782 Phil. 230

SECOND DIVISION

[G.R. No. 205703, March 07, 2016]

INDUSTRIAL PERSONNEL & MANAGEMENT SERVICES, INC. (IPAMS), SNC LAVALIN ENGINEERS & CONTRACTORS, INC. AND ANGELITO C. HERNANDEZ, PETITIONERS, VS. JOSE G. DE VERA AND ALBERTO B. ARRIOLA, RESPONDENTS.

DECISION

MENDOZA, J.:

When can a foreign law govern an overseas employment contract? This is the fervent question that the Court shall resolve, once and for all.

This petition for review on *certiorari* seeks to reverse and set aside the January 24, 2013 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. SP No. 118869, which modified the November 30, 2010 Decision[2] of the National Labor Relations Commission (*NLRC*) and its February 2, 2011 Resolution,[3] in NLRC LAC Case No. 08-000572-10/NLRC Case No. NCR 09-13563-09, a case for illegal termination of an Overseas Filipino Worker (*OFW*).

The Facts

Petitioner Industrial Personnel & Management Services, Inc. (*IPAMS*) is a local placement agency duly organized and existing under Philippine laws, with petitioner Angelito C. Hernandez as its president and managing director. Petitioner SNC Lavalin Engineers & Contractors, Inc. (*SNC-Lavalin*) is the principal of IPAMS, a Canadian company with business interests in several countries. On the other hand, respondent Alberto Arriola (*Arriola*) is a licensed general surgeon in the Philippines.[4]

Employee's Position

Arriola was offered by SNC-Lavalin, through its letter,[5] dated May 1, 2008, the position of Safety Officer in its Ambatovy Project site in Madagascar. The position offered had a rate of CA$32.00 per hour for forty (40) hours a week with overtime pay in excess of forty (40) hours. It was for a period of nineteen (19) months starting from June 9, 2008 to December 31, 2009.

Arriola was then hired by SNC-Lavalin, through its local manning agency, IPAMS, and his overseas employment contract was processed with the Philippine Overseas Employment Agency (*POEA*)[6] In a letter of understanding,[7] dated June 5, 2008, SNC-Lavalin confirmed Arriola's assignment in the Ambatovy Project. According to

Arriola, he signed the contract of employment in the Philippines.[8] On June 9, 2008, Arriola started working in Madagascar.

After three months, Arriola received a notice of pre-termination of employment,[9] dated September 9, 2009, from SNC-Lavalin. It stated that his employment would be pre-terminated effective September 11, 2009 due to diminishing workload in the area of his expertise and the unavailability of alternative assignments. Consequently, on September 15, 2009, Arriola was repatriated. SNC-Lavalin deposited in Arriola's bank account his pay amounting to Two Thousand Six Hundred Thirty Six Dollars and Eight Centavos (CA$2,636.80), based on Canadian labor law.

Aggrieved, Arriola filed a complaint against the petitioners for illegal dismissal and non-payment of overtime pay, vacation leave and sick leave pay before the Labor Arbiter (*LA*). He claimed that SNC-Lavalin still owed him unpaid salaries equivalent to the three-month unexpired portion of his contract, amounting to, more or less, One Million Sixty-Two Thousand Nine Hundred Thirty-Six Pesos (P1,062,936.00). He asserted that SNC-Lavalin never offered any valid reason for his early termination and that he was not given sufficient notice regarding the same. Arriola also insisted that the petitioners must prove the applicability of Canadian law before the same could be applied to his employment contract.

Employer's Position

The petitioners denied the charge of illegal dismissal against them. They claimed that SNC-Lavalin was greatly affected by the global financial crises during the latter part of 2008. The economy of Madagascar, where SNC-Lavalin had business sites, also slowed down. As proof of its looming financial standing, SNC-Lavalin presented a copy of a news item in the Financial Post,[10] dated March 5, 2009, showing the decline of the value of its stocks. Thus, it had no choice but to minimize its expenditures and operational expenses. It re-organized its Health and Safety Department at the Ambatovy Project site and Arriola was one of those affected.[11]

The petitioners also invoked *EDI-Staffbuilders International, Inc. v. NLRC*[12] (*EDI-Staffbuilders*), pointing out that particular labor laws of a foreign country incorporated in a contract freely entered into between an OFW and a foreign employer through the latter's agent was valid. In the present case, as all of Arriola's employment documents were processed in Canada, not to mention that SNC-Lavalin's office was in Ontario, the principle of *lex loci celebrationis* was applicable. Thus, the petitioners insisted that Canadian laws governed the contract.

The petitioners continued that the pre-termination of Arriola's contract was valid for being consistent with the provisions of both the Expatriate Policy and laws of Canada. The said foreign law did not require any ground for early termination of employment, and the only requirement was the written notice of termination. Even assuming that Philippine laws should apply, Arriola would still be validly dismissed because domestic law recognized retrenchment and redundancy as legal grounds for termination.

In their Rejoinder,[13] the petitioners presented a copy of the Employment Standards Act (*ESA*) of Ontario, which was duly authenticated by the Canadian authorities and certified by the Philippine Embassy.

The LA Ruling

In a Decision,[14] dated May 31, 2010, the LA dismissed Arriola's complaint for lack of merit. The LA ruled that the rights and obligations among and between the OFW, the local recruiter/agent, and the foreign employer/principal were governed by the employment contract pursuant to the *EDI-Staffbuilders* case. Thus, the provisions on termination of employment found in the ESA, a foreign law which governed Arriola's employment contract, were applied. Given that SNC-Lavalin was able to produce the duly authenticated ESA, the LA opined that there was no other conclusion but to uphold the validity of Arriola's dismissal based on Canadian law. The *fallo* of the LA decision reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered dismissing the complaint for lack of merit.
>
> SO ORDERED.[15]

Aggrieved, Arriola elevated the LA decision before the NLRC.

The NLRC Ruling

In its decision, dated November 30, 2010, the NLRC reversed the LA decision and ruled that Arriola was illegally dismissed by the petitioners. Citing *PNB v. Cabansag*,[16] the NLRC stated that whether employed locally or overseas, all Filipino workers enjoyed the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. Thus, the Labor Code of the Philippines and Republic Act (*R.A.*) No. 8042, or the Migrant Workers Act, as amended, should be applied. Moreover, the NLRC added that the overseas employment contract of Arriola was processed in the POEA.

Applying the Philippine laws, the NLRC found that there was no substantial evidence presented by the petitioners to show any just or authorized cause to terminate Arriola. The ground of financial losses by SNC-Lavalin was not supported by sufficient and credible evidence. The NLRC concluded that, for being illegally dismissed, Arriola should be awarded CA$81,920.00 representing sixteen (16) months of Arriola's purported unpaid salary, pursuant to the *Serrano v. Gallant*[17] doctrine. The decretal portion of the NLRC decision states:

> WHEREFORE, premises considered, judgment is hereby rendered finding complainant-appellant to have been illegally dismissed. Respondents-appellees are hereby ordered to pay complainant-appellant the amount of CA$81,920.00, or its Philippine Peso equivalent prevailing at the time of payment. Accordingly, the decision of the Labor Arbiter dated May 31, 2010 is hereby VACATED and SET ASIDE.

SO ORDERED.[18]

The petitioners moved for reconsideration, but their motion was denied by the NLRC in its resolution, dated February 2, 2011.

Undaunted, the petitioners filed a petition for *certiorari* before the CA arguing that it should be the ESA, or the Ontario labor law, that should be applied in Arriola's employment contract. No temporary restraining order, however, was issued by the CA.

The Execution Proceedings

In the meantime, execution proceedings were commenced before the LA by Arriola. The LA granted the motion for execution in the Order,[19] dated August 8, 2011.

The petitioners appealed the execution order to the NLRC. In its Decision,[20] dated May 31, 2012, the NLRC corrected the decretal portion of its November 30, 2010 decision. It decreased the award of backpay in the amount of CA$26,880.00 or equivalent only to three (3) months and three (3) weeks pay based on 70-hours per week workload. The NLRC found that when Arriola was dismissed on September 9, 2009, he only had three (3) months and three (3) weeks or until December 31, 2009 remaining under his employment contract.

Still not satisfied with the decreased award, IPAMS filed a separate petition for *certiorari* before the CA. In its decision, dated July 25, 2013, the CA affirmed the decrease in Arriola's backpay because the unpaid period in his contract was just three (3) months and three (3) weeks.

Unperturbed, IPAMS appealed before the Court and the case was docketed as G.R. No. 212031. The appeal, however, was dismissed outright by the Court in its resolution, dated August 8, 2014, because it was belatedly filed and it did not comply with Sections 4 and 5 of Rule 7 of the Rules of Court. Hence, it was settled in the execution proceedings that the award of backpay to Arriola should only amount to three (3) months and three (3) weeks of his pay.

The CA Ruling

Returning to the principal case of illegal dismissal, in its assailed January 24, 2013 decision, the CA affirmed that Arriola was illegally dismissed by the petitioners. The CA explained that even though an authenticated copy of the ESA was submitted, it did not mean that the said foreign law automatically applied in this case. Although parties were free to establish stipulations in their contracts, the same must remain consistent with law, morals, good custom, public order or public policy. The appellate court wrote that the ESA allowed an employer to disregard the required notice of termination by simply giving the employee a severance pay. The ESA could not be made to apply in this case for being contrary to our Constitution, specifically on the right of due process. Thus, the CA opined that our labor laws should find application.

As the petitioners neither complied with the twin notice-rule nor offered any just or authorized cause for his termination under the Labor Code, the CA held that Arriola's dismissal was illegal. Accordingly, it pronounced that Arriola was entitled to his salary for the unexpired portion of his contract which is three (3) months and three (3) weeks salary. It, however, decreased the award of backpay to Arriola because the NLRC made a wrong calculation. Based on his employment contract, the backpay of Arriola should only be computed on a 40-hour per week workload, or in the amount of CA$19,200.00. The CA disposed the case in this wise:

> WHEREFORE, in view of the foregoing premises, the petition is PARTIALLY GRANTED. The assailed Order of the National Labor Relations Commission in NLRC LAC No. 08-000572-10/NLRC Case No. NCR 09-13563-09 is MODIFIED in that private respondent is only entitled to a monetary judgment equivalent to his unpaid salaries in the amount of CA$19,200.00 or its Philippine Peso equivalent.
>
> SO ORDERED.[21]

Hence, this petition, anchored on the following

ISSUES

I

WHETHER OR NOT RESPONDENT ARRIOLA WAS VALIDLY DISMISSED PURSUANT TO THE EMPLOYMENT CONTRACT.

II

GRANTING THAT THERE WAS ILLEGAL DISMISSAL IN THE CASE AT BAR, WHETHER OR NOT THE SIX-WEEK ON, TWO-WEEK OFF SCHEDULE SHOULD BE USED IN THE COMPUTATION OF ANY MONETARY AWARD.

III

GRANTING THAT THERE WAS ILLEGAL DISMISSAL, WHETHER OR NOT THE AMOUNT BEING CLAIMED BY RESPONDENTS HAD ALREADY BEEN SATISFIED, OR AT THE VERY LEAST, WHETHER OR NOT THE AMOUNT OF CA$2,636.80 SHOULD BE DEDUCTED FROM THE MONETARY AWARD.[22]

The petitioners argue that the rights and obligations of the OFW, the local recruiter, and the foreign employer are governed by the employment contract, citing *EDI-Staffbuilders*; that the terms and conditions of Arriola's employment are embodied in the Expatriate Policy, Ambatovy Project - Site, Long Term, hence, the laws of Canada must be applied; that the ESA, or the Ontario labor law, does not require any ground for the early termination of employment and it permits the termination without any notice provided that a severance pay is given; that the ESA was duly authenticated by

the Canadian authorities and certified by the Philippine Embassy; that the NLRC Sixth Division exhibited bias and bad faith when it made a wrong computation on the award of backpay; and that, assuming there was illegal dismissal, the CA$2,636.80, earlier paid to Arriola, and his home leaves should be deducted from the award of backpay.

In his Comment,[23] Arriola countered that foreign laws could not apply to employment contracts if they were contrary to law, morals, good customs, public order or public policy, invoking *Pakistan International Airlines Corporation v. Ople* (*Pakistan International*);[24] that the ESA was not applicable because it was contrary to his constitutional right to due process; that the petitioners failed to substantiate an authorized cause to justify his dismissal under Philippine labor law; and that the petitioners could not anymore claim a deduction of CA$2,636.80 from the award of backpay because it was raised for the first time on appeal.

In their Reply,[25] the petitioners asserted that R.A. No. 8042 recognized the applicability of foreign laws on labor contracts; that the *Pakistan International* case was superseded by *EDI-Staffbuilders* and other subsequent cases; and that SNC-Lavalin suffering financial losses was an authorized cause to terminate Arriola's employment.

In his Memorandum,[26] Arriola asserted that his employment contract was executed in the Philippines and that the alleged authorized cause of financial losses by the petitioners was not substantiated by evidence.

In their Consolidated Memorandum,[27] the petitioners reiterated that the ESA was applicable in the present case and that recent jurisprudence recognized that the parties could agree on the applicability of foreign laws in their labor contracts.

The Court's Ruling

The petition lacks merit.

Application of foreign laws with labor contracts

At present, Filipino laborers, whether skilled or professional, are enticed to depart from the motherland in search of greener pastures. There is a distressing reality that the offers of employment abroad are more lucrative than those found in our own soils. To reap the promises of the foreign dream, our unsung heroes must endure homesickness, solitude, discrimination, mental and emotional struggle, at times, physical turmoil, and, worse, death. On the other side of the table is the growing number of foreign employers attracted in hiring Filipino workers because of their reasonable compensations and globally-competitive skills and qualifications. Between the dominant foreign employers and the vulnerable and desperate OFWs, however, there is an inescapable truth that the latter are in need of greater safeguard and protection.

In order to afford the full protection of labor to our OFWs, the State has vigorously enacted laws, adopted regulations and policies, and established agencies to ensure that their needs are satisfied and that they continue to work in a humane living environment outside of the country. Despite these efforts, there are still issues left unsolved in the

realm of overseas employment. One existing question is posed before the Court -when should an overseas labor contract be governed by a foreign law? To answer this burning query, a review of the relevant laws and jurisprudence is warranted.

R.A. No. 8042, or the Migrant Workers Act, was enacted to institute the policies on overseas employment and to establish a higher standard of protection and promotion of the welfare of migrant workers.[28] It emphasized that while recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development.[29] Although it acknowledged claims arising out of law or contract involving Filipino workers,[30] it does not categorically provide that foreign laws are absolutely and automatically applicable in overseas employment contracts.

The issue of applying foreign laws to labor contracts was initially raised before the Court in *Pakistan International*. It was stated in the labor contract therein (1) that it would be governed by the laws of Pakistan, (2) that the employer have the right to terminate the employee at any time, and (3) that the one-month advance notice in terminating the employment could be dispensed with by paying the employee an equivalent one-month salary. Therein, the Court elaborated on the parties' right to stipulate in labor contracts, to wit:

> A contract freely entered into should, of course, be respected, as PIA argues, since a contract is the law between the parties. The principle of party autonomy in contracts is not, however, an absolute principle. The rule in Article 1306, of our Civil Code is that the contracting parties may establish such stipulations as they may deem convenient, "**provided they are not contrary to law, morals, good customs, public order or public policy**." Thus, counterbalancing the principle of autonomy of contracting parties is the equally general rule that provisions of applicable law, especially provisions relating to matters affected with public policy, are deemed written into the contract. Put a little differently, the governing principle is that parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest. **The law relating to labor and employment is clearly such an area and parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.** x x x[31]
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> [Emphases Supplied]

In that case, the Court held that the labor relationship between OFW and the foreign employer is "much affected with public interest and that the otherwise applicable Philippine laws and regulations cannot be rendered illusory by the parties agreeing upon some other law to govern their relationship."[32] Thus, the Court applied the Philippine laws, instead of the Pakistan laws. It was also held that the provision in the employment contract, where the employer could terminate the employee at any time for any ground and it could even disregard the notice of termination, violates the

employee's right to security of tenure under Articles 280 and 281 of the Labor Code.

In *EDI-Staffbuilders*, the case heavily relied on by the petitioners, it was reiterated that, "[i]n formulating the contract, the parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."[33] In that case, the overseas contract specifically stated that Saudi Labor Laws would govern matters not provided for in the contract. The employer, however, failed to prove the said foreign law, hence, the doctrine of processual presumption came into play and the Philippine labor laws were applied. Consequently, the Court did not discuss any longer whether the Saudi labor laws were contrary to Philippine labor laws.

The case of *Becmen Service Exporter and Promotion, Inc. v. Spouses Cuaresma*,[34] though not an illegal termination case, elucidated on the effect of foreign laws on employment. It involved a complaint for insurance benefits and damages arising from the death of a Filipina nurse from Saudi Arabia. It was initially found therein that there was no law in Saudi Arabia that provided for insurance arising from labor accidents. Nevertheless, the Court concluded that the employer and the recruiter in that case abandoned their legal, moral and social obligation to assist the victim's family in obtaining justice for her death, and so her family was awarded P5,000,000.00 for moral and exemplary damages.

In *ATCI Overseas Corporation v. Echin*[35] (*ATCI Overseas*), the private recruitment agency invoked the defense that the foreign employer was immune from suit and that it did not sign any document agreeing to be held jointly and solidarily liable. Such defense, however, was rejected because R.A. No. 8042 precisely afforded the OFWs with a recourse against the local agency and the foreign employer to assure them of an immediate and sufficient payment of what was due. Similar to *EDI-Staffbuilders*, the local agency therein failed to prove the Kuwaiti law specified in the labor contract, pursuant to Sections 24 and 25 of Rule 132 of the Revised Rules of Court.

Also, in the recent case of *Sameer Overseas Placement Agency, Inc. v. Cabiles*[36] (*Sameer Overseas*), it was declared that the security of tenure for labor was guaranteed by our Constitution and employees were not stripped of the same when they moved to work in other jurisdictions. Citing *PCL Shipping Phils., Inc. v. NLRC*[37] (*PCL Shipping*), the Court held that the principle of *lex loci contractus* (the law of the place where the contract is made) governed in this jurisdiction. As it was established therein that the overseas labor contract was executed in the Philippines, the Labor Code and the fundamental procedural rights were observed. It must be noted that no foreign law was specified in the employment contracts in both cases.

Lastly, in *Saudi Arabian Airlines (Saudia) v. Rebesencio*[38], the employer therein asserted the doctrine of forum non conveniens because the overseas employment contracts required the application of the laws of Saudi Arabia, and so, the Philippine courts were not in a position to hear the case. In striking down such argument, the Court held that while a Philippine tribunal was called upon to respect the parties' choice of governing law, such respect must not be so permissive as to lose sight of

considerations of law, morals, good customs, public order, or public policy that underlie the contract central to the controversy. As the dispute in that case related to the illegal termination of the employees due to their pregnancy, then it involved a matter of public interest and public policy. Thus, it was ruled that Philippine laws properly found application and that Philippine tribunals could assume jurisdiction.

Based on the foregoing, the general rule is that Philippine laws apply even to overseas employment contracts. This rule is rooted in the constitutional provision of Section 3, Article XIII that the State shall afford full protection to labor, whether local or overseas. Hence, even if the OFW has his employment abroad, it does not strip him of his rights to security of tenure, humane conditions of work and a living wage under our Constitution.[39]

As an exception, the parties may agree that a foreign law shall govern the employment contract. A synthesis of the existing laws and jurisprudence reveals that this exception is subject to the following requisites:

1. That it is expressly stipulated in the overseas employment contract that a specific foreign law shall govern;

2. That the foreign law invoked must be proven before the courts pursuant to the Philippine rules on evidence;

3. That the foreign law stipulated in the overseas employment contract must not be contrary to law, morals, good customs, public order, or public policy of the Philippines; and

4. That the overseas employment contract must be processed through the POEA.

The Court is of the view that these four (4) requisites must be complied with before the employer could invoke the applicability of a foreign law to an overseas employment contract. With these requisites, the State would be able to abide by its constitutional obligation to ensure that the rights and well-being of our OFWs are fully protected. These conditions would also invigorate the policy under R.A. No. 8042 that the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and the Filipino migrant workers, in particular.[40] Further, these strict terms are pursuant to the jurisprudential doctrine that "parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest,"[41] such as laws relating to labor. At the same time, foreign employers are not at all helpless to apply their own laws to overseas employment contracts provided that they faithfully comply with these requisites.

If the first requisite is absent, or that no foreign law was expressly stipulated in the employment contract which was executed in the Philippines, then the domestic labor laws shall apply in accordance with the principle of *lex loci contractus*. This is based on the cases of *Sameer Overseas* and *PCL Shipping*.

If the second requisite is lacking, or that the foreign law was not proven pursuant to Sections 24 and 25 of Rule 132 of the Revised Rules of Court, then the international law doctrine of processual presumption operates. The said doctrine declares that " [w]here a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours."[42] This was observed in the cases of *EDI-Staffbuilders* and *ATCI Overseas*.

If the third requisite is not met, or that the foreign law stipulated is contrary to law, morals, good customs, public order or public policy, then Philippine laws govern. This finds legal bases in the Civil Code, specifically: (1) Article 17, which provides that laws which have, for their object, public order, public policy and good customs shall not be rendered ineffective by laws of a foreign country; and (2) Article 1306, which states that the stipulations, clauses, terms and conditions in a contract must not be contrary to law, morals, good customs, public order, or public policy. The said doctrine was applied in the case of *Pakistan International*.

Finally, if the fourth requisite is missing, or that the overseas employment contract was not processed through the POEA, then Article 18 of the Labor Code is violated. Article 18 provides that no employer may hire a Filipino worker for overseas employment except through the boards and entities authorized by the Secretary of Labor. In relation thereto, Section 4 of R.A. No. 8042, as amended, declares that the State shall only allow the deployment of overseas Filipino workers in countries where the rights of Filipino migrant workers are protected. Thus, the POEA, through the assistance of the Department of Foreign Affairs, reviews and checks whether the countries have existing labor and social laws protecting the rights of workers, including migrant workers.[43] Unless processed through the POEA, the State has no effective means of assessing the suitability of the foreign laws to our migrant workers. Thus, an overseas employment contract that was not scrutinized by the POEA definitely cannot be invoked as it is an unexamined foreign law.

In other words, lacking any one of the four requisites would invalidate the application of the foreign law, and the Philippine law shall govern the overseas employment contract.

As the requisites of the applicability of foreign laws in overseas labor contract have been settled, the Court can now discuss the merits of the case at bench.

A judicious scrutiny of the records of the case demonstrates that the petitioners were able to observe the second requisite, or that the foreign law must be proven before the court pursuant to the Philippine rules on evidence. The petitioners were able to present the ESA, duly authenticated by the Canadian authorities and certified by the Philippine Embassy, before the LA. The fourth requisite was also followed because Arriola's employment contract was processed through the POEA.[44]

Unfortunately for the petitioners, those were the only requisites that they complied with. As correctly held by the CA, even though an authenticated copy of the ESA was submitted, it did not mean that said foreign law could be automatically applied to this case. The petitioners miserably failed to adhere to the two other requisites, which shall be discussed *in seratim*.

The foreign law was not expressly specified in the employment contract

The petitioners failed to comply with the first requisite because no foreign law was expressly stipulated in the overseas employment contract with Arriola. In its pleadings, the petitioners did not directly cite any specific provision or stipulation in the said labor contract which indicated the applicability of the Canadian labor laws or the ESA. They failed to show on the face of the contract that a foreign law was agreed upon by the parties. Rather, they simply asserted that the terms and conditions of Arriola's employment were embodied in the Expatriate Policy, Ambatovy Project - Site, Long Term.[45] Then, they emphasized provision 8.20 therein, regarding interpretation of the contract, which provides that said policy would be governed and construed with the laws of the country where the applicable SNC-Lavalin, Inc. office was located.[46] Because of this provision, the petitioners insisted that the laws of Canada, not of Madagascar or the Philippines, should apply. Then, they finally referred to the ESA.

It is apparent that the petitioners were simply attempting to stretch the overseas employment contract of Arriola, by implication, in order that the alleged foreign law would apply. To sustain such argument would allow any foreign employer to improperly invoke a foreign law even if it is not anymore reasonably contemplated by the parties to control the overseas employment. The OFW, who is susceptible by his desire and desperation to work abroad, would blindly sign the labor contract even though it is not clearly established on its face which state law shall apply. Thus, a better rule would be to obligate the foreign employer to expressly declare at the onset of the labor contract that a foreign law shall govern it. In that manner, the OFW would be informed of the applicable law before signing the contract.

Further, it was shown that the overseas labor contract was executed by Arriola at his residence in Batangas and it was processed at the POEA on May 26, 2008.[47] Considering that no foreign law was specified in the contract and the same was executed in the Philippines, the doctrine of *lex loci celebrationis* applies and the Philippine laws shall govern the overseas employment of Arriola.

The foreign law invoked is contrary to the Constitution and the Labor Code

Granting arguendo that the labor contract expressly stipulated the applicability of Canadian law, still, Arriola's employment cannot be governed by such foreign law because the third requisite is not satisfied. A perusal of the ESA will show that some of its provisions are contrary to the Constitution and the labor laws of the Philippines.

First, the ESA does not require any ground for the early termination of employment.[48] Article 54 thereof only provides that no employer should terminate the employment of an employee unless a written notice had been given in advance.[49] Necessarily, the employer can dismiss any employee for any ground it so desired. At its own pleasure, the foreign employer is endowed with the absolute power to end the employment of an employee even on the most whimsical grounds.

Second, the ESA allows the employer to dispense with the prior notice of termination to

an employee. Article 65(4) thereof indicated that the employer could terminate the employment without notice by simply paying the employee a severance pay computed on the basis of the period within which the notice should have been given.[50] The employee under the ESA could be immediately dismissed without giving him the opportunity to explain and defend himself.

The provisions of the ESA are patently inconsistent with the right to security of tenure. Both the Constitution[51] and the Labor Code[52] provide that this right is available to any employee. In a host of cases, the Court has upheld the employee's right to security of tenure in the face of oppressive management behavior and management prerogative. Security of tenure is a right which cannot be denied on mere speculation of any unclear and nebulous basis.[53]

Not only do these provisions collide with the right to security of tenure, but they also deprive the employee of his constitutional right to due process by denying him of any notice of termination and the opportunity to be heard.[54] Glaringly, these disadvantageous provisions under the ESA produce the same evils which the Court vigorously sought to prevent in the cases of *Pakistan International* and *Sameer Overseas*. Thus, the Court concurs with the CA that the ESA is not applicable in this case as it is against our fundamental and statutory laws.

In fine, as the petitioners failed to meet all the four (4) requisites on the applicability of a foreign law, then the Philippine labor laws must govern the overseas employment contract of Arriola.

No authorized cause for dismissal was proven

Article 279 of our Labor Code has construed security of tenure to mean that the employer shall not terminate the services of an employee except for a just cause or when authorized by law.[55] Concomitant to the employer's right to freely select and engage an employee is the employer's right to discharge the employee for just and/or authorized causes. To validly effect terminations of employment, the discharge must be for a valid cause in the manner required by law. The purpose of these two-pronged qualifications is to protect the working class from the employer's arbitrary and unreasonable exercise of its right to dismiss.[56]

Some of the authorized causes to terminate employment under the Labor Code would be installation of labor-saving devices, redundancy, retrenchment to prevent losses and the closing or cessation of operation of the establishment or undertaking.[57] Each authorized cause has specific requisites that must be proven by the employer with substantial evidence before a dismissal may be considered valid.

Here, the petitioners assert that the economy of Madagascar weakened due to the global financial crisis. Consequently, SNC-Lavalin's business also slowed down. To prove its sagging financial standing, SNC-Lavalin presented a copy of a news item in the Financial Post, dated March 5, 2009. They insist that SNC-Lavalin had no choice but to minimize its expenditures and operational expenses.[58] In addition, the petitioners

argued that the government of Madagascar prioritized the employment of its citizens, and not foreigners. Thus, Arriola was terminated because there was no more job available for him.[59]

The Court finds that Arriola was not validly dismissed. The petitioners simply argued that they were suffering from financial losses and Arriola had to be dismissed. It was not even clear what specific authorized cause, whether retrenchment or redundancy, was used to justify Arriola's dismissal. Worse, the petitioners did not even present a single credible evidence to support their claim of financial loss. They simply offered an unreliable news article which deserves scant consideration as it is undoubtedly hearsay. Time and again the Court has ruled that in illegal dismissal cases like the present one, the onus of proving that the employee was dismissed and that the dismissal was not illegal rests on the employer, and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal.[60]

As to the amount of backpay awarded, the Court finds that the computation of the CA was valid and proper based on the employment contract of Arriola. Also, the issue of whether the petitioners had made partial payments on the backpay is a matter best addressed during the execution process.

WHEREFORE, the petition is **DENIED**. The January 24, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 118869 is **AFFIRMED *in toto*.**

SO ORDERED.

Carpio, (Chairperson), Del Castillo, and *Leonen, JJ.*, concur.
Brion, J., on leave.

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[1] Penned by Associate Justice Edwin D. Sorongon with Associate Justice Hakim S. Abdulwahid and Associate Justice Marlene Gonzales-Sison, concurring; *rollo*, pp. 48-58.

[2] Penned by Presiding Commissioner Benedicto R. Palacol with Commissioner Isabel G. Panganiban-Ortiguerra and Commissioner Nieves Vivar-De Castro, concurring; id. at 66-72.

[3] Id. at 73-75.

[4] Id. at 49 and 67.

[5] CA *rollo*, pp. 106-107.

[6] Id. at 70, citing NLRC Records, p. 5.

[7] Id. at 127-128.

[8] *Rollo*, pp. 59-60; see CA *rollo*, p. 126.

[9] CA *rollo*, p. 151

[10] CA *rollo*, pp. 130-131.

[11] *Rollo*, pp. 50 and 68-69.

[12] 563 Phil. 1 (2007).

[13] CA *rollo*, p. 201.

[14] Penned by Labor Arbiter Jose G. De Vera; id. at 59-65

[15] Id. at 65.

[16] 499 Phil. 512 (2005).

[17] 601 Phil. 245 (2009).

[18] *Rollo*, p. 72.

[19] See CA *rollo*, p. 794.

[20] Id. at 794-802

[21] *Rollo*, pp. 57-58.

[22] Id. at 267-268.

[23] Id. at 145-167.

[24] 268 Phil. 92 (1990).

[25] *Rollo*, pp. 170-196.

[26] Id. at 232-251.

[27] Id. at 256-308.

[28] Azucena, The Labor Code with Comments and Cases, Volume I, 7th ed., 2010, p. 57.

[29] Section 2(c), R.A. No. 8042, as amended.

[30] Section 10, R.A. No. 8042, as amended.

[31] Supra note 24, pp. 100-101.

[32] Id. at 104.

[33] Supra note 12, p. 22.

[34] 602 Phil. 1058 (2009).

[35] 647 Phil. 43-52 (2010).

[36] G.R. No. 170139, August 5, 2014, 732 SCRA 22.

[37] 540 Phil. 65-85 (2006).

[38] G.R. No. 198587, January 14, 2015.

[39] 2nd Paragraph, Section 3, Article XIII, 1987 Constitution.

[40] Section 2(a), R.A. No. 8042.

[41] *Halagueña v. PAL, Inc.*, 617 Phil. 502, 520 (2009); *Servidad v. NLRC*, 364 Phil. 518, 527 (1999); *Manila Resource Development Corp. v. NLRC*, G.R. No. 75242, September 2, 1992, 213 SCRA 296.

[42] *Philippine Export and Foreign Loan Guarantee Corp. v. V.P. Eusebio Construction Inc.*, 478 Phil. 269, 289 (2004).

[43] See Section 4, R.A. 8042, as amended.

[44] *Rollo*, p. 42.

[45] Id. at 19.

[46] CA *rollo*, p. 125.

[47] *Rollo*, p, 42.

[48] Id. at 20.

[49] CA *rollo*, p. 276.

[50] Id. at 284.

[51] 2nd Paragraph, Section 3, Article XIII, 1987 Constitution.

[52] Article 279.

[53] Azucena, The Labor Code with Comments and Cases, Volume II, 7th ed., 2010, p. 692.

[54] Section 1, Article III, 1987 Constitution.

[55] Supra note 50, p. 692, citing *Rance v. NLRC*, 246 Phil. 287 (1988).

[56] *Deoferio v. Intel Technology Phil, Inc.*, G.R. No. 202996, June 18, 2014, 726 SCRA 679, 686.

[57] Article 283, Labor Code.

[58] *Rollo*, p. 50.

[59] Id. at 191.

[60] *Radar Security & Watchman Agency, Inc. v. Castro*, G.R. No. 211210, December 2, 2015.
