Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CO SAY COCO PRODUCTS PHILS., INC., TANAWAN PORT SERVICES, EFREN CO SAY and YVETTE SALAZAR, Petitioners,	**G.R. No. 188828**
	Present:
	CARPIO,* Acting Chief Justice, BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
- versus -	
BENJAMIN BALTASAR, MARVIN A. BALTASAR, RAYMUNDO A. BOTALON, NILO B. BORDEOS, JR., CARLO B. BOTALON and GERONIMO B. BAS, Respondents.	Promulgated: MAR 0 5 2014

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DECISION

PEREZ, *J.:*

This is a Petition for Review on *Certiorari* pursuant to Rule 45 of the Revised Rules of Court, assailing the 20 April 2009 Decision[1] rendered by the Eighth Division of the Court of Appeals in CA-G.R. SP No. 89128. In its assailed decision, the appellate court: (1) reversed as grave abuse of discretion the Resolution of the National Labor Relations Commission (NLRC) which granted the petition of Co Say Coco Products Phils., Inc. (Co

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* Per Special Order No. 1644 dated 25 February 2014.

1 Penned by Associate Justice Romeo F. Barza with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Arcangelita M. Romilla-Lontok, concurring. *Rollo*, pp. 38-55.

Say), Tanawan Port Services (Tanawan Port), Efren Co Say and Yvette Salazar (Salazar) despite non-perfection of their appeal; and (2) proceeded to affirm the ruling of the Labor Arbiter.

In a Resolution[2] dated 8 July 2009, the appellate court refused to reconsider its earlier decision.

The Facts

Petitioner Co Say is a domestic corporation duly organized and existing under Philippine laws and is the owner of a private port located in Bigaa, Legazpi City. Tanawan Port on the other hand, is a single proprietorship owned and managed by Salazar.

On 18 March 2002, Co Say, thru its President, Efren Co Say, entered into a Contract for Cargo Handling Services[3] with petitioner Tanawan Port, wherein the latter was given the authority to manage and operate the *arrastre* and stevedoring services of its port.

To jumpstart the operation of its cargo handling services, Tanawan Port employed respondents Benjamin Baltasar as Manager, Marvin Baltasar as Computer Operator, Raymundo Botalon as Crane Operator, Nilo Bordeos, Jr. as Crane Helper, Carlo Botalon as Crane Operator and Geronimo Bas as Fork Lift Operator.[4]

Due to lack of clientele, the business venture of Tanawan Port failed to gain momentum causing serious alarm to the company. A couple of months after respondents were hired, Tanawan Port decided to cease operation by sending letters[5] to the City Treasurer of Legaspi City and the Revenue District Officer of the Bureau of Internal Revenue informing them of its intention to close its business and to surrender its business registration due to serious business losses. On 30 August 2002, the City Treasurer approved the retirement from business of Tanawan Port.[6] On the same day, Salazar convened respondents to formally inform them of her intention to close Tanawan Port's operation, but she was prevailed upon by the latter to

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2 Id. at 56-57.
3 Id. at 59-60.
4 Benjamin Baltasar, Marvin A. Baltasar, Raymundo Botalon, Nilo B. Bordeos, Jr., Carlo B. Botalon and Geronimo Bas were respectively hired on 1 April 2002, 6 May 2002, 15 April 2002, 15 April 2002, 2 May 2002 and 1 July 2002. CA *rollo*, p. 105.
5 *Rollo,* pp. 68-69.
6 Id. at 70.

hold it up while Baltasar is looking for new clients that could help boost the company's revenue. Efforts to revive the business, however, proved to be futile constraining the company to finally discontinue its operation and close its business. As a result, respondents were terminated from employment but were accordingly given their corresponding separation pay and 13th month pay in the following amounts:

Name	Separation Pay	13th Month Pay	TOTAL
Carlo Botalon	₱ 18,000.00	₱ 3,750.00	₱ 21,750.00
Raymundo Botalon	18,000.00	4,125.00	22,125.00
Marvin Baltasar	12,000.00	2,500.00	14,500.00
Nilo Bordeos	10,000.00	2,291.69	12,291.69
Geronimo Bas	14,000.00	1,749.99	15,749.99
	₱ 72,000.00	₱ 14,416.68	₱ 86,416.68[7]

Barely a month after they received their separation pay, respondents filed complaints[8] for illegal dismissal and non-payment of labor standard benefits against petitioners Tanawan Port, Salazar, Co Say and Efren Co Say before the Labor Arbiter. In their Position Papers, respondents alleged that Tanawan Port was merely feigning losses in order to ease out employees, pointing out the absence of evidence to prove business reverses. Respondents also punctuated Tanawan Port's failure to comply with the procedural requirement of sending notices to employees concerned and to the Department of Labor and Employment (DOLE) one month before the intended date of closure as required by law.

Tanawan Port, for its part, asserted that respondents' severance from employment was brought about by closure or cessation of business operation which is an authorized cause for termination of employment under the Labor Code. To dispute the allegation of respondents that the closure was done in bad faith, Tanawan Port insisted that the lack of clientele caused serious financial drain to the company leaving the management with no other option but to shutdown its operations.[9]

On 7 August 2003, the Labor Arbiter rendered a Joint Decision[10] in favor of respondents and held that petitioners are liable for illegal dismissal for failure to comply with the procedural and substantive requirements of terminating employment due to closure of business operations. It was found that while Tanawan Port claimed that it was suffering from serious business

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7 Id. at 71.
8 Id. at 74-85.
9 CA *rollo*, pp. 105-112.
10 *Rollo*, pp. 86-96.

losses, it failed to adduce its financial statements to prove that its withdrawal from operation was *bona fide* in character. A similar failure to comply with the notice requirement was likewise observed by the labor officer resulting in the violation of respondents' right to due process of law. Finally, the Labor Arbiter declared that Tanawan Port is engaged in labor-only contracting and is merely an extension of the business personality of Co Say, which is thus, solidarily liable with the former, the labor-only contractor, for the rightful claims of the employees. The decretal portion of the Labor Arbiter Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainants as illegal, and directing respondent Co Say [C]oco Products Phil., Inc., and Efren Co Say being their employer, to reinstate them to their former positions without loss of seniority rights and privileges with full backwages from September 21, 2002 with earlier amount paid to the complainants to be deducted therefrom as of August 2003, is computed as follows:
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> | | |
> |---|---|
> | 1. BENJAMIN BALTASAR | |
> | a) From September 2002 to August 2003 | ₱768,000.00 |
> | b) 13th month pay for 2002 and 2003 | 128,000.00 |
> | c) Commission | 2,887,182.38 |
> | | ₱3,783,182.38 |
> | 2. MARVIN BALTASAR | |
> | a) Backwages from Sept. to August 2003 | ₱108,000.00 |
> | b) 13th month pay for 2003 | 9,000.00 |
> | | ₱117,000.00 |
> | 3. CARLO BOTALON | |
> | a) Backwages from Sept. to August 2003 | ₱108,000.00 |
> | b) 13th month pay for 2003 | 9,000.00 |
> | | ₱117,000.00 |
> | 4. NILO BORDEOS | |
> | a) Backwages from Sept. to August 2003 | ₱108,000.00 |
> | b) 13th month pay for 2003 | 9,000.00 |
> | | ₱117,000.00 |
> | 5. RAYMUNDO BOTALON | |
> | a) Backwages from September to August 2003 | ₱108,000.00 |
> | b) 13th month pay for 2003 | 9,000.00 |
> | | ₱117,000.00 |
> | 6. GERONIMO BAS | |
> | a) Backwages from Sept. to August 2003 | ₱84,000.00 |
> | b) 13th month pay for 2003 | 7,000.00 |
> | | ₱91,000.00 |
>
> or a total of FOUR MILLION THREE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED EIGHTY-TWO AND 38/100 (₱4,342,182.38).

> Respondents are ordered jointly and severally to pay attorney's fee equivalent to 10% of the total award.[11]

Contradicting the Labor Arbiter Decision, the NLRC in its Decision[12] dated 31 May 2004, held that respondents' severance from employment was not illegal, as the company where they were working closed due to business losses, and, the closure of business or establishment is one of the authorized causes recognized by law in dismissing an employee. The NLRC further ruled that there was sufficient compliance with the substantive requirement in terminating employment and held that proof of business losses is not necessary since cessation of business operation is a management prerogative and should not be interfered with by courts or labor tribunals.

Similarly ill-fated was petitioners' Motion for Reconsideration which was denied by the NLRC in a Resolution[13] dated 29 December 2004.

In a Decision[14] dated 20 April 2009, the Court of Appeals reversed the NLRC Decision due to failure of petitioners to perfect their appeal and proceeded to affirm the Labor Arbiter's Decision. Contrary to the ruling of the NLRC, the appellate court ruled that the posting of the appeal bond after the period to perfect the appeal had expired, resulted in the non-perfection of the appeal. Accordingly, the Court of Appeals ruled that the NLRC has no authority to alter, modify or reverse the Labor Arbiter decision after the said decision became final and executory.

In a Resolution[15] dated 8 July 2009, the Court of Appeals refused to reconsider its earlier decision.

Petitioners are now before this Court *via* this instant Petition for Review on *Certiorari*[16] praying that the Court of Appeals Decision be reversed and aside on the following grounds:

> I.
> THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT AN AFFIDAVIT OF NON-FORUM SHOPPING WAS

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11 Id. at 95-96.
12 Id. at 122-134.
13 Id. at 135-136.
14 Id. at 38-55.
15 Id. at 56-57.
16 Id. at 8-36.

NOT NECESSARY IN THE COMPLAINTS FILED BY THE RESPONDENTS;

II.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT THE RESPONDENTS FAILED TO PERFECT THEIR APPEAL ON TIME;

III.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DID NOT ADDRESS THE ISSUE OF WHETHER OR NOT THE TERMINATION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP WAS FOR A CAUSE RECOGNIZED BY LAW; [AND]

IV.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DID NOT ADDRESS THE ISSUE OF WHETHER OR NOT THE RESPONDENT BENJAMIN BALTASAR HAS FULLY ESTABLISHED HIS RIGHT TO THIRTY (30) PERCENT OF THE GROSS SALES OF TANAWAN PORT SERVICES.[17]

The Court's Ruling

Petitioners, in assailing the appellate court's decision, invited the attention of this Court to the Certification dated 19 January 2004, issued by the Regional Arbitration Branch (RAB) of the NLRC, stating that petitioners posted a surety bond in the amount of ₱4,342,182.38 on 24 September 2003. They insisted that they have complied with all the requirements for perfecting an appeal, including the posting of the surety bond within the period for perfecting an appeal, thereby imputing error to the ruling of the appellate court that no appeal was perfected on time.

Time and again we reiterate the established rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts[18] and does not routinely undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of labor officials who are deemed to have acquired

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17 Id. at 23-24.

18 Exceptions: a) the conclusion is a finding of fact grounded on speculations, surmises and conjectures; b) the inferences made are manifestly mistaken, absurd or impossible; c) there is a grave abuse of discretion; d) there is misappreciation of facts; and e) the court, in arriving in its findings, went beyond the issues of the case and the same are contrary to the admission of the parties or the evidence presented. See *OSM Shipping Phil., Inc. v. Dela Cruz*, 490 Phil. 392, 402 (2005).

expertise in matters within their respective jurisdiction are generally accorded not only respect, but even finality, and are binding upon this Court, when supported by substantial evidence.[19]

The NLRC ruled that petitioners were able to post the surety bond and timely perfect their appeal before the expiration of the 10-day reglementary period, while the Court of Appeals oppositely ruled although both findings are based on the same pieces of evidence available on record. According to the appellate court, the First Certification issued by the RAB-NLRC on 2 October 2003 is telling of the petitioners' failure to perfect an appeal. It appeared in the said certification that the appeal bond, which is a mandatory requirement for perfecting an appeal, has not been posted as of 2 October 2003, *viz:*

CERTIFICATION

> This is to certify that according to the records of this office, no appeal bond has been posted by the respondents in re: RAB-V Case Nos. 10-00486-02; 10-00513-02, to 10-00517-02, entitled, BENJAMIN BALTASAR, ET., AL., -versus- COSAY Coco Products Phil., ET., AL.
>
> Issued this 2nd day of October, 2003, at Legazpi City, Philippines, upon request of Atty. J. Roberto J. Bernabe for whatever legal purpose this may serve.
>
> EDITH C. BUENAAGUA
> Administrative Officer III[20]

Three months after the said certification was issued, the RAB-NLRC issued a Second Certification on 19 January 2004, indicating that petitioners posted a surety bond on 24 September 2003 although the said bond was received by the RAB-NLRC only on 28 October 2003, to wit:

CERTIFICATION

> To Whom It May Concern;
>
> This is to certify that according to the records of this office, Mr. Efren Cosay, respondent in re: RAB-V case no. 10-004860-02 entitled, Benjamin Baltazar vs. Cosay Coco Products Phil. Inc./Tanawan Port Service/Efren O. Cosay and Y[v]ette C. Salazar, posted Surety Bond in the amount of Four Million Three Hundred Forty Two Thousand One Hundred Eighty Two & Thirty Eight Centavos (Php. 4,342,182.38) dated

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19 *Bughaw, Jr., v. Treasure Island Industrial Corporation*, 573 Phil. 435, 442 (2008).
20 CA *rollo*, p. 165.

> on September 24, 2003. However said bond was received by this Branch only on October 28, 2003, (as per attached photocopy of the logbook).
>
> Issued this 19th day of January 2004 upon request of Atty. Jesus Roberto J. Bernabe, for whatever legal purpose this may serve.
>
> EDITH C. BUENAAGUA
> Administrative Officer III[21]

It was on the basis of the Second Certification that the NLRC allowed the appeal. The divergence of the findings of the NLRC on the one hand, and the Court of Appeals on the other, necessitates a review of the records of this case to ascertain which conclusion is supported by substantial evidence and, enough to remove the conclusion away from the issue of grave abuse of discretion. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[22]

The crucial issue in the resolution of the instant petition concerns the timely posting of the appeal bond. The pertinent rule on the matter is Article 223 of the Labor Code, as amended, which sets forth the rules on appeal from the Labor Arbiter's monetary award:

> ART. 223. Appeal. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x.
>
> x x x x
>
> In case of a judgment involving 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 Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis ours).

Implementing the aforestated provisions of the Labor Code are the provisions of Rule VI of the 2011 NLRC Rules of Procedure on perfection of appeals which read:

> SECTION 1. PERIODS OF APPEAL. - Decisions, awards, or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from

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21 Id. at 64.

22 *Blue Sky Trading Company, Inc. v. Blas*, G.R. No. 190559, 7 May 2012, 667 SCRA 727, 744.

receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.

No motion or request for extension of the period within which to perfect an appeal shall be allowed.

SECTION 2. GROUNDS. - The appeal may be entertained only on any of the following grounds:

a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter or Regional Director;
b) If the decision, award or order was secured through fraud or coercion, including graft and corruption;
c) If made purely on questions of law; and/or
d) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

SECTION 3. WHERE FILED. - The appeal shall be filed with the Regional Arbitration Branch or Regional Office where the case was heard and decided.

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. - a) The appeal shall be:

(1) filed within the reglementary period provided in Section 1 of this Rule;
(2) verified by the appellant himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as amended;
(3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, award or order;
(4) in three (3) legibly typewritten or printed copies; and
(5) accompanied by:

i) proof of payment of the required appeal fee and legal research fee;
ii) posting of a cash or surety bond as provided in Section 6 of this Rule;
and
iii) proof of service upon the other parties.

b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

c) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his/her answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his/her answer or reply within the said period may be construed as a waiver on his/her part to file the same.

d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

SECTION 5. APPEAL FEE. - The appellant shall pay the prevailing appeal fee and legal research fee to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case.

SECTION 6. BOND. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by original or certified true copies of the following:

a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.
b) an indemnity agreement between the employer-appellant and bonding company;
c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security;
d) a certificate of authority from the Insurance Commission;
e) certificate of registration from the Securities and Exchange Commission;
f) certificate of accreditation and authority from the Supreme Court; and
g) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

The Commission through the Chairman may on justifiable grounds blacklist a bonding company, notwithstanding its accreditation by the Supreme Court.

> A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied.
>
> This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.
>
> The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.
>
> Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.
>
> No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.
>
> The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

These statutory and regulatory provisions explicitly provide that an appeal from the Labor Arbiter to the NLRC must be perfected **within ten calendar days from receipt of such decisions, awards or orders of the Labor Arbiter.** In a judgment involving a monetary award, the appeal shall be perfected only upon; (1) proof of payment of the required appeal fee; **(2) posting of a cash or surety bond issued by a reputable bonding company;** and (3) filing of a memorandum of appeal.[23]

No appeal was perfected by the petitioners within the 10-day period under Article 223 of the Labor Code.

The petitioners received the 7 August 2003 Decision of the Labor Arbiter on 15 September 2003, hence, they had until 25 September 2003 to perfect their appeal. A perusal of the records reveals an apparent contrariety on the date of the posting of the appeal bond, a material fact decisive of the instant controversy. While the First Certification indicated that no appeal bond has been posted as of 2 October 2003, the Second Certification and the

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[23] *Colby Construction and Management Corporation and/or Lo v. NLRC*, 564 Phil. 145, 156 (2007).

Transmittal Letter[24] stated that a surety bond was posted on 24 September 2003.

The conclusion that the First Certification necessarily leads to is the lateness of the perfection of the appeal to the NLRC. Ostensibly, the Second Certification puts the appeal within the required perfection period of ten days from receipt of the decision of the Labor Arbiter. However, the fact behind what seems to be is that both certifications state, directly by the first while distortedly by the second, that the appeal by petitioners to the NLRC was perfected beyond the provided period. In a seeming attempt to avoid the direct fact of untimeliness in the First Certificate, the Second Certificate mentions two dates, one which is within the 10-day period and the other, the late date of 28 October 2003 which is even beyond the 2 October 2003 issuance of the First Certificate. The first date, 24 September 2003 was depicted in the Second Certificate as the date of posting while the date 28 October 2003 was described as the date of receipt by the DOLE-RAB. Apart from saying that the appeal bond was timely "posted" on 24 September 2003, the Second Certification would also justify why on the date of the First Certification, 2 October 2003, there was yet no posted appeal bond on record, the reason, although unstated being that the "posted" bond was "received" only on 28 October 2003.

The Second Certificate is not a document of timeliness of petitioners' appeal bond. It is even confirmatory of the fact of tardiness that the First Certification stated doubtlessly. The NLRC gravely abused its discretion when it considered as correct the statement in the Second Certificate that "x x x respondent in re: RAB-V Case No. 10-004860-02 x x x posted Surety Bond x x x dated on September 24, 2003." To elaborate:

1. The records pertinent to petitioners' appeal bond do not state, nor do they show, that the bond was posted on 24 September 2003. The Surety Bond, the Affidavit of Justification, and the Joint Declaration all state that the surety bond was issued on 24 September 2003. What petitioners did thereafter to be able to beat the 25 September 2003 deadline is not indicated by the records.

2. Insofar as the appeal bond is concerned, issuance is not equivalent to posting; and even if it so, posting of the surety bond alone would not suffice. This is evident from the provisions on Bond in the NLRC Rules of Procedure, which we, for emphasis, repeat hereunder.[25]

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24 *Rollo*, p. 147.

25 2011 NLRC Rules of Procedure, Rule VI provide:

SECTION 1. PERIODS OF APPEAL. - Decisions, awards, or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.

No motion or request for extension of the period within which to perfect an appeal shall be allowed.

SECTION 2. GROUNDS. - The appeal may be entertained only on any of the following grounds:

a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter or Regional Director;
b) If the decision, award or order was secured through fraud or coercion, including graft and corruption;
c) If made purely on questions of law; and/or
d) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

SECTION 3. WHERE FILED. - The appeal shall be filed with the Regional Arbitration Branch or Regional Office where the case was heard and decided.

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. - a) The appeal shall be:

(1) filed within the reglementary period provided in Section 1 of this Rule;
(2) verified by the appellant himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as amended;
(3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, award or order;
(4) in three (3) legibly typewritten or printed copies; and
(5) accompanied by:

i) proof of payment of the required appeal fee and legal research fee;
ii) posting of a cash or surety bond as provided in Section 6 of this Rule;
and
iii) proof of service upon the other parties.

b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

c) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his/her answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his/her answer or reply within the said period may be construed as a waiver on his/her part to file the same.

d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

SECTION 5. APPEAL FEE. - The appellant shall pay the prevailing appeal fee and legal research fee to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case.

SECTION 6. BOND. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of

2.a The rule requires that the bond — the posting of which perfects an appeal "shall either be in the form of cash deposit or surety bond x x x." If the bond is in the form of surety bond, there are two separate requirements: first, the surety bond must be issued by a reputable company duly accredited by the Commission or the Supreme Court and second, the surety bond that was issued by the rule-compliant bonding company must be accompanied by original or certified true copies of no less than seven (7) other documents. Clearly, the issuance of the surety bond, as erroneously considered by the Second Certification, cannot be the posting required by the rule. It is only one of the two requirements of posting.

That the posting of the surety bond requires as necessary addition the seven enumerated documents is underscored by the provision that the

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a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by original or certified true copies of the following:

a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.

b) an indemnity agreement between the employer-appellant and bonding company;

c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security;

d) a certificate of authority from the Insurance Commission;

e) certificate of registration from the Securities and Exchange Commission;

f) certificate of accreditation and authority from the Supreme Court; and

g) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

The Commission through the Chairman may on justifiable grounds blacklist a bonding company, notwithstanding its accreditation by the Supreme Court.

A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied.

This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.[26]

The rule gives the appellee the authority and opportunity, even the duty, to verify the regularity and genuineness not only of the surety bond but also of the seven attachments. To reiterate, even if the issuance of the surety bond on 24 September 2003 is considered as the posting of the bond, the certification cannot furthermore be considered as the posting of the other seven required documents.

Without a straight statement, the Second Certification seems to consider posting as mailing such that the date 24 September 2003 should be the reckoning date that determines timeliness and not the date 28 October 2003 which was the date of receipt of the surety bond. Even such insinuation, strained and all, is unacceptable considering the absence of proof of mailing, it being the fact that there was no mention at all in any of the pleadings below that the surety bond was mailed.

The Court of Appeals therefore, correctly ruled that petitioners failed to perfect their appeal on time. In holding so, the appellate court only applied the appeal bond requirement as already well explained in our previous pronouncements that there is legislative and administrative intent to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention.[27] The clear intent of both statutory and procedural law is to require the employer to post a cash or surety bond securing the full amount of the monetary award within the ten 10-day reglementary period.[28] Rules on perfection of an appeal, particularly in labor cases, must be strictly construed because to extend the period of the appeal is to delay the case, a circumstance which would give the employer a chance to wear out the efforts and meager resources of the worker to the point that the latter is constrained to give up for less than what is due him.[29] This is to assure the workers that if they finally prevail in the case the monetary award will be given to them both upon dismissal of the employer's appeal. It is further meant to discourage employers from using the appeal to delay or evade payment of their obligations to the employees.[30] The appeal bond requirement precisely aims to prevent empty or inconsequential victories

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26 2011 NLRC Rules of Procedure, Rule VI, Section 6.
27 *Computer Innovations Center v. NLRC*, 500 Phil. 573, 580 (2005).
28 Id.
29 *Colby Construction and Management Corporation and/or Lo v. NLRC*, supra note 23 at 157.
30 *Coral Point Development Corporation v. NLRC*, 383 Phil. 456, 463-464 (2000).

secured by laborers in consonance with the protection of labor clause ensconced and zealously guarded by our Constitution.[31]

It is entrenched in our jurisprudence that perfection of an appeal in a manner and within the period prescribed by law is not only mandatory but jurisdictional, **and failure to perfect an appeal has the effect of making judgment final and executory**.[32] While dismissal of an appeal on technical grounds is frowned upon, Article 223 of the Labor Code which prescribes the appeal bond requirement, however, is a rule of jurisdiction and not of procedure.[33] Hence, there is a little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities.[34] It is axiomatic that an appeal is only a statutory privilege and it may only be exercised in the manner provided by law.[35] The timely perfection of an appeal is a mandatory requirement, which cannot be trifled with a "mere technicality" to suit the interest of party.[36] We cannot condone the practice of parties who, either by their own or their counsel's inadvertence, have allowed the judgment to become final and executory and, after the same had reached finality, seeks the shield of substantial justice to assail it.

All considered then, the finding of the Labor Arbiter holding the petitioners liable for illegal dismissal is binding on them. Not having been timely appealed, this issue is already beyond our jurisdiction to resolve, and the finding of the Labor Arbiter can no longer be disturbed without violating the fundamental principle that final judgment is immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusion of fact and law.[37]

WHEREFORE, premises considered, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals, reversing the NLRC Resolution and effectively reinstating the Labor Arbiter Decision, are hereby **AFFIRMED**.

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31 *Colby Construction and Management Corporation and/or Lo v. NLRC*, supra note 23 at 162.

32 *Banahaw Broadcasting Corporation v. Pacana III*, G.R. No. 171673, 30 May 2011, 649 SCRA 196, 210.

33 *Computer Innovations Center v. NLRC*, supra note 27 at 582.

34 Id.

35 *Manaban v. Sarphil Corporation/Apokon Fruits, Inc.*, 495 Phil. 222, 235 (2005).

36 Id.

37 *Mendoza v. Fil-Homes Development Corporation*, G.R. No. 194653, 8 February 2012, 665 SCRA 628, 634.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Acting Chief Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were 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