Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 157010 June 21, 2005

PHILIPPINE NATIONAL BANK, petitioner,
vs.
FLORENCE O. CABANSAG, respondent.

D E C I S I O N

PANGANIBAN, *J.:*

The Court reiterates the basic policy that all Filipino workers, whether employed locally or overseas, enjoy the protective mantle of Philippine labor and social legislations. Our labor statutes may not be rendered ineffective by laws or judgments promulgated, or stipulations agreed upon, in a foreign country.

The Case

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the July 16, 2002 Decision[2] and the January 29, 2003 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 68403. The assailed Decision dismissed the CA Petition (filed by herein petitioner), which had sought to reverse the National Labor Relations Commission (NLRC)'s June 29, 2001 Resolution,[4] affirming Labor Arbiter Joel S. Lustria's January 18, 2000 Decision.[5]

The assailed CA Resolution denied herein petitioner's Motion for Reconsideration.

The Facts

The facts are narrated by the Court of Appeals as follows:

"In late 1998, [herein Respondent Florence Cabansag] arrived in Singapore as a tourist. She applied for employment, with the Singapore Branch of the Philippine National Bank, a private banking corporation organized and existing under the laws of the Philippines, with principal offices at the PNB Financial Center, Roxas Boulevard, Manila. At the time, the Singapore PNB Branch was under the helm of Ruben C. Tobias, a lawyer, as General Manager, with the rank of Vice-President of the Bank. At the time, too, the Branch Office had two (2) types of employees: (a) expatriates or the regular employees, hired in Manila and assigned abroad including Singapore, and (b) locally (direct) hired. She applied for employment as Branch Credit Officer, at a total monthly package of $SG4,500.00, effective upon assumption of duties after approval. Ruben C. Tobias found her eminently qualified and wrote on October 26, 1998, a letter to the President of the Bank in Manila, recommending the appointment of Florence O. Cabansag, for the position.

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"The President of the Bank was impressed with the credentials of Florence O. Cabansag that he approved the recommendation of Ruben C. Tobias. She then filed an 'Application,' with the Ministry of Manpower of the Government of Singapore, for the issuance of an 'Employment Pass' as an employee of the Singapore PNB Branch. Her application was approved for a period of two (2) years.

"On December 7, 1998, Ruben C. Tobias wrote a letter to Florence O. Cabansag offering her a temporary appointment, as Credit Officer, at a basic salary of Singapore Dollars 4,500.00, a month and, upon her successful completion of her probation to be determined solely, by the Bank, she may be extended at the discretion of the Bank, a permanent appointment and that her temporary appointment was subject to the following terms and conditions:

'1. You will be on probation for a period of three (3) consecutive months from the date of your assumption of duty.

'2. You will observe the Bank's rules and regulations and those that may be adopted from time to time.

'3. You will keep in strictest confidence all matters related to transactions between the Bank and its clients.

'4. You will devote your full time during business hours in promoting the business and interest of the Bank.

'5. You will not, without prior written consent of the Bank, be employed in anyway for any purpose whatsoever outside business hours by any person, firm or company.

> ‘6. Termination of your employment with the Bank may be made by either party after notice of one (1) day in writing during probation, one month notice upon confirmation or the equivalent of one (1) day’s or month’s salary in lieu of notice.’

"Florence O. Cabansag accepted the position and assumed office. In the meantime, the Philippine Embassy in Singapore processed the employment contract of Florence O. Cabansag and, on March 8, 1999, she was issued by the Philippine Overseas Employment Administration, an ‘Overseas Employment Certificate,’ certifying that she was a bona fide contract worker for Singapore.

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"Barely three (3) months in office, Florence O. Cabansag submitted to Ruben C. Tobias, on March 9, 1999, her initial ‘Performance Report.’ Ruben C. Tobias was so impressed with the ‘Report’ that he made a notation and, on said ‘Report’: ‘GOOD WORK.’ However, in the evening of April 14, 1999, while Florence O. Cabansag was in the flat, which she and Cecilia Aquino, the Assistant Vice-President and Deputy General Manager of the Branch and Rosanna Sarmiento, the Chief Dealer of the said Branch, rented, she was told by the two (2) that Ruben C. Tobias has asked them to tell Florence O. Cabansag to resign from her job. Florence O. Cabansag was perplexed at the sudden turn of events and the runabout way Ruben C. Tobias procured her resignation from the Bank. The next day, Florence O. Cabansag talked to Ruben C. Tobias and inquired if what Cecilia Aquino and Rosanna Sarmiento had told her was true. Ruben C. Tobias confirmed the veracity of the information, with the explanation that her resignation was imperative as a ‘cost-cutting measure’ of the Bank. Ruben C. Tobias, likewise, told Florence O. Cabansag that the PNB Singapore Branch will be sold or transformed into a remittance office and that, in either way, Florence O. Cabansag had to resign from her employment. The more Florence O. Cabansag was perplexed. She then asked Ruben C. Tobias that she be furnished with a ‘Formal Advice’ from the PNB Head Office in Manila. However, Ruben C. Tobias flatly refused. Florence O. Cabansag did not submit any letter of resignation.

"On April 16, 1999, Ruben C. Tobias again summoned Florence O. Cabansag to his office and demanded that she submit her letter of resignation, with the pretext that he needed a Chinese-speaking Credit Officer to penetrate the local market, with the information that a Chinese-speaking Credit Officer had already been hired and will be reporting for work soon. She was warned that, unless she submitted her letter of resignation, her employment record will be blemished with the notation ‘DISMISSED’ spread thereon. Without giving any definitive answer, Florence O. Cabansag asked Ruben C. Tobias that she be given sufficient time to look for another job. Ruben C. Tobias told her that she should be ‘out’ of her employment by May 15, 1999.

"However, on April 19, 1999, Ruben C. Tobias again summoned Florence O. Cabansag and adamantly ordered her to submit her letter of resignation. She refused. On April 20, 1999, she received a letter from Ruben C. Tobias terminating her employment with the Bank.

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"On January 18, 2000, the Labor Arbiter rendered judgment in favor of the Complainant and against the Respondents, the decretal portion of which reads as follows:

‘WHEREFORE, considering the foregoing premises, judgment is hereby rendered finding respondents guilty of Illegal dismissal and devoid of due process, and are hereby ordered:

1. To reinstate complainant to her former or substantially equivalent position without loss of seniority rights, benefits and privileges;

2. Solidarily liable to pay complainant as follows:

   a) To pay complainant her backwages from 16 April 1999 up to her actual reinstatement. Her backwages as of the date of the promulgation of this decision amounted to SGD 40,500.00 or its equivalent in Philippine Currency at the time of payment;

   b) Mid-year bonus in the amount of SGD 2,250.00 or its equivalent in Philippine Currency at the time of payment;

   c) Allowance for Sunday banking in the amount of SGD 120.00 or its equivalent in Philippine Currency at the time of payment;

   d) Monetary equivalent of leave credits earned on Sunday banking in the amount of SGD 1,557.67 or its equivalent in Philippine Currency at the time of payment;

   e) Monetary equivalent of unused sick leave benefits in the amount of SGD 1,150.60 or its equivalent in Philippine Currency at the time of payment.

   f) Monetary equivalent of unused vacation leave benefits in the amount of SGD 319.85 or its equivalent in Philippine Currency at the time of payment.

   g) 13th month pay in the amount of SGD 4,500.00 or its equivalent in Philippine Currency at the time of payment;

3. Solidarily to pay complainant actual damages in the amount of SGD 1,978.00 or its equivalent in Philippine Currency at the time of payment, and moral damages in the amount of PhP 200,000.00, exemplary damages in the amount of PhP 100,000.00;

4. To pay complainant the amount of SGD 5,039.81 or its equivalent in Philippine Currency at the time of payment, representing attorney’s fees.

SO ORDERED." [6] [Emphasis in the original.]

PNB appealed the labor arbiter's Decision to the NLRC. In a Resolution dated June 29, 2001, the Commission affirmed that Decision, but reduced the moral damages to ₱100,000 and the exemplary damages to ₱50,000. In a subsequent Resolution, the NLRC denied PNB's Motion for Reconsideration.

Ruling of the Court of Appeals

In disposing of the Petition for *Certiorari*, the CA noted that petitioner bank had failed to adduce in evidence the Singaporean law supposedly governing the latter's employment Contract with respondent. The appellate court found that the Contract had actually been processed by the Philippine Embassy in Singapore and approved by the Philippine Overseas Employment Administration (POEA), which then used that Contract as a basis for issuing an Overseas Employment Certificate in favor of respondent.

According to the CA, even though respondent secured an employment pass from the Singapore Ministry of Employment, she did not thereby waive Philippine labor laws, or the jurisdiction of the labor arbiter or the NLRC over her Complaint for illegal dismissal. In so doing, neither did she submit herself solely to the Ministry of Manpower of Singapore's jurisdiction over disputes arising from her employment. The appellate court further noted that a cursory reading of the Ministry's letter will readily show that no such waiver or submission is stated or implied.

Finally, the CA held that petitioner had failed to establish a just cause for the dismissal of respondent. The bank had also failed to give her sufficient notice and an opportunity to be heard and to defend herself. The CA ruled that she was consequently entitled to reinstatement and back wages, computed from the time of her dismissal up to the time of her reinstatement.

Hence, this Petition.[7]

Issues

Petitioner submits the following issues for our consideration:

> "1. Whether or not the arbitration branch of the NLRC in the National Capital Region has jurisdiction over the instant controversy;
>
> "2. Whether or not the arbitration of the NLRC in the National Capital Region is the most convenient venue or forum to hear and decide the instant controversy; and
>
> "3. Whether or not the respondent was illegally dismissed, and therefore, entitled to recover moral and exemplary damages and attorney's fees."[8]

In addition, respondent assails, in her Comment,[9] the propriety of Rule 45 as the procedural mode for seeking a review of the CA Decision affirming the NLRC Resolution. Such issue deserves scant consideration. Respondent miscomprehends the Court's discourse in *St. Martin Funeral Home v. NLRC,*[10] which has indeed affirmed that the proper mode of review of NLRC decisions, resolutions or orders is by a special civil action for *certiorari* under Rule 65 of the Rules of Court. The Supreme Court and the Court of Appeals have *concurrent original* jurisdiction over such petitions for *certiorari*. Thus, in observance of the doctrine on the hierarchy of courts, these petitions should be initially filed with the CA.[11]

Rightly, the bank elevated the NLRC Resolution to the CA by way of a Petition for *Certiorari*. In seeking a review by this Court of the CA Decision -- on questions of jurisdiction, venue and validity of employment termination -- petitioner is likewise correct in invoking Rule 45.[12]

It is true, however, that in a petition for review on *certiorari*, the scope of the Supreme Court's judicial review of decisions of the Court of Appeals is generally confined only to errors of law. It does not extend to questions of fact. This doctrine applies with greater force in labor cases. Factual questions are for the labor tribunals to resolve. [13] In the present case, the labor arbiter and the NLRC have already determined the factual issues. Their findings, which are supported by substantial evidence, were affirmed by the CA. Thus, they are entitled to great respect and are rendered conclusive upon this Court, absent a clear showing of palpable error or arbitrary disregard of evidence.[14]

The Court's Ruling

The Petition has no merit.

First Issue:

Jurisdiction

The jurisdiction of labor arbiters and the NLRC is specified in Article 217 of the Labor Code as follows:

"ART. 217. Jurisdiction of Labor Arbiters and the Commission. – (a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. Termination disputes;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wage, rates of pay, hours of work and other terms and conditions of employment

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount of exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

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More specifically, Section 10 of RA 8042 reads in part:

"SECTION 10. *Money Claims.* — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

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Based on the foregoing provisions, labor arbiters clearly have *original and exclusive* jurisdiction over claims arising from employer-employee relations, including *termination disputes* involving *all* workers, among whom are overseas Filipino workers (OFW).[15]

We are not unmindful of the fact that respondent was directly hired, while on a tourist status in Singapore, by the PNB branch in that city state. Prior to employing respondent, petitioner had to obtain an employment pass for her from the Singapore Ministry of Manpower. Securing the pass was a regulatory requirement pursuant to the immigration regulations of that country.[16]

Similarly, the Philippine government requires non-Filipinos working in the country to first obtain a local work permit in order to be legally employed here. That permit, however, does not automatically mean that the non-citizen is thereby bound by local laws only, as averred by petitioner. It does not at all imply a waiver of one's national laws on labor. Absent any clear and convincing evidence to the contrary, such permit simply means that its holder has a legal status as a worker in the issuing country.

Noteworthy is the fact that respondent likewise applied for and secured an Overseas Employment Certificate from the POEA through the Philippine Embassy in Singapore. The Certificate, issued on March 8, 1999, declared her a bona fide contract worker for Singapore. Under Philippine law, this document authorized her working status in a foreign country and entitled her to all benefits and processes under our statutes. Thus, even assuming *arguendo*that she was considered at the start of her employment as a "direct hire" governed by and subject to the laws, common practices and customs prevailing in Singapore[17] she subsequently became a contract worker or an OFW who was covered by Philippine labor laws and policies upon certification by the POEA. At the time her employment was illegally terminated, she already possessed the POEA employment Certificate.

Moreover, petitioner admits that it is a Philippine corporation doing business through a branch office in Singapore.[18] Significantly, respondent's employment by the Singapore branch office had to be approved by Benjamin P. Palma Gil,[19] the president of the bank whose principal offices were in Manila. This circumstance militates against petitioner's contention that respondent was "locally hired"; and totally "governed by and subject to the laws, common practices and customs" of Singapore, not of the Philippines. Instead, with more reason does this fact reinforce the presumption that respondent falls under the legal definition of *migrant worker*, in this case one deployed in Singapore. Hence, petitioner cannot escape the application of Philippine laws or the jurisdiction of the NLRC and the labor arbiter.

In any event, we recall the following policy pronouncement of the Court in *Royal Crown Internationale v. NLRC:*[20]

"x x x. Whether employed locally or overseas, all Filipino workers enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic public policy of the State to afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. For the State assures the basic rights of all workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work [Article 3 of the Labor Code of the Philippines; *See also* Section 18, Article II and Section 3, Article XIII, 1987 Constitution]. This ruling is likewise rendered imperative by Article 17 of the Civil Code which states that laws 'which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determination or conventions agreed upon in a foreign country.'"

Second Issue:

Proper Venue

Section 1(a) of Rule IV of the NLRC Rules of Procedure reads:

"Section 1. Venue – (a) All cases which Labor Arbiters have authority to hear and decide may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant/petitioner; Provided, however that cases of Overseas Filipino Worker (OFW) shall be filed before the Regional Arbitration Branch where the complainant resides or where the principal office of the respondent/employer is situated, at the option of the complainant.

"For purposes of venue, workplace shall be understood as the place or locality where the employee is regularly assigned when the cause of action arose. It shall include the place where the employee is supposed to report back after a temporary detail, assignment or travel. In the case of field employees, as well as ambulant or itinerant workers, their workplace is where they are regularly assigned, or where they are supposed to regularly receive their salaries/wages or work instructions from, and report the results of their assignment to their employers."

Under the "Migrant Workers and Overseas Filipinos Act of 1995" (RA 8042), a *migrant worker* "refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a legal resident; to be used interchangeably with overseas Filipino worker."[21] Undeniably, respondent was employed by petitioner in its branch office in Singapore. Admittedly, she is a Filipino and not a legal resident of that state. She thus falls within the category of "migrant worker" or "overseas Filipino worker."

As such, it is her option to choose the venue of her Complaint against petitioner for illegal dismissal. The law gives her two choices: (1) at the Regional Arbitration Branch (RAB) where she resides or (2) at the RAB where the principal office of her employer is situated. Since her dismissal by petitioner, respondent has returned to the Philippines -- specifically to her residence at Filinvest II, Quezon City. Thus, in filing her Complaint before the RAB office in Quezon City, she has made a valid choice of proper venue.

Third Issue:

Illegal Dismissal

The appellate court was correct in holding that respondent was already a regular employee at the time of her dismissal, because her three-month probationary period of employment had already ended. This ruling is in accordance with Article 281 of the Labor Code: "An employee who is allowed to work after a probationary period shall be considered a regular employee." Indeed, petitioner recognized respondent as such at the time it dismissed her, by giving her one month’s salary in lieu of a one-month notice, consistent with provision No. 6 of her employment Contract.

Notice and Hearing Not Complied With

As a regular employee, respondent was entitled to all rights, benefits and privileges provided under our labor laws. One of her fundamental rights is that she may not be dismissed without due process of law. The twin requirements of notice and hearing constitute the essential elements of procedural due process, and neither of these elements can be eliminated without running afoul of the constitutional guarantee.[22]

In dismissing employees, the employer must furnish them two written notices: 1) one to apprise them of the particular acts or omissions for which their dismissal is sought; and 2) the other to inform them of the decision to dismiss them. As to the requirement of a hearing, its essence lies simply in the opportunity to be heard.[23]

The evidence in this case is crystal-clear. Respondent was not notified of the specific act or omission for which her dismissal was being sought. Neither was she given any chance to be heard, as required by law. At any rate, even if she were given the opportunity to be heard, she could not have defended herself effectively, for she knew no cause to answer to.

All that petitioner tendered to respondent was a notice of her employment termination effective the very same day, together with the equivalent of a one-month pay. This Court has already held that nothing in the law gives an employer the option to substitute the required prior notice and opportunity to be heard with the mere payment of 30 days’ salary.[24]

Well-settled is the rule that the employer shall be sanctioned for noncompliance with the requirements of, or for failure to observe, due process that must be observed in dismissing an employee.[25]

No Valid Cause for Dismissal

Moreover, Articles 282,[26] 283[27] and 284[28] of the Labor Code provide the valid grounds or causes for an employee’s dismissal. The employer has the burden of proving that it was done for any of those just or authorized causes. The failure to discharge this burden means that the dismissal was not justified, and that the employee is entitled to reinstatement and back wages.[29]

Notably, petitioner has not asserted any of the grounds provided by law as a valid reason for terminating the employment of respondent. It merely insists that her dismissal was validly effected pursuant to the provisions of her employment Contract, which she had voluntarily agreed to be bound to.

Truly, the contracting parties may establish such stipulations, clauses, terms and conditions as they want, and their agreement would have the force of law between them. However, petitioner overlooks the qualification that those terms and conditions agreed upon must not be contrary to law, morals, customs, public policy or public order.[30] As explained earlier, the employment Contract between petitioner and respondent is governed by Philippine labor laws. Hence, the stipulations, clauses, and terms and conditions of the Contract must not contravene our labor law provisions.

Moreover, a contract of employment is imbued with public interest. The Court has time and time again reminded parties that they "are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other."[31] Also, while a contract is the law between the parties, the provisions of positive law that regulate such contracts are deemed included and shall limit and govern the relations between the parties.[32]

Basic in our jurisprudence is the principle that when there is no showing of any clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal.[33]

Awards for Damages Justified

Finally, moral damages are recoverable when the dismissal of an employee is attended by bad faith or constitutes an act oppressive to labor or is done in a manner contrary to morals, good customs or public policy.[34] Awards for moral and exemplary damages would be proper if the employee was harassed and arbitrarily dismissed by the employer.[35]

In affirming the awards of moral and exemplary damages, we quote with approval the following ratiocination of the labor arbiter:

"The records also show that [respondent's] dismissal was effected by [petitioners'] capricious and high-handed manner, anti-social and oppressive, fraudulent and in bad faith, and contrary to morals, good customs and public policy. Bad faith and fraud are shown in the acts committed by [petitioners] before, during and after [respondent's] dismissal in addition to the manner by which she was dismissed. First, [respondent] was pressured to resign for two different and contradictory reasons, namely, cost-cutting and the need for a Chinese[-]speaking credit officer, for which no written advice was given despite complainant's request. Such wavering stance or vacillating position indicates bad faith and a dishonest purpose. Second, she was employed on account of her qualifications, experience and readiness for the position of credit officer and pressured to resign a month after she was commended for her good work. Third, the demand for [respondent's] instant resignation on 19 April 1999 to give way to her replacement who was allegedly reporting soonest, is whimsical, fraudulent and in bad faith, because on 16 April 1999 she was given a period of [sic] until 15 May 1999 within which to leave. Fourth, the pressures made on her to resign were highly oppressive, anti-social and caused her absolute torture, as [petitioners] disregarded her situation as an overseas worker away from home and family, with no prospect for another job. She was not even provided with a return trip fare. Fifth, the notice of termination is an utter manifestation of bad faith and whim as it totally disregards [respondent's] right to security of tenure and due process. Such notice together with the demands for [respondent's] resignation contravenes the fundamental guarantee and public policy of the Philippine government on security of tenure.

"[Respondent] likewise established that as a proximate result of her dismissal and prior demands for resignation, she suffered and continues to suffer mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock and social humiliation. Her standing in the social and business community as well as prospects for employment with other entities have been adversely affected by her dismissal. [Petitioners] are thus liable for moral damages under Article 2217 of the Civil Code.

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"[Petitioners] likewise acted in a wanton, oppressive or malevolent manner in terminating [respondent's] employment and are therefore liable for exemplary damages. This should served [sic] as protection to other employees of [petitioner] company, and by way of example or correction for the public good so that persons similarly minded as [petitioners] would be deterred from committing the same acts."[36]

The Court also affirms the award of attorney's fees. It is settled that when an action is instituted for the recovery of wages, or when employees are forced to litigate and consequently incur expenses to protect their rights and interests, the grant of attorney's fees is legally justifiable.[37]

WHEREFORE, the Petition is *DENIED* and the assailed Decision and Resolution *AFFIRMED.* Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

Footnotes

[1] *Rollo*, pp. 9-31.

[2] *Id.*, pp. 33-56. Tenth Division. Penned by Justice Romeo J. Callejo Sr. (chairman and now a member of this Court), with the concurrence of Justices Remedios Salazar-Fernando and Danilo B. Pine (members).

[3] *Id.*, pp. 59-60.

[4] *Id.*, pp. 75-91.

[5] *Id.*, pp. 62-74.

[6] Assailed Decision, pp. 2-7; *rollo*, pp. 34-39.

[7] This case was deemed submitted for decision on December 5, 2003, upon this Court's receipt of respondent's Memorandum -- signed by Atty. Elvira de Vera Bitonio. Petitioner's Memorandum, signed by Attys. Benilda V. Abrasia-Tejada, Irahlyn P. Sacupayo-Lariba and Marino M. Buban Jr. -- was received by this Court on November 7, 2003.

[8] Petition, p. 8; *rollo*, p. 16.

[9] *Rollo*, pp. 100-110.

[10] 356 Phil. 811, September 16, 1998.

[11] *Id.*, p. 824.

[12] See Retuya *v.* Dumarpa, 408 SCRA 315, August 5, 2003.

[13] Alfaro *v.* CA, 416 Phil. 310, August 28, 2001.

[14] *Ibid.* See also *PNOC* Dockyard & Engineering Corp. *v.* NLRC, 353 Phil. 431, June 26, 1998; KAMADA *v.*Ferrer-Calleja, 344 Phil. 67, September 5, 1997; Caurdanetaan Piece Workers Union *v.* Laguesma, 350 Phil. 35, February 24, 1998; Tan *v.* NLRC, 359 Phil. 499, November 24, 1998.

[15] §3(a) of RA 8042 defines *migrant worker* as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state in which he or she is not a legal resident; to be used interchangeably with *overseas Filipino worker.*" (Emphasis ours.)

[16] Paragraph 8 of the employment pass states:

> "If there is a change in the Designation or Duties as declared in the application form for an Employment Pass, a fresh application is required. It is an offence under the Immigration Regulations for failing to do so." (Annex "5-a" to Comment; *rollo*, p. 120.)

[17] Petition, p. 3; *rollo*, p. 11.

[18] Petitioner's Memorandum, p. 22; *rollo*, p. 178.

[19] Annex "2" to Comment; *rollo*, pp. 113-114.

[20] 178 SCRA 569, 580-581, October 16, 1989, per Cortes, *J.*

[21] §3(a), RA 8042; also §§2(a) and (e), Rule II of the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act.

[22] Vinta Maritime Co., Inc. *v.* NLRC, 348 Phil. 714, January 23, 1998.

[23] Paguio Transport Corp. *v.* NLRC, 356 Phil. 158, August 28, 1998; Tan *v.* NLRC, supra; Pascua *v.* NLRC, 351 Phil. 48, March 13, 1998; Vinta Maritime Co., Inc. *v.* NLRC, *supra.*

[24] Serrano v. NLRC, 387 Phil. 345, May 4, 2000.

[25] Fernandez, v. NLRC, 349 Phil. 65, January 28, 1998.

[26] "Art. 282. Termination by employer. – An employer may terminate an employment for any of the following causes: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) other causes analogous to the foregoing."

[27] "Art. 283. *Closure of establishment and reduction of personnel.* – The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title, by serving a written notice on the workers and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or

financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year."

[28] "Art. 284. *Disease as ground for termination.* – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided,* that he is paid separation pay equivalent to at least one (1) month salary or to one-half month salary for every year or service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year."

[29] Paguio Transport Corp. *v.* NLRC, supra; Caurdanetaan Piece Workers Union *v.* Laguesma, *supra*; Vinta Maritime Co., Inc. *v.* NLRC, *supra*; Anino *v.* NLRC*,* 352 Phil. 1098, May 21, 1998.

[30] Solid Homes, Inc. *v.* CA, 341 Phil. 261, 280, July 8, 1997.

[31] Pakistan International Airlines Corp. *v.* Ople, 190 SCRA 90, 99, September 28, 1990, per Feliciano, J. (cited in Bernardo *v.* NLRC, 369 Phil. 443, July 12, 1999; Magsalin *v.* National Organization of Working Men, 403 SCRA 199, May 9, 2003).

[32] Asia World Recruitment, Inc. *v.* NLRC, 371 Phil. 745, August 24, 1999.

[33] Vinta Maritime Co., Inc. *v.* NLRC*, supra.*

[34] Pascua *v.* NLRC, *supra*; Nueva Ecija I Electric Cooperative, Inc. *v.* NLRC, 380 Phil. 44, January 24, 2000.

[35] Cruz *v.* NLRC, 381 Phil. 775, February 7, 2000 (cited in Asia Pacific Chartering (Phils.), Inc. *v.* Farolan, 441 Phil. 776, December 4, 2002).

[36] Labor Arbiter Joel S. Lustria's Decision, pp. 9-12; *rollo*, pp. 70-73. (Citations omitted)

[37] PNCC *v.* NLRC*,* 342 Phil. 769, August 11, 1997.