REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **13 January 2021** *which reads as follows*:

"**G.R. No. 212393** ***(Danilo P. Alcebar v. Court of Appeals [23rd Division], Motorkee Trading[1] and/or Ms. Nathalie Q. Ng, Proprietress/Mitsukoshi Motors Phils., Inc. and/or Mr. Eric W.C. Ngan, Chairman of the Board).*** – This is a petition for *certiorari* under Rule 65 of the Rules of Court assailing the July 31, 2013 Decision[2] and February 14, 2014 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 04860. The CA affirmed with modification the Decision[4] of the National Labor Relations Commission *(NLRC)*, promulgated on November 29, 2011, which upheld the termination of Danilo P. Alcebar *(petitioner)* but penalized Motorkee Trading *(respondent company)* for failure to observe procedural due process.

Antecedents

Petitioner started working with respondent company on January 16, 2004 as Officer-in-Charge *(OIC)* of its Kidapawan City, Cotabato branch. He became Branch Manager of its Cagayan de Oro Branch on June 17, 2004, and later transferred to the Midsayap Branch on August 21, 2006 with an increase in salary plus meal allowance.[5]

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[1] Also referred to as "Motor-kee Trading" in some parts of the *rollo*.
[2] *Rollo*, pp. 192-201; penned by Associate Justice Edgardo T. Lloren with Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras, concurring.
[3] Id. at 209-211.
[4] Id. at 143-154; penned by Commissioner Dominador B. Medroso, Jr. with Presiding Commissioner Bario-Rod M. Talon and Commissioner Proculo T. Sarmen, concurring.
[5] Id. at 193.

Petitioner's version

Petitioner claims that sometime in the later part of 2006, through the inducement of respondent company's personnel, petitioner applied for and was allowed to assume the post of a field auditor. Less than a year later, he was assigned as a liaison officer for several branches. However, respondent company closed its Davao City regional office in 2008 which directly affected petitioner's status. Respondent company then offered the affected employees, including petitioner, to either tender their resignation and avail of separation benefits or assume any available position in the provincial branches. Petitioner opted to accept another assignment which led to his transfer to the branch in Kidapawan City as a marketing assistant.[6]

Sometime in December 2010, petitioner received a memorandum accusing him of requesting for a series of demotions. He was also asked to explain why he should not be terminated based on loss of trust and confidence. He submitted his explanation letter refuting the accusation.[7]

Subsequently, petitioner received another memorandum ordering him to assume the post of branch manager in the San Francisco Branch in Agusan del Sur. He sent several letters manifesting his refusal to accept the assignment and claimed that his re-assignment is a form of harassment which respondent company did not offer additional financial benefits which would mitigate his relocation.[8] Despite his protest, private respondents terminated him on January 24, 2011. On the same date, petitioner filed a complaint for illegal dismissal.[9]

Private respondents' version

Private respondents maintain that petitioner requested his immediate superiors to demote him to positions of lower rank and lesser responsibilities, but without change in his salary as branch manager.[10] Due to several inquiries coming from personnel of other branches holding the positions of field auditor, liaison, and marketing assistants who were receiving lesser compensation, private respondents' Human Resources Management in Quezon City conducted an administrative conference on December 8, 2010. During the conference, petitioner received Memorandum

[6] Id. at 6.
[7] Id.
[8] Id.
[9] Id. at 7.
[10] Id. at 253.

HR-2010-12-42 directing him to explain why he continuously received the compensation of a branch manager but did not want to assume such position. Petitioner replied that his superiors at the regional office assigned him as liason officer, a lower position with lesser responsibilities.[11]

After the conference and deliberation of petitioner's case, respondent company sent Memorandum HR-2010-12-88 ordering him to report to the San Francisco Branch and assume the position of branch manager on December 20, 2010. Petitioner did not report to the branch as instructed. Respondent company then issued Memorandum HR-2010-12-98 on December 20, 2010 and extended petitioner's reporting date until the following day without any reprimand. Petitioner still did not report and instead sent a request for payment of 100% separation pay claiming "that I have to resign from my employment but your offer of 50% as my separation pay is not acceptable to me." Respondent company denied asking for petitioner's resignation and instead sent Memorandum HR 2010-12-107 on December 22, 2010.[12]

Respondent company claims that it issued Memorandum 2010-12-109 on December 27, 2010 instructing petitioner to explain why he should not be penalized for his disobedience and disruption of operations in the San Francisco Branch. Petitioner and respondent company thereafter exchanged several letters.[13]

During the January 14, 2011 administrative conference, petitioner manifested that he was no longer interested in continuing his employment and that he would voluntarily resign. He, however, reiterated his claim for 100% separation pay. On January 21, 2011, respondent company issued Memorandum HR 2011-01-147 terminating the services of petitioner on the grounds of lack of trust and confidence and serious disobedience.[14]

The Labor Arbiter Decision

In a Decision[15] promulgated on June 27, 2011, Labor Arbiter Merceditas C. Larida *(LA Larida)* dismissed the complaint for lack of merit. LA Larida held that petitioner's refusal to accept his assignment to the San Francisco Branch was unjustifiable. Since there was nothing irregular in his re-assignment, respondent company had only validly exercised its

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[11] Id. at 254.
[12] Id. at 254-255.
[13] Id. at 255.
[14] Id.
[15] Id. at 103-107.

management prerogative.[16] LA Larida also found that petitioner was not coerced into resigning since, even prior to his dismissal, he had consistently manifested his intention to resign rather than accept his re-assignment.[17]

The NLRC Decision

On November 29, 2011, the NLRC Eighth (8th) Division in Cagayan de Oro City rendered a Resolution[18] disposing as follows:

> **WHEREFORE**, the appeal is **PARTIALLY GRANTED**. The Assailed Decision dated 27 June 2011 is **AFFIRMED WITH MODIFICATION**. Accordingly, the dismissal of complainant-appellant is with just cause, hence, valid. However, finding that the procedural due process has not been satisfactorily complied with by the respondents, complainant-appellant is hereby indemnified the amount of ₱30,000.00 as nominal damages.
>
> **SO ORDERED.**[19]

The NLRC noted that petitioner's actuations after the issuance of the transfer order demonstrated that he did not want to assume the position of branch manager despite receiving the salary rate commensurate to the position. Since an employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interest, respondent company has the right to dismiss such an employee if only as a measure of self-protection.[20]

However, the NLRC found that the only time petitioner was apprised of his possible termination was in the December 4, 2010 Memorandum. The Memorandum dated January 5, 2011, which scheduled an administrative conference, did not mention that petitioner's termination was being sought. Evidently, there was noncompliance with the requirements of a show cause notice which should have informed him of his possible termination from employment.[21]

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[16] Id. at 106-107.
[17] Id. at 107.
[18] Id. at 143-154.
[19] Id. at 153-154.
[20] Id. at 149-150.
[21] Id. at 151-152.

Petitioner sought reconsideration but the NLRC denied the same through a Resolution issued on January 30, 2012.[22]

The CA Decision

On July 31, 2013, the CA issued the assailed Decision modifying the Resolution of the NLRC as follows:

> **WHEREFORE**, the petition is hereby DENIED. The National Labor Relations Commission Eighth (8th) Division's (NLRC) Resolutions promulgated on November 29, 2011 and January 30, 2012 are hereby AFFIRMED with MODIFICATION that the award of nominal damages is fixed at twenty thousand pesos (₱20,000.00) only.
>
> SO ORDERED.[23]

The CA held that petitioner's designation as branch manager does not amount to constructive dismissal and was done within private respondents' prerogative.[24] The appellate court also agreed with the NLRC that respondents failed to observe procedural due process in terminating petitioner. However, it noted that based on the prevailing facts, the nominal damages of ₱30,000.00 based on *Agabon v. NLRC (Agabon)*[25] should be reduced to ₱20,000.00.[26]

Petitioner filed a motion for reconsideration but the CA denied the same in the Resolution[27] issued on February 14, 2014.

Issues

Petitioner attributes grave abuse of discretion on the part of the CA based on the following grounds:

> a) It abdicated its judicial duty to reconcile its own legal finding therein that there was no constructive dismissal when the petitioner was ordered by the private respondents to transfer from their branch in Kidapawan City, North Cotabato to

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[22] Id. at 171-172.
[23] Id. at 200-201.
[24] Id. at 197-198.
[25] 485 Phil. 248 (2004).
[26] *Rollo*, pp. 198-200.
[27] Id. at 209-211.

another one which is located in San Francisco, Agusan Del Sur with [a simultaneous] legal finding that such transfer is in fact a promotion; and

b) It maintained that the issues being raised by the petitioner in his motion for reconsideration are mere rehash or repetition of the matters at dispute which it has already resolved or passed upon despite of its conspicious *(sic)* failure to cite in its original Decision dated [July 31, 2013] any evidence to support its conclusion that petitioner's contemplated transfer or employment relocation will not ensue into the dimunition of his benefit.[28]

Petitioner argues that regardless of the benevolence or the sincere intention of the employer to elevate the status of its employee, the latter retains the right to accept or refuse such promotion or recognition; that respondents had deceitfully entrapped him into an "unlivable working environment" that would eventually force him to resign or suffer from respondents' unfair treatment; and that the transfer order, which respondents issued under threat of disciplinary action in case of noncompliance, resulted to a stressful experience and constant mental pressure.[29]

Private respondents contend that the petition should be dismissed for being the wrong remedy; that assuming *certiorari* was proper, the petition should be dismissed for lack of merit; that respondents had been patient and understanding and provided petitioner with the opportunity to explain his side; that petitioner remained adamant in refusing to report for work and assuming the position of branch manager while taking undue advantage by receiving a salary higher than what other employees occupying the same lower position he maintained had been receiving;[30] that while petitioner constantly offered his resignation during the administrative hearings, respondents had consistently manifested they still needed his services at that time; that petitioner's continued disobedience had crippled their operations;[31] and that the award of nominal damages should be deleted because the Memorandum dated December 27, 2010 had substantially provided him with an opportunity to explain.[32]

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[28] Id. at 10.
[29] Id. at 8-12.
[30] Id. at 259.
[31] Id. at 259-260.
[32] Id. at 94 and 261-262.

Based on the parties' arguments, the issues to be resolved are: (1) whether or not petitioner availed of the proper remedy against the assailed CA decision and resolution; (2) whether or not the CA erred in ruling that the NLRC did not commit grave abuse of discretion.

Our Ruling

We **DISMISS** the petition.

Petitioner availed of the wrong remedy in assailing the decision and resolution by the CA. The proper remedy of a party aggrieved by a decision of the CA is a petition for review under Rule 45; and such is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which in essence is a continuation of the appellate process over the original case.[33]

Moreover, *certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.[34] Herein records show that petitioner received the CA Resolution denying his motion for reconsideration on March 4, 2014. Hence, he had until sixty (60) days to file a petition for review on *certiorari*. However, petitioner allowed the said period to lapse and instead filed a petition for *certiorari* on May 2, 2014.[35]

It is settled rule that where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.[36] Where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of. Consequently, adoption of an improper remedy already warrants the outright dismissal of this petition.[37]

Even if We set aside petitioner's procedural error and treat his petition as one filed under Rule 45, the same is still dismissible.

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[33] *Albor v. Court of Appeals*, 823 Phil. 901, 909 (2018), citation omitted; citing *Philippine Bank of Communications v. Court of Appeals*, 805 Phil. 964, 971 (2017).
[34] Id. at 910, citing *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, 716 Phil. 500, 513 (2013).
[35] *Rollo*, p. 10.
[36] *Philippine Spring Water Resources, Inc. v. Court of Appeals*, 736 Phil. 305, 316 (2014).
[37] *Albor v. Court of Appeals*, supra note 33, at 910-911.

Petitioner's insistence that he had been constructively dismissed is a factual issue. Issues of facts may not be raised under Rule 45 of the Rules of Court because this Court is not a trier of facts. It is not to re-examine and assess the evidence on record, whether testimonial or documentary.[38] As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[39] While there are exceptions to this rule,[40] petitioner failed to prove that his case falls under the recognized exceptions.

At any rate, We do not find error in the findings of the CA, which affirmed those of the NLRC and the Labor Arbiter. Indeed, an unjustified and continuous refusal to abide by management decision to report to a new assignment constitutes willful disobedience. In *Allied Banking Corporation v. Court of Appeals*,[41] We explained that:

> **The refusal to obey a valid transfer order constitutes willful disobedience of a lawful order of an employer. Employees may object to, negotiate and seek redress against employers for rules or orders that they regard as unjust or illegal. However, until and unless these rules or orders are declared illegal or improper by competent authority, the employees ignore or disobey them at their peril.** For Galanida's continued refusal to obey Allied Bank's transfer orders, we hold that the bank dismissed Galanida for just cause in accordance with Article 282(a) of the Labor Code. Galanida is thus not entitled to reinstatement or to separation pay.[42] (emphasis supplied, citations omitted).

Private respondents as employers, have the right to regulate, according to their discretion and best judgment, all aspects of employment, including work assignment, among others. They had validly exercised their management prerogative in directing petitioner to return to his former position as branch manager based purely on legitimate business reasons.

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[38] *Bright Maritime Corp. v. Racela*, G.R. No. 239390, June 3, 2019.

[39] *Paredes v. Feed the Children Philippines, Inc.*, 769 Phil. 418, 433 (2015).

[40] The exceptions are: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or public interest is involved (*Olores v. Manila Doctors College*, 731 Phil. 45, 58-59 [2014]; *Sim v. National Labor Relations Commission*, 560 Phil. 762, 768 [2007]).

[41] 461 Phil. 517 (2003).

[42] Id. at 538.

Petitioner's stubborn refusal to abide by the transfer order and to instead negotiate for his resignation with accompanying higher separation pay cannot be countenanced. His insistence that he was being constructively dismissed should be rejected because there was nothing unbearable in his situation which required him to occupy a position commensurate to the pay he had been receiving. Accordingly, We neither find abuse nor bad faith on the part of private respondents which may lead to a finding of constructive dismissal.

While this Court sustains the ruling of the CA regarding the validity of petitioner's dismissal from service, We find reason to modify the same concerning the amount of nominal damages imposed against private respondents. For a proper perspective, We quote the pertinent portion of the CA decision, *viz.:*

> There is a psychological effect or a stigma in immediately finding one's self laid off from work. This is why our labor laws have provided for procedural due process. While employers have the right to terminate employees it can no longer sustain, our laws also recognize the employee's right to be properly informed of the impending termination of his employment. Though the failure of respondent-company to comply with the notice requirements under the Labor Code did not affect the validity of the dismissal, petitioner is however entitled to nominal damages in addition to his separation pay. Thus, the award of nominal damages in favor of petitioner is proper. However, We are not in conformity as to the sum of thirty thousand pesos (₱30,000.00) award cited in *Agabon v. NLRC* based on the facts at hand. Accordingly, the award is reduced to twenty thousand pesos (₱20,000.00).[43]

In *Agabon*, the Court fixed the amount of nominal damages to ₱30,000.00 to serve as a deterrent against employers from committing future violations of the statutory due process rights of employees. In recognition of the workers' fundamental right under the Labor Code, this Court had consistently and without exceptions, imposed such amount against employers who did not observe procedural due process in terminating employees based on a cause. It bears emphasis that the right to due process does not discriminate against errant employees. Neither does it exempt or favor employers who terminated their employees in good faith. As such, the CA cannot simply reduce the amount of nominal damages which jurisprudence had already fixed, based on a terse statement that the facts do not justify the imposition of a similar amount. In this regard, We find error on the part of the CA in reducing the amount of nominal damages to ₱20,000.00.

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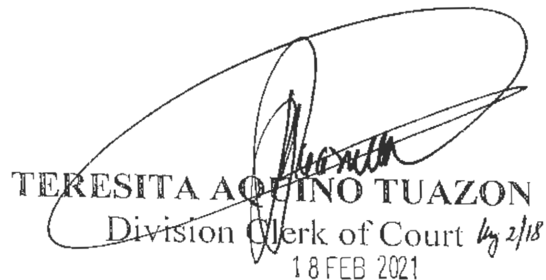
[43] *Rollo*, p. 200.

WHEREFORE, We **DISMISS** the petition for *certiorari*; **AFFIRM with MODIFICATION** the Decision of the Court of Appeals promulgated on July 31, 2013 in CA-G.R. SP No. 04860; and **ORDER** private respondents to **PAY** Danilo P. Alcebar nominal damages in the amount of **THIRTY THOUSAND PESOS** (₱30,000.00).

SO ORDERED. (Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020)"

By authority of the Court:



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*with copy of CA Decision dated 31 July 2013.
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