Republic of the Philippines
Supreme Court
Manila

# THIRD DIVISION

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| **MACARTHUR MALICDEM and HERMENIGILDO FLORES,** Petitioners, | **G.R. No. 204406** Present: |
| - versus - | VELASCO, JR., *J., Chairperson,* PERALTA, BERSAMIN,* MENDOZA, and LEONEN, *JJ.* |
| **MARULAS INDUSTRIAL CORPORATION and MIKE MANCILLA,** Respondents. | Promulgated: **February 26, 2014** |

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# DECISION

**MENDOZA, *J.*:**

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Macarthur Malicdem *(Malicdem)* and Hermenigildo Flores *(Flores)* assails the July 18, 2012 Decision[2] and the November 12, 2012 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 124470, dismissing their petition for *certiorari* under Rule 65 in an action for illegal dismissal.

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* Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

[1] *Rollo*, pp. 26-44.

[2] Id. at 8-21; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Franchito N. Diamante and Abraham B. Borreta, concurring.

[3] Id. at 23-24; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Franchito N. Diamante and Abraham B. Borreta, concurring.

***The Facts:***

A complaint[4] for illegal dismissal, separation pay, money claims, moral and exemplary damages, and attorney's fees was filed by petitioners Malicdem and Flores against respondents Marulas Industrial Corporation *(Marulas)* and Mike Mancilla *(Mancilla)*, who were engaged in the business of manufacturing sacks intended for local and export markets.

Malicdem and Flores were first hired by Marulas as extruder operators in 2006, as shown by their employment contracts. They were responsible for the bagging of filament yarn, the quality of pp yarn package and the cleanliness of the work place area. Their employment contracts were for a period of one (1) year. Every year thereafter, they would sign a Resignation/Quitclaim in favor of Marulas a day after their contracts ended, and then sign another contract for one (1) year. Until one day, on December 16, 2010, Flores was told not to report for work anymore after being asked to sign a paper by Marulas' HR Head to the effect that he acknowledged the completion of his contractual status. On February 1, 2011, Malicdem was also terminated after signing a similar document. Thus, both claimed to have been illegally dismissed.

Marulas countered that their contracts showed that they were fixed-term employees for a specific undertaking which was to work on a particular order of a customer for a specific period. Their severance from employment was due to the expiration of their contracts.

On February 7, 2011, Malicdem and Flores lodged a complaint against Marulas and Mancilla for illegal dismissal.

On July 13, 2011, the Labor Arbiter *(LA)* rendered a decision[5] in favor of the respondents, finding no illegal dismissal. He ruled that Malicdem and Flores were not terminated and that their employment naturally ceased when their contracts expired. The LA, however, ordered Marulas to pay Malicdem and Flores their respective wage differentials, to wit:

> **WHEREFORE**, the complaints for illegal dismissal are dismissed for lack of merit. Respondent Marulas Industrial Corporation is, however, ordered to pay complainants wage differential in the following amounts:

[4] Id. at 63-64.
[5] Id. at 141-149. Penned by Labor Arbiter Raymund M. Celino.

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|---|---|---|---|
| 1. | Macarthur Malicdem | ₱20,111.26 | |
| | 2/2/07 – 6/13/08 = None | | |
| | 6/14/08 – 8/27/08 = 2.47 mos. | | |
| | ₱377 – 362 = ₱15 | | |
| | x 26 days x 2.47 mos. = | | 963.30 |
| | 8/28/08 – 6/30/10 = 22.06 mos. | | |
| | ₱382 – ₱362 = ₱20 | | |
| | x 26 days x 22.06 mos. = | | 11,471.20 |
| | 7/1/10 – 2/2/11 = 7.03 mos. | | |
| | ₱404 – ₱362 = ₱42 | | |
| | x 26 days x 7.03 mos. = | | 7,676.76 |
| | | | 20,111.26 |

; and

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| 2. | Herminigildo Flores | ₱18,440.50 | |
| | 2/2/08 – 6/13/08 = 4.36 mos. None | | |
| | 6/14/08 – 8/27/08 = | | 963.30 |
| | 8/28/08 – 6/30/10 = | | 11,471.20 |
| | 7/1/10 – 12/16/10 = 5.50 mos. | | |
| | ₱404 x ₱362 = ₱42 | | |
| | x 26 days x 5.50 mos. = | | 6,006.00 |
| | | | 18,440.50 |

All other claims are dismissed for lack of merit.

SO ORDERED.[6]

Malicdem and Flores appealed to the NLRC which partially granted their appeal with the award of payment of 13th month pay, service incentive leave and holiday pay for three (3) years. The dispositive portion of its December 19, 2011 Decision[7] reads:

> **WHEREFORE,** the appeal is **GRANTED IN PART**. The Decision of Labor Arbiter Raymund M. Celino, dated July 13, 2011, is **MODIFIED.** In addition to the award of salary differentials, complainants should also be awarded 13th month pay, service incentive leave and holiday pay for three years.
>
> **SO ORDERED**.[8]

Still, petitioners filed a motion for reconsideration, but it was denied by the NLRC on February 29, 2011.

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[6] Id. at 148.
[7] Id. at 175-183. Penned by Commissioner Dolores M. Peralta-Beley.
[8] Id. at 182.

Aggrieved, Malicdem and Flores filed a petition for *certiorari* under Rule 65 with the CA.

On July 18, 2012, the CA denied the petition,[9] finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC. It ruled that the issue of whether or not the petitioners were project employees or regular employees was factual in nature and, thus, not within the ambit of a petition for *certiorari*. Moreover, it accorded respect and due consideration to the factual findings of the NLRC, affirming those of the LA, as they were supported by substantial evidence.

On the substantive issue, the CA explained that "the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee."[10]

Corollarily, considering that there was no illegal dismissal, the CA ruled that payment of backwages, separation pay, damages, and attorney's fees had no factual and legal bases. Hence, they could not be awarded to the petitioners.

Aggrieved, Malicdem and Flores filed a motion for reconsideration, but their pleas were denied in the CA Resolution, dated November 12, 2012.

***The Petition***

Malicdem and Flores now come before this Court by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court praying for the reversal of the CA decision anchored on the principal argument that the appellate court erred in affirming the NLRC decision that there was no illegal dismissal because the petitioners' contracts of employment with the respondents simply expired. They claim that their continuous rehiring paved the way for their regularization and, for said reason, they could not be terminated from their jobs without just cause.

In their Comment,[11] the respondents averred that the petitioners failed to show that the CA erred in affirming the NLRC decision. They posit that the petitioners were contractual employees and their rehiring did not amount to regularization. The CA cited *William Uy Construction Corp. v.*

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[9] Id. at 56.
[10] Id. at 55.
[11] Id. at 227-235.

*Trinidad*,[12] where it was held that the repeated and successive rehiring of project employees did not qualify them as regular employees, as length of service was not the controlling determinant of the employment tenure of a project employee, but whether the employment had been fixed for a specific project or undertaking, its completion had been determined at the time of the engagement of the employee. The respondents add that for said reason, the petitioners were not entitled to full backwages, separation pay, moral and exemplary damages, and attorney's fees.

Now, the question is whether or not the CA erred in not finding any grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC.

***The Court's Ruling:***

The Court grants the petition.

The petitioners have convincingly shown that they should be considered regular employees and, as such, entitled to full backwages and other entitlements.

A reading of the 2008 employment contracts,[13] denominated as "Project Employment Agreement," reveals that there was a stipulated probationary period of six (6) months from its commencement. It was provided therein that in the event that they would be able to comply with the company's standards and criteria within such period, they shall be reclassified as project employees with respect to the remaining period of the effectivity of the contract. Specifically, paragraph 3(b) of the agreement reads:

> The SECOND PARTY hereby acknowledges, agrees and understands that the nature of his/her employment is probationary and on a project-basis. The SECOND PARTY further acknowledges, agrees and understands that within the effectivity of this Contract, his/her job performance will be evaluated in accordance with the standards and criteria explained and disclosed to him/her prior to signing of this Contract. **In the event that the SECOND PARTY is able to comply with the said standards and criteria within the probationary period of six month/s from commencement of this Contract, he/she <u>shall</u> be reclassified as a project employee of (o)f the FIRST PARTY** with respect to the remaining period of the effectivity of this Contract.

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[12] G.R. No. 183250, March 10, 2010, 615 SCRA 180, citing *Caseres v. Universal Robina Sugar Milling Corporation*, 560 Phil. 615 (2007).
[13] *Rollo*, pp. 91-124.

Under Article 281 of the Labor Code, however, "an employee who is allowed to work after a probationary period shall be considered a regular employee." When an employer renews a contract of employment after the lapse of the six-month probationary period, the employee thereby becomes a regular employee. *No employer is allowed to determine indefinitely the fitness of its employees.*[14] While length of time is not the controlling test for project employment, it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary and indispensable to the usual business of trade of the employer.[15] Thus, in the earlier case of *Maraguinot, Jr. v. NLRC*,[16] it was ruled that a project or work pool employee, who has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) those tasks are vital, necessary and indispensable to the usual business or trade of the employer, must be deemed a regular employee. Thus:

> x x x. Lest it be misunderstood, this ruling does not mean that simply because an employee is a project or work pool employee even outside the construction industry, he is deemed, *ipso jure*, a regular employee. All that we hold today is that once a project or work pool employee has been: (1) continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee, pursuant to Article 280 of the Labor Code and jurisprudence. To rule otherwise would allow circumvention of labor laws in industries not falling within the ambit of Policy Instruction No. 20/Department Order No. 19, hence allowing the prevention of acquisition of tenurial security by project or work pool employees who have already gained the status of regular employees by the employer's conduct.

The test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business.[17]

Guided by the foregoing, the Court is of the considered view that there was clearly a deliberate intent to prevent the regularization of the petitioners.

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[14] *Voyeur Visage Studio, Inc. v. Court of Appeals*, 493 Phil. 831 (2005), citing *CENECO v. NLRC*, G.R. No. 106246, September 1, 1994, 263 SCRA 108.
[15] *Liganza v. RBL Shipyard Corporation*, 534 Phil. 662 (2006).
[16] 348 Phil. 580 (1998).
[17] *Integrated Contractor and Plumbing Works, Inc., vs. NLRC*, 503 Phil.875 (2005).

To begin with, there is no actual project. The only stipulations in the contracts were the dates of their effectivity, the duties and responsibilities of the petitioners as extruder operators, the rights and obligations of the parties, and the petitioners' compensation and allowances. As there was no specific project or undertaking to speak of, the respondents cannot invoke the exception in Article 280 of the Labor Code.[18] This is a clear attempt to frustrate the regularization of the petitioners and to circumvent the law.

Next, granting that they were project employees, the petitioners could only be considered as regular employees as the two factors enumerated in *Maraguinot, Jr.*, are present in this case. It is undisputed that the petitioners were continuously rehired by the same employer for the same position as extruder operators. As such, they were responsible for the operation of machines that produced the sacks. Hence, their work was vital, necessary and indispensable to the usual business or trade of the employer.

In *D.M. Consunji, Inc. v. Estelito Jamin*[19] and *Liganza v. RBL Shipyard Corporation*,[20] the Court reiterated the ruling that an employment ceases to be coterminous with specific projects when the employee is continuously rehired due to the demands of the employer's business and re-engaged for many more projects without interruption.

The respondents cannot use the alleged expiration of the employment contracts of the petitioners as a shield of their illegal acts. The project employment contracts that the petitioners were made to sign every year since the start of their employment were only a stratagem to violate their security of tenure in the company. As restated in *Poseidon Fishing v. NLRC*,[21] "if from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be disregarded for being contrary to public policy."

The respondents' invocation of *William Uy Construction Corp. v. Trinidad*[22] is misplaced because it is applicable only in cases involving the tenure of project employees in the construction industry. It is widely known that in the construction industry, a project employee's work depends on the availability of projects, necessarily the duration of his employment.[23] It is not permanent but coterminous with the work to which he is assigned.[24] It would be extremely burdensome for the employer, who depends on the

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[18] Except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee.
[19] G.R. No. 192514, April 18, 2012, 670 SCRA 235.
[20] 534 Phil. 662 (2006).
[21] 518 Phi. 146 (2006).
[22] Supra note 12.
[23] *Archbuild Masters and Construction, Inc., and Joaquin C. Regala v. NLRC and Rogelio Cayanga*, 321 Phil. 869 (1995).
[24] *Mamansag v. NLRC*, G.R. No. 97520, February 9, 1992, 218 SCRA 722.

availability of projects, to carry him as a permanent employee and pay him wages even if there are no projects for him to work on.[25] The rationale behind this is that once the project is completed it would be unjust to require the employer to maintain these employees in their payroll. To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair to the employers and amounts to labor coddling at the expense of management.[26]"

Now that it has been clearly established that the petitioners were regular employees, their termination is considered illegal for lack of just or authorized causes. Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. The law intends the award of backwages and similar benefits to accumulate past the date of the LA decision until the dismissed employee is actually reinstated.

**WHEREFORE**, the petition is **GRANTED.** The assailed July 18, 2012 decision of the Court of Appeals and its November 12, 2012 Resolution in CA-G.R. SP No. 124470, are hereby **ANNULLED** and **SET ASIDE**.

Accordingly, respondent Marulas Industrial Corporation is hereby ordered to reinstate petitioners Macarthur Malicdem and Hermenigildo Flores to their former positions without loss of seniority rights and other privileges and to pay their full backwages, inclusive of allowances and their other benefits or their monetary equivalent computed from the time their compensations were withheld from them up to the time of their actual reinstatement plus the wage differentials stated in the July 13, 2011 decision of the Labor Arbiter, as modified by the December 19, 2011 NLRC decision.

**SO ORDERED**.

**JOSE CATRAL MENDOZA**
Associate Justice

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[25] *Cartegenas v. Romago*, 258 Phil. 445 (1989).
[26] *De Ocampo v. NLRC*, 264 Phil. 728 (1990).

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

**DIOSDADO M. PERALTA**
Associate Justice

**LUCAS P. BERSAMIN**
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.

**ANTONIO T. CARPIO**
Acting Chief Justice