Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HACIENDA SAN ISIDRO/SILOS FARMS and REY SILOS LLAMADO, Petitioners,	**G.R. No. 220087**
	Present:
- versus -	GESMUNDO, *C.J.*, *Chairperson*, HERNANDO, ZALAMEDA, ROSARIO, and MARQUEZ, *JJ.*
LUCITO VILLARUEL and HELEN VILLARUEL, Respondents.	Promulgated: NOV 13 2023

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D E C I S I O N

ROSARIO, *J.*:

A seasonal employee is deemed a regular employee if they perform work or services that are seasonal in nature and is employed to perform such work or services for more than one season. The fact that an employee is free to make their services available to others does not negate regular employment status for as long as they are hired repeatedly for the same activities and not merely on and off for any single phase of agricultural work. Likewise, being compensated under a *pakyaw* scheme does not negate regular employment so long as the employer has the right to exercise the power of control or supervision over the performance of an employee's duties, regardless of whether the same is actually exercised.

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45

[1] *Rollo*, pp. 4-30.

of the Rules of Court assailing the Amended Decision[2] dated January 9, 2015 and the Resolution[3] dated July 20, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 07025 insofar as they declared respondent Helen Villaruel (Helen) a regular employee of petitioners Hacienda San Isidro/Silos Farms and Rey Silos Llamado (petitioners), and ordered payment of backwages and separation pay.

Factual Antecedents

Spouses Lucito Villaruel (Lucito) and Helen (Spouses Villaruel) worked in Hacienda San Isidro, Himamaylan, Negros Occidental, administered by Rey Silos Llamado, and which forms part of Silos Farms, owned by Fidel Silos.[4]

On December 18, 2009 and April 7, 2010, the Spouses Villaruel filed before the National Labor Relations Commission (NLRC) their separate complaints against petitioners for illegal dismissal, underpayment of wages and payment of service incentive leave pay, and attorney's fees, docketed respectively as RAB Case No. VI-12-101006-09 originally raffled to Labor Arbiter (LA) Romulo P. Sumalinog and RAB Case No. VI-04-10301-10 originally raffled to Executive LA Rene G. Eñano. These cases were later consolidated and re-assigned to LA Henry B. Tañoso. On February 14, 2011, LA Tañoso rendered a Decision,[5] the decretal portion of which reads:

> WHEREFORE, in view of the foregoing considerations, it is hereby declared that the dismissal of [respondent] Lucito Villaruel is for a just cause but without due process. Consonant with this finding, [petitioner] Silos Farm and/or [petitioner] Fidel Silos are hereby ordered to pay said [respondent] nominal damages in the amount of Five Thousand ([PHP]5,000.00) Pesos. [Respondent] Helen Villaruel is hereby found to be a regular employee of [petitioners] and being declared having been [sic] illegally dismissed from her employment. Accordingly, [petitioner] Silos Farm and/or [petitioner] Fidel Silos is ordered to pay her backwages from the time her salaries [were] withheld from her until the date of this decision and separation pay equivalent to one (1) month pay for every year of her service.
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> [Petitioner] Silos Farms and/or [petitioner] Fidel Silos are also ordered to pay [respondent] Lucito Villaruel proportionate 13th month pay for 2009 and service incentive leave pay.
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> Monetary awards to [respondents] are computed as follows:
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> x x x x

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2 Id. at 34-52. Penned by Associate Justice Edgardo L. Delos Santos (a retired Member of this Court) and concurred in by Associate Justices Pamela Ann Abella Maxino and Marie Christine Azcarraga-Jacob.

3 Id. at 55-57. Penned by Associate Justice Edgardo L. Delos Santos (a retired Member of this Court) and concurred in by Associate Justices Pamela Ann Abella Maxino and Marie Christine Azcarraga-Jacob.

4 Id. at 5.

5 Id. at 161-186.

> Said Respondents are hereby ordered to deposit the judgment awarded in the total amount of TWO HUNDRED TWENTY SIX THOUSAND SIX HUNDRED FIFTEEN ([PHP]226,615.00) PESOS in this Arbitration Branch within ten (10) day[s] from receipt of this decision.
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> x x x x
>
> SO ORDERED.[6]

On April 11, 2011, petitioners filed a Memorandum of Partial Appeal[7] before the NLRC while respondents opposed the same through an Opposition[8] dated April 26, 2011.

On September 30, 2011, the NLRC rendered a Decision[9] granting the petitioners' appeal as follows:

> **WHEREFORE**, premises considered, [petitioners'] appeal is **GRANTED**. The assailed Decision is **MODIFIED** with respect to the following:
>
> 1. [Respondent] Lucito Villaruel was dismissed and was afforded **WITH DUE PROCESS**;
> 2. The award of [PHP]5,000.00 in favor of Lucito Villaruel in the concept of nominal damages is **DELETED**;
> 3. [Respondent] Helen Villaruel is not an employee of the hacienda; hence, she is not entitled to her money claims and her complaint must be accordingly **DISMISSED**;
> 4. The rest of the decision **STANDS**.
>
> **SO ORDERED**.[10]

Aggrieved, Spouses Villaruel filed a Motion for Reconsideration[11] dated November 21, 2011, which was subsequently granted by the NLRC in its Resolution[12] dated January 27, 2012, the dispositive portion of which reads:

> WHEREFORE, premises considered, [respondents'] motion for reconsideration is GRANTED. Our Decision dated 30 September 2011 is PARTIALLY RECONSIDERED. The Decision of the Labor Arbiter is REINSTATED with the following MODIFICATION, to wit:
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> 1) Lucito Villaruel's dismissal is hereby DECLARED ILLEGAL;
> 2) [Petitioners] are jointly and solidarily DIRECTED to pay Lucito Villaruel separation pay, backwages, wage differential, 13th

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6 Id. at 183-186.
7 Id. at 189-202.
8 Id. at 203-207.
9 Id. at 208-221. Penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Julie C. Rendoque. Presiding Commissioner Violeta Ortiz-Bantug was on leave.
10 Id. at 221.
11 Id. at 222-228.
12 Id. at 329-339. Penned by Commissioner Julie C. Rendoque and concurred in by Presiding Commissioner Violeta Ortiz-Bantug.

month pay, SILP, in the sum of [PHP]241,847.53.
3) Helen Villaruel's dismissal is DECLARED ILLEGAL;
4) [Petitioners] are jointly and solidarily DIRECTED to pay Helen Villaruel separation pay, backwages and wage differential in the sum of [PHP]195,456.95;
5) [Petitioners] are jointly and solidarily DIRECTED to pay [respondents] attorney's fees equivalent to 10% of the total monetary award or the sum of [PHP]43,730.75.

SO ORDERED.[13]

In turn, petitioners filed a Verified Motion for Reconsideration of the Resolution dated January 27, 2012,[14] which the NLRC denied in its Resolution[15] dated March 30, 2012.

Undeterred, petitioners filed a Petition for *Certiorari*[16] before the CA, which the CA granted in its Decision[17] dated March 27, 2013. Resolving the issue pertinent to the case at bench on whether Helen is an employee of the petitioners, the CA initially ruled in the negative since Helen failed to prove the existence of all the elements to establish an employer-employee relationship between her and the petitioners, particularly the vital element of power of control.[18] The dispositive portion of the Decision dated March 27, 2013 reads:

> WHEREFORE, the Resolution dated 27 January 2012 of the [NLRC], Seventh Division (Former Fourth Division) in NLRC Case No. VAC-06-000328-11 is declared null and void for being rendered with grave abuse of discretion on the part of the public respondent. A judgment is hereby rendered:
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> 1. Declaring that [respondent] Lucito Villaruel was justly dismissed and was afforded with due process;
> 2. Deleting the award of [PHP]5,000.00.00 in favor of Lucito Villaruel in the concept of nominal damages; and
> 3. Declaring that [respondent] Helen Villaruel is not an employee of the Hacienda; hence she is not entitled to her money claims and her complaint is accordingly dismissed.
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> For this purpose, this case is REMANDED to the [LA] for proper action in light of the ongoing execution of the NLRC January 27, 2012 Resolution which is deemed permanently stayed by this decision.
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> SO ORDERED.[19]

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[13] Id. at 337-338.
[14] Id. at 231-253.
[15] Id. at 341-344. Penned by Commissioner Julie C. Rendoque and concurred in by Presiding Commissioner Violeta Ortiz Bantug.
[16] Id. at 275-307.
[17] Id. at 502-530. Penned by Associate Justice Edgardo L. Delos Santos (a retired Member of this Court) and concurred in by Associate Justices Pamela Ann Abella Maxino and Maria Elisa Sempio Diy.
[18] Id. at 524-526.
[19] Id. at 529-530.

However, upon the Spouses Villaruel's motion for reconsideration[20] dated May 27, 2013, the CA, through its assailed Amended Decision[21] dated January 9, 2015, reversed its previous ruling that Helen was not an employee, much less a regular employee, of the petitioners and therefore cannot be illegally dismissed. It affirmed the rulings of both the LA and the NLRC that she is a regular employee of petitioners based on Article 280 (now 295) of the Labor Code because she was engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer. Moreover, the CA found that since Helen does not qualify under any of the kinds of employees under the first paragraph of Art. 280, she is deemed a casual employee under the second paragraph, but can be considered a regular employee for having rendered at least one year of service, being constantly rehired until her dismissal.[22] The dispositive portion of the Amended Decision reads:

> **WHEREFORE**, premises considered, this Court resolves to PARTIALLY GRANT the [respondents'] 27 May 2013 Motion for Reconsideration. This Court's Decision dated 27 March 2013 is hereby AMENDED, PARTIALLY GRANTING the instant Petition for Certiorari. The public respondent NLRC's Resolution dated 27 January 2012 in NLRC Case No. VAC-06-000328-11 is hereby MODIFIED, to wit;
>
> 1. [Respondent] Lucito Villaruel was justly dismissed and was afforded with due process;
> 2. The award of wage differentials, 13th month pay, service incentive leave pay, and money commutation of the 5-day service incentive leave pay in favor of Lucito Villaruel, as computed by the [LA] in its 14 February 2011 Decision, remains and is hereby affirmed;
> 3. The award of [PHP]5,000.00 in favor of Lucito Villaruel in the concept of nominal damages is hereby DELETED;
> 4. [Respondent] Helen Villaruel is a regular employee of the petitioners and was therefore illegally dismissed;
> 5. [Petitioners] are jointly and solidarily DIRECTED to pay Helen Villaruel backwages, with wage differentials, computed from the time her salaries were withheld from her until the date of this Decision and separation pay equivalent to one (1) month pay for every year of her service;
> 6. [Petitioners] are jointly and solidarity DIRECTED to pay attorney's fees equivalent to 10% of the total monetary award to [respondents] Lucito Villaruel and Helen Villaruel.
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> For this purpose, this case is REMANDED to the [LA] for the proper determination and computation of the amounts awarded above.
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> SO ORDERED.[23]

On February 11, 2015, petitioners filed a Motion for Partial

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[20] Copy not attached to the Petition.
[21] *Rollo*, pp. 34-52.
[22] Id. at 46-48.
[23] Id. at 50-51.

Reconsideration[24] of the above Amended Decision, which the CA denied for lack of merit in its Resolution[25] dated July 20, 2015.

Hence, petitioners filed the instant petition before this Court, raising the sole legal issue of whether Helen, as a seasonal worker in a sugar plantation, should be considered a regular employee.[26]

On November 9, 2015, the Court issued a Resolution[27] denying the Petition for lack of merit. We found that Helen was indeed a farm worker who was in the regular employ of petitioners. For a number of years, she had been working on petitioners' land by sugarcane cultivation, counting *patdan* (canepoints), and other works related to sugar farming. Her employment was continuous in the sense that it was done for more than one harvesting season. Moreover, no amount of reasoning could detract from the fact that these tasks were necessary or desirable in the usual business of petitioners. Hence, the CA was correct in amending its earlier ruling insofar as Helen is concerned and declaring her dismissal as illegal.[28]

Subsequently, petitioners filed their Motion for Reconsideration[29] dated January 27, 2016, arguing that pursuant to *Gapayao v. Fulo*[30] (*Gapayao*) citing *Mercado, Sr. v. NLRC*,[31] one of the exceptions to the general rule where a seasonal employee who has worked for more than one season is considered not a regular employee is when the seasonal employee is free to contract their services elsewhere.[32] Since Helen was free to contract her services elsewhere, she could not be considered a regular seasonal employee.[33]

Helen filed her Comment/Opposition to Petitioners' Motion for Reconsideration[34] dated August 24, 2016, to which petitioners filed their Reply[35] dated September 14, 2016.

In Our Resolution[36] dated November 7, 2016, We resolved to grant petitioners' Motion for Reconsideration and set aside Our Resolution dated November 9, 2015, and reinstate the Petition. Thereafter, Helen filed her Comment to Petition[37] dated December 29, 2016, and petitioners, their Reply (To Comment to Petition)[38] dated May 3, 2019.

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[24] Id. at 534-548.
[25] Id. at 55-57.
[26] Id. at 15.
[27] Id. at 554-557.
[28] Id. at 555-556.
[29] Id. at 558-579.
[30] 711 Phil. 179 (2013).
[31] 278 Phil. 345 (1991).
[32] *Gapayao v. Fulo*, supra at 193.
[33] *Rollo*, p. 560.
[34] Id. at 582-585.
[35] Id. at 587-598.
[36] Id. at 600-601.
[37] Id. at 602-609.
[38] Id. at 615-630.

Our Ruling

It is undisputed that Helen is a seasonal worker. However, the parties differ as to whether she may be considered a regular employee.

Petitioners contend that Helen merely worked sparingly in the *hacienda* on *pakyaw* basis, that they did not wield any control over the manner by which she performed her work, and that she was free to work elsewhere. They presented affidavits[39] which showed that she was hired intermittently, counting *patdan* at times, and even managed and operated her own *sari-sari* store. Further, the payroll and worksheets[40] submitted by Helen show that she was not required to report daily and observe definite hours of work. They cite *Gapayao*,[41] where We held that when seasonal employees are free to contract their services with other farm owners, the former are not regular employees.[42] Further citing *Gapayao*, where We also held that employees paid on a *pakyaw* basis may be considered as regular employees only if their employers have control over the conduct of their work,[43] petitioners contend that Helen failed to prove by substantial evidence that petitioners had control over the manner she performed her work.[44]

On the other hand, respondents argue that there is no evidence presented to show that Helen worked with other *haciendas* or farm owners, and that the sample payrolls and worksheets, as well as the affidavit[45] of a former secretary of the *hacienda*, prove that she has been working as a regular employee of petitioners for many years. Moreover, they posit that *pakyaw* is just a method of compensation and does not negate regular employment. They maintain that under Art. 280 (now Art. 295) of the Labor Code, she is a regular employee, considering that she was engaged to perform activities which are necessary or desirable in the usual business or trade of the employer, and that she has rendered at least one year of service, whether continuous or broken, with respect to the activity for which she was employed.[46]

The LA,[47] the NLRC,[48] and the CA[49] uniformly found that Helen was a regular employee of petitioners. It is a settled rule that the factual findings of quasi-judicial agencies which have acquired expertise in the matters entrusted to their jurisdiction, when affirmed by the appellate court, are accorded by this Court not only respect but even finality.[50] Thus, We shall no longer disturb

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[39] Id. at 113-116.
[40] Id. at 158-160. See also id. at 23.
[41] Supra note 30.
[42] Id. at 193.
[43] Id. at 195.
[44] *Rollo*, pp. 565-566. See also id. at 591.
[45] Id. at 157.
[46] Id. at 606-607.
[47] Id. at 461.
[48] Id. at 334.
[49] Id. at 46.
[50] *Formantes v. Duncan Pharmaceuticals, Phils., Inc.*, 622 Phil. 287, 299 (2009).

this finding. However, while We agree with the CA that Helen was a regular employee, We disagree with its ratiocination in arriving at said conclusion and deem it necessary, for the guidance of the bench and the bar, to correct such erroneous reasoning.

Art. 295 (formerly Art. 280) of the Labor Code provides:

> Article 295. *Regular and casual employment.* — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except** where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or **where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.**
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he [or she] is employed and his [or her] employment shall continue while such activity exists. (Emphases supplied)

The CA found that, based on the first paragraph of Art. 280 (now Art. 295), Helen is a regular employee because she was employed by petitioners to perform sugarcane cultivation, counting *patdan*, and other works related to sugar farming, which are unquestionably necessary or desirable in the usual business or trade of petitioners.[51] For some reason, however, the CA further stated that Helen does not qualify under any of the kinds of employees covered by the first paragraph of Art. 280 (now Art. 295); hence, she is a casual employee under the second paragraph of the same provision. Moreover, it reasoned that since she is a casual employee who has rendered at least one year of service, whether continuous or broken, she may be considered a regular employee pursuant to the proviso in the second paragraph, and that being a *pakyaw* worker does not necessarily negate such regular employment status.[52]

It is erroneous for the CA to categorize Helen as a casual employee and apply the proviso under the second paragraph. The general rule is that the office of a proviso is to qualify or modify only the phrase immediately preceding it or restrain or limit the generality of the clause that it immediately follows. The second paragraph and its proviso take effect only if the employee is not covered by the first paragraph. In *Paz v. Northern Tobacco Redrying Co., Inc.*[53] citing *Mercado*,[54] We held that the proviso in the second paragraph

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[51] *Rollo*, pp. 47-48.
[52] Id. at 48.
[53] 754 Phil. 251 (2015).
[54] Supra note 31.

of Art. 280 (now Art. 295) applies only to "casual" employees and not to those who are covered by the first paragraph.[55]

The basis for saying that Helen is a regular seasonal employee is, therefore, not the proviso in the second paragraph but the exception to the exception, *i.e.*, the general rule enunciated in the first paragraph. The first paragraph of Art. 280 (now Art. 295) excepts from regular employment status only those seasonal employees whose employment is "for the duration of the season," *i.e.*, for one season. Hence, seasonal employees who were employed for more than one season in the work or service that they seasonally perform no longer fall under the exception in the first paragraph, but under the general rule of regular employment.[56]

While farm workers generally fall under the definition of seasonal employees, We have consistently held that seasonal employees may be considered as regular employees.[57] In *Abasolo v. National Labor Relations Commission*[58] and in *Gapayao*,[59] We held that regular seasonal employees are workers who are called to work from time to time, mostly during a certain season, and are temporarily laid off during off-season yet are not, strictly speaking, separated from service during said off-season period but are merely considered on leave until they are reemployed.[60]

In *Universal Robina Sugar Milling Corp. v. Acibo*,[61] We considered as a badge of regular employment the fact that a seasonal worker is continuously and repeatedly hired to perform the same tasks or activities for several seasons or even after the cessation of the season.[62] However, regular seasonal employees should be distinguished from regular employees of the sugar mill such as the administrative or office personnel who perform their tasks for the entire year regardless of the season.[63]

From the foregoing, the following requisites for the attainment of regular employment status by a seasonal employee may be deduced:

1) **The seasonal employee performs work or services that are seasonal in nature; and**

2) **The seasonal employee is employed to perform such work or services for more than one season.**

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55 *Paz v. Northern Tobacco Redrying Co., Inc.*, supra note 52, at 261.
56 See *Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade*, 444 Phil. 587, 596 (2003).
57 *Gapayao v. Fulo*, supra note 30, at 192-193.
58 400 Phil. 86 (2000).
59 Supra note 30.
60 *Abasolo v. National Labor Relations Commission*, supra note 58, at 104; and *Gapayao v. Fulo*, supra note 30, at 193.
61 724 Phil. 489 (2014).
62 Id. at 502.
63 Id. at 505.

The above requisites are present in this case. In fact, petitioners have repeatedly emphasized that they do not dispute the fact that Helen performs work that is seasonal in nature and that such cycle is repeated every year.[64] Nonetheless, they claim that she still cannot be considered a regular employee because of an exception that We laid down in our ruling in *Gapayao*,[65] citing *Mercado,*[66] where We held that when seasonal employees are free to contract their services with other farm owners, the former are not regular employees.[67]

Petitioners' reliance on *Mercado*, as cited in *Gapayao*, is misplaced. Our explanation in *Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade*[68] for the inapplicability of *Mercado* is worth reiterating, thus:

> *Mercado v. NLRC* was not applicable to the case at bar. In the earlier case, the workers were required to perform phases of agricultural work for a definite period of time, after which their services would be available to any other farm owner. They were not hired regularly and repeatedly for the same phase/s of agricultural work, but on and off for any single phase thereof. On the other hand, herein respondents, **having performed the same tasks for petitioners every season for several years, are considered the latter's regular employees for their respective tasks**. Petitioners' eventual refusal to use their services — even if they were ready, able and willing to perform their usual duties whenever these were available — and hiring of other workers to perform the tasks originally assigned to respondents amounted to illegal dismissal of the latter.[69] (Emphasis supplied)

In *Mercado*,[70] We agreed with the LA's finding that it was within the prerogative of the employer either to take in the workers to do further work or not after any single phase of agricultural work had been completed by them.[71] Unlike the workers in *Mercado*, Helen was not hired on and off for any single phase of agricultural work. She was hired repeatedly for the same activities, *i.e.*, sugarcane cultivation, counting *patdan*, etc. Hence, whether she was free to make her services available to other farm owners is of no relevance here. The fact that she maintains a *sari-sari* store is likewise inconsequential and not incompatible with her regular employment status with petitioners.

On petitioners' second argument that Helen cannot be deemed their regular employee because she was a *pakyaw* worker who was not subject to their control, We find the same bereft of merit. By arguing that her status as a *pakyaw* worker negates the existence of an employer-employee relationship, petitioners essentially want Us to engage in a factual review of the entire case to determine whether that relationship exists. However, such approach is not

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64 *Rollo*, pp. 15, 616, 561.
65 Supra note 30.
66 Supra note 31.
67 *Gapayao v. Fulo,* supra note 30, at 193.
68 Supra note 56.
69 Id. at 597.
70 Supra note 31.
71 Id. at 354-355.

allowed under a Rule 45 petition for review of a CA decision rendered under a Rule 65 proceeding. In deciding a Rule 45 petition for review of a labor decision rendered by the CA under Rule 65, the narrow scope of inquiry is whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the NLRC.[72] Even if We were to entertain such argument, the same utterly fails to persuade.

In *Abuda v. L. Natividad Poultry Farms*,[73] We explained that a *pakyaw* or task basis arrangement defines not the relationship between the parties but the manner of payment of wages.[74] In *Gapayao*,[75] We held that *pakyaw* workers are regular employees provided they are subject to the control of their employer.[76] However, we clarified that the control test "merely calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually supervises the performance of duties by the employee. It is enough that the former has a right to wield the power."[77]

Since Helen performed her tasks at petitioners' *hacienda*, the latter could easily exercise control and supervision over the former. Accordingly, whether petitioners actually exercised this right or power to control is immaterial as the law simply requires the existence of such right and the opportunity to control and supervise.[78]

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Amended Decision dated dated January 9, 2015 and the Resolution dated July 20, 2015 of the Court of Appeals in CA-G.R. SP No. 07025 are **AFFIRMED**.

SO ORDERED.

RICARDO R. ROSARIO
Associate Justice

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[72] *David v. Macasio*, 738 Phil. 293, 304 (2014).
[73] 835 Phil. 554 (2018).
[74] Id. at 568.
[75] Supra note 30.
[76] Id. at 195.
[77] Id. at 195-196.
[78] *David v. Macasio*, supra note 72, at 308-309.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

RAMON PAUL L. HERNANDO
Associate Justice

RODIL V. ZALAMEDA
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