Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RAMON O. SAMPANA, Petitioner, - versus - **THE MARITIME TRAINING CENTER OF THE PHILIPPINES, CAPTAIN ALEJANDRO C. AQUINO, JR., AND NORMANDY E. GUALBERTO,** Respondents.	**G.R. No. 264439** Present: LEONEN, *SAJ*, *Chairperson*, LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.* Promulgated: FEB 26 2024

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 158622 entitled *Ramon O. Sampana v. National Labor Relations Commission (Fourth Division), The Maritime Training Center of the Philippines, Captain Alejandro C. Aquino, Jr., and Normandy E. Gualberto*:

1. Decision[2] dated March 18, 2021 affirming the ruling of the National Labor Relations Commission (NLRC) that petitioner Ramon O. Sampana (Sampana) did not meet the

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1 *Rollo*, pp. 11–31.

2 *Id.* at 38–60. Penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Japar B. Dimaampao (now a member of the Court) and Carlito B. Calpatura, Third Division, Court of Appeals, Manila.

five-year requirement for optional retirement benefits under the Labor Code; and

2. Resolution[3] dated October 20, 2022 denying Sampana's Motion for Reconsideration.

Antecedents

On April 11, 2017, Sampana filed a Complaint[4] for illegal dismissal, regularization, and payment of retirement benefits, 14th month pay, training fees, separation pay, damages, and attorney's fees against respondents The Maritime Training Center of the Philippines (TMTCP), Captain Alejandro C. Aquino, Jr. (Capt. Aquino), TMTCP's chief executive officer (CEO), and Normandy E. Gualberto (Gualberto), TMTCP's administrative and finance manager.[5]

Sampana essentially averred that he was hired by TMTCP as Instructor initially under a consultancy agreement for a period of three months from March 21, 2011 to June 21, 2011 with a monthly salary of PHP 25,000.00. The consultancy agreement was continuously and repeatedly renewed every three months for three years, or from March 21, 2011 to March 20, 2014.[6] Eventually, his contract was changed by TMTCP to one captioned as "Employment with a Fixed Term" for a period of three months from March 21, 2014 to June 21, 2014[7] with a monthly gross compensation of PHP 27,000.00. The fixed-term contract was likewise repeatedly renewed[8] every three months until December 21, 2016.[9]

Meantime, on November 8, 2016, per advice of TMTCP's management, he sent a letter[10] to Gualberto inquiring about his retirement benefits. He stated therein that he already turned 60 and has been serving TMTCP for five years and seven months as of October 21, 2016. On November 24, 2016, he sent another letter[11] to Gualberto and Capt. Aquino notifying them that he preferred to retire after his five years and eight months of employment with TMTCP, and reiterating his query about his retirement benefits.[12]

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3 *Id.* at 62–64. Penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Carlito B. Calpatura and Jose Lorenzo R. Dela Rosa, Special Former Third Division, Court of Appeals, Manila.
4 *Id.* at 112–113.
5 *Id.* at 41.
6 *Id.* at 243–252.
7 *Id.* at. 253–254.
8 *Id.* at 255–267.
9 *Id.* at 41–42.
10 *Id.* at 263.
11 *Id.* at 264.
12 *Id.* at 39–40.

On December 21, 2016, he was allegedly dismissed by TMTCP without just cause. On the following day, he was required to sign an Employee Clearance Form with Release, Waiver and Quitclaim.[13]

TMTCP, on the other hand, countered that it is an educational institution that provides training to Filipino seafarers.[14] Sampana was engaged as its consultant from March 21, 2011 to March 20, 2014 under a consultancy agreement. Sampana requested that his contract be changed from consultancy to contractual basis so it entered into another contract with him. In the new contract, it was stipulated that Sampana's employment was for a fixed period from March 21, 2014 to June 21, 2014. This fixed-term contract was renewed several times. Sampana was fully aware that his employment as instructor was only for the duration of the training course, which is three months, and may be renewed by agreement of the parties.[15]

During the latter part of Sampana's employment, it received several complaints from its trainees regarding Sampana's manner of conducting his classes. Consequently, due to Sampana's unsatisfactory service, it decided not to renew Sampana's last contract after it expired on December 21, 2016. Hence, Sampana was not illegally dismissed.[16]

Too, he was not entitled to retirement pay. While he reached the required age for voluntary retirement, he failed to meet the required five years of service. The period for which he was hired as consultant should be excluded from the computation of the five-year service requirement since no employer-employee relationship existed between them. More, he is not entitled to 14th month pay considering that its grant is a prerogative of management. The grant of cash gift is an act of liberality, not an obligation, which Sampana cannot demand as a matter of right.[17]

Ruling of the Labor Arbiter

By Decision[18] dated August 31, 2017, the labor arbiter found Sampana to be a regular employee, and is thus entitled to retirement benefits, *viz.*:

> IN VIEW OF THE FOREGOING, respondent is directed to pay complainant retirement pay in the total of [PHP] 116,775.00, the computation of which is shown below.
>
> **Retirement Pay -**
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> **3/21/11 – 12/21/16 = 5 yrs.**

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13 *Id.* at 265.
14 *Id.* at 270.
15 *Id.* at 41–42.
16 *Id.* at 42.
17 *Id.* at 43.
18 *Id.* at 342–352.

[PHP] 27,000/26 = [PHP] 1,038.46
[PHP] 1,038.46 x 22.5 mos. x 5 yrs. = [PHP] 116,775.00

The rest of the claims are dismissed.

SO ORDERED.[19] (Emphasis in the original)

The labor arbiter held that Sampana was a regular employee of TMTCP pursuant to Article 280 of the Labor Code since he worked for at least a year from March 2011 to December 21, 2016 whether such service is continuous or broken.[20] He was, however, not illegally dismissed since he opted to retire from service.[21] He was also not entitled to his claim of 14th month pay and training fees.[22]

Ruling of the National Labor Relations Commission

On partial appeal[23] by TMTCP, the NLRC reversed per its Decision[24] dated June 26, 2018, *viz.*:

WHEREFORE, premises considered, the instant partial appeal filed by respondents is hereby **GRANTED**.

Accordingly, the Labor Arbiter's Decision dated 31 August 2017 is hereby **AFFIRMED WITH MODIFICATION** in that the award of Retirement Pay in favor of complainant Ramon Ortiz Sampana is hereby **DELETED** for lack of legal and factual basis.

The rest of the Decision **STANDS**.

SO ORDERED.[25] (Emphasis in the original)

It held that it was undisputed that Sampana was initially hired as a consultant under a consultancy agreement from March 21, 2011 to March 20, 2014, and thereafter on a fixed-term employment from March 21, 2014 to December 21, 2016.[26]

From March 21, 2014 to December 21, 2016, he was a fixed-term employee of TMTCP and not its regular employee. His employment with a fixed term was voluntarily agreed upon by TMTCP and Sampana himself.

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19 *Id.* at 352.
20 *Id.* at 348.
21 *Id.*
22 *Id.* at 350–351.
23 *Id.* at 355–366.
24 *Id.* at 90–105.
25 *Id.* at 104.
26 *Id.* at 101.

There was no indication that force, duress, or improper pressure was exerted on Sampana which could have vitiated his consent in signing the fixed-term employment contract/s. The period under the contract was only for three months, or from March 21, 2014 to June 21, 2014, which applied to the succeeding fixed-term contracts until Sampana's last contract which expired on December 21, 2016.[27]

Further, Sampana is not entitled to the minimum retirement benefits under the Labor Code. His employment as a consultant from March 21, 2011 to March 20, 2014 should be excluded from the computation of the five-year service requirement as there was then no employer-employee relationship to speak of between the parties. Thus, the labor arbiter erred in awarding him retirement benefits.[28]

Through Resolution[29] dated September 26, 2018, Sampana's Motion for Reconsideration[30] got denied.

Ruling of the Court of Appeals

On Sampana's Petition for *Certiorari*,[31] the Court of Appeals affirmed under its assailed Decision[32] dated March 18, 2021. By Resolution[33] dated October 20, 2022, it denied Sampana's Motion for Reconsideration.

The Present Petition

Sampana now seeks to reverse the foregoing dispositions of the Court of Appeals. He faults the appellate court for affirming that: (1) he was a fixed-term employee of TMTCP, and (2) he failed to meet the five-year service requirement for optional retirement under the Labor Code.[34]

He asserts that he was TMTCP's regular employee and not a fixed-term employee since he had been continuously employed by TMTCP for a period of more than five years under contracts which were similarly worded and unilaterally prepared by TMTCP.[35] He concludes that the piecemeal periods

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27 *Id.* at 98–100.
28 *Id.* at 103–104.
29 *Id.* at 107–110.
30 *Id.* at 369–375.
31 *Id.* at 65–86.
32 *Id.* at 38–60.
33 *Id.* at 62–64.
34 *Id.* at 19.
35 *Id.* at 23.

imposed by TMTCP in the contracts hindered him from attaining security of tenure.[36]

In its Comment[37] dated October 19, 2023, TMTCP ripostes that the petition should be dismissed for raising questions of fact which are not warranted under Rule 45 of the Rules of Court. In any event, it has sufficiently established that Sampana's fixed-term employment contracts are valid. Therefore, Sampana is not entitled to retirement benefits.[38]

Issues

1. Is Sampana a regular employee of TMTCP?

2. Was Sampana illegally dismissed?

3. Is Sampana entitled to backwages and retirement benefits?

Ruling

Sampana is a regular employee of TMTCP

The existence of an employer-employee relationship is a pure factual issue which the Court does not generally entertain. The Court is not a trier of facts, and this rule applies with greater force in labor cases. Hence, the factual findings of the NLRC are generally accorded not only respect but even finality if supported by substantial evidence and especially when affirmed by the Court of Appeals. But a disharmony between the factual findings of the Labor Arbiter and the NLRC, as in this case, opens the door for review by the Court.[39] Here, there is a need to review the records to determine whether the Court of Appeals, in the exercise of its *certiorari* jurisdiction, erred in affirming that Sampana is not a regular employee of TMTCP, thus:

> ....
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> However, with respect to the period from March 21, 2011 up to March 20, 2014, We opine that the same should not be included in the computation since no employer-employee relationship existed between the parties while petitioner was a consultant.

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36 *Id.* at 25.
37 *Id.* at 445–453.
38 *Id.* at 447–452.
39 *Perez v. The Medical City General Hospital*, 519 Phil. 129, 133 (2006) [Per J. Azcuna, Second Division].

To ascertain the existence of an employer-employee relationship, jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee, (2) the payment of wages, (3) the power of dismissal, and (4) the power to control the employee's conduct, or the so-called "control test." Verily, the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called "control test," and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end.

Based on the Consultancy Agreements entered into between the parties, petitioner was engaged to "provide consultancy services and coordinate to the Training Director and/or Course Director, for further instructions on his duties and responsibilities and other pertinent related functions." It is also stated therein that petitioner's consultancy services would be paid in the amount of [PHP] 25,000.00 subject to the deduction of ten percent (10%) creditable withholding tax. Consequently, no income tax was withheld from petitioner. No deductions were likewise made with respect to petitioner's contributions for coverage under PhilHealth, Social Security System (SSS), Pag-Ibig, and other contributions mandated by law to be collected by an employer from the employees.

The consultancy hours agreed upon was from 8:00 o'clock in the morning to 5:00 o'clock in the afternoon from Monday to Friday, and 8:00 o'clock in the morning to 12:00 o'clock noon every Saturday. However, there was no stipulation in the agreement that petitioner was required to physically report at the TMTCP premises from Monday to Saturday. Petitioner likewise failed to present proof that he was actually present at the TMTCP premises for the entirety of the agreed consultancy period.

Petitioner asseverates that he was mandated to familiarize himself with a certain manual, serving as proof that TMTCP exercised control over how petitioner performed his duties. Under the consultancy agreement, said manual refers to nothing more than the TMTCP Company Policies and Regulations. Such document pertains to general matters affecting all stakeholders of TMTCP, i.e., with regard to office decorum and attire. The same does not prescribe the manner or method by which petitioner should conduct the assigned training course. And looking at the complaints, comments, and suggestions of the trainees regarding petitioner and the training course, it is apparent that the manner and method by which petitioner performed his duties are not regulated by TMTCP. Petitioner is given freedom of discretion on how to carry out the training course during the consultancy, petitioner is not even precluded from devoting an hour's worth of lecture time to sharing anecdotes from the Bible.

Under the circumstances, We agree with the findings of the NLRC that the aforecited tests for the existence of employer-employee relationship were not met in this case.[40] (Citations omitted)

We reverse.

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[40] *Rollo*, pp. 56–58.

At the outset, TMTCP admitted that it is an educational institution that provides basic safety courses and/or programs in order to ensure efficiency in operation and safety in navigation of the growing national fleet and foreign ships manned by Filipino seafarers, and conducts assessment of a seafarer's competence.[41] The Court, thus, observes that TMTCP is a maritime training institution (MTI) pursuant to the prevailing rules of the Maritime Industry Authority (MARINA). Under existing MARINA rules, an MTI is authorized to "establish a system of hiring qualified *instructors* in accordance with the qualification standards set forth by the MARINA STCW[42] Office."[43]

Indeed, to carry out its business as an MTI, TMTCP hired Sampana to be one of its instructors. Per the so-called Consultancy Agreements of the parties, Sampana was engaged as an **"Instructor"** of TMTCP, to wit:

Consultancy Agreement

Dear Mr. Sampana,

This will confirm our initial discussion regarding the engagement of your services as Instructor from 21 June to 21 September 2011.

The Consultancy hours are from 0800 to 1700 hours, from Monday to Friday, and from 0800 to 1200 hours, during Saturday.

This ***engagement contract*** shall be covered by the terms and conditions defined in the prevailing Company Policies and Regulations, thus, ***it is mandatory that you familiarize yourself with this handbook.***

You will coordinate to (sic) the **Training Director** and/or Course Director, for further instructions on your duties and responsibilities and other pertinent related functions.

The fee for your Consultancy services will be **Pesos: Twenty[-]Five Thousand ([PHP] 25,000.00)** monthly, subject to the deduction of the mandatory ten percent (10%) creditable tax withheld, on income payments for professional services rendered by juridical persons / individuals. Please be guided that TMTCP, Inc. will be penalized, with interest and surcharges, if the Company would fails (sic) to withhold the expanded withholding tax.

Furthermore, this is to clarify that the expanded withholding tax is not a final tax, and, therefore, you are not included in the substituted filing through the submission to the Bureau of Internal Revenue (BIR) of the annual alphabetical list of taxes withheld on compensation. The Company will issue BIR form number 2307, as certificate of creditable tax withheld from our consultancy fees.

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41 *Id.* at 270.

42 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.

43 MARINA Memorandum Circular No. SC-2021-08 (2021), Sec. 19.

This Consultancy Agreement shall take effect on 21 March 2011, until such time that it is terminated by either party by giving thirty (30) days written notice.

If the above terms and conditions are acceptable to you, please indicate by affixing your signature on the conforme below.

Welcome onboard The Maritime Training Center of the Philippines, Inc.

Very truly yours,
(Sgd.)
CAPT. ALEJANDRO C. AQUINO JR.
President, MM

Noted by:
(Sgd.)
MR. NORMANDY E. GUALBERTO
Administration and Finance Director

Conforme:
(Sgd.)
3/M Ramon O. Sampana
Date 23/06/11[44] (Emphasis in the original)

Relevantly, under TMTCP's Quality Management System Records Manual,[45] an ***Instructor*** is ordained to perform the following main function and responsibilities, *viz.*:

Main Function:

Imparting knowledge / attitude type and / or physical skill / proficiency-type subject matter in the manner and competence required by national and international regulatory bodies / agencies, and as expressed in the Company's quality policy.

Responsibilities:

1. Prepare Instructor Guide / Lesson Plan in coordination with Course Director and Training Director. Recommend updating of Instructor Guide / Lesson Plan as necessary.

2. Teach according to the current Instructor Guide / Lesson Plan and the relevant provisions of WI 1.2

3. Construct valid and reliable test items for approval by the Training / Course Director.

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44 *Rollo*, pp. 243–252.
45 *Id.* at 240.

4. Finalize Enrollment Report and grades of students. Prepare Student Performance Record and Course Completion Report.

5. Keep abreast of latest training / instructional trend in the maritime educational field.

6. Recommend methods and materials for the improvement of teaching quality.

7. Be fair, firm and friendly in all dealings with students, especially during teaching activities.[46]

Based on the nature of the foregoing main function and responsibilities, calling the contract as a Consultancy Agreement is a misnomer. A consultant is a person "who gives expert or professional advice"[47] and "possesses special knowledge or skills and provides that expertise to a client for a fee."[48] A consultant "helps all sorts of businesses find and implement solutions to a wide variety of problems."[49]

In the case of Sampana, he was engaged to provide training to seafarers enrolled in TMTCP in compliance with the certification requirement of national and international bodies tasked with the regulation of the practice of their profession. His functions as such conform with the functions of an instructor as laid out in TMTCP's Quality Management System Records Manual. Noticeably, he did not give expert or professional advice nor help to find and implement solutions to a wide variety of business problems.

Indeed, it is not the title of the contract or the designation of the position given to Sampana which determines the nature of his engagement. It is how the law defines it. Clearly, it was an employment contract and Sampana was an employee who was issued not one, but **seven** successive and uniformly worded "Consultancy Agreements"[50] with TMTCP from March 21, 2011 to March 20, 2014, as well as **10** subsequent alleged "Employment with a Fixed Term" contracts[51] from March 21, 2014 to September 21, 2016, bearing exactly the same wording as the previous "Consultancy Agreements." As stated though, in the eyes of the law, these engagements were in reality contracts of employment chopped into three months each, obviously as a scheme to prevent Sampana from acquiring regular status.

This brings us to the finding of the Court of Appeals that Sampana was only a fixed-term employee from March 21, 2014 until his termination on December 21, 2016, thus:

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46 *Id.*
47 US Legal, Legal Definitions, available at https://definitions.uslegal.com/c/consultants/ (last accessed on July 27, 2023).
48 *Id.*
49 *Id.*
50 *Rollo*, pp. 243–252.
51 *Id.* at 253–262.

With regard to the last employment contract between the parties, which covered the period starting from September 21, 2016 to December 21, 2016, the same was made only verbally. Hence, no written proof of the employment terms are available to Us. In such a scenario, We are guided by the ruling in *Quebral, et al. vs. Angbus Construction, Inc.* where it was held that the absence of a written contract of employment does not by itself grant regular status to an employee. However, it is evidence that the employee was informed of the duration and scope of his/her work and his/her employment status at the start of his/her engagement.

Since March 21, 2014, petitioner had entered into 3-month long employment contracts with TMTCP, specifically, a subsequent contract with the same terms and duration which had been entered into after the expiration of the last. ...

A perusal of petitioner's payslips for the months of September 2016 to December 2016 also reveals that petitioner was compensated at a monthly rate of [PHP] 27,500.00, the same amount he had been receiving since March 21, 2015, pursuant to contracts similarly worded as the aforequoted contract of employment. There was likewise no allegation in any of petitioner's pleadings that there was any variation in his work arrangements for the period starting from September 21, 2016 to December 21, 2016. Thus, from all indications, the last employment contract between the parties, which covered the period starting from September 21, 2016 to December 21, 2016, is no different from the employment contracts that came before it. Accordingly, We can place the same treatment for all the subject 3-month contracts between the parties for the period starting from March 21, 2014 to December 21, 2016.

After careful examination of the above-quoted 3-month contract of employment, it is apparent that both parties knowingly and willingly agreed on the terms thereof. Both parties agreed that the duration of said contract was only 3 months. The same observation holds true with respect to each subsequent 3-month contract of employment, until the last one which expired on December 21, 2016.

It is undisputed that petitioner, then an instructor/trainer for aspiring seafarers, was engaged to perform activities which are necessary or desirable in the usual business or trade of TMTCP, a training institution for Filipino seafarers. However, while certain forms of employment require the performance of usual or desirable functions and exceed one year, these do not necessarily result in regular employment under Article 295 of the Labor Code. ...

....

Under the Civil Code, fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by nature seasonal or for specific projects with predetermined dates of completion. They also include those to which the parties by free choice have assigned a specific date of termination.[52] (Citations omitted)

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[52] *Id.* at 50–52.

....

> In stark contrast, it appears that petitioner himself requested for a contractual arrangement when he wrote a letter dated March 13, 2014 addressed to private respondent Aquino.[53] ...
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> ....
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> Accordingly, We opine that petitioner and TMTCP dealt with each other on more or less equal terms, with no moral dominance exerted by one over the other. We thus agree with the conclusion reached by the NLRC that petitioner can not be deemed as a regular employee and the fixed-term contracts entered into by the parties can not be said to be in circumvention of the law on security of tenure.[54] ... (Citations omitted)

Again, we cannot agree. Though not explicitly mentioned in the Labor Code, fixed-term employment was recognized by the Court in *Brent School, Inc. v. Zamora*[55] as another classification of employment. The Court nonetheless emphasized that where from the circumstances, it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down or disregarded as contrary to law and public policy.[56]

Further, in *GMA Network, Inc. v. Pabriga*,[57] the Court outlined the criteria of a valid fixed-term employment as enunciated in *Brent*, *viz.*:

> 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
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> 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.[58]

Here, TMTCP did not deal with Sampana, with more or less equal terms as to negate exertion of its moral dominance on the latter.

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53 *Id.* at 54.
54 *Id.* at 55.
55 260 Phil. 747 (1990) [Per J. Narvasa, *En Banc*].
56 *Id.* at 761.
57 722 Phil. 161 (2013) [Per J. Leonardo-De Castro, First Division].
58 *Id.* at 178, *citing Romares v. National Labor Relations Commission*, 355 Phil. 835, 847 (1998) [Per J. Martinez, Second Division] and *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, 471 Phil. 355, 372–373 (2004) [Per J. Callejo, Sr., Second Division].

For one, the fact that Sampana is a professional does not automatically establish that he and TMTCP dealt with each other on more or less equal terms with no moral dominance exercised by TMTCP.

In *Samonte, et al. v. La Salle Greenhills, Inc.*,[59] La Salle Greenhills, Inc. (LSGI) contracted the services of medical professionals, such as pediatricians, dentists and a physician, to comprise its Health Service Team (HST). Notably, Samonte and the other members of the HST (Samonte, et al.) were repeatedly engaged by LSGI under a uniform one-page Contracts of Retainer for a period of 15 years or from 1989 to 2004. LSGI thereafter informed Samonte, et al. that their contracts will no longer be renewed since LSGI decided to hire full-time doctors and dentists; thus, they filed a complaint for illegal dismissal against LSGI.[60] The Court decreed that Samonte, et al. were regular employees, *viz.*:

> In the case at bar, the Court of Appeals disregarded the repeated renewals of the Contracts of Retainer of petitioners spanning a decade and a half.[61]
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> ....
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> We completely disagree with the Court of Appeals.
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> The uniform one-page Contracts of Retainer signed by petitioners were prepared by LSGI alone. Petitioners, medical professionals as they were, were still not on equal footing with LSGI as they obviously did not want to lose their jobs that they had stayed in for fifteen (15) years. There is no specificity in the contracts regarding terms and conditions of employment that would indicate that petitioners and LSGI were on equal footing in negotiating it. Notably, without specifying what are the tasks assigned to petitioners, LSGI "may upon prior written notice to the retainer, terminate [the] contract should the retainer fail in any way to perform his assigned job/task to the satisfaction of La Salle Greenhills, Inc. or for any other just cause."
>
> While vague in its sparseness, the Contract of Retainer very clearly spelled out that LSGI had the power of control over petitioners.
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> ....
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> In all, given the following: (1) repeated renewal of petitioners' contract for fifteen years, interrupted only by the close of the school year; (2) the necessity of the work performed by petitioners as school physicians and dentists; and (3) the existence of LSGI's power of control over the means and method pursued by petitioners in the performance of their job, we rule that petitioners attained regular employment, entitled to security of tenure who could only be dismissed for just and authorized causes. Consequently,

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59 780 Phil. 778 (2016) [Per J. Perez, Third Division].
60 *Id.* at 793.
61 *Id.* at 792.

> petitioners were illegally dismissed and are entitled to the twin remedies of payment of separation pay and full back wages. We order separation pay in lieu of reinstatement given the time that has lapsed, twelve years, in the litigation of this case.[62]

Here, the terms and conditions of the similarly worded two-page "Consultancy Agreements" and "Employment with a Fixed Term" contracts do not suggest at all that Sampana and TMTCP were on equal footing when these engagements were negotiated. In fact, the records do not show that Sampana had any participation in the preparation of his supposed fixed-term employment contracts or consultancy agreements.

For another, in his letter to Capt. Aquino, CEO and President of TMTCP, dated January 16, 2017,[63] Sampana pleaded to confirm his employment status with TMTCP for the sake of his daughter who was still studying and to give him some kind of assurance that in the coming months or years, he could still pay for his family's rent, utility expenses, and loan. This spoke volumes of his family's dependence on his employment with TMTCP for their subsistence.

Thus, in truth, Sampana was not in a position to bargain on the terms of his employment with TMTCP. The so-called "Consultancy Agreements," as well as the "Employment with a Fixed Term" contracts were but a ruse to prevent him from attaining the status of a regular employee. His repeated engagement under a three-month contract each time was undeniably a circumvention of his right to security of tenure. Hence, the Court strikes down these contracts for being contrary to law and public policy. The Court further declares that Sampana was a regular employee of TMTCP since March 21, 2011 until his dismissal on December 21, 2016.

Article 295 [280] of the Labor Code defines regular employment, thus:

> 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 services to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered

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62 *Id.* at 793–794.

63 *Rollo*, p. 266.

> 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 is employed and his employment shall continue while such actually exists.

There are two types of regular employees: (a) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (b) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category).[64]

In *Fuji Network Television, Inc. v. Espiritu*,[65] the Court ordained that a contract indicating a fixed term does not automatically mean that an employee could never be a regular employee, as this is precisely what Article 280 seeks to avoid. Thus, the *Brent* ruling on fixed-term employment remains as the *exception* rather than the general rule.[66]

As well, *Fuji* decreed that the repeated engagement under a fixed-term contract is indicative of the necessity and desirability of the employee's work in the employer's business. And where the employee's contract has been continuously extended or renewed to the same position, with the same duties and remained in the employ without any interruption, then such employee is a regular employee.[67]

Remarkably, Sampana is deemed a regular employee under both categories of Article 295 [280] of the Labor Code and pursuant to the doctrine laid down in *Fuji*. As an instructor of TMTCP, the nature of Sampana's work is necessary and desirable to TMTCP's usual business as an educational institution providing training to seafarers. Too, Sampana has been employed as an instructor of TMTCP from March 21, 2011 to December 21, 2016. Verily, the repeated hirings of Sampana for over five years indicates the necessity of his work.

Sampana was illegally dismissed

A regular employee enjoys the constitutional right of security of tenure. Consequently, a regular employee cannot be dismissed without just or authorized cause.[68]

TMTCP posits that it decided not to renew Sampana's last contract after it expired on December 21, 2016 due to Sampana's supposed unsatisfactory

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64 *ABS-CBN Corp. v. Concepcion*, 887 Phil. 71, 92–93 (2020) [Per J. Zalameda, Third Division].
65 749 Phil. 388 (2014) [Per J. Leonen, Second Division].
66 *Id.* at 439.
67 *Samonte. v. La Salle Greenhills, Inc.*, 780 Phil. 778, 792 (2016) [Per J. Perez, Third Division].
68 Labor Code, as renumbered in 2015, art. 294.

service. But as stated, Sampana was a regular employee who was dismissed under the guise of an alleged Fixed Term Contract that had expired. Also, the supposed complaints against his method of teaching, standing alone, without even a semblance of due process pertaining to the two notice rule and hearing, cannot be considered a just or valid cause for termination. Sampana was, therefore, deemed to have been illegally dismissed.

Under the law and existing jurisprudence, the legal consequences of illegal dismissal are: (a) reinstatement without loss of seniority rights and other privileges, or in lieu thereof, separation pay; *and* (b) full backwages.[69] On February 16, 2021, however, Sampana turned 65 years old and had reached the compulsory age of retirement. In view of his compulsory retirement, reinstatement had become impossible. Thus, Sampana is entitled to full back wages computed from his illegal dismissal on December 21, 2016 up to February 16, 2021 when he turned 65 years old.

In addition, Sampana is entitled to attorney's fees equivalent to 10% of the total monetary award pursuant to Article 111[70] of the Labor Code. It is well-settled that where an employee was forced to litigate and, thus, incurred expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[71]

The Court notes that Sampana is represented by the Public Attorney's Office (PAO). Jurisprudence dictates that while petitioner is still entitled to attorney's fees even if he is represented by the PAO, it shall be received by PAO as a trust fund to be used for the special allowances of its officials and lawyers in accordance with Book IV, Title III, Chapter 5 of Executive Order No. 292, or the Administrative Code of 1987,[72] as amended by Republic Act No. 9406.[73]

Finally, the total monetary award shall earn legal interest of 6% per annum from finality of this Decision until fully paid in accordance with prevailing jurisprudence.[74]

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69 *Agapito v. Aeroplus Multi-Services, Inc.*, G.R. No. 248304, April 20, 2022 [Per J. Lazaro-Javier, Third Division].

70 Article. 111. Attorney's fees. – ....
(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

71 *Agapito v. Aeroplus Multi-Services, Inc.*, G.R. No. 248304, April 20, 2022 [Per J. Lazaro-Javier, Third Division], *citing Leus v. St. Scholastica's College Westgrove*, 752 Phil. 186 (2015) [Per J. Reyes, Third Division].

72 *Id., citing Our Haus Realty Development Corp. v. Parian*, 740 Phil. 699 (2014) [Per J. Brion, Second Division].

73 An Act Reorganizing and Strengthening the Public Attorney's Office (PAO), Amending for the Purpose Pertinent Provisions of Executive Order No. 292, otherwise known as the "Administrative Code of 1987," as Amended, Granting Special Allowance to PAO Officials and Lawyers, and Providing Funds Therefor, approved March 23, 2007.

74 *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013) [Per J. Peralta, *En Banc*].

Sampana is entitled to retirement benefits under the Labor Code

As it is already settled that Sampana was a regular employee of TMTCP since March 21, 2011 until his termination on December 21, 2016, the Court ordains that Sampana is entitled to retirement benefits under Article 302 [287] of the Labor Code.

Retirement benefits are a form of reward for an employee's loyalty and service to an employer and are earned under existing laws, collective bargaining agreements, employment contracts, and company policies.[75]

Article 302 [287] of the Labor Code, as amended by Republic Act No. 7641[76] provides for two types of retirements, namely: (1) optional retirement at age 60; and (2) compulsory retirement at age 65. The law does not make any distinction as for the grant of retirement benefits in either case. In both cases, the retirement benefit is equivalent to 1/2 month salary for every year of service, the 1/2 month being computed at 22.5 days[77] provided the employee has worked with his or her employer for at least five years prior to retirement.[78]

To recall, Sampana has expressed his intent to optionally retire through his letters dated November 8 and 24, 2016 because he had already turned 60 years old on February 16, 2016. At the time he opted to retire, he had been employed with TMTCP for at least five years already. Meantime, during the pendency of the case, he turned 65 years old on February 16, 2021 and reached the compulsory age of retirement. Evidently, he complied with requirements of age and tenure for retirement under Article 302 [287] of the Labor Code, as amended.

In fine, there is a need to remand the case to the labor arbiter for the computation of the total monetary award and retirement benefits due Sampana.

A Final Word. The Court will not allow employers to circumvent the basic principles of labor laws which were meticulously crafted to ensure full protection to laborers.[79] This becomes more true when fixed-term contracts

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75 *Santo v. University of Cebu*, 860 Phil. 979, 987 (2019) [Per J. Lazaro-Javier, Second Division].

76 An Act Amending Article 287 of Presidential Decree No. 442, as amended, Otherwise Known as The Labor Code of the Philippines, By Providing For Retirement Pay to Qualified Private Sector Employees in the Absence of Any Retirement Plan in the Establishment, approved December 9, 1992.

77 One-half (1/2) month salary means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay and the remaining 5 days for service incentive leave. *See Elegir v. Philippine Airlines, Inc.*, 691 Phil. 58, 73 (2012) [Per J. Reyes, Second Division].

78 *Santo v. University of Cebu*, 860 Phil. 979, 990 (2019) [Per J. Lazaro-Javier, Second Division].

79 *Bantogon v. PVC Master Mfg. Corp.*, 885 Phil. 638, 648 (2020) [Per J. Lazaro-Javier, First Division].

are used as a vehicle to exploit the economic disadvantage of workers,[80] to preclude them from acquiring regular employment, and to prevent them from receiving their much hoped for retirement benefits. Indeed, retirement benefits are intended to help the employee enjoy the remaining years of his or her life, releasing the retiree from the burden of worrying for his or her financial support.[81]

ACCORDINGLY, the Petition is **GRANTED**. The Decision dated March 18, 2021 and Resolution dated October 20, 2022 of the Court of Appeals in CA-G.R. SP No. 158622 are **REVERSED**.

Respondent The Maritime Training Center of the Philippines is found liable for the illegal dismissal of petitioner Ramon O. Sampana. It is ordered to **PAY** him the following:

1) Full backwages computed from December 21, 2016 up to February 16, 2021 when he turned 65 years old;

2) Retirement benefits under Article 302 of the Labor Code computed from February 16, 2021; and

3) Attorney's fees equivalent to 10% of the total monetary award to be remitted directly to the Public Attorney's Office.

The total monetary award shall earn legal interest at 6% per annum from finality of this Decision until fully paid.

The case is **REMANDED** to the labor arbiter for the computation of the total monetary award.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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80 *Claret School of Quezon City v. Sinday*, 864 Phil. 1053, 1074–1075 (2019) [Per J. Leonen, Third Division].

81 *Santo v. University of Cebu*, 860 Phil. 979, 992 (2019) [Per J. Lazaro-Javier, Second Division].

WE CONCUR:

Ce separate opinion

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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 M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ALEXANDER G. GESMUNDO
Chief Justice