



Mis-DCBatt
Division Office of Court
Third Division

JAN 11 2021

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

REDENTOR Y. AGUSTIN,
Petitioner,

G.R. No. 218282

Present:

- versus -

LEONEN, J.,
Chairperson,
GESMUNDO,
CARANDANG,
LOPEZ,* and
GAERLAN, JJ.

ALPHALAND CORPORATION, Promulgated:
ET AL.,

Respondents. September 9, 2020

~~Mis-DCBatt~~

X-----X

DECISION

CARANDANG, J.:

This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeking the modification of the Decision² dated September 26, 2014 and the Resolution³ dated April 20, 2015 of the Court of Appeals in CA-G.R. SP No. 130198. The assailed issuances affirmed the Decision⁴ dated January 14, 2013 and the Resolution⁵ dated March 15, 2013 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 11-16616-11 (NLRC LAC No. 09-002627-12), which likewise affirmed the Decision⁶ dated August 2, 2012 of the Labor Arbiter (LA).

* Designated as additional Member per Raffle dated June 29, 2020.

¹ *Rollo*, pp. 33-47.

² *Id.* at 8-14.

³ *Id.* at 25-27.

⁴ *Id.* at 292-300

⁵ *Id.* at 333-335.

⁶ *Id.* at 236-247.

Facts of the Case

Via a letter⁷ dated July 6, 2011, respondent Alphaland Corporation (Alphaland) offered to employ petitioner Redentor Y. Agustin (Agustin) as Executive Chef, with a gross monthly salary of ₱122,500.00. The offer came with a six-month probation period.⁸

Agustin signed the letter to signify his acceptance of the job offer. As the Executive Chef, Agustin took over the Balesin Island Club's Kitchen. He organized the kitchen, prepared the job descriptions and responsibilities of each kitchen staff, conceptualized the menu, kitchen design, and managed the equipment acquisition.⁹

On November 4, 2011, barely four months from commencement of his employment, Agustin received a Notice of Termination.¹⁰ He was informed that regular employment status cannot be granted to him because he failed to meet the standards set forth by the company for his position. Also stated is the immediate effectivity of Agustin's termination.¹¹

Agustin filed a complaint for illegal dismissal against Alphaland and prayed for reinstatement and payment of backwages. He alleged that the standards set forth by Alphaland in order to qualify as regular employee were not made known to him at the time of his engagement. The letter-offer,¹² which likewise serves as the employment contract between Alphaland and Agustin, merely states:

As an employee of **ALPHALAND CORPORATION** you are expected to render the highest quality of professional service and to always pursue the interest of the company. Any behavior or action contrary will become the basis for appropriate disciplinary action on the part of the Company including suspension and termination.¹³ (Emphasis in the original)

Agustin also claimed for 13th month pay, damages, and attorney's fees.

In its Position Paper¹⁴ submitted before the LA, Alphaland alleged that the executives of the company and the business associates assessed the variety of dishes offered by Agustin, its palatability, and the quality of his cooking. Unfortunately, Agustin's performance fell short of their expectations. The executives and business associates also voted that Agustin's performance was

⁷ *Rollo*, pp. 206-208.

⁸ *Id.* at 206.

⁹ *Id.* at 85-168. Agustin submitted as evidence before the LA the kitchen organization chart and job descriptions for each kitchen staff.

¹⁰ *Id.* at 169.

¹¹ *Id.*

¹² *Id.* at 227-229.

¹³ *Id.* at 227.

¹⁴ *Id.* at 177-188.

9

not apt for a high-end luxury resort. Similarly, the diners were not satisfied with the food prepared by Agustin.¹⁵ Alphaland claimed that Agustin failed to meet the following standards in order to qualify as regular employee: (1) that he was expected to render high quality of professional service; and (2) to always pursue the interest of the company.¹⁶ Further, Alphaland argued that Agustin's employment was validly terminated within the probationary period and in accordance with procedural due process. According to Alphaland, the two-notice rule was not applicable to probationary employees and that procedural due process in the termination of a probationary employee merely requires a termination notice.¹⁷

Ruling of the Labor Arbiter

The LA issued on August 2, 2012 a Decision finding Agustin to have been illegally dismissed. The LA found that the standard provided in the appointment letter was too general and did not specify with clarity what is expected or needed for an Executive Chef. The record is also bereft of anything to show that the executives and guests did not desire much of Agustin's cooking skills.¹⁸ Hence, Agustin was entitled to his salary for November 5, 2011 up to January 6, 2012, the unexpired portion of his probation period. As regards the 13th month pay, the LA awarded the same proportionately for the period of July 6, 2011 to January 6, 2012.¹⁹ The claim for damages was denied for lack of factual basis.²⁰ The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been illegally dismissed. Respondent Alphaland Corporation is ordered to pay complainant the following:

1. unexpired portion of his probationary employment in the amount of TWO HUNDRED FORTY FIVE THOUSAND PESOS (P 245,000.00);
2. proportionate 13th month pay in the amount of SIXTY ONE THOUSAND TWO HUNDRED FIFTY PESOS (P51,250.00);
3. attorney's fees in the amount of THIRTY THOUSAND SIX HUNDRED TWENTY FIVE PESOS (30,625.00).

SO ORDERED.²¹

Alphaland appealed to the NLRC.

To support its claim that Agustin's performance had been subject of an assessment, Alphaland presented for the first time the affidavits of Mario A.

¹⁵ Id. at 182.
¹⁶ Id.
¹⁷ Id. at 182-183.
¹⁸ Id. at 245.
¹⁹ Id. at 246.
²⁰ Id. at 247.
²¹ Id.

9

Oreta and Conrad Nicholson M. Celdran, the President of Alphaland and Agustin's immediate supervisor, respectively. "Both attested to the fact that they were the recipients of feedbacks from guests of the Balesin Island Club about the food served being ordinary, below average, mediocre, and did not seem appropriate for a resort touted as one of the country's most exclusive and luxurious."²²

Ruling of the National Labor Relations Commission

The NLRC denied the appeal.

In its Decision dated January 14, 2013, the NLRC agreed with the LA in finding that Alphaland failed to establish that Agustin was properly apprised beforehand of the reasonable standards set forth by the company for Agustin's position, the conditions for his employment, and the basis for his advancement. The record was bereft of any persuasive showing that the dissatisfaction on the part of the executives and the guests was real and in good faith. The NLRC also took note that the affidavits of the persons who conducted the alleged assessment were only submitted as evidence on appeal, and never before the LA. The NLRC explained that in the normal course of events, Alphaland would have at least called the attention of Agustin on the alleged assessment.²³ Aside from failure to apprise Agustin of the reasonable standards against which his performance shall be assessed, Alphaland also failed to serve upon Agustin the notice of termination within a reasonable time from the effective date of termination as required under Section 2, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code.²⁴ The Motion for Reconsideration²⁵ filed by Alphaland was denied by the NLRC in its Resolution dated March 15, 2013.

Therefrom, Alphaland filed a Petition for *Certiorari*²⁶ before the CA, which rendered the assailed Decision.

Ruling of the Court of Appeals

In denying the petition, the CA held that the LA and NLRC did not err in finding that Alphaland failed to specify the necessary standards for Agustin's work as an Executive Chef.²⁷ The standards set forth in the employment contract indeed were too general for Agustin to be informed of what constitutes "the highest quality of professional service."²⁸ The NLRC correctly disregarded the Affidavits executed by the members of the Balesin Club. Such Affidavits were presented for the first time only on appeal and Alphaland did not offer any explanation for such belated submission.²⁹

²² Id. at 296.

²³ Id. at 298.

²⁴ Id. at 297-299.

²⁵ Id. at 301-311.

²⁶ Id. at 336-352.

²⁷ Id. at 12.

²⁸ Id. at 13.

²⁹ Id. at 13-14.

9

Agustin's claims for reinstatement, additional backwages and damages cannot be granted due to Agustin's failure to appeal these awards.³⁰ The awards granted by the LA and affirmed by the NLRC were already final and binding.³¹ The CA also denied the Motion for Reconsideration filed by Alphaland.

In his Petition, Agustin prays for reinstatement and payment of additional backwages from the date of his illegal dismissal.³² This relief is based on the premise that he shall be deemed a regular employee because no standards were made known to him at the time of his employment.³³ Further, Agustin argues that following the ruling in the case of *St. Michael's Institute v. Santos*,³⁴ he may still be awarded backwages and reinstatement even if he did not appeal the Decisions of the LA and NLRC.³⁵

This Court required the parties to file subsequent pleadings, such as Comment, Reply, and their respective Memoranda.³⁶ In its Memorandum, Alphaland mainly points out that Agustin did not appeal the Decision of the LA and merely included in his Opposition and Answer a prayer for relief which was not among the issues raised in the Appeal. Alphaland argues that Agustin was in effect belatedly appealing the Decision of the LA in the guise of his Opposition and Answer.³⁷ Agustin did not file a Petition for *Certiorari* before the CA and merely opposed Alphaland's Petition for *Certiorari* filed before the CA.³⁸ In his Comment opposing the said Petition, Agustin "cunningly interjected the issue of his reinstatement, and his entitlement to backwages and 13th month pay until his actual reinstatement, which issues were not covered by respondent Alphaland's Petition."³⁹ Moreover, Agustin's full satisfaction with the Decision of the LA is unmistakable because he has not only moved for the execution and implementation thereof, but had already received the benefits arising from the said Decision.⁴⁰

Ruling of the Court

The petition is meritorious.

In the case of *St. Michael's Institute v. Santos*,⁴¹ a group of teachers with regular employment status were dismissed for joining a public rally and disrupting classes.⁴² The LA found and declared that there was just cause for the dismissal since they were guilty of dereliction of duty and

30 Id. at 14.
 31 Id.
 32 Id. at 46.
 33 Id. at 41-42.
 34 422 Phil. 723 (2001).
 35 *Rollo*, pp. 43-45.
 36 Id. at 455-456.
 37 Id. at 459.
 38 Id. at 460.
 39 Id.
 40 Id. at 465.
 41 *Supra* note 19.
 42 Id. at 727-728

insubordination.⁴³ On appeal, the NLRC reversed the ruling of the LA and held that the teachers had been illegally dismissed. However, the NLRC in its Decision did not award backwages. The employer in *St. Michael's Institute* filed a Petition for *Certiorari*. The CA sustained the decision of the NLRC and in addition, awarded backwages to the teachers who were illegally dismissed.⁴⁴ Undaunted, the employer filed a Petition for Review on *Certiorari* before this Court. In the said petition, the employer averred that when the CA awarded backwages in favor of the employees, it "unwittingly reversed a time-honored doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision."⁴⁵ To this issue, this Court ruled that the award of backwages is merely a legal consequence of the finding that the employees were illegally dismissed by the employer. In unequivocal terms, this Court explained in the said case that: "the [Court] is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests or to avoid dispensing piecemeal justice."⁴⁶

The case of Alphaland and Agustin presents Us with a similar factual milieu. In the same vein as *St. Michael's Institute*, the case at bar involves a regular employee who was declared illegally dismissed yet was not properly awarded backwages from the time of illegal dismissal until reinstatement.

Based on two grounds, this Court holds that Agustin was a regular employee of Alphaland.

First, The LA, NLRC, and later on the CA uniformly found that Agustin was hired from the management's standpoint as a probationary employee but was not informed of the reasonable standards by which his probationary employment was to be assessed. The standards set are too general and failed to specify with clarity what is expected of Agustin as an Executive Chef.⁴⁷ Consequently, the lower courts found that Agustin's dismissal was illegal. This finding warrants the application of the following self-explanatory provisions:

Article 296 of the Labor Code

Article 296. [281] *Probationary Employment*. – Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance

⁴³ Id. at 729.

⁴⁴ Id. at 731.

⁴⁵ Id. at 735.

⁴⁶ Id.

⁴⁷ *Rollo*, p. 245.

9

with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

Section 6 (d) of the Implementing Rules of Book VI, Rule I of the Labor Code

Section 6. *Probationary Employment.* – There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x x

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. **Where no standards are made known to the employee at that time, he shall be deemed a regular employee.** (Emphasis supplied).

Considering the foregoing, the probationary period set in the contract of employment dated July 6, 2011 is therefore purposeless. In no case was Agustin hired on a probationary status by Alphaland. As of July 6, 2011, Agustin became part of Alphaland Corporation as a regular employee of the company without a fixed term of employment.

Second, Agustin served as a consultant prior to being hired as an Executive Chef allegedly on a probationary status. The Consultancy Engagement Offer⁴⁸ provides that Agustin served as a consultant from June 6, 2011 until July 5, 2011, with a salary of ₱50,000.00. Narrated in the Memorandum⁴⁹ submitted by Alphaland, Agustin as a consultant, was responsible for setting up the kitchen, choosing the equipment, laying out the job description for each kitchen staff, and the preparation of menus for all cuisines that the Club will offer. Following the completion of Agustin's tasks as the Club's consultant, Alphaland proceeded to search for an Executive Chef to head the Club's restaurants. Since the opening of the Club was fast approaching, Alphaland hired Agustin as the Executive Chef for all the Club's restaurants. Alphaland claims that since it still had to assess and determine whether Agustin's skills as Executive Chef are at par with what the Club requires, it hired Agustin as a probationary employee.⁵⁰

We find this circumstance contrary to the ordinary course of business.

⁴⁸ Id. at 226.

⁴⁹ Id. at 457-473.

⁵⁰ Id. at 462.

Mainly, consultants are hired to provide their expert advice and opinion on what needs to be done. Records show that Agustin has been in the culinary industry for almost 19 years already, won several contests, and has served well-known establishments in the Philippines and abroad.⁵¹ When Alphaland hired Agustin as Consultant, without doubt, it was fully aware of his qualifications and skills to set up the “kitchen” at the Balesin Island Club. This Court cannot agree that Agustin was hired as Executive Chef on probationary basis since the tasks for which Agustin was engaged as a Consultant were the very same tasks he had to do as an Executive Chef. In both engagements, Agustin was tasked to take over the kitchen planning.

Dismissal of regular employees by the employer requires the observance of the two-fold due process, namely: (1) substantive due process; and (2) procedural due process. Alphaland failed to observe both substantive and procedural due process in dismissing Agustin from employment.

Substantive due process means that the dismissal must be for any of the: (1) just causes provided under Article 297 of the Labor Code or the company rules and regulations promulgated by the employer; or (2) authorized causes under Article 298 and 299 thereof. None of these causes exist in the case at bar.

The attendant circumstances in the instant case show that the issue of Agustin’s alleged failure to meet the standards set by Alphaland as a ground for terminating employment was not proven with substantial evidence. The NLRC correctly observed that “the record is bereft of any persuasive showing that such dissatisfaction is real and in good faith, not feigned. How the assessment was made, who made it, and the result of such assessment are not known. It is only on appeal that Alphaland submitted the affidavits of Mario A. Oreta and Conrad Nicholson M. Celdran who assessed and evaluated the performance of [Agustin]. [Alphaland] offered no explanation why such affidavits were presented only on appeal. What comes clear is that the execution of these affidavits – more than one year from [Agustin’s] termination – is just an afterthought x x x.”⁵²

Neither does the purported unsatisfactory performance of Agustin as Executive Chef fall under any of the just causes provided in Article 297 of the Labor Code, such as gross and habitual neglect or serious misconduct and similar offenses. For misconduct or improper behavior to be a just cause for dismissal, there must be a valid company rule or regulation violated. As found by the labor tribunals and by the CA, the standards set by Alphaland are too general to apprise the employee of what he is expected to do or accomplish. Expecting Agustin “to render the highest quality of professional service and to always pursue the interest of the company”⁵³ falls short of the required reasonable standards to be provided by the employer in order to serve as guidelines for the employee for purposes of evaluating his performance.

⁵¹ Id. at 35.
⁵² Id. at 298.
⁵³ Id. at 182.



Moreover, even if the standards for an Executive Chef need not be spelled out, Agustin has not acted in a manner contrary to basic knowledge and common sense.

Procedural due process means that the employee must be accorded due process required under Article 292(b) of the Labor Code, the elements of which are the twin-notice rule and the employee's opportunity to be heard and to defend himself.⁵⁴ In the case of Agustin's dismissal, neither of these elements was satisfied.

Agustin's dismissal, through a Notice of Termination⁵⁵ dated November 2, 2011, took effect upon notice. Alphaland does not deny the fact that only one Notice of Termination was sent to Agustin. Without presenting any evidence, Alphaland also failed to discharge its burden of proving that it afforded Agustin the opportunity to be heard and to explain himself.

Pursuant to Article 294 of the Labor Code, an illegally dismissed employee is entitled to the following reliefs: (1) reinstatement without loss of seniority rights and other privileges; (2) full backwages, inclusive of allowances; and (3) other benefits or their monetary equivalent.

Notably, the lower courts awarded backwages merely for the unexpired portion of Agustin's probationary employment. The fact that Agustin did not appeal the Decision of the LA does not bar this Court from awarding additional backwages, *i.e.*, backwages from the time of his illegal dismissal until reinstatement as a regular employee. Following the ruling in *St. Michael's Institute*, the grant of such additional backwages is "necessary in arriving at a complete and just resolution of the case"⁵⁶ and is a relief granted by substantive law which cannot be defeated by mere procedural lapses. This award is merely a logical consequence of the finding that Agustin was a regular employee who has been illegally dismissed by Alphaland.

Agustin is thus entitled to backwages reckoned from the time he was illegally dismissed on November 4, 2011, with a ₱122,500.00 monthly salary, until his reinstatement. However, this Court finds that the award of separation pay in lieu of reinstatement will be in the best interest of both parties. This Court recognizes the fact that a continued relationship between Agustin and Alphaland is no longer viable due to the strained relations⁵⁷ and antagonism definitely brought about by the long lapse or passage of time that Agustin was out of Alphaland's employment from the date of his dismissal until the final resolution of this case.⁵⁸

⁵⁴ *Pascua v. NLRC*, 351 Phil. 48 (1998); *Manila Electric Co. v. NLRC*, 506 Phil. 338 (2005); *St. Luke's Medical Center, Inc. v. Notario*, 648 Phil. 258 (2010); *Lima Land, Inc. v. Cuevas*, 635 Phil. 36 (2010).

⁵⁵ *Rollo*, p. 169.

⁵⁶ *St. Michael's Institute v. Santos*, supra note 19 at 735.

⁵⁷ *Bordomeo v. CA*, 704 Phil. 278, 300 (2013); *Naranjo v. Biomedica Health Care, Inc.*, 695 Phil. 551, 573-574 (2012); *Aliling v. Feliciano*, 686 Phil. 889, 916-917 (2012); *Velasco v. NLRC*, 492 SCRA 686, 699 (2006); *St. Luke's Medical Center, Inc. v. Notario*, 648 Phil. 258, 299-300 (2010); *Manila Water Co., Inc. v. Pena*, 478 Phil. 68, 83 (2004).

⁵⁸ *Sanoh Fulton Philippines, Inc. v. Bernardo and Taghoy*, 716 Phil. 378, 391 (2013); *Blue Sky Trading Co. v. Bias*, 683 Phil. 689, 711 (2012); *Abaria v. NLRC*, 678 Phil. 64, 96-97 (2011); *St. Luke's Medical*

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated September 26, 2014 and the Resolution dated April 20, 2015 of the Court of Appeals in CA-G.R. SP No. 130198 are hereby **AFFIRMED with MODIFICATION** in that Alphaland Corporation is **ORDERED** to pay petitioner Redentor Y. Agustin the following:

- (a) Backwages from the date he was illegally dismissed on November 4, 2011 until the finality of this Decision; and
- (b) Separation pay computed from July 6, 2011 until the finality of this Decision, at the rate of one (1) month salary for every year of service.

The amount of ₱245,000.00 previously received by petitioner Redentor Y. Agustin by virtue of the Decision of the Labor Arbiter must be deducted from the foregoing awards.

Further, Alphaland Corporation is **ORDERED** to pay petitioner Redentor Y. Agustin legal interest of six percent (6%) *per annum* of the foregoing monetary awards computed from the finality of this Decision until full satisfaction.⁵⁹

The Labor Arbiter is hereby **ORDERED** to make another recomputation according to the above directives.

SO ORDERED.

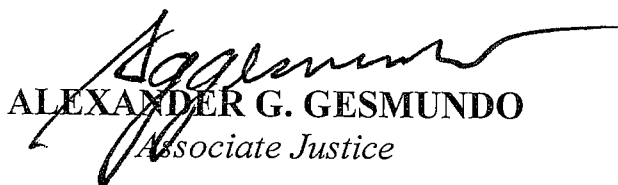

ROSMARIE D. CARANDANG
Associate Justice

⁵⁹ See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).


WE CONCUR:




MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



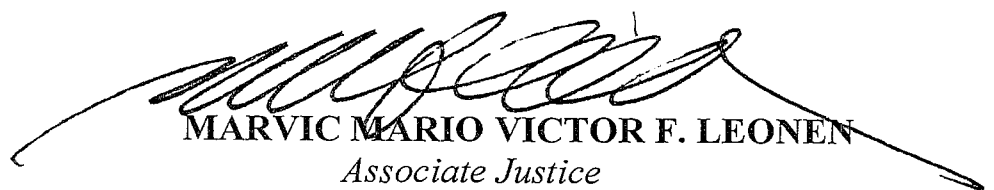
MARIO V. LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

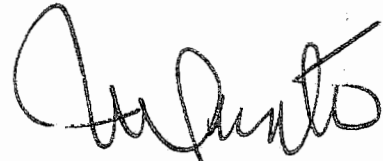
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

Mis-PDCBatt
MISABEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

JAN 11 2021