Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JOSE LENI Z. SOLIDUM,
Petitioner,

- versus -

SMART COMMUNICATIONS, INC., NAPOLEON L. NAZARENO and RICARDO P. ISLA,
Respondents.

G.R. No. 206985

Present:

GESMUNDO, *C.J.*,
    Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

FEB 28 2024

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DECISION

HERNANDO, J.:

This Petition for Partial Review on *Certiorari*[1] seeks to annul the Resolutions[2] of the Court of Appeals (CA) in CA-G.R. SP No. 115794 insofar as it ordered petitioner Jose Leni Z. Solidum (Solidum) to refund respondent Smart Communications, Inc. (Smart) the additional wages and benefits he received by virtue of the 10th Alias Writ of Execution[3] issued in NLRC Case No. NCR-00-11-09564-05.

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[1] *Rollo*, vol. 1, pp. 9–51.

[2] *Id.* at 53–58; 60–61. The November 23, 2012 Resolution in CA-G.R. SP No. 115794 was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon A. Cruz of the Former Special Special Former Eleventh Division, Court of Appeals, Manila.

[3] *Id.* at 464–474.

The Antecedents

In 2005, Solidum filed a Complaint[4] for Illegal Dismissal, Illegal Suspension, Non-payment of Salaries, Damages, and Attorney's Fees against Smart, its President and Chief Executive Officer, Napoleon Nazareno, and its former Marketing Head, Ricardo Isla. The case was docketed as NLRC Case No. NCR-00-11-09564-05 (Illegal Dismissal Case).

On July 3, 2006, the arbiter rendered a Decision[5] in favor of Solidum and found that he was illegally dismissed from employment by Smart. The dispositive portion of the Decision reads:

WHEREFORE, premises all considered, judgment is hereby rendered in favor of complainant and against respondents, as follows:

1. Declaring the 20-day extended preventive suspension of complainant from October 22, 2006 to November 10, 2005 illegal and tantamount to constructive dismissal, and ordering respondents to jointly and severally pay complainant the corresponding salaries, benefits, privileges, allowances and other incentives/bonuses during the period from October 22 to November 10, 2005, in the amount of P236,061.94;

2. Ordering respondents to jointly and severally pay the complainant's unpaid salaries, benefits, privileges, allowances, and other incentives/bonuses during the 30-day preventive suspension, in the amount of P365,896.00;

3. Declaring the dismissal of the complainant effective November 11, 2005 as illegal and ordering respondents to reinstate the complainant to his former position, immediately upon receipt of this decision, whether physically or in the payroll, at the option of the former, and failure to exercise their option within ten (10) days hereof shall place the complainant on payroll reinstatement, with payment of accrued salaries, allowances, benefits/incentives and bonuses;

4. Ordering respondents to jointly and severally pay him his full backwages, inclusive of all benefits, bonuses, privileges, incentives, allowances or their money equivalents from date of dismissal on November 11, 2005 until actual reinstatement, partially computed as follows:

a. Backwages & benefits -	P2,903,561.79
b. Quarterly performance bonus -	P 935,640.00
c. Monthly gas allowance -	P 90,693.00
d. Monthly rice allowance -	P 9,000.00
e. Monthly driver's allowance -	P 68,175.00

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4 *Id.* at 100–101.
5 *Id.* at 102–162. The July 3, 2006 Decision in NLRC Case No. NCR-00-11-09564-05 was penned by Labor Arbiter Felipe P. Pati of the National Labor Relations Commission, National Capital Region, Quezon City.

f. 13th month pay (pro-rata) -   P265,569.68
g. Unpaid accumulated leaves
   2004 & 2005 -   P472,123.87
h. Smart incentive entitlement -   P7,370,250.00

5. Ordering respondents to jointly and severally pay complainant for the foregone opportunity of pursuing studies in the United Kingdom under the British Chevening Scholarship Award, in the sum of 20,189.00 British Pounds or Peso 1,982,727.37.

6. Ordering respondents to jointly and severally pay complainant moral damages in the amount of P2Million, exemplary damages in the amount of P2Million and attorney's fees equivalent to 10% of the judgment award.

SO ORDERED.[6]

Solidum received the July 3, 2006 Decision of the arbiter on July 13, 2006.[7]

Aggrieved, Smart appealed to the National Labor Relations Commission (NLRC). Pending resolution of Smart's appeal, the arbiter issued a writ of execution commanding the sheriff to collect from Smart the accrued reinstatement wages and benefits of Solidum from July 21, 2006 to October 20, 2006.[8]

Thereafter, in its July 4, 2007 Resolution,[9] the NLRC denied Smart's appeal for being filed out of time. Discontented, Smart filed a Motion for Reconsideration.[10]

Pending resolution of Smart's Motion for Reconsideration, specifically during the period from August 15, 2007 to January 22, 2009, the arbiter issued seven Alias Writs of Execution[11] (Alias Writs) on the collection of the monetary awards and reinstatement aspect of the arbiter's July 3, 2006 Decision, viz.:

Writ of Execution	Date of Issue	Amount
Alias Writ of Execution	[August] 15, 2007	[PHP] 4,322,003.78
Second Alias Writ of Execution	[October] 25, 2007	[PHP] 1,440,667.93
Third Alias Writ of Execution	[February] 11, 2008	[PHP] 1,440,667.93
Fourth Alias Writ of Execution	[April] 28, 2008	[PHP] 1,440,667.93
Fifth Alias Writ of Execution	[July] 23, 2008	[PHP] 1,440,667.93
Sixth Alias Writ of Execution	[November] 11, 2008	[PHP] 1,440,667.93

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6 *Id.* at 160–162.
7 *Id.* at 14.
8 *Id.* at 257.
9 *Id.* at 172–177. The July 4, 2007 Resolution in NLRC NCR CA No. 049875-06 was penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go of the First Division, National Labor Relations Commission, Quezon City.
10 *Id.* at 178.
11 *Id.* at 16 and 56.

| Seventh Alias Writ of Execution | [January] 22, 2009 | [PHP] 1,440,667.93[12] |

Notably, despite the issuance of the alias writs, they were not carried out by Smart; instead it filed several motions seeking the quashal of the alias writs.[13]

Meanwhile, in a Resolution[14] dated January 26, 2009, the NLRC granted Smart's motion for reconsideration and dismissed Solidum's complaint in the Illegal Dismissal Case, thus:

> **WHEREFORE**, the foregoing considered, the Commission hereby resolves, as follows:
>
> 1. complainant's Motion to Inhibit dated June 13, 2008 is **DENIED** for lack of merit.
> 2. respondents' Motion for Reconsideration dated July 27, 2007 is **GRANTED** and their instant appeal dated July 25, 2006 is given **DUE COURSE**.
> 3. the Commission's Resolution dated July 4, 2007 is **SET ASIDE** and **VACATED**.
> 4. The appealed Decision *a quo* dated July 3, 2006 is **SET ASIDE** and a new one is **ENTERED** dismissing the complaint below for lack of merit.
>
> **SO ORDERED.**[15]

Solidum sought reconsideration[16] of the January 26, 2009 Resolution of the NLRC. Meanwhile, Smart filed an Urgent Motion for Issuance of a Writ of Preliminary Injunction with application for Temporary Restraining Order[17] to prevent Solidum's reinstatement pending the resolution of his motion for reconsideration.

Pending resolution of Solidum's motion for reconsideration in the Illegal Dismissal Case, Solidum filed before the arbiter an Ex-parte Motion for Issuance of Alias Writ of Execution on the Reinstatement Aspect of the LA's July 3, 2006 Decision,[18] docketed as NLRC NCR Case No. 0011-09564-05 (Alias Writ Case), for the collection of his accrued benefits equivalent to three months, specifically from January 21, 2009 to April 20, 2009.

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[12] *Id.* at 56.
[13] *Id.* at 257.
[14] *Id.* at 178–205. The January 26, 2009 Resolution in NLRC NCR CA No. 049875-06 was penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco of the First Division, National Labor Relations Commission, Quezon City.
[15] *Id.* at 204.
[16] *Id.* at 17.
[17] *Id.* at 209–223.
[18] *Id.* at 206–208.

On May 29, 2009, the NLRC rendered a Decision[19] in the Illegal Dismissal Case denying both the motion for reconsideration filed by Solidum and the injunction filed by Smart for lack of merit. On August 10, 2009, the NLRC's Decision in the Illegal Dismissal Case, dated May 29, 2009, became final and executory, as indicated in the Entry of Judgment[20] dated June 1, 2010.

Proceedings before the Arbiter

On July 29, 2009, the arbiter issued an Order[21] in the Alias Writ Case denying Solidum's Ex-parte Motion for Issuance of Alias Writ of Execution on the Reinstatement Aspect of the Decision. The arbiter held that since the NLRC's Decision dated January 26, 2009 reversed the July 3, 2006 Decision of the arbiter in the Illegal Dismissal Case, this effectively prevents the latter from issuing future writs of execution on the reinstatement aspect of the July 3, 2006 Decision.[22] The dispositive portion of the July 29, 2009 Order states:

> WHEREFORE, [i]n view of the foregoing considerations, let the Ex-Parte Motion for the Issuance of Alias Writ of Execution on the Reinstatement Aspect of the Decision be, as it is hereby DENIED for lack of merit.
>
> SO ORDERED.[23]

Solidum thus filed an Appeal[24] against the said order of the arbiter to the NLRC.

Proceedings before the NLRC

In its May 31, 2010 Decision,[25] the NLRC partly granted Solidum's appeal in the Alias Writ Case. The dispositive portion thereof reads:

> WHEREFORE, premises considered, complainant's appeal is PARTLY GRANTED. The assailed Order of Labor Arbiter Felipe P. Pati dated July 29, 2009 is hereby REVERSED and SET ASIDE.

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[19] *Id.* at 224-235. The May 29, 2009 Decision in NLRC Case No. 00-11-09564-05 was penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco of the First Division, National Labor Relations Commission, Quezon City.

[20] *Id.* at 263.

[21] *Id.* at 236-240. The July 29, 2009 Order in NLRC Case No. NCR-00-11-09564-05 was penned by Labor Arbiter Felipe P. Pati of the National Labor Relations Commission, National Capital Region, Quezon City.

[22] *Id.* at 239.

[23] *Id.* at 239-240.

[24] *Id.* at 241-253.

[25] *Id.* at 255-262. The May 31, 2010 Decision in NLRC Case No. 00-11-09564-05 was penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Gregorio O. Bilog and Pablo C. Espiritu Jr. of the Special First Division, National Labor Relations Commission, Quezon City.

Let the entire records of this case be remanded to the Labor Arbiter of origin for the issuance of an alias writ of execution for the collection of complainant's accrued reinstatement salaries/wages and other benefits for the period covering July 13, 2006 to May 29, 2009, less the total amount he already received as payment thereof.

SO ORDERED.[26]

The NLRC made the following observations:

In the case at bar, records show that respondents appealed from the Labor Arbiter's Decision to the Commission on July 25, 2006. The Commission resolved respondents' appeal on January 26, 2009, reversing the Decision of the Labor Arbiter dated July 3, 2006. Notably, there is no showing in the records that respondents reinstated complainant to his former position. Hence, pursuant to Article 223 of the Labor Code, as amended, relative to the reinstatement aspect of the Labor Arbiter's Decision, respondents are obligated to pay complainant's salaries and benefits, computed from July 13, 2006, when respondents received a copy of the Labor Arbiter's Decision which, among others, ordered the reinstatement of complainant, up to the date of finality of the Commission's resolution reversing the Labor Arbiter's Decision, which, for this purpose, is reckoned on May 29, 2009, when the Commission denied complainant's Motion for Reconsideration.

Indeed, common sense dictates that complainant's entitlement to reinstatement salaries/wages and benefits, emanating from the Labor Arbiter's order of reinstatement, presupposes that said order of reinstatement is still enforceable. Here, the Labor Arbiter's order of reinstatement dated July 3, 2006 was no longer enforceable as of May 29, 2009 when the Commission's resolution reversing the Labor Arbiter's order of reinstatement is deemed to have become final as hereinabove discussed. Patently then, complainant is no longer entitled to reinstatement salaries/wages and benefits after May 29, 2009.

Significantly, the Order of the Labor Arbiter being appealed from by complainant, denied the latter's motion for issuance of alias writ of execution for the collection of his reinstatement salaries and benefits for the period covering January 21, 2009 to April 20, 2009. The Labor Arbiter thus committed serious error in denying complainant's motion with respect to his reinstatement salaries and benefits as he is entitled to the same for the period starting July 13, 2006 to May 29, 2009.[27]

Dissatisfied, Smart sought the reconsideration of the NLRC's Decision.[28]

Meanwhile, Solidum filed a Motion for Partial Reconsideration,[29] alleging that the period for computing his accrued reinstatement salaries should be until August 10, 2009, the date when the May 29, 2009 Decision of the NLRC became final and executory.

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[26] *Id.* at 261–262.
[27] *Id.* at 260–261.
[28] *Id.* at 270.
[29] *Id.* at 264–267.

In its July 30, 2010 Resolution,[30] the NLRC granted Solidum's Motion for Partial Reconsideration, denied Smart's Motion for Reconsideration, and ordered it to pay the accrued reinstatement salaries and benefits of Solidum from July 13, 2006 to August 10, 2009. The dispositive portion of the July 30, 2010 Resolution reads:

> **WHEREFORE**, premises considered, the Motion for Partial Reconsideration by complainant is partly **GRANTED**. The Decision of this Commission dated May 31, 2010 is **MODIFIED** to the extent that the computation . . . cover[s] the period from July 13, 2006 to August 10, 2009. All other dispositions are affirmed. The Motion for Reconsideration of respondent is DENIED for lack of merit.
>
> **SO ORDERED.**[31] (Emphasis in the original)

Dissatisfied, Smart filed a Petition for *Certiorari*[32] before the CA. It argued that the NLRC gravely abused its discretion when it: (1) acted upon Solidum's appeal from an interlocutory order; (2) ordered payment of backwages until August 10, 2009 contrary to established laws and jurisprudence; (3) applied Article 223 of the Labor Code of the Philippines despite clear showing that Solidum was a managerial employee; and (4) ordered payment of backwages and other benefits until August 10, 2009, which is in excess of what was sought for by Solidum.

Meanwhile, on October 6, 2010, Smart filed with the arbiter a Motion to Suspend Proceedings and a Motion for Recomputation of Claimed Monetary Awards.[33] However, it was denied for lack of merit. Incidentally, the arbiter issued the Eighth Alias Writ of Execution[34] in the amount of PHP 1,440,667.93.[35] The sheriff collected from Smart and received the check payment for the said amount which pertained to Solidum's accrued reinstatement salaries and other benefits for the period covering January 21, 2009 to April 20, 2009. The sheriff then deposited this amount to the NLRC Cashier[36] and subsequently released it to Solidum.[37]

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[30] *Id.* at 270–274. The July 30, 2010 Resolution in NLRC Case No. 00-11-09564-05 was penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Gregorio O. Bilog and Pablo C. Espiritu Jr. of the Special First Division, National Labor Relations Commission, Quezon City.

[31] *Id.* at 273.

[32] *Id.* at 276–317.

[33] *Id.* at 469.

[34] *Id.*

[35] *Id.* at 55.

[36] *Id.* at 469.

[37] *Id.* at 22.

Proceedings before the Court of Appeals

In its January 25, 2011 Decision,[38] the CA granted Smart's petition, the dispositive portion thereof reads:

> **WHEREFORE,** the instant Petition is **GRANTED.** The assailed Decision, dated May 31, 2010, and the Resolution, dated July 30, 2010, of the Public Respondent National Labor Relations Commission, in NLRC NCR Case No. 0011-09-0954-05, are hereby **NULLIFIED** and **SET ASIDE** for lack of jurisdiction. Accordingly, the Order dated July 29, 2009, of the Labor Arbiter is **REINSTATED.**
>
> **SO ORDERED.**[39]

The CA held that the Order of the arbiter denying Solidum's Ex-parte Motion for the Issuance of an Alias Writ of Execution is not a final order, as there was something else to be done, namely, the resolution of his Complaint for illegal dismissal against Smart on the merits. In other words, it was an interlocutory order. As such, the CA ruled that the order is not appealable until after the rendition of judgment on the merits. Therefore, the NLRC had no jurisdiction to rule on the appeal except to dismiss it.[40]

On March 7, 2011, Solidum sought the reconsideration[41] of the January 25, 2011 Decision of the CA. For its part, Smart filed a Motion to Order the Return of the Monetary Award.[42]

Meanwhile, in view of an Ex-Parte Motion for Issuance of Alias Writ of Execution filed by Solidum last January 24, 2011 for the collection of his accrued reinstatement salaries and other benefits covering the period from April 21, 2009 to July 20, 2009, a Ninth Alias Writ of Execution was issued on May 18, 2011 in the amount of PHP 1,440,667.93.[43] Subsequently, the sheriff garnished and deposited this amount to the NLRC Cashier[44] before finally releasing it to Solidum.[45]

On June 6, 2011, Solidum filed a Request[46] with the NLRC for the computation of salaries and other benefits owed to him for the period from

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[38] *Id.* at 378–389. The January 25, 2011 Decision in CA-G.R. SP No. 115794 was penned by Associate Justice Noel G. Tijam (a retired Member of the Court) and concurred in by Associate Justices Marlene Gonzales-Sison and Danton Q. Bueser of the Eleventh Division, Court of Appeals, Manila.
[39] *Id.* at 388–389.
[40] Id. at 386–388.
[41] *Id.* at 390–409.
[42] *Id.* at 476.
[43] *Id.* at 470.
[44] *Id.* at 472.
[45] *Id.* at 22.
[46] *Id. at* 425–433.

July 13, 2006 to January 26, 2009. In an Order[47] dated April 25, 2012, the arbiter approved the additional salaries and benefits due to Solidum, amounting to PHP 15,889,871.04, as computed by the NLRC Computation Unit (NLRC-CEU). In this regard, the NLRC-CEU held that Solidum cannot be faulted, nor can he be barred from seeking his right over the past three years from July 13, 2006, to January 26, 2009, considering that the additional computations were never included by the NLRC-CEU in its initial partial computation dating back to October 10, 2006.[48] Thus, on May 8, 2012, the arbiter issued a 10th Alias Writ of Execution[49] for the payment of additional unpaid reinstatement salaries and other benefits to Solidum, totaling PHP 15,889,871.04.[50] The execution of the 10th Alias Writ was satisfied, and the sheriff garnished the amount of PHP 15,889,871.04, which was then deposited to the NLRC Cashier and subsequently released to Solidum on June 14, 2012.[51]

In an Amended Decision[52] dated July 3, 2012, the CA partly granted Solidum's motion for reconsideration. The CA upheld its finding that the NLRC gravely abused its discretion in taking cognizance of Solidum's appeal of an interlocutory order. Nevertheless, it found that the NLRC's Order dated May 29, 2009, became final and executory on August 10, 2009, instead of June 1, 2010, as stated in its earlier pronouncement. Regarding the return of the monetary award, the CA held that no refund is permitted since the reinstatement wages and benefits, totaling PHP 2,881,335.86, which Solidum received during the periods from January 21, 2009, to April 20, 2009 under the Eighth Alias Writ, and April 21, 2009, to July 20, 2009 under the Ninth Alias Writ, accrued prior to August 10, 2009. The *fallo* of the Amended Decision reads:

> **WHEREFORE**, this Court **RESOLVED**, as it hereby **RESOLVES**, as follows:
>
> • The motion for reconsideration is **PARTLY GRANTED**. The January 25, 2011 decision of this Court is hereby **MODIFIED** by changing the declared date of finality of judgment with respect to the May 29, 2009 Resolution of the National Labor Relations Commission to August 10, 2009.

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[47] *Id.* at 457-462. The April 25, 2012 Order in NLRC-NCR Case No. 11-09564-05 was penned by Labor Arbiter Madjayran H. Ajan of the National Labor Relations Commission, National Capital Region, Quezon City.

[48] *Id.* at 460.

[49] *Id.* at 464-474.

[50] *Id.* at 473.

[51] *Id.* at 24.

[52] *Id.* at 475-485. The July 3, 2012 Amended Decision in CA-G.R. No. SP No.115794 was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon A. Cruz of the Special Special Former Eleventh Division, Court of Appeals, Manila.

- The Manifestations filed on May 19, 2011, May 4, 2012, May 10, 2012, May 15, 2012 and June 11, 2012 are **NOTED**.

- The following Motions are **DENIED**: (a) Motions to Issue Temporary Restraining Order filed on May 19, 2011, May 4, 2012, May 10, 2012 and May 15, 2012, (b) Motion to Order the Return of Monetary Award, and the (c) Motion to Strike filed on June 11, 2012.

SO ORDERED.[53]

Aggrieved, Smart filed a Motion for Partial Reconsideration with Motion to Order Return,[54] praying that Solidum be ordered to return the total amount of PHP 18,691,169.80 that he received from the Eighth, Ninth, and 10th Alias Writs of Execution.

In the assailed November 23, 2012 Resolution,[55] the CA affirmed its earlier Amended Decision with modification. It held that it cannot order the return of the amounts released by way of the Eighth and Ninth Alias Writs since the wages, allowances, incentives/benefits and bonuses received through the said writs covered the period from January 21, 2009 to July 20, 2009, or before the July 3, 2006 Decision of the arbiter was reversed by the NLRC in its May 29, 2009 Decision, which later became final and executory on August 10, 2009. However, the CA ordered Solidum to return the additional wages and benefits he received by virtue of the 10th Alias Writ in the amount of PHP 15,889,871.04 after finding that Solidum only filed his claim over the additional benefits on June 6, 2011. Therefore, it ruled that no delay can be attributed on the part of Smart and, incidentally, Solidum is barred from collecting the accrued wages.

The dispositive portion of the assailed Resolution reads:

WHEREFORE, this Court **RESOLVED**, as it hereby **RESOLVES**:

- To **AFFIRM** our July 3, 2012 ruling with respect to the real and actual date of finality of judgment;

- To **MODIFY** our July 3, 2012 ruling that denied the Motion to Order the Return of Monetary Award. The Court hereby **DIRECTS** private respondent Jose Leni Solidum to **RETURN** the additional unpaid wages/other benefits released by virtue of the 10th Alias Writ of Execution amounting to Fifteen Million Eight Hundred Eighty Nine Thousand Eight Hundred Seventy One and 04/100 (₱15,889,871.04) to herein petitioners; and

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53 *Id.* at 484.
54 *Id.* at 486–505.
55 *Id.* at 53–58.

- To **NOTE** the following: 1) Private respondent Jose Leni Solidum's "Motion for Extension of Time to File Petition for Partial Review on Certiorari under Rule 45 of the Rules of Court" dated July 23, 2012, and; 2) Petitioner's Reply to Comment (Re: Motion for Partial Reconsideration dated 12 July 2012) filed on September 28, 2012.

SO ORDERED.[56]

Solidum filed a Motion for Leave to Admit Motion for Partial Reconsideration[57] dated December 20, 2012, which was later denied by the CA in a Resolution[58] dated April 23, 2013.

Hence, the present Petition for Partial Review on *Certiorari*.[59]

Solidum argues that contrary to the ruling of the CA, the delay in enforcing his reinstatement pending appeal was due to Smart's unjustified act or omission in implementing the arbiter's writs of execution. Smart did not submit a compliance report for the reinstatement order in the July 3, 2006 Decision of the arbiter, indicating Smart's refusal to reinstate him. There was no delay on his part in seeking the enforcement of all accrued wages and benefits due to him since he filed a Motion for the Issuance of Writ of Execution on the Reinstatement Aspect of the arbiter's Decision as early as September 1, 2006. In support of his contentions, Solidum presented a Certification[60] dated December 20, 2012 issued by the NLRC Records and Docket Section, the pertinent portion of which is quoted as follows:

This is to certify that per the records of the case docketed as NLRC-NCR Case No. 00-11-09564-05, entitled "JOSE LENI SOLIDUM -versus- SMART COMMUNICATIONS, INC., et al.", there is no showing on record that respondents SMART Communications, Inc. et al. submitted a report of compliance as to the reinstatement aspect of complainant per the decision rendered by Honorable Labor Arbiter Felipe P. Pati dated July 03, 2006.[61]

While Solidum asked for a computation of the accrued wages and benefits from July 13, 2006 to August 10, 2009 only on June 6, 2011, he explained that it was borne out of the NLRC's Decision dated May 31, 2010 and Resolution dated July 30, 2010, which remanded the case to the arbitration branch of origin for the issuance of a writ of execution for the collection of his accrued reinstatement wages for the said period. He argues that the additional unpaid reinstatement wages which accrued during the pendency of the appeal in the Illegal Dismissal Case were never included by

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[56] *Id.* at 58.
[57] *Id.* at 62–84.
[58] *Id.* at 60–61.
[59] *Id.* at 9–51.
[60] *Id.* at 163.
[61] *Id.*

the NLRC-CEU in their initial partial computation dated October 10, 2006 through no fault of his own. In any case, the delay contemplated under jurisprudence cited by the CA pertains to the employer and not the employee. In sum, Solidum asserts that the "refund doctrine" propounded by the CA is contrary to law and jurisprudence.

In a Comment,[62] Smart argues that Solidum failed to show that the assailed rulings were contrary to law and jurisprudence, and that the finding of delay on the part of Solidum in filing for a re-computation of his accrued wages and benefits is a question of fact and outside the purview of this Court's jurisdiction.

Smart further claims that it did not delay Solidum's reinstatement since as early as November 13, 2006, Solidum was able to claim his wages from the period of July 21, 2006 to October 20, 2006 by virtue of a writ of execution. They maintain that as correctly held by the CA, it took Solidum four years before he asked for a re-computation of his other benefits – hence the delay is attributable to no one else but himself.

Our Ruling

In summary, a total of 10 Alias Writs of Execution were issued pursuant to the July 3, 2006 Decision of the arbiter in the Illegal Dismissal Case. These alias writs ordered the sheriff to collect from Smart the accrued salaries, allowances, benefits, incentives and bonuses owed to Solidum. The first seven Alias Writs, which remained unsatisfied, were issued between August 15, 2007 and January 22, 2009, viz.:

Writ of Execution	Date of Issue	Amount
Alias Writ of Execution	[August] 15, 2007	[PHP] 4,322,003.78
Second Alias Writ of Execution	[October] 25, 2007	[PHP] 1,440,667.93
Third Alias Writ of Execution	[February] 11, 2008	[PHP] 1,440,667.93
Fourth Alias Writ of Execution	[April] 28, 2008	[PHP] 1,440,667.93
Fifth Alias Writ of Execution	[July] 23, 2008	[PHP] 1,440,667.93
Sixth Alias Writ of Execution	[November] 11, 2008	[PHP] 1,440,667.93
Seventh Alias Writ of Execution	[January] 22, 2009	[PHP] 1,440,667.93[63]

Thereafter, in a Decision dated May 29, 2009, the NLRC reversed with finality the July 3, 2006 Decision of the arbiter and dismissed Solidum's illegal dismissal complaint against Smart. The NLRC's May 29, 2009 Decision became final and executory on August 10, 2009.

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[62] *Rollo*, vol. 2, pp. 719–742.
[63] *Rollo*, vol. 1, p. 56.

Meanwhile, pursuant to the Eighth Alias Writ issued on October 22, 2010, and Ninth Alias Writ issued on May 18, 2011, Solidum received from Smart the amount of PHP 2,881,335.86 representing his accrued salaries, allowances, benefits, incentives and bonuses for the period from January 21, 2009 to July 20, 2009. Subsequently, on May 8, 2012, the 10th Alias Writ was issued for the payment to Solidum of additional unpaid reinstatement salaries and other benefits for the period from July 13, 2006 to January 26, 2009 in the total amount of PHP 15,889,871.04. The execution of the 10th Alias Writ was satisfied, and the amount of PHP 15,889,871.04 was released to Solidum. A summary of the Eighth, Ninth, and 10th Alias Writs, which were all satisfied by Smart, are as follows:

Writ of Execution	Date of Issue	Amount
Eight Alias Writ of Execution	October 22, 2010	[PHP] 1,440,667.93
Ninth Alias Writ of Execution	May 18, 2011	[PHP] 1,440,667.93
Tenth Alias Writ of Execution	May 8, 2012	[PHP] 15,889,871.04[64]

Issue

Although the case presents a complex narrative of facts which spans several years, the issue in this case may be succinctly summarized as follows:

Whether the CA erred in ordering Solidum to return to Smart the amount he received through the 10th Alias Writ covering his accrued wages and benefits for the period from July 13, 2006 to January 26, 2009.

Our Ruling

After a judicious deliberation, We find the petition meritorious.

The Court's authority in a Rule 45 Petition for Review on *Certiorari* is confined to addressing questions of law.[65] In this context, the present petition essentially poses the question of whether Smart may recover Solidum's wages and benefits which accrued before the NLRC's reversal of the July 3, 2006 Decision of the arbiter. This is a question of law well within the Court's purview in a Rule 45 petition.

Incidentally, the Court may nevertheless entertain the factual question of whether delay, if any, is properly attributable to Solidum or Smart. Although questions of fact are not entertained in a Rule 45 review, this admits several exceptions, such as when: (1) the findings and conclusions of the CA differ from the labor tribunals, (2) the rulings of the antecedent deciding bodies are

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[64] *Rollo*, vol. 2, p. 722.
[65] *Bergonio, Jr., v. South East Asian Airlines*, 733 Phil. 347, 356 (2014) [Per J. Brion, Second Division].

conflicting, or (3) there is a misapprehension of facts.[66] Notably, these exceptions are all present in the instant case. The Court is thus compelled to address certain factual issues raised in this instant petition.

The immediately executory nature of the arbiter's decision mandates Smart to reinstate Solidum until reversal by the NLRC. Smart's non-compliance of the arbiter's order of reinstatement resulted to Solidum's unpaid wages and benefits under the 10th Alias Writ

An order of reinstatement issued by the labor arbiter is self-executory or immediately executory even pending appeal. In fact, this right is statutorily enshrined in the Labor Code:

> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.[67]

Aligning with this principle, both the 2005 and 2011 NLRC Rules of Procedure (2005 NLRC Rules and 2011 NLRC Rules, respectively) specify that the perfection of an appeal suspends the execution of the labor arbiter's decision, with the exception of the reinstatement aspect pending appeal.[68] Owing to the immediately executory nature of the decision, the employer is obligated to reinstate and compensate the dismissed employee throughout the appeal process until reversal by the higher court.[69]

In carrying out the reinstatement provision outlined in the labor arbiter's decision, the employer has two available options: Firstly, it may opt for actual reinstatement, requiring the employee to be restored to the position held prior to the illegal dismissal. This includes reinstating the employee under the same terms and conditions that existed before the dismissal. If the original position is no longer available, the employer must provide a substantially equivalent position.[70]

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[66] *Sermona v. Hacienda Lumboy*, G.R. No. 205524, January 18, 2023 [Per SAJ. Leonen, Second Division] and *Citibank Savings, Inc. v. Rogan*, G.R. No. 220903, March 29, 2023 [Per J. Gaerlan, Third Division].
[67] LABOR CODE, as renumbered in 2015, art. 229.
[68] NLRC Rules of Procedure (2005), rule XI, sec. 6; NLRC Rules of Procedure (2011), rule XI, sec. 3.
[69] *Wenphil Corporation v. Abing*, 731 Phil. 685, 696 (2014) [Per J. Brion, Second Division].
[70] *Islriz Trading/Lu v. Capada*, 656 Phil. 9, 23–24 (2011) [Per J. Del Castillo, First Division].

Alternatively, the employer may choose payroll reinstatement, where the employee is reinstated in the employer's payroll without necessitating his or her return to the workplace. This option allows the employee to resume his or her employment status without physically reporting back to work.[71] It is well-settled that "[i]n the case of payroll reinstatement, even if the employer's appeal turns the tide in its favor, the reinstated employee has no duty to return or reimburse the salary he received during the period where the lower court's governing decision was for the employee's illegal dismissal. Otherwise, the situation would run counter to the immediately executory nature of an order of reinstatement."[72]

In *Garcia v. Philippine Airlines, Inc.*,[73] this Court elaborated on the impracticality of compelling the employee to reimburse the employer for the monetary award, *viz.:*

> Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.[74]

Significantly, the principle of social justice has consistently aimed at affording full protection to labor. In fact, this commitment is explicitly articulated in the 2011 NLRC Rules, which provides that in cases where a judgment has been executed and is subsequently totally or partially reversed or annulled by the CA or this Court, the labor arbiter shall, upon motion, issue orders for the restitution of the executed award, *except wages paid during reinstatement pending appeal.*[75]

Moreover, should the employer fail to comply with the labor arbiter's order of reinstatement, the employer becomes obligated to pay the accrued salaries of the reinstated employee as stipulated in the decision.[76] In this regard, Our ruling in *Smart Communications, Inc. v. Solidum*[77] emphasized that employees are entitled to their accrued salaries, allowances, benefits,

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[71] *Id.*
[72] *Wenphil Corp. v. Abing,* 731 Phil. 685, 697 (2014) [Per J. Brion, Second Division]; *Roquero vs. Philippine Airlines, Inc.,* 449 Phil. 437, 446 (2003) [Per J. Puno, Third Division].
[73] 596 Phil. 510 (2009) [Per J. Carpio-Morales, *En Banc*].
[74] *Id.* at 538.
[75] NLRC Rules of Procedure (2011), rule XI, sec. 14.
[76] NLRC Rules of Procedure (2005), rule XI, sec. 6; NLRC Rules of Procedure (2011), rule XI, sec. 12 as renumbered by NLRC En Banc Resolution No. 11-12 (2012); *Islriz Trading/Lu v. Capada,* 656 Phil. 9, 23 (2011) [Per J. Del Castillo, First Division].
[77] 758 Phil. 211, 222 (2015) [Per J. Carpio, Second Division].

incentives, and bonuses from the date they received the labor arbiter's decision ordering reinstatement until the NLRC's reversal of the labor arbiter's order of reinstatement becomes final and executory, as shown on the entry of judgment.[78]

The records of the instant case reveal Smart's blatant defiance to comply with the July 3, 2006 Decision of the arbiter mandating Solidum's actual reinstatement. Despite seven alias writs, Smart failed to reinstate Solidum to his former position, neglected to place him on the payroll, or pay his salaries and benefits. This left Smart liable for Solidum's salaries and benefits until the NLRC, through its May 29, 2009 Decision, reversed the labor arbiter's ruling, which, eventually, became final and executory on August 10, 2009. At this point, Smart remained liable for Solidum's accrued salaries and benefits for the period from July 13, 2006,[79] to August 10, 2009.

It is worth noting that Solidum received his accrued salaries and benefits from Smart, totaling PHP 2,881,335.86, only after the issuance of the Eighth and Ninth Alias Writs on October 22, 2010 and May 18, 2011, respectively. However, this payment covered only his accrued salaries and benefits for the period from January 21, 2009, to July 20, 2009.

At this juncture, it is crucial to highlight that the CA appropriately disallowed the refund of Solidum's salaries and benefits, totaling PHP 2,881,335.86, pursuant to the Eighth and Ninth Alias Writs, as these amounts had accrued before August 10, 2009. This entitlement has, in fact, been affirmed by this Court in *Smart Communications, Inc.* In *Smart Communications, Inc.*, We specifically held that "[s]ince the NLRC's [May 29, 2009] Decision became final and executory on [August 10, 2009], Solidum is entitled to [PHP] 2,881,335.86, representing his accrued salaries, allowances, benefits, incentives, and bonuses for the period [January 21, 2009 to July 20, 2009]."

While Smart eventually complied with the Eighth and Ninth Alias Writs, Solidum's accrued salaries and benefits for a significant period, particularly from July 3, 2006 to January 20, 2009, remained unpaid. Simply put, from July 2006 to January 2009, nearly three years of wages and benefits went unpaid. Smart's liability grew because the earlier Alias Writs (First to Seventh) were never fulfilled, necessitating a complete recalculation of Solidum's rightful compensation during that period.

Notably, Solidum's claim filed on June 6, 2011, which incidentally stemmed from the NLRC Decision issued on May 31, 2010 and its Resolution dated July 30, 2010, extended beyond the mere redress of Smart's outstanding

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[78] *Id.*
[79] Solidum received the July 3, 2006 Decision of the LA on July 13, 2006.

liabilities. It also sought to recover rightfully accrued but previously excluded wages and benefits earned during Smart's appeal in the Illegal Dismissal Case, which the NLRC-CEU omitted from their initial October 6, 2006 computation. The 10th Alias Writ issued by the arbiter finally rectified the amount of Solidum's accrued wages and benefits earned before August 10, 2009.[80]

Crucially, it appears that the 10th Alias Writ covers the entire outstanding amount owed to Solidum, excluding the amounts he received previously from the Eighth and Ninth Alias Writs. Because the earlier alias writs remained unfulfilled, the recomputation of his accrued salaries and wages was essential. Therefore, the amount of PHP 15,889,871.04 claimed in the 10th Alias Writ, representing his accrued earnings from before August 10, 2009, rightfully belongs to Solidum.

The Application of the Two-Fold Test; "Delay" refers to an unreasonable period between the labor arbiter's reinstatement order and the employer's compliance directly attributable to the employer's refusal to reinstate the employee

As discussed above, if the labor arbiter finds that an employee was illegally dismissed, the employer must immediately reinstate the employee. If the employer fails to do so, it is liable to pay for the salary of the dismissed employee. If the higher tribunal reverses the labor arbiter's decision on appeal, the employer's obligation to reinstate the employee ends. This means that an employer is no longer obliged to keep the employee in the actual service or in the payroll. The employee, in turn, is not required to return the wages that he had received prior to the reversal of the labor arbiter's decision. The foregoing notwithstanding, if the employer, who, despite the labor arbiter's order of reinstatement, did not reinstate the employee during the pendency of the appeal, it may still be held liable for the accrued wages of the employee, *i.e.*, the unpaid salary accruing up to the time the higher tribunal reverses the labor arbiter's decision.[81]

However, by way of exception to the above rule, an employee may be barred from collecting his or her accrued wages if shown that the delay in enforcing the reinstatement aspect of the labor arbiter's decision pending appeal was without fault on the part of the employer. "To determine whether an employee is thus barred, two tests must be satisfied: (1) actual delay or the fact that the order of reinstatement pending appeal was not executed prior to

[80] *Rollo*, vol. 1, pp. 457–462.
[81] *Bergonio, Jr., v. South East Asian Airlines*, 733 Phil. 347, 359–360 (2014) [Per J. Brion, Second Division].

its reversal; and (2) the delay must not be due to the employer's unjustified act or omission."[82]

Given the foregoing, it appears that the CA erroneously applied the Two-Fold Test in this case. To recall, the appellate court ordered Solidum to return PHP 15,889,871.04, claiming that he filed his claim for additional benefits after the NLRC decision in the Illegal Dismissal Case became final and executory. Due to what the appellate court sees as Solidum's delay in filing the claim, it concluded that he cannot collect the accrued wages and benefits and, thus, ordered Solidum to return to Smart the amount he received under the 10th Alias Writ.[83]

Current labor laws provide a specific definition of "delay" relevant to this case. Under the second test, if the delay in the actual or payroll reinstatement of the employee is due to the employer's unjustified refusal, the employer may still be required to pay the employee's salaries. This liability applies specifically to the employer if it intentionally caused the delay by refusing to reinstate the employee, either physically or through payroll. However, if the delay resulted from no fault of the employer, the employee cannot claim his accrued wages and benefits.[84]

In other words, "delay" in the context of the Two-Fold Test, refers to an unjustifiable and unreasonable period of time between the issuance of the labor arbiter's reinstatement order and the actual or payroll reinstatement of the employee by the employer before the order is reversed. This delay must be directly attributable to the employer's refusal to comply with the order, excluding any extenuating circumstances or delays caused by the employee.

It follows, then, that any delay, if any, on the part of the employee in requesting for the computation and payment of all additional or accrued wages and benefits legally due him is inconsequential. This is due to the immediately executory or self-executory nature of the reinstatement aspect of the labor arbiter's decision. Notably, the NLRC rules do not even require an employee to file a motion for execution since the reinstatement aspect of the labor arbiter's decision is immediately executory. Specifically, the 2011 NLRC Rules require the employer to submit a report of compliance within 10 calendar days from receipt of the labor arbiter's decision.[85] Conversely, the rules do not require the employee to file a motion for the issuance of the writ of execution, as the labor arbiter has the authority to issue the writ *motu proprio*.[86] These principles have remained consistent since the 2005 NLRC Rules, underscoring the employer's responsibility to immediately comply with

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[82] *Id.* at 360–361.
[83] *Rollo*, vol. 1, pp. 56–57.
[84] *Bergonio, Jr., v. South East Asian Airlines*, 733 Phil. 347, 360–361 (2014) [Per J. Brion, Second Division].
[85] NLRC Rules of Procedure (2011), rule V, sec. 18.
[86] NLRC Rules of Procedure (2011), rule XI, sec. 1.

the labor arbiter's reinstatement directive, disobedience to which clearly denotes a refusal to comply with the order.[87]

In conclusion, the CA appears to have misapplied the Two-Fold Test, leading to the erroneous order for Solidum to return PHP 15,889,871.04 to Smart. The appellate court incorrectly attributed Solidum's alleged delay in filing his claim for additional benefits as a basis for denying him his accrued wages and benefits. However, as discussed above, the term "delay" in the Two-Fold Test context is directly attributable to the employer who has refused to comply with the labor arbiter's reinstatement order before its reversal. Significantly, the supposed delay on the part of Solidum in requesting the computation and payment of his accrued wages and benefits is deemed inconsequential due to the immediate and self-executory nature of the LA decision. The NLRC rules support this, as they do not require him, as an employee, to file a motion for the issuance of the writ of execution, placing the responsibility on Smart, as the employer, to promptly comply with the arbiter's reinstatement directive.

In any event, the records show Solidum's filing for a recomputation on June 6, 2011 was a direct result of the NLRC's May 31, 2010 Decision and July 30, 2010 Resolution, indicating that there was no delay on his part. This is because the NLRC orders required the case to be sent back to the arbiter for the issuance of a writ of execution to collect Solidum's accrued reinstatement wages from July 13, 2006 to August 10, 2009.

At this juncture, it is incumbent upon the Court to acknowledge the Order[88] dated April 25, 2012, issued by the arbiter, wherein the computation of Solidum's total salaries and benefits amounting to PHP 15,889,871.04 under the 10th Alias Writ was approved. The relevant excerpts from the April 25, 2012 Order are as follows:

> Next, delving now on the approval of the computation. The Decision of Labor Arbiter Felipe Pati dated July 3, 2006, which contained the order of complainant's reinstatement, was received by respondents on July 13, 2006. However, the Writ of Execution dated November 13, 2006 issued by Labor Arbiter Felipe Pati computed complainant's accrued reinstatement salaries and other benefits only starting July 21, 2006. His accrued reinstatement salaries from July 13, 2006 until July 20, 2006 (or an equivalent of 8 days) was not included in the previous computation, nor paid to him. Hence, this Office hereby approve as correct the CEU's computation for the unpaid accrued reinstatement salaries for eight (8) days from July 13, 2006 to July 20, 2006 which is P128,319.27.
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> **Regarding all other accrued unpaid benefits or entitlement of complainant, this Office rules that he cannot be faulted nor can be barred**

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[87] *Garcia v. Philippine Airlines, Inc.*, 596 Phil. 510, 542 (2009) [Per J. Carpio Morales, *En Banc*].

[88] *Rollo*, vol. 1, pp. 457–462. The April 25, 2012 Order in NLRC-NCR Case No. 11-09564-05 was penned by Labor Arbiter Madjayran H. Ajan of the National Labor Relations Commission, National Capital Region, Quezon City.

from seeking his right over the past 3 years from July 13, 2006 to January 26, 2009 considering that herein additional computation were never included by the CEU in their initial partial computation last October 10, 2006. Further, this Office cites the Order dated May 17, 2011 issued by Labor Arbiter Aliman D. Mangandog, which also ruled that herein complainant is still entitled to collect his unpaid reinstatement wages until the time that the decision of the NLRC reversing the order of reinstatement of the Labor Arbiter became final and executory on August 10, 2009, as recorded in the Book of Entries of Judgement.

Thus, this Office hereby approves the computation for unpaid Christmas Package Benefit for three-year period from July 13, 2006 until January 26, 2009 which is P7,500 (computed as 3 years x 2,500/year); unpaid Guaranteed Paid Leaves from July 13, 2006 until January 26, 2009 or equivalent to 75 days, which is P885,232.50 (computed as 75 days x P11,803.10/day); and unpaid SMART Long Term Incentive benefit (LTIP) vesting last December 31, 2007 in the amount of P14,740,500. All being accrued unpaid benefits or entitlements of complainant, the CEU official computations of which has factual basis and evidentiary support in this case.[89] (Emphasis supplied)

Notably, instead of challenging the arbiter's April 25, 2012 Order by filing a motion to quash the 10th Alias Writ, Smart initially paid Solidum PHP 15,889,871.04. However, Smart would later on file a Motion to Order the Return of the Monetary Award before the CA, which is currently under consideration in the present petition. Despite these developments, the Court refrains from disputing the calculations and determinations made by the arbiter in the April 25, 2012 Order, given that it has already attained finality and executory status based on the Certification of Finality[90] issued by the NLRC on September 10, 2012.

The delay in implementing Solidum's reinstatement pending appeal was due to Smart's unjustified acts. Thus, Solidum is entitled to the PHP 15,889,871.04 claimed under the 10th Alias Writ, representing his accrued earnings from before August 10, 2009, covering the period from July 13, 2006 to January 26, 2009

The central question persists: did the CA correctly order Solidum to refund to Smart the additional wages and benefits acquired through the 10th Alias Writ totaling PHP 15,889,871.04? To resolve this question, We apply the Two-Fold Test in its proper context.

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[89] *Id.* at 460–461.
[90] *Id.* at 463.

Firstly, it is evident that there has been a substantial delay in executing the reinstatement aspect of the arbiter's Decision dated July 3, 2006. This delay persisted until the said Decision was overturned on appeal by the NLRC. To recall, the records of the case reveal that despite the issuance of seven Alias Writs by the LA for the collection of both monetary awards and compliance with the reinstatement aspect of the July 3, 2006 Decision in the Illegal Dismissal Case,[91] Smart filed multiple motions to quash these writs. Eventually, these writs were not carried out by Smart.[92] Meanwhile, only a fraction of Solidum's accrued salaries and benefits from Smart, amounting to PHP 2,881,335.86, was received by Solidum after the NLRC's reversal of the arbiter's July 3, 2006 Decision, through the issuance of the Eight and Ninth Alias Writs of Execution on October 22, 2010 and May 18, 2011, respectively.

Based on these facts, there is no doubt that there was actual delay in the execution of the reinstatement aspect of the arbiter's July 3, 2006 Decision before it was reversed by the NLRC through its May 29, 2009 Decision.

Secondly, in examining the cause of the delay, it is evident that the delay in implementing Solidum's reinstatement pending appeal was a result of Smart's unjustified acts. While Solidum consistently and actively sought the execution of the reinstatement aspect of the arbiter's decision by filing motions for execution, Smart, in contrast, filed multiple motions to quash those writs. This, in Our view, demonstrates Smart's deliberate effort to impede the execution of Solidum's reinstatement pending appeal.[93]

In its defense, Smart asserts that it cannot be held accountable for any delay since as early as November 13, 2006, it already paid out Solidum's salaries and benefits from July 21, 2006 to October 20, 2006.[94] However, Smart has failed to provide any evidence substantiating the actual payment of Solidum's salaries and benefits. Even if We consider payment for the period from July 21, 2006, to October 20, 2006, it does not constitute full compliance with the LA's reinstatement directive. In this case, full compliance necessitates payment of salaries and benefits until the reversal of the LA Decision by the NLRC, covering the period from October 20, 2006, to August 10, 2009, which Smart failed to promptly fulfill.

Moreover, Section 14, Rule V and Section 6, Rule XI of the 2005 NLRC Rules, then in effect at the time of the July 3, 2006 arbiter Decision, required employers to submit a report of compliance within 10 calendar days from receipt of the labor arbiter's decision. In *Bergonio, Jr., v. South East Asian*

[91] *Id.* at 62–84.
[92] *Id.* at 257.
[93] See *Bergonio, Jr., v. South East Asian Airlines*, 733 Phil. 347, 362 (2014) [Per J. Brion, Second Division].
[94] *Rollo*, vol. 1, p. 726.

Airlines,[95] We held that failure to adhere to this requirement clearly indicates a refusal to reinstate.[96] Notably, based on a Certification[97] issued by the NLRC on December 20, 2012, or more than six years after the arbiter issued its July 3, 2006 Decision, Smart has not submitted a report of its compliance regarding Solidum's reinstatement to Smart, either actual or in the payroll. Clearly, Smart's non-compliance with this rule all the more showed a clear and determined refusal to reinstate Solidum.[98]

All told, the CA misapplied the Two-Fold Test resulting in the erroneous order for Solidum to reimburse PHP 15,889.871.04 to Smart. The appellate court incorrectly attributed Solidum's alleged delay in filing his claim for additional salaries and benefits as a reason for its order of reimbursement in favor of Smart. However, as explained earlier, the term "delay" in the Two-Fold Test context is directly linked to the employer who has refused to comply with the labor arbiter's reinstatement order before its reversal. Importantly, any perceived delay on Solidum's part in seeking the computation and payment of his accumulated wages and benefits is considered inconsequential due to the immediate and self-executory nature of the labor arbiter's decision.

Given the facts and circumstances, the delay in this case can be traced back to the unjustified actions of Smart. It is crucial to reiterate that Article 223, paragraph 3, of the Labor Code mandates the employer to promptly reinstate the dismissed employee, either by actual reinstatement under the conditions prevailing before the dismissal, or through his or her inclusion in the payroll. Smart's failure to exercise either option in a timely manner makes it accountable for Solidum's accrued salaries and benefits until the arbiter's decision was overturned by the NLRC. Notably, since the NLRC's May 29, 2009 Decision attained finality on August 10, 2009, Solidum is entitled to the PHP 15,889,871.04 claimed under the 10th Alias Writ, representing his accrued earnings from before August 10, 2009, covering the period from July 13, 2006, to January 26, 2009.

ACCORDINGLY, the Petition for Partial Review on *Certiorari* is **GRANTED**. The November 23, 2012 and April 23, 2013 Resolutions of the Court of Appeals in CA-G.R. SP No. 115794, insofar as it ordered petitioner Jose Leni Z. Solidum to refund respondent Smart Communications, Inc. the additional wages and benefits he received by virtue of the 10th Alias Writ of Execution issued by the Labor Arbiter in NLRC Case No. NCR-00-11-09564-05, are **REVERSED** and **SET ASIDE**.

[95] 733 Phil. 347 (2014) [Per J. Brion, Second Division].
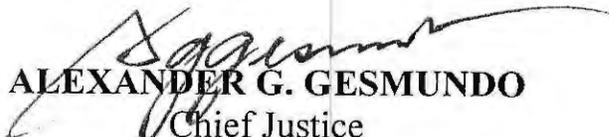[96] *Id.* at 363.
[97] *Rollo*, vol. 1, p. 163.
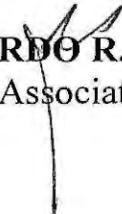[98] See *Bergonio, Jr., v. South East Asian Airlines*, 733 Phil. 347, 363–364 (2014) [Per J. Brion, Second Division].
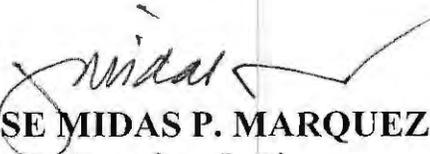
SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice
Working Chairperson

WE CONCUR:

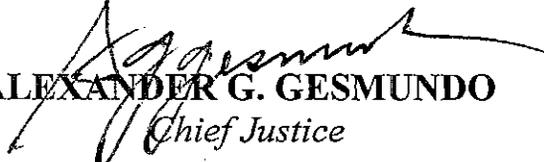**ALEXANDER G. GESMUNDO**
Chief Justice
Chairperson

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice