Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

HERNANDO BORRA, JOHN PACHEO, DANILO PEREZ, FELIZARDO SIMON, RAMON BUENACOSA, JR., FELIX BELADOR, WILFREDO LUPO, RONALD VILLARIAS, ARSENIO MINDANAO, MAX NONALA, SIMPLICIO DE ERIT, NOEL DONGUINES, JULIO BORRA, MELCHOR JAVIER, JOHNNY ENRICO VARGAS, PAQUITO SONDIA, JOSE SALAJOG, ELMER LUPO, RAZUL ARANEZ, NELSON PEREZ, BALBINO ABLAY, FERNANDO SIMON, JIMMY VILLARTA, ROMEO CAINDOC, SALVADOR SANTILLAN, ROMONEL JANEO, ERNESTO GONZALUDO, JOSE PAJES, ROY TAN, FERNANDO SANTILLAN JR., DEMETRIO SEMILLA, RENE CORDERO, EDUARDO MOLENO, ROMY DINAGA, HERNANDO GUMBAN, FEDERICO ALVARICO, ELMER CATO, ROGELIO CORDERO, RODNEY PAJES, ERNIE BAYER, ARMANDO TABARES, NOLI AMADOR, MARIO SANTILLAN, ALANIL TRASMONTE, VICTOR ORTEGA, JOEVING ROQUERO, CYRUS PINAS, DANILO PERALES, and ALFONSO COSAS, JR.,
Petitioners,

- versus -

COURT OF APPEALS SECOND AND NINETEENTH DIVISIONS and HAWAIIAN PHILIPPINE COMPANY,
Respondents.

x----------x

G.R. No. 167484

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
ABAD,
MENDOZA,
LEONEN, *JJ.*

Promulgated:

SEP 0 9 2013

D E C I S I O N

PERALTA, *J.*:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking the nullification of the November 14, 2003 Resolution,[1] as well as the subsequent Decision[2] and Resolution,[3] dated June 22, 2004 and January 14, 2005, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 78729. The November 14, 2003 Resolution granted private respondent's motion for the issuance of a preliminary mandatory injunction. The assailed CA Decision, on the other hand, set aside the Order of the Labor Arbiter, dated August 12, 2003, and dismissed RAB Case No. 09-10698-97, while the January 14, 2005 CA Resolution denied petitioners' motion for reconsideration.

The factual and procedural antecedents of the case are as follows:

On September 12, 1997, herein petitioners filed with the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. VI in Bacolod City two separate complaints which were docketed as RAB Case No. 06-09-10698-97 and RAB Case No. 06-09-10699-97. RAB Case No. 06-09-10698-97 was filed against herein private respondent alone, while RAB Case No. 06-09-10699-97 impleaded herein private respondent and a certain Fela Contractor as respondents. In RAB Case No. 06-09-10698-97, herein petitioners asked that they be recognized and confirmed as regular employees of herein private respondent and further prayed that they be awarded various benefits received by regular employees for three (3) years prior to the filing of the complaint, while in RAB Case No. 06-09-10699-97, herein petitioners sought for payment of unpaid wages, holiday pay, allowances, 13th month pay, service incentive leave pay, moral and exemplary damages also during the three (3) years preceding the filing of the complaint.

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1 Penned by Associate Justice Andres B. Reyes, Jr. (now CA Presiding Justice), with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring; Annex "D" to Petition, *rollo*, pp. 100-103.

2 Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr., concurring; Annex "E" to Petition, *rollo*, pp. 104-113.

3 Annex "F" to Petition, *rollo*, pp. 114-115.

On October 16, 1997, private respondent filed a Motion to Consolidate[4] the abovementioned cases, but the Labor Arbiter in charge of the case denied the said Motion in its Order[5] dated October 20, 1997.

On January 9, 1998, private respondent filed a Motion to Dismiss[6] RAB Case No. 06-09-10698-97 on the ground of *res judicata*. Private respondent cited an earlier decided case entitled "*Humphrey Perez, et al. v. Hawaiian Philippine Co. et al.*" (Perez case) and docketed as RAB Case No. 06-04-10169-95, which was an action for recovery of 13th month pay and service incentive leave pay, and it includes herein petitioners among the complainants and herein private respondent and one Jose Castillon (Castillon) as respondents. Private respondent contended that the *Perez* case, which has already become final and executory, as no appeal was taken therefrom, serves as a bar to the litigation of RAB Case No. 06-09-10698-97, because it was ruled therein that petitioners are not employees of private respondent but of Castillon.

In an Order[7] dated July 9, 1998, the Labor Arbiter granted private respondent's Motion to Dismiss.

Petitioners appealed to the NLRC which set aside the Order of the Labor Arbiter, reinstated the complaint in RAB Case No. 06-09-10698-97 and remanded the same for further proceedings.[8]

Private respondent appealed to the CA. On January 12, 2001, the CA rendered judgment, affirming the Decision of the NLRC and denied the subsequent motion for reconsideration.

Aggrieved, private respondent filed a petition for review on *certiorari* before this Court. The case was entitled as "*Hawaiian Philippine Company v. Borra*" and docketed as *G.R. No. 151801*. On November 12, 2002, this Court rendered its Decision denying the petition and affirming the Decision of the CA. Quoting with approval, the assailed Decision of the CA, this Court held, thus:

> The Court of Appeals committed no reversible error. The two cases in question indeed involved different causes of action. The previous case of "Humphrey Perez vs. Hawaiian Philippine Company" concerned a money claim and pertained to the years 1987 up until 1995. During that period,

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4 Records, Vol. I, pp. 16-17.
5 *Id.* at 24.
6 *Id*. at 31-42.
7 *Id.* at 132-134.
8 See NLRC Decision dated November 25, 1999, records, Vol. I, pp. 253-259.

private respondents were engaged by contractor Jose Castillon to work for petitioner at its warehouse. It would appear that the finding of the Labor Arbiter, to the effect that no employer-employee relationship existed between petitioner and private respondents, was largely predicated on the absence of privity between them. The complaint for confirmation of employment, however, was filed by private respondents on 12 September 1997, by which time, Jose Castillon was no longer the contractor. The Court of Appeals came out with these findings; *viz*.:

> At first glance, it would appear that the case at bench is indeed barred by Labor Arbiter Drilon's findings since both petitioner and private respondents are parties in *Perez* and the issue of employer-employee relationship was finally resolved therein.
>
> However, the factual milieu of the *Perez* case covered the period November 1987 to April 6, 1995 (date of filing of the complaint), during which time private respondents, by their own admission, were engaged by Castillon to work at petitioner's warehouse.
>
> In contrast, the instant case was filed on September 12, 1997, by which time, the contractor involved was Fela Contractor; and private respondents' prayer is for confirmation of their status as regular employees of petitioner.
>
> Stated differently, *Perez* pertains to private respondents' employment from 1987 to 1995, while the instant case covers a different (subsequent) period. Moreover, in *Perez,* the finding that no employer-employee relationship existed between petitioner and private respondents was premised on absence of privity between Castillon and petitioner. Consequently, *Perez* and the instant case involve different subject matters and causes of action.
>
> On the other hand, resolution of the case at bench would hinge on the nature of the relationship between petitioner and Fela Contractor. In other words, private respondents' action for declaration as regular employees of petitioner will not succeed unless it is established that Fela Contractor is merely a "labor-only" contractor and that petitioner is their real employer.
>
> Indeed, it is pure conjecture to conclude that the circumstances obtaining in *Perez* subsisted until the filing of the case at bench as there is no evidence supporting such conclusion. There is, as yet, no showing that Fela Contractor merely stepped into the shoes of Castillon. Neither has Fela Contractor's real principal been shown: petitioner or the sugar traders/planters?
>
> Consequently, factual issues must first be ventilated in appropriate proceedings before the issue of employer-employee relationship between petitioner and private respondents [herein private respondent and petitioners] can be determined.

> It is premature to conclude that the evidence in *Perez* would determine the outcome of the case at bench because as earlier pointed out, there is still no showing that the contractor (Fela contractor) in this case can be considered as on the same footing as the previous contractor (Castillon). Such factual issue is crucial in determining whether petitioner is the real employer of private respondents.[9]

In the meantime, on December 21, 1998, the Labor Arbiter rendered a Decision[10] in RAB Case No. 06-09-10699-97 holding that there is no employer-employee relations between private respondent and petitioners. The Labor Arbiter held as follows:

> x x x Fela Contractor as may be noted happened to replace Jose Castillon, as Contractor of the traders or sugar planters, who absorbed the workers of the erstwhile contractor Castillon. **The complainants herein, who were the workers of Castillon, formally applied for employment with respondent Jose Castillon, the owner of Fela Contractor, the new handler and hauler of the sugar planters and traders. Thus, on February 15, 1996, respondent Jardinico, representative of respondent Fela Contractor, wrote a letter to the Administrative Manager of respondent Hawaiian informing the latter that as of March 1, 1996, the former workers of Castillon the previous contractor, who undertook the handling and withdrawal of the sugar of the traders and planters[,] have been absorbed and employed by Fela, with a request to allow them to enter the premises of the company.**
>
> In this suit, the same complainants now seek monetary benefits arising from the employment and they again impleaded respondent Hawaiian.
>
> We, thus resolve to dismiss the complaint against respondent Hawaiian, who as we have found in an earlier pronouncement has no employer-employee relations with the complainant, let alone, any privity of relationship, except for the fact that it is the depository of sugar where the sugar of the planters and traders are hauled by the workers of the contractor, like respondent herein Fela Contractor/Jardinico.[11]

No appeal was taken from the abovequoted Decision. Thus, the same became final and executory.[12]

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[9] See *Hawaiian Philippine Company v. Borra*, G.R. No. 151801, November 12, 2002, 391 SCRA 453, 455-456.

[10] Annex "H" to private respondent's Comment, *rollo*, pp. 393-408.

[11] *Id.* at 402-403. (Emphasis supplied)

[12] See NLRC Certification dated January 11, 2000, Annex "H-1" to private respondent's Comment, *rollo*, p. 409.

As a consequence of the finality of the Decision in RAB Case No. 06-09-10699-97, herein private respondent again filed a Motion to Dismiss[13] RAB Case No. 06-09-10698-97 on the ground, among others, of *res judicata*. Private respondent contended that the final and executory Decision of the Labor Arbiter in RAB Case No. 06-09-10699-97, which found no employer-employee relations between private respondent and petitioners, serves as a bar to the further litigation of RAB Case No. 06-09-10698-97.

On August 12, 2003, the Labor Arbiter handling RAB Case No. 06-09-10698-97 issued an Order[14] denying private respondent's Motion to Dismiss.

Private respondent then filed a petition for *certiorari* and prohibition with the CA assailing the August 12, 2003 Order of the Labor Arbiter.

On June 22, 2004, the CA rendered its questioned Decision, the dispositive portion of which reads, thus:

> WHEREFORE, foregoing premises considered, the petition is GRANTED. Accordingly, the Order dated August 12, 2003 of public respondent is hereby ANNULLED and SET ASIDE. RAB Case No. 09-10698-97 is ordered DISMISSED.
>
> SO ORDERED.[15]

Petitioners filed a Motion for Reconsideration, but the CA denied it in its Resolution[16] dated January 14, 2005.

Hence, the present petition for *certiorari* based on the following grounds:

> I. THE COURT OF APPEALS ACTED ABSOLUTELY WITHOUT ANY JURISDICTION WHEN IT TOOK COGNIZANCE OF THE 2nd PETITION OF HPCO DESPITE THE ABSOLUTE LACK OF ANY INTERVENING OR SUPERVENING EVENT THAT WOULD RENDER THE ORDERS OF THE SUPREME COURT AND COURT OF APPEALS INAPPLICABLE AND THE CLEAR AND ESTABLISHED DECISION LAID DOWN BY THE FIRST DIVISION OF THE

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13 Records, Vol. I, pp. 661-671.
14 Records, Vol. II, pp. 1005-1007.
15 *Rollo*, p. 113.
16 *Id*. at 115.

SUPREME COURT UNDER CHIEF JUSTICE HILARIO G. DAVIDE, JR., ASSOCIATE JUSTICES JOSE C. VITUG, CONSUELO YNARES-SANTIAGO, ANTONIO T. CARPIO, AND ADOLFO S. AZCUNA AND BY THE COURT OF APPEALS UNDER JUSTICES EDGARDO P. CRUZ, RAMON MABUTAS, JR., ROBERTO A. BARRIOS, MA. ALICIA AUSTRIA-MARTINEZ AND HILARION L. AQUINO, RULING THAT FURTHER HEARINGS AND TRIAL MUST BE CONDUCTED BY THE LABOR ARBITER WHICH SIGNIFICANTLY FOUND THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP IN HIS DECISION DATED SEPTEMBER 25, 2003.

II. THE COURT OF APPEALS HAD SERIOUSLY ERRED, IF NOT GRAVELY ABUSED ITS DISCRETION WHEN IT CHOSE TO DELIBERATELY IGNORE AND/OR ENTIRELY DISREGARD THE CLEAR AND ESTABLISHED FACTS ON RECORD AS TO THE EXISTENCE OF THE IDENTITY OF SUBJECT MATTER AND CAUSE OF ACTION BETWEEN HPCO VS. BORRA & 48 OTHERS/NLRC, ET. AL., C.A. G.R. NO. 59132 AND HPCO VS. NLRC, BORRA, ET AL., G.R. NO. 151801 ON ONE HAND AND HPCO VS. HON. PHEBUN PURA/BORRA & 48 OTHERS C.A. G.R. NO. 78729 ON THE OTHER HAND.

III. THE COURT OF APPEALS SERIOUSLY ERRED IN TAKING COGNIZANCE OF THE SECOND PETITION OF HPCO DESPITE THE CLEAR AND ESTABLISHED FACT ON RECORD THAT HPCO HAD SIMULTANEOUSLY AND SUCCESSIVELY FILED AN (sic) IDENTICAL THREE (3) MOTIONS TO DISMISS IN THE SALA OF LABOR ARBITERS AND TWO (2) PETITIONS FOR CERTIORARI IN THE COURT OF APPEALS WHICH IS A FLAGRANT VIOLATION ON THE LAW OF FORUM SHOPPING.[17]

The petition lacks merit.

This Court is not persuaded by petitioners' argument that the CA has no jurisdiction over private respondent's petition for *certiorari* because this Court, in *G.R. No. 151801*, lodged jurisdiction in the Labor Arbiter by directing the remand of RAB Case No. 06-09-10698-97 thereto for further proceedings.

It is settled that jurisdiction over the subject matter is conferred by law and it is not within the courts, let alone the parties, to themselves determine or conveniently set aside.[18]

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17 *Id.* at 52-53.

18 *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559; *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 90.

In this regard, it should be reiterated that what has been filed by private respondent with the CA is a special civil action for *certiorari* assailing the Labor Arbiter's Order which denied its motion to dismiss.

Section 3, Rule V of the NLRC Rules of Procedure, which was then prevailing at the time of the filing of private respondent's petition for *certiorari* with the CA, clearly provides:

> SECTION 3. *MOTION TO DISMISS*. - On or before the date set for the conference, the respondent may file a motion to dismiss. Any motion to dismiss on the ground of lack of jurisdiction, improper venue, or that the cause of action is barred by prior judgment, prescription or forum shopping, shall be immediately resolved by the Labor Arbiter by a written order. **An order denying the motion to dismiss or suspending its resolution until the final determination of the case is not appealable.**[19]

In the case of *Metro Drug Distribution, Inc. v. Metro Drug Corporation Employees Association-Federation of Free Workers,*[20] this Court held that:

> x x x The NLRC rule proscribing appeal from a denial of a motion to dismiss is similar to the general rule observed in civil procedure that an order denying a motion to dismiss is interlocutory and, hence, not appealable until final judgment or order is rendered. The remedy of the aggrieved party in case of denial of the motion to dismiss is to file an answer and interpose, as a defense or defenses, the ground or grounds relied upon in the motion to dismiss, proceed to trial and, in case of adverse judgment, to elevate the entire case by appeal in due course. **In order to avail of the extraordinary writ of *certiorari,* it is incumbent upon petitioner to establish that the denial of the motion to dismiss was tainted with grave abuse of discretion.**[21]

In this regard, Rule 41 of the Rules of Court, which is applied in a suppletory character to cases covered by the NLRC Rules, provides that in all the instances enumerated under the said Rule, where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.[22] Thus, this Court has held that when the denial of a motion to dismiss is tainted with grave abuse of discretion, the

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19 Emphasis supplied.
20 508 Phil. 47 (2005).
21 *Id.* at 58-59. (Emphasis supplied)
22 See Rules of Court, Rule 41, Section 1, last paragraph.

grant of the extraordinary remedy of *certiorari* may be justified.[23] On the basis of the foregoing, it is clear that the CA has jurisdiction over the special civil action for *certiorari* filed by private respondent as the latter was able to allege and establish that the denial of its motion to dismiss was tainted with grave abuse of discretion. Petitioners are wrong to argue that this Court's directive in *G.R. No. 151801* to remand RAB Case No. 06-09-10698-97 to the Labor Arbiter for further proceedings deprives the CA of its jurisdiction over private respondent's petition for *certiorari*. The essence of this Court's ruling in *G.R. No. 151801* is simply to require resolution of the factual issue of whether or not Fela Contractor has stepped into the shoes of Castillon and, thus, has taken petitioners in its employ. In other words, this Court called for a prior determination as to who is the real employer of petitioners. This issue, however, was already settled as will be discussed below.

At the outset, the underlying question which has to be resolved in both RAB Case Nos. 06-09-10698-97 and 06-09-10699-97, before any other issue in these cases could be determined, is the matter of determining petitioners' real employer. Is it Fela Contractor, or is it private respondent? Indeed, the tribunals and courts cannot proceed to decide whether or not petitioners should be considered regular employees, and are thus entitled to the benefits they claim, if there is a prior finding that they are, in the first place, not employees of private respondent. Stated differently, and as correctly held by the CA, petitioners' prayer for regularization in RAB Case No. 06-09-10698-97 is essentially dependent on the existence of employer-employee relations between them and private respondent, because one cannot be made a regular employee of one who is not his employer. In the same vein, petitioners' prayer in RAB Case No. 06-09-10699-97 for the recovery of backwages, 13th month pay, holiday pay and service incentive leave pay from private respondent likewise rests on the determination of whether or not the former are, indeed, employees of the latter.

As earlier mentioned, this issue has already been settled. In the already final and executory decision of the Labor Arbiter in RAB Case No. 06-09-10699-97, it was ruled therein that no employer-employee relationship exists between private respondent and petitioners because the latter's real employer is Fela Contractor. Thus, insofar as the question of employer and employee relations between private respondent and petitioners is concerned, the final judgment in RAB Case No. 06-09-10699-97 has the effect and authority of *res judicata* by conclusiveness of judgment.

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[23] *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011, 661 SCRA 328, 337; *Lim v. Court of Appeals, Mindanao Station*, G.R. No. 192615, January 30, 2013, 689 SCRA 705, 710.

Discussing the concept of *res judicata*, this Court held in *Antonio v. Sayman Vda. de Monje*[24] that:

> x x x [*R*]*es judicata* is defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." According to the doctrine of *res judicata*, 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.**
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> The principle of *res judicata* is applicable by way of (1) "bar by prior judgment" and (2) "conclusiveness of judgment." This Court had occasion to explain the difference between these two aspects of *res judicata* as follows:
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> > There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
> >
> > But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, **any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.**

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[24] G.R. No. 149624, September 29, 2010, 631 SCRA 471.

> Stated differently, conclusiveness of judgment finds application **when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction.** The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.[25]

Hence, there is no point in determining the main issue raised in RAB Case No. 06-09-10698-97, *i.e.*, whether petitioners may be considered regular employees of private respondent, because, in the first place, they are not even employees of the latter. As such, the CA correctly held that the Labor Arbiter committed grave abuse of discretion in denying private respondent's motion to dismiss RAB Case No. 06-09-10698-97.

The question that follows is whether private respondent is guilty of forum shopping, considering that it already filed a motion to dismiss RAB Case No. 06-09-10698-97 in 1998? The Court answers in the negative.

In *Pentacapital Investment Corporation v. Mahinay*,[26] this Court's discussion on forum shopping is instructive, to wit:

> Forum-shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, **all substantially founded on the same transactions and the same essential facts and circumstances**, and **all raising substantially the same issues**, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.
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> What is important in determining whether forum-shopping exists is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.
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> Forum-shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer,

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25 *Id.* at 479-481. (Emphases in the original; citations omitted)

26 G.R. Nos. 171736 and 181482, July 5, 2010, 623 SCRA 284.

> the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).
>
> More particularly, the elements of forum-shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, **the relief being founded on the same facts**; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[27]

In the instant case, there can be no forum shopping, because the grounds cited by private respondent in its motions to dismiss filed in 1998 and in the present case are different. In 1998, the motion to dismiss is based on the argument that the final and executory decision in the *Perez* case serves as *res judicata* and, thus, bars the re-litigation of the issue of employer-employee relations between private respondent and petitioners. In the instant case, private respondent again cites *res judicata* as a ground for its motion to dismiss. This time, however, the basis for such ground is not *Perez* but the final and executory decision in RAB Case No. 06-09-10699-97. Thus, the relief prayed for in private respondent's motion to dismiss subject of the instant case is founded on totally different facts and issues.

As a final note, this Court cannot help but call the attention of the Labor Arbiter regarding Our observation that the resolution of RAB Case No. 06-09-10698-97 has been unnecessarily pending for almost sixteen (16) years now. The resulting delay in the resolution of the instant case could have been avoided had the Labor Arbiter granted private respondent's Motion to Consolidate RAB Case Nos. 06-09-10698-97 and 06-09-10699-97. This Court quotes with approval the contention of private respondent in its Motion, to wit:

> 3. That in light of the fact that the question as to whether or not there exists employer-employee relations as between complainants [herein petitioners] and herein respondent HPCO will indispensably have to be resolved in light of the presence of an independent contractor (FELA Contractors) in RAB Case No. 06-09-10699-97 − which should otherwise be determinative of the issue involved in the present suit – it should only be logical and proper that for purposes of abating separate and inconsistent verdicts by two distinct arbitration salas of this Commission that the

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[27] *Id.* at 310-311. (Emphasis supplied; citations omitted))

> present suit be accordingly consolidated for joint hearing and resolution with said RAB Case No. 06-09-10699-97 x x x.[28]

Under Section 3, Rule IV of the then prevailing, as well as in the presently existing, NLRC Rules of Procedure, it is clearly provided that:

> Section 3. *Consolidation of Cases.* – Where there are two or more cases pending before different Labor Arbiters in the same Regional Arbitration Branch involving the same employer and issues, or the same parties and different issues, whenever practicable, the subsequent case/s shall be consolidated with the first to avoid unnecessary costs or delay. x x x

In the same manner, Section 1, Rule 31 of the 1997 Rules of Civil Procedure, allows consolidation, thus:

> SECTION 1. *Consolidation.* – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Considering that the abovementioned cases involved essentially the same parties and the basic issue of employer-employee relations between private respondent and petitioners, the Labor Arbiter should have been more circumspect and should have allowed the cases to be consolidated. This would be in consonance with the parties' constitutional right to a speedy disposition of cases as well as in keeping with the orderly and efficient disposition of cases.

WHEREFORE, the petition is **DISMISSED**. The assailed Decision and Resolutions of the Court of Appeals in CA-G.R. SP No. 78729 are **AFFIRMED.**

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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[28] Records, Vol. I, pp. 16-17.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice