Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NORKIS TRADING CORPORATION,
Petitioner,

- *versus* -

JOAQUIN BUENAVISTA, HENRY FABROA, RICARDO CAPE, BERTULDO TULOD, WILLY DONDOYANO and GLEN VILLARIASA,
Respondents.

G.R. No. 182018

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

10 OCT 2012

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DECISION

REYES, *J.*:

Before us is a Petition for Review on *Certiorari* filed by petitioner Norkis Trading Corporation (Norkis Trading) to assail the Decision[1] dated May 7, 2007 and Resolution[2] dated March 4, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 84041.

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Arsenio J. Magpale and Agustin S. Dizon, concurring; *rollo*, pp. 54-65.

[2] Id. at 67-69.

The Facts

The petition stems from an amended complaint for illegal suspension, illegal dismissal, unfair labor practice and other monetary claims filed with the National Labor Relations Commission (NLRC) by herein respondents Joaquin Buenavista (Buenavista), Henry Fabroa (Fabroa), Ricardo Cape (Cape), Bertuldo Tulod (Tulod), Willy Dondoyano (Dondoyano) and Glen Villariasa (Villariasa) against Norkis Trading and Panaghiusa sa Kauswagan Multi-Purpose Cooperative (PASAKA). The complaint was docketed as NLRC-RAB-VII Case No. 09-1402-99.

During the proceedings *a quo,* herein respondents submitted the following averments:

The respondents were hired by Norkis Trading, a domestic corporation engaged in the business of manufacturing and marketing of Yamaha motorcycles and multi-purpose vehicles, on separate dates and for various positions, particularly:

Name	*Date of Hiring*	*Position*
Joaquin Buenavista	March 14, 1994	Operator
Henry Fabroa	January 5, 1993	Welder
Ricardo Cape	January 1993	Welder/Operator
Bertuldo Tulod	November 13, 1994	Welder/Assistant Operator
Willy Dondoyano	January 1993	Welder
Glen Villariasa	February 1993	Welder[3]

Although they worked for Norkis Trading as skilled workers assigned in the operation of industrial and welding machines owned and used by Norkis Trading for its business, they were not treated as regular employees by Norkis Trading. Instead, they were regarded by Norkis Trading as members of PASAKA, a cooperative organized under the Cooperative Code of the

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[3] Id. at 71.

Philippines, and which was deemed an independent contractor that merely deployed the respondents to render services for Norkis Trading.[4] The respondents nonetheless believed that they were regular employees of Norkis Trading, citing in their Position Paper[5] the following circumstances that allegedly characterized their employment with the company:

> The work of the operators involves operating industrial machines, such as, press machine, hydraulic machine, and spotweld machine. On the other hand, the welders used the welding machines. The machines used by complainants [herein respondents] in their work are all owned by respondent Norkis [Trading] [herein petitioner] and these are installed and located in the working area of the complainants inside the company's premises.
>
> The complainants produced steel crates which are exported directly by respondent Norkis [Trading] to Japan. These crates are used as containers of motorcycle machines and are shipped from Japan back to respondent Norkis [Trading].
>
> The materials and supplies used by complainants in their work are supplied by respondent Norkis [Trading] through Benjamin Gulbin, the company's Stockman, upon the request of Tirso Maslog, a Leadman also employed by respondent Norkis [Trading].
>
> Respondent Norkis [Trading] gave instructions and supervised the work of complainants through Edwin Ponce and Kiven Alilin, who are both Leadmen, and Rico Cabanas, who is the Production Supervisor, of the former.
>
> The salaries of complainants are paid inside the premises of respondent Norkis [Trading] by Dalia Rojo and Belen Rubio, who are also employees of the said company assigned at the accounting office.
>
> Despite having served respondent Norkis [Trading] for many years and performing the same functions as regular employees, complainants were not accorded regular status. It was made to appear that complainants are not employees of said company but that of respondent PASAKA.[6]

Against the foregoing scenario, the respondents, together with several other complainants,[7] filed on June 9, 1999 with the Department of Labor and Employment (DOLE) a complaint against Norkis Trading and PASAKA for

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4 Id. at 72.
5 Id. at 70-79.
6 Id. at 71-72.
7 The other complainants in LSED Case No. RO700-9906-CI-CS-168 were Bernardo Tumulak, Jr., Efren Dadol, Melecio Bontuyan, Jose Ramil Suico, Constancio Layasan, Renato Montaner, Ronilo Bordario, Profil Suico and Florencio Capangpangan.

labor-only contracting and non-payment of minimum wage and overtime pay. The complaint was docketed as LSED Case No. RO700-9906-CI-CS-168.

The filing of the complaint for labor-only contracting allegedly led to the suspension of the respondents' membership with PASAKA. On July 22, 1999, they were served by PASAKA with memoranda charging them with a violation of the rule against commission of acts injurious or prejudicial to the interest or welfare of the cooperative. The memoranda cited that the respondents' filing of a case against Norkis Trading had greatly prejudiced the interest and welfare of the cooperative.[8] In their answer[9] to the memoranda, the respondents explained that they merely wanted to be recognized as regular employees of Norkis Trading. The case records include copies of the memoranda sent to respondents Buenavista, Fabroa and Dondoyano.[10]

On August 16, 1999, the respondents received another set of memoranda from PASAKA, now charging them with the following violations of the cooperative's rules and regulations: (1) serious misconduct or willful disobedience of superior's instructions or orders; (2) gross and habitual neglect of duties by abandoning work without permission; (3) absences without filing leave of absence; and (4) wasting time or loitering on company's time or leaving their post temporarily without permission during office hours.[11] Copies of the memoranda[12] sent to Fabroa and Cape form part of the records.

On August 26, 1999, PASAKA informed the respondents of the cooperative's decision to suspend them for fifteen (15) working days, to be effective from September 1 to 21, 1999, for violation of PASAKA rules.

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8 *Rollo*, p. 72.
9 Id. at 83.
10 Id. at 80-82.
11 Id. at 72.
12 Id. at 84-85.

The records include copies of the memoranda[13] sent to Fabroa and Cape. The suspension prompted the respondents to file with the NLRC the complaint for illegal suspension against Norkis Trading and PASAKA.

The 15-day suspension of the respondents was extended for another period of 15 days, from September 22, 1999 to October 12, 1999.[14] Copies of PASAKA's separate letters[15] to Buenavista, Fabroa, Cape and Dondoyano on the cooperative's decision to extend the suspension form part of the records.

On October 13, 1999, the respondents were to report back to work but during the hearing in their NLRC case, they were informed by PASAKA that they would be transferred to Norkis Tradings' sister company, Porta Coeli Industrial Corporation (Porta Coeli), as washers of Multicab vehicles. The respondents opposed the transfer as it would allegedly result in a change of employers, from Norkis Trading to Porta Coeli. The respondents also believed that the transfer would result in a demotion since from being skilled workers in Norkis Trading, they would be reduced to being utility workers. These circumstances made the respondents amend their complaint for illegal suspension, to include the charges of unfair labor practice, illegal dismissal, damages and attorney's fees.

For their part, both Norkis Trading and PASAKA claimed that the respondents were not employees of Norkis Trading. They insisted that the respondents were members of PASAKA, which served as an independent contractor that merely supplied services to Norkis International Co., Inc. (Norkis International) pursuant to a job contract[16] which PASAKA and Norkis International executed on January 14, 1999 for 121,500 pieces of F/GF-Series Reinforcement Production. After PASAKA received reports

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13 Id. at 86-87.
14 Id. at 73.
15 Id. at 91-94.
16 Id. at 106-110.

from its coordinator at Norkis International of the respondents' low efficiency and violation of the cooperative's rules, and after giving said respondents the chance to present their side, a penalty of suspension was imposed upon them by the cooperative. The illegal suspension being complained of was then not linked to the respondents' employment, but to their membership with PASAKA.

Norkis Trading stressed that the respondents were deployed by PASAKA to Norkis International, a company that is entirely separate and distinct from Norkis Trading.

The Ruling of the Labor Arbiter

On June 1, 2000, Labor Arbiter Jose G. Gutierrez (LA Gutierrez) dismissed the complaint *via* a Decision[17] with decretal portion that reads:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered DISMISSING this case for lack of merit. Complainants [herein respondents] are however directed to report back to respondent PASAKA for work assignment [within] ten (10) days from receipt of this decision. Likewise, respondent PASAKA is directed to accept the complainants back for work.
>
> SO ORDERED.[18]

LA Gutierrez sustained the suspension imposed by PASAKA upon the respondents, taking into account the offenses that the said respondents were found to have committed. He likewise rejected the respondents' claim of illegal dismissal. He ruled that to begin with, the respondents had failed to prove with convincing evidence that they were dismissed from employment. The Decision reads in part:

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17 Id. at 210-220.

18 Id. at 219.

> Before the legality or illegality of a dismissal can be put in issue, the fact of dismissal itself must, first, be clearly established. In the instant case, We find that complainant[s] [herein respondents] failed to prove with convincing evidence the fact that they were dismissed from employment. This observation is derived from their very own allegation in their position paper. The first paragraph of page 5 of the complainants' position paper clearly show[s] that they were not yet dismissed from their employment. The said paragraph states:
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> > "Convinced that the company is bent on terminating their services, complainants amended their complaint to include the charges of unfair labor practice, illegal dismissal, damages and attorney's fees."
>
> The truth, as the record would show is that, complainants were only offered another post in order to save the contractual relations between their cooperative and Norkis [Trading] as the latter finds the complainants' performance not satisfactory. The [complainants] took this offer as a demotion amounting to dismissal. We do not however, agree as their transfer to another post was only the best option available in order to save the contractual relations between their cooperative (PASAKA) and Norkis [Trading].[19]

The allegation of unfair labor practice and claim for monetary awards were likewise rejected by the LA. Feeling aggrieved, the respondents appealed from the decision of the LA to the NLRC.

In the meantime, DOLE Regional Director Melencio Q. Balanag (Regional Director Balanag) issued on August 22, 2000 his Order[20] in LSED Case No. RO700-9906-CI-CS-168. Regional Director Balanag ruled that PASAKA was engaged in labor-only contracting.[21] The other findings in his Order that are significant to this case are as follows: (1) PASAKA had failed to prove that it had substantial capital;[22] (2) the machineries, equipment and supplies used by the respondents in the performance of their duties were all owned by Norkis Trading and not by PASAKA;[23] (3) the respondents' membership with PASAKA as a cooperative was inconsequential to their employment with Norkis Trading;[24] (4) Norkis Trading and PASAKA failed

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19 Id. at 217-218.
20 Id. at 223-239.
21 Id. at 236.
22 Id. at 233.
23 Id. at 234.
24 Id. at 235.

to prove that their sub-contracting arrangements were covered by any of the conditions set forth in Section 6 of Department Order No. 10, Series of 1997;[25] (5) Norkis Trading and PASAKA failed to dispute the respondents' claim that their work was supervised by leadmen and production supervisors of Norkis Trading;[26] and (6) Norkis Trading and PASAKA failed to dispute the respondents' allegation that their salaries were paid by employees of Norkis Trading.[27] Norkis Trading and PASAKA were then declared solidarily liable for the monetary claims of therein complainants, as provided in the dispositive portion of Regional Director Balanag's Order, to wit:

> **WHEREFORE**, respondent **PANAGHIUSA SA KAUSWAGAN MULTIPURPOSE COOPERATIVE** and/or **NORKIS TRADING CORPORATION** are hereby **ORDERED** to pay solidarily the amount of **THREE HUNDRED THIRTEEN THOUSAND THREE HUNDRED FIFTY[-]FOUR AND 50/100 ([₱]313,354.50) PESOS**, Philippine Currency, within ten (10) calendar days from receipt hereof to herein complainants x x x:
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> x x x x
>
> **SO ORDERED.** [28]

The respondents informed the NLRC of Regional Director Balanag's Order by filing a Manifestation[29] dated September 11, 2000, attaching thereto a copy of the Order dated August 22, 2000.

It bears mentioning that Regional Director Balanag's Order was later affirmed by then DOLE Secretary Patricia Sto. Tomas (Sec. Sto. Tomas) in her Orders dated February 7, 2002 and October 14, 2002.[30] When the rulings of the DOLE Secretary were appealed before the CA *via* the petitions for *certiorari* docketed as CA-G.R. SP No. 73880 and CA-G.R. SP No. 74619, the CA affirmed the Orders of the DOLE Secretary.[31] A motion for

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25 Id. at 236.
26 Id. at 237.
27 Id.
28 Id. at 238-239.
29 Id. at 221-222.
30 Id. at 268.
31 Id. at 267-287.

reconsideration of the CA decision was denied in a Resolution[32] dated October 9, 2007. The two petitions docketed as G.R. Nos. 180078-79, which were brought before this Court to question the CA's rulings, were later denied with finality by this Court in the Resolutions dated December 5, 2007[33] and April 14, 2008.[34]

The Ruling of the NLRC

On April 18, 2002, the NLRC rendered its Decision[35] affirming with modification the decision of LA Gutierrez. It held that the respondents were not illegally suspended from work, as it was their membership in the cooperative that was suspended after they were found to have violated the cooperative's rules and regulations. It also declared that the respondents' dismissal was not established by substantial evidence. The NLRC however declared that the LA had no jurisdiction over the dispute because the respondents were not employees, but members of PASAKA. The suspension of the respondents as members of PASAKA for alleged violation of the cooperative's rules and regulations was not a labor dispute, but an intra-corporate dispute.[36] The complaint was also declared to have been filed against the wrong party because the respondents were found by the NLRC to have been deployed by PASAKA to Norkis International pursuant to a job contract.

The dispositive portion of the NLRC's Decision reads:

> WHEREFORE, the Decision dated June 1, 2000 of the Labor Arbiter is AFFIRMED, with respect to the DISMISSAL of the complainants [herein respondents] for lack of merit [sic], but deleting the portion directing the complainants to report back to respondent PASAKA for work assignment and to accept them back to work being an internal concern of PASAKA.

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32 Id. at 288-289.
33 Id. at 290-291.
34 Id. at 292-293.
35 Id. at 240-245.
36 Id. at 244.

SO ORDERED.[37]

The respondents' motion for reconsideration was denied by the NLRC in a Resolution[38] dated December 18, 2003. Undaunted, the respondents questioned the NLRC's rulings before the CA *via* a petition for *certiorari*.

The Ruling of the CA

Finding merit in the petition for *certiorari*, the CA rendered its decision reversing and setting aside the decision and resolution of the NLRC. The dispositive portion of its Decision dated May 7, 2007 reads:

> ***WHEREFORE***, the petition is ***GRANTED***. The assailed Decision and Resolution of the NLRC, are hereby ***REVERSED*** and ***SET ASIDE***, and a new judgment is hereby rendered ordering the private respondents to:
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> (1) Reinstate petitioners to their former positions without loss of seniority rights, and to pay full backwages inclusive of allowances and their other benefits or their monetary equivalent computed from the time of illegal dismissal to the time of actual reinstatement; and
>
> (2) Alternatively, if reinstatement is not possible, to pay full backwages inclusive of other benefits or their monetary equivalent from the time of illegal dismissal until the same is paid in full, and pay petitioners' separation pay equivalent to one month's salary for every year of service.
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> ***SO ORDERED***.[39]

The CA rejected the argument of PASAKA and Norkis Trading that by virtue of a job contract executed on January 14, 1999, the respondents were deployed to Norkis International and not to Norkis Trading. The CA held:

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37 Id. at 245.
38 Id. at 246-247.
39 Id. at 64.

> We are not convinced. Private respondents' [among them, herein petitioner] own evidence belie their claim.
>
> In its Comment, NORKIS TRADING attached the Payroll Registers for ***PANAGHIUSA SA KAUSWAGAN (PASAKA) MULTIPURPOSE COOPERATIVE-NICI Tin Plate*** covering the payroll periods ***"12/28/98-01/07/99"*** and ***"01/08/99-01/14/99".*** Included among the payees therein were the petitioners [herein respondents]. x x x *Why were petitioners included in said payrolls for said payroll periods when the supposed Contract with NORKIS INTERNATIONAL was not yet executed?* Apparently, private respondents slipped. Thus, we hold that the much ballyhooed January 14, 1999 Contract between PASAKA and NORKIS INTERNATIONAL, is but a mere afterthought, a concoction designed by private respondents to evade their obligations to petitioners.[40] (Citations omitted and emphasis supplied)

The CA also considered Regional Director Balanag's finding in LSED Case No. RO700-9906-CI-CS-168 that PASAKA was engaged in labor-only contracting. In ruling that the respondents were illegally dismissed, the CA held that Norkis Trading's refusal to accept the respondents back to their former positions, offering them instead to accept a new assignment as washers of vehicles in its sister company, was a demotion that amounted to a constructive dismissal.

Norkis Trading's motion for reconsideration was denied by the CA in its Resolution[41] dated March 4, 2008. Hence, this petition.

The Present Petition

The petition is founded on the following grounds:

> 1) THE COURT OF APPEALS HAS DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT MADE ITS OWN FACTUAL FINDINGS AND DISREGARDED THE UNIFORM AND CONSISTENT FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC, WHICH MUST BE ACCORDED GREAT WEIGHT, RESPECT AND EVEN FINALITY. IN SO DOING, THE COURT OF APPEALS EXCEEDED ITS AUTHORITY ON CERTIORARI UNDER RULE 65 OF THE RULES OF COURT BECAUSE SUCH FACTUAL FINDINGS WERE BASED ON

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40 Id. at 60-61.

41 Id. at 67-69.

> SPECULATIONS AND NOT ON OTHER EVIDENCES [SIC] ON RECORD.
>
> 2) THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN RULING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN ALLEGEDLY IGNORING THE RULING OF THE REGIONAL DIRECTOR.
>
> 3) THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN RULING THAT PETITIONER IS THE EMPLOYER OF RESPONDENTS.
>
> 4) THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN RULING THAT THE RESPONDENTS WERE CONSTRUCTIVELY DISMISSED CONTRARY TO THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC AND WITHOUT SHOWING ANY EVIDENCE TO OVERTURN SUCH FINDING OF FACT.[42]

The respondents oppose these grounds in their Comment.[43] In support of their arguments, the respondents submit with their Comment copies of the CA's Decision[44] and Resolution[45] in CA-G.R. SP No. 73880 and CA-G.R. SP No. 74619, and this Court's Resolutions[46] in G.R. Nos. 180078-79.

This Court's Ruling

The Court resolves to deny the petition.

Factual findings of labor officials may be examined by the courts when there is a showing that they were arrived at arbitrarily or in disregard of evidence on record.

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42 Id. at 27-28.
43 Id. at 250-266.
44 Id. at 267-287.
45 Id. at 288-289.
46 Id. at 290-291 and 292-293.

As regards the first ground, the petitioner questions the CA's reversal of LA Gutierrez's and the NLRC's rulings, and argues that said rulings should have been accorded great weight and finality by the appellate court as these were allegedly supported by substantial evidence.

On this matter, the settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. We emphasize, nonetheless, that these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can then grant a petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence. It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.[47]

We have thus explained in *Cocomangas Hotel Beach Resort v. Visca*[48] that the CA can take cognizance of a petition for *certiorari* if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which are material to or decisive of the controversy. The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality or significance of the evidence, which are alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.

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[47] *Prince Transport, Inc. v. Garcia*, G.R. No. 167291, January 12, 2011, 639 SCRA 312, 325, citing *Emcor Incorporated v. Sienes*, G.R. No. 152101, September 8, 2009, 598 SCRA 617, 632.

[48] G.R. No. 167045, August 29, 2008, 563 SCRA 705.

This case falls within the exception to the general rule that findings of fact of labor officials are to be accorded respect and finality on appeal. As our discussions in the other grounds that are raised in this petition will demonstrate, the CA has correctly held that the NLRC has disregarded facts and evidence that are material to the outcome of the respondents' case. No error can be ascribed to the appellate court for making its own assessment of the facts that are significant to the case to determine the presence or absence of grave abuse of discretion on the part of the NLRC, even if the CA's findings turn out to be different from the factual findings of both the LA and NLRC.

Norkis Trading is the principal employer of the respondents, considering that PASAKA is a mere labor-only contractor.

The second and third grounds, being interrelated as they both pertain to the CA's finding that an employer-employee relationship existed between the petitioner and the respondents, shall be discussed jointly. In its decision, the CA cited the findings of the Regional Director in LSED Case No. RO700-9906-CI-CS-168 and declared that the NLRC committed a grave abuse of discretion when it ignored said findings.

The issue of whether or not the respondents shall be regarded as employees of the petitioner hinges mainly on the question of whether or not PASAKA is a labor-only contractor. Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work, or service for a principal. In labor-only contracting, the following elements are present: (a) the contractor or subcontractor does not have substantial capital or investment to actually perform the job, work, or service under its own account and responsibility; and (b) the employees recruited, supplied or placed by such contractor or subcontractor perform activities which are directly related to the main business of the principal. These differentiate it from permissible or

legitimate job contracting or subcontracting, which refers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur: (a) the contractor carries on a distinct and independent business and partakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.[49]

We emphasize that the petitioner's arguments against the respondents' claim that PASAKA is a labor-only contractor, which is thus to be regarded as a mere agent of Norkis Trading for which the respondents rendered service, are already mooted by the finality of this Court's Resolutions dated December 5, 2007 and April 14, 2008 in G.R. Nos. 180078-79, which stems from the CA's and the DOLE Secretary's review of the DOLE Regional Director's Order dated August 22, 2000 in LSED Case No. RO700-9906-CI-CS-168.

To recapitulate, Regional Director Balanag issued on August 22, 2000 its Order[50] in LSED Case No. RO700-9906-CI-CS-168 and declared PASAKA as a mere labor-only contractor, and Norkis Trading as the true employer of herein respondents. He explained that PASAKA failed to prove

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[49] *Babas v. Lorenzo Shipping Corporation*, G.R. No. 186091, December 15, 2010, 638 SCRA 735, 745-746, citing *Vinoya v. NLRC*, 381 Phil. 460, 472-473 (2000).

[50] *Rollo*, pp. 223-239.

during the conduct of a summary investigation that the cooperative had substantial capital or investment sufficient to enable it to perform the functions of an independent contractor. The respondents' claim that the machinery, equipment and supplies they used to perform their duties were owned by Norkis Trading, and not by PASAKA, was undisputed. While PASAKA reflected in its Statement of Financial Condition for the year 1996 property and equipment net of accumulated depreciation at ₱344,273.02, there was no showing that the properties covered thereby were actually and directly used in the conduct of PASAKA's business.[51] The DOLE Regional Director explained:

> [H]erein respondents [among them, herein petitioner] failed to prove that their sub-contracting arrangements fall under any of the conditions set forth in Sec. 6 of D.O. # 10 S. 1997 to qualify as permissible contracting or subcontracting as provided for as follows:
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> > Sec. 6. Permissible contracting or subcontracting. Subject to conditions set forth in Sec. 4 (d) and (e) and Section 5 hereof, the principal may engage the services of a contractor or subcontractor for the performance of any of the following:
> >
> > a.) Works or services temporarily or occasionally needed to meet abnormal increase in the demand of products or services...
> >
> > b) Works or services temporarily or occasionally needed by the principal for undertakings requiring expert or highly technical personnel to improve the management or operations of an enterprise;
> >
> > c) Services temporarily needed for the introduction or promotion of new products...;
> >
> > **d)** Works or services not directly related or not integral to main business or operation of the principal **including** casual work, janitorial, security, landscaping and messengerial services and **work not related to manufacturing processes in manufacturing establishments**.
> >
> > **e)** Services involving the public display of manufacturers' products...;
> >
> > **f)** Specialized works involving the use of some particular, unusual or peculiar skills... and
> >
> > **g)** Unless a reliever system is in place among the regular workforce, substitute services for [absent] regular employees...

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[51] Id. at 234.

> It is therefore evident that herein respondents are engaged in "labor-only" contracting as defined in Art. 106 of the Labor Code. Furthermore, such contracting/sub-contracting arrangement not only falls under labor-only contracting but also fails to qualify as legitimate subcontracting as defined under Sec. 4 par. e of D.O. #10 S. 1997[,] to wit:
>
> > "Sec. 4. Definition of terms. …
> > d) …
> > Subject to the provisions of Sections 6, 7 and 8 of this Rule, contracting or subcontracting shall be legitimate if the following circumstances **concur**:
> > i) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility, according to its own manner and method, and **free from the control and direction of the principal in all matters connected with the performance of the work except to the results thereof;**
> > ii) The contractor or subcontractor has **substantial capital or investment**; and
> > iii) The **agreement** between the principal and contractor or subcontractor **assures the contractual employees entitlement to all labor and occupational and safety and health standards**, free exercise of the right to self-organization, security of tenure and social and welfare benefits."[52] (Emphasis supplied)

Together with his finding that PASAKA evidently lacked substantial capital or investment required from legitimate job contractors, Regional Director Balanag ruled that the cooperative failed to dispute the respondents' allegation that officers of Norkis Trading supervised their work and paid their salaries. In conclusion, PASAKA and Norkis Trading were declared solidarily liable for the monetary awards made in favor of therein claimants-employees, which included herein respondents. A motion for reconsideration of the Order was denied by the Regional Director.

Upon appeal, then DOLE Sec. Sto. Tomas affirmed the rulings of Regional Director Balanag. Both Norkis Trading and PASAKA filed their separate appeals from the orders of the DOLE Secretary to the CA *via* the petitions for *certiorari* docketed as CA-G.R. SP Nos. 73880 and 74619, but

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[52] Id. at 236-237.

said petitions were dismissed for lack of merit by the CA in its Decision dated May 7, 2007 and Resolution dated October 9, 2007. The CA held:

> [T]his Court agrees with the finding of the DOLE Regional Director, as affirmed by the Secretary of Labor in her assailed Order, that petitioners [among them, herein petitioner] [were] engaged in labor-only contracting.
>
> *First*. PASAKA failed to prove that it has substantial capitalization or investment in the form of tools, equipment, machineries, work premises, among others, to qualify as an independent contractor. PASAKA's claim that it has machineries and equipment worth ₱344,273.02 as reflected in its Financial Statements and Supplementary Schedules is belied by private respondents' [among them, herein respondents] evidence which consisted of pictures showing machineries and [equipment] which were owned [by] and located [at] the premises of petitioner NORKIS TRADING (as earlier noted, some of the pictures showed some of the private respondents operating said machines). Indeed it makes one wonder why, if PASAKA indeed had such machineries and equipment worth ₱344,273.02, private respondents were using machineries and [equipment] owned [by] and located at the premises of NORKIS TRADING.
>
> Even granting that indeed PASAKA had machineries and equipment worth ₱344,273.02, it was not shown that said machineries and equipment were ***actually used*** in the performance or completion of the job, work, or service that it was contracted to render under its supposed job contract.
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> x x x x
>
> *Second*. PASAKA likewise did not carry out an independent business from NORKIS TRADING. While PASAKA was issued its Certificate of Registration on July 18[,] 1991, all it could show to prove that it carried out an independent business as a job contractor were the Project Contract dated January 2, 1998 with NORKIS TRADING, and the Project Contract dated December 18, 1998 with NORKIS INTERNATIONAL. However, as earlier discussed, the Project Contract dated December 18, 1998 with NORKIS INTERNATIONAL is nothing more than an afterthought by the petitioners to confuse its workers and defeat their rightful claims. The same can be said of the Project Contract with WICKER and VINE, INC., considering that it was executed *only on* ***February 1, 2000.*** Verily, said contract was submitted only to strengthen PASAKA's claim that it is a legitimate job contractor.
>
> *Third.* Private respondents performed activities directly related to the principal business of NORKIS TRADING. They worked as welders and machine operators engaged in the production of steel crates which were sent to Japan for use as containers of motorcycles that are then sent back to NORKIS TRADING. Private respondents[‘] functions therefore are directly related and vital to NORKIS TRADING's business of manufacturing of Yamaha motorcycles.

> All the foregoing considerations affirm by more than substantial evidence that NORKIS TRADING and PASAKA engaged in labor-only contracting.[53] (Citations omitted and emphasis supplied)

When the case was brought before this Court *via* the petitions for review on *certiorari* docketed as G.R. Nos. 180078-79, we resolved to issue on December 5, 2007 our Resolution dismissing the appeal for, among other grounds, the failure of Norkis Trading to sufficiently show any reversible error in the the CA decision. In our Resolution dated April 14, 2008, we denied with finality Norkis Tradings' motion for reconsideration on the ground that no substantial argument and compelling reason was adduced to warrant a reconsideration of our dismissal of the petition. This Court's resolutions, affirming the findings of the CA, had then become final and executory.

Applying the doctrine of *res judicata,* all matters that have been fully resolved with finality by this Court's dismissal of the appeal that stemmed from Regional Director Balanag's Order dated August 22, 2000 in LSED Case No. RO700-9906-CI-CS-168 are already conclusive between the parties. *Res judicata* is defined as a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Under this doctrine, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.[54]

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[53] Id. at 283-285.

[54] *Antonio v. Sayman Vda. de Monje*, G.R. No. 149624, September 29, 2010, 631 SCRA 471, 479-480, citing *Agustin v. Delos Santos*, G.R. No. 168139, January 20, 2009, 576 SCRA 576, 585.

Res judicata has two aspects: bar by prior judgment and conclusiveness of judgment as provided under Section 47(b) and (c), Rule 39, respectively, of the Rules of Court.[55] Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot be raised in any future case between the same parties, even if the latter suit may involve a different cause of action.[56]

Clearly, *res judicata* in the concept of conclusiveness of judgment has set in. In the proceedings before the Regional Director and the LA, there were identity of parties and identity of issues, although the causes of action in the two actions were different. First, herein respondents on the one hand, and Norkis Trading on the other hand, were all parties in the two cases, being therein complainants and respondent, respectively. As to the second requisite, the issue of whether PASAKA was a labor-only contractor which would make Norkis Trading the true employer of the respondents was the main issue in the two cases, especially since Norkis Trading had been arguing in both proceedings that it could not be regarded as the herein respondents' employer, harping on the defense that PASAKA was a legitimate job contractor.

Similarly, in *Dole Philippines, Inc. v. Esteva*,[57] we held that the finding of the DOLE Regional Director, which had been affirmed by the Undersecretary of Labor, by authority of the Secretary of Labor, in an Order that has reached finality and which provided that the cooperative Cannery

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[55] Sec. 47. *Effects of judgments or final orders*. The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[56] *Tan v. Court of Appeals*, 415 Phil. 675, 681-682 (2001), citing *Mata v. Court of Appeals*, 376 Phil. 525, 540 (1999).

[57] 538 Phil. 817 (2006).

Multi-Purpose Cooperative (CAMPCO) was engaged in labor-only contracting should bind the NLRC in a case for illegal dismissal. We ruled:

> While the causes of action in the proceedings before the DOLE and the NLRC differ, they are, in fact, very closely related. The DOLE Regional Office conducted an investigation to determine whether CAMPCO was violating labor laws, particularly, those on labor-only contracting. Subsequently, it ruled that CAMPCO was indeed engaging in labor-only contracting activities, and thereafter ordered to cease and desist from doing so. x x x The matter of whether CAMPCO was a labor-only contractor was already settled and determined in the DOLE proceedings, which should be conclusive and binding upon the NLRC. What were left for the determination of the NLRC were the issues on whether there was illegal dismissal and whether respondents should be regularized.
>
> x x x For the NLRC to ignore the findings of DOLE Regional Director Parel and DOLE Undersecretary Trajano is an unmistakable and serious undermining of the DOLE officials' authority.[58]

The rule on conclusiveness of judgment then now precludes this Court from re-opening the issues that were already settled with finality in G.R. Nos. 180078-79, which effectively affirmed the CA's findings that PASAKA was engaged in labor-only contracting, and that Norkis Trading shall be treated as the employer of the respondents.

In the present petition, Norkis Trading still argues that the NLRC committed no grave abuse of discretion in ignoring the findings of Regional Director Balanag considering that his Order had not yet reached finality at the time the NLRC resolved the appeal from the decision of the LA. This notwithstanding, this Court holds that the CA still committed no error in finding grave abuse of discretion on the part of the NLRC by the latter's utter disregard of the findings of the Regional Director that Norkis Trading should be considered the employer of herein respondents. As correctly observed by the CA in the assailed Decision dated May 7, 2007:

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[58] Id. at 863-864.

> Surprisingly, the NLRC failed to consider or even make reference to the said August 22, 2000 Order of the DOLE Regional Director. **Considering the significance of the DOLE Regional Director's findings, the same cannot just be perfunctorily rejected.** For the NLRC to ignore the findings of DOLE Regional Director is to undermine or disregard of [sic] the visitorial and enforcement power of the DOLE Secretary and his authorized representatives under Article 128 of the Labor Code, as amended. **It was grave abuse of discretion then on the part of the NLRC to ignore or simply sweep under the rug the findings of the DOLE Regional Director**.[59] (Citation omitted and emphasis ours)

A reading of the NLRC's Resolution[60] dated December 18, 2003 indicates that while it was confronted with opposing findings of the Regional Director and the LA on the material issue of labor-only contracting, it failed to even attempt to review thoroughly the matter, look into the records, reconcile the differing judgments and make its own appreciation of the evidence presented by the parties. Instead, it simply brushed aside the rulings of the Regional Director, without due consideration of the circumstance that said labor official had the jurisdiction to rule on the issue pursuant to the visitorial and enforcement powers of the DOLE Secretary and his duly authorized representatives under Article 128[61] of the Labor Code.

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59 *Rollo*, pp. 61-62.

60 Id. at 246-247.

61 Art. 128. *Visitorial and enforcement power*. – (a) The Secretary of Labor and Employment or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this Article may be appealed to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from. (As amended by R.A. No. 7730, June 2, 1994).

The rule in appeals in labor cases provides that the CA can grant a petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically or arbitrarily disregarding evidence which is material or decisive of the controversy.[62] Significantly, the Secretary of Labor had already affirmed Regional Director Balanag's Order when the appeal from the LA's rulings was resolved. In the NLRC Resolution dated December 18, 2003, the Commission nonetheless merely held:

> The photocopies of the Order of the Honorable Secretary of the Department of Labor and Employment dated February 7, 2002 and the Order of the Regional Director of the Regional Office of the Department of Labor and Employment finding the existence of labor-only contracting between respondent NORKIS [Trading] and respondent PASAKA do not provide sufficient basis to disturb Our Decision. We are not convinced that the facts and evidence, which are totally distinct from this case and which were presented in a separate proceedings and before another Office, would be a sufficient and valid basis to divest the Labor Arbiter *a quo* of his authority which undoubtedly the law vests upon him as his exclusive jurisdiction. The jurisdiction conferred by Article 217 of the Labor Code upon the Labor Arbiter is "original and exclusive", and his authority to hear and decide case[s] vested upon him is to the exclusion of any other court or quasi-judicial body. By reason of their training, experience, and expertise, Labor Arbiters are in a better position to resolve controversies, for which they are conferred original and exclusive jurisdiction by law. Even Article 218 of the Labor Code does not empower the Regional Director of the Department of Labor and Employment to share original and exclusive jurisdiction conferred on the Labor Arbiter by Article 217 x x x.[63]

Such utter disregard by the NLRC of the findings of the Regional Director and DOLE Secretary amounts to grave abuse of discretion amounting to lack or excess of jurisdiction. As this Court's review of the records would confirm, a judicious study of the evidence presented by the parties would have supported the finding that Norkis Trading should be treated as the respondents' true employer, with PASAKA being merely an agent of said employer. PASAKA failed to sufficiently show that it had substantial capital or investment in the form of tools, equipment,

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62 *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, April 14, 2008, 551 SCRA 254, 270.

63 *Rollo*, pp. 246-247.

machineries and work premises required from legitimate job contractors. The work required from the respondents, being welders and/or operators of industrial machines, were also directly related to Norkis Trading's principal business of manufacturing. The job contract supposedly executed by and between PASAKA and Norkis International in 1999 deserved nil consideration given that the respondents had claimed early on that they began working for Norkis Trading on various dates from 1993 to 1994. Moreover, the records confirm that Norkis Trading was still among the clients of PASAKA as of July 1999, as clearly indicated in the memoranda it sent to respondents Buenavista, Fabroa and Dondoyano on July 22, 1999, which provide:

> Please take note that the recent action you have done in filing a case **against one of our client[s,] Norkis Trading Co., Inc.[,]** has greatly prejudiced the interest and welfare of the Cooperative.[64] (Emphasis ours)

This categorical statement of PASAKA that Norkis Trading was among its clients at the time the memoranda were issued only further bolsters the respondents' claim, and Regional Director Balanag's finding, that said respondents were deployed by PASAKA to Norkis Trading. This also contradicts petitioner's argument that its contract with PASAKA had ended in 1998.[65]

Finally, contrary to the insinuations of Norkis Trading, the fact that PASAKA was a duly-registered cooperative did not preclude the possibility that it was engaged in labor-only contracting, as confirmed by the findings of the Regional Director. An entity is characterized as a labor-only contractor based on the elements and guidelines established by law and jurisprudence, judging primarily on the relationship that the said entity has with the company to which the workers are deployed, and not on any special arrangement that the entity has with said workers.

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64 Id. at 80-82.

65 Id. at 103.

Termination of an employment for no just or authorized cause amounts to an illegal dismissal.

As to the issue of whether the respondents were illegally dismissed by Norkis Trading, we answer in the affirmative, although not by constructive dismissal as declared by the CA, but by actual dismissal.

Where an entity is declared to be a labor-only contractor, the employees supplied by said contractor to the principal employer become regular employees of the latter. Having gained regular status, the employees are entitled to security of tenure and can only be dismissed for just or authorized causes and after they had been afforded due process.[66] Termination of employment without just or authorized cause and without observing procedural due process is illegal.

In claiming that they were illegally dismissed from their employment, the respondents alleged having been informed by PASAKA that they would be transferred, upon the behest of Norkis Trading, as Multicab washers or utility workers to Porta Coeli, a sister company of Norkis Trading. Norkis Trading does not dispute that such job transfer was relayed by PASAKA unto the respondents, although the company contends that the transfer was merely an "offer" that did not constitute a dismissal. It bears mentioning, however, that the respondents were not given any other option by PASAKA and Norkis Trading but to accede to said transfer. In fact, there is no showing that Norkis Trading would still willingly accept the respondents to work for the company. Worse, it still vehemently denies that the respondents had ever worked for it. Again, all defenses of Norkis Trading that anchor on the alleged lack of employer-employee relationship between it and the respondents no longer merit any consideration, given that this

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66 Supra note 49, at 747.

Court's findings in G.R. Nos. 180078-79 have become conclusive. Thus, the respondents' transfer to Porta Coeli, although relayed to the respondents by PASAKA was effectively an act of Norkis Trading. Where labor-only contracting exists, the Labor Code itself establishes an employer-employee relationship between the employer and the employees of the labor-only contractor. The statute establishes this relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer.[67]

No further evidence or document should then be required from the respondents to prove such fact of dismissal, especially since Norkis Trading maintains that it has no duty to admit and treat said respondents as its employees. Considering that Porta Coeli is an entity separate and distinct from Norkis Trading, the respondents' employment with Norkis Trading was necessarily severed by the change in work assignment. It then did not even matter whether or not the transfer involved a demotion in the respondents' rank and work functions; the intention to dismiss, and the actual dismissal of the respondents were sufficiently established.

In the absence of a clear showing that the respondents' dismissal was for just or authorized causes, the termination of the respondents' employment was illegal. What may be reasonably deduced from the records was that Norkis Trading decided on the transfer, after the respondents had earlier filed their complaint for labor-only contracting against the company. Even Norkis Trading's contention that the transfer may be deemed a valid exercise of management prerogative is misplaced. First, the exercise of management prerogative presupposes that the transfer is only for positions within the business establishment. Second, the exercise of management

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[67] *Aliviado v. Procter and Gamble Phils., Inc.*, G.R. No. 160506, June 6, 2011, 650 SCRA 400, 417, citing *PCI Automation Center, Inc. v. NLRC*, 322 Phil. 536, 548 (1996).

prerogative by employers is not absolute, as it is limited by law and the general principles of fair play and justice.

WHEREFORE, premises considered, the petition is **DENIED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

MARIA LOURDES P. A. SERENO
Chief Justice