDERED.^[4]"

Resolution dated December 23, 2013:

"**WHEREFORE**, the Motion for Reconsideration filed by May Lyn Tibio, is hereby **DENIED** for lack of merit. Accordingly, our earlier Order dated August 7, 2013, **STANDS**.

No further pleading of similar nature shall hereinafter be entertained.

SO ORDERED.^[5]"

The facts are:

On September 21, 2007, Around the World Services-Proactive HR Solutions (AWS for brevity) entered into an Association Agreement^[6] with private respondent Innovative Manpower Services (IMS), whereby AWS, among others, undertook to

pay the latter a recruitment fee for its services for every successfully deployed worker. On August 4, 2009, private respondent IMS filed a Complaint for Disqualification^[7] against AWS and its Operations and Business Development Manager, petitioner May Lyn Tibio (Tibio for brevity), before the Philippine Overseas Employment Administration (POEA). It sought their permanent disqualification from participating in the overseas employment program of the government for their failure to observe their contractual obligation under the Association Agreement and for gross violation of laws, rules and regulations for overseas employment.^[8] Private respondent IMS alleged that AWS violated its contractual obligation when it defaulted in its payment of its recruitment fees and such failure to pay its outstanding obligation is a ground for disqualification sanctioned under the POEA Rules and Regulations.^[9] Moreover, AWS also committed several acts which showed its disregard/lack of concern for the welfare and interest of the deployed migrant workers.^[10] Meanwhile, petitioner Tibio was impleaded in the complaint as a party respondent for being the representative of AWS who assured private respondent IMS that AWS will honor its contractual obligations.^[11] Thereafter, AWS and petitioner Tibio were summoned and directed to file their verified Answer/Explanation to the complaint. Despite notice and several opportunities to submit a responsive pleading, they still failed to file their answer.^[12] On November 26, 2012, the POEA granted the prayer for disqualification and blacklisted both AWS and petitioner Tibio as foreign principals.^[13] On January 7, 2013, petitioner Tibio filed a Notice with Memorandum of Appeal and assailed the POEA's order.^[14] On August 7, 2013, public respondent DOLE affirmed the findings of the POEA and dismissed the appeal for lack of merit.^[15] Aggrieved, petitioner Tibio moved for reconsideration^[16] but her motion was denied.^[17]

Hence, this petition based on the following grounds:^[18]

I.

THE DOLE VIOLATED SECTION 14, ARTICLE VIII OF THE CONSTITUTION, THUS, GRAVELY ABUSED ITS DISCRETION, BY FAILING TO STATE CLEARLY AND DISTINCTLY IN ITS ASSAILED ORDER THE FACTUAL AND LEGAL BASIS OF ITS CONCLUSION THAT PETITIONER, WHO IS NOT THE FOREIGN PRINCIPAL, SHOULD BE HELD EQUALLY LIABLE WITH THE LATTER.

II.

THE DOLE GROSSLY DISREGARDED THE LAW AND JURISPRUDENCE, NAY, GRAVELY ABUSED ITS DISCRETION BY BRINGING PETITIONER WITHIN THE COVERAGE OF THE POEA RULES SANCTIONING FOREIGN PRINCIPALS EVEN IF SHE WAS NOT COVERED THEREIN BEING NOT THE FOREIGN PRINCIPAL AND BEING ITS MERE EMPLOYEE.

The petition is without merit.

The main thrust of a petition for certiorari under Rule 65 of the 1997 Revised Rules

of Court is only the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.^[19] Thus, as a rule, only jurisdictional questions or matters of grave abuse of discretion which are equivalent to lack of jurisdiction may be raised in such petition.^[20] In this case, a careful reading of the petition shows that the pivotal question raised by petitioner Tibio in her petition ultimately presents a factual issue. As defined by jurisprudence, an issue is a factual issue when its determination necessitates an evaluation of proof and not only a consideration of the applicable statutory and case laws.^[21] Here, the question of whether or not petitioner Tibio is a mere employee who acted on behalf of her foreign principal AWS and therefore she should not be covered by the POEA Rules and Regulations imposing disciplinary action^[22] on erring foreign principal/employer is essentially a factual issue because it necessarily requires an appraisal and evaluation of available evidence attesting to that fact. Such factual issue cannot be addressed or is outside the ambit of a petition for certiorari since said remedy is limited to issues of jurisdiction and grave abuse of discretion.^[23]

For a petition for certiorari to prosper, the following requisites must concur:

(a) The writ is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions;

(b) Such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and

There is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.^[24]

Part of the duty of petitioner Tibio is to prove her allegation that the assailed order of the DOLE in holding her equally liable with AWS was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.^[25] Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law".^[26] In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.^[27] Here, an evaluation of the assailed order of the DOLE suggests that the findings thereof are rooted from the available records of the case which established the default on the part of AWS in the fulfillment of its contractual obligation with private respondent IMS. At the same time, the DOLE cannot be faulted from affirming the POEA's findings, holding petitioner Tibio equally liable with AWS as her allegation that she was a mere employee of the latter was never established because she failed to file an answer in support of her statements. This was discussed in the assailed order of the DOLE, to wit: