



Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION

SERMAN COOPERATIVE,
 Petitioner,

G.R. Nos. 246760-61

Present:

- versus -

PERALTA, C.J.,
Chairperson,
 CAGUIOA,
 CARANDANG,
 ZALAMEDA, and
 GAERLAN, JJ.

ANNALYN E. MONTARDE,
 JORDAN A. ALMAZAN, DANILO A.
 VALENCIA, CHRIS JOSEPH B.
 ENAR, RENANTE B. RIVAREZ,
 JORGE A. GREGORIO, GERALD S.
 FAJARDO, MARCELINO T.
 LUCERO, MICHAEL A.
 MALABANAN, ROMEO JUNIOR E.
 GAGANTE, LORELYN C. TENGCO,
 FE L. MARTINEZ, AMIE P. DE
 GUZMAN, MYLENE D. QUINTOS,
 NELIA I. ORLIGA, ERICK S.
 PONTIPEDRA, FREDERICK M.
 PEREZ, STEPHEN C. FORTUNA,
 RICK V. ARROYO, AND EDDIE T.
 LACASANDILE,

Respondents.

X-----X

WYETH PHILIPPINES, INC.,
 Petitioner,

G.R. Nos. 246764-65

- versus -

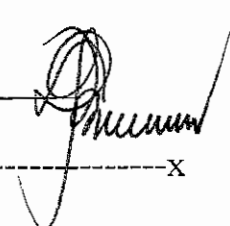
ANNALYN E. MONTARDE,
 JORDAN A. ALMAZAN, DANILO A.

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**VALENCIA, CHRIS JOSEPH B.
ENAR, RENANTE B. RIVAREZ,
JORGE A. GREGORIO, MICHAEL
A. MALABANAN, ROMEO JUNIOR
E. GAGANTE, MARCELINO T.
LUCERO, GERALD S. FAJARDO,
LORELYN C. TENGCO, FE L.
MARTINEZ, NELIA I. ORUGA,
AMIE P. DE GUZMAN, MYLENE D.
QUINTOS, ERICK S. PONTIPEDRA,
FREDERICK M. PEREZ, RICK V.
ARROYO, EDDIE T.
LACASANDILE, AND STEPHEN C.
FORTUNA**

Promulgated:

DEC 09 2020



Respondents.

X-----X

DECISION

CARANDANG, J.:

Before this Court are two consolidated petitions for review on *certiorari*¹ under Rule 45 of the Rules of Court (Rules) assailing the Decision² dated June 26, 2018 and the Resolution³ dated March 28, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 142600 and CA-G.R. SP No. 142631 filed by petitioners Serman Cooperative (Serman) and Wyeth Philippines, Inc. (Wyeth).

Antecedents

Wyeth is a company engaged in the manufacturing and sale of nutritional products for infants, children, and mothers. On various dates beginning April 2003 until December 2012, Wyeth entered into several service agreements⁴ with Serman, a multipurpose cooperative engaged in the service of job contracting, manufacturing, marketing, and exporting of garments and other products. Under these agreements, Serman undertook to assign its personnel to Wyeth to render services such as sorting of finished goods, cartoning of sachets and finished goods, and preparing and dumping of raw materials. On different dates between 2006 and 2011, Serman deployed the following personnel to Wyeth as Production Helpers (collectively, workers):

¹ *Rollo* (G.R. Nos. 246760-61), pp. 12-32; *rollo* (G.R. Nos. 246764-65), pp. 9-55.

² Penned by Associate Justice Ramon M. Bato, Jr., with the concurrence of Associate Justices Ramon A. Cruz and Pablito A. Perez; *rollo* (G.R. Nos. 246760-61), pp. 94-115.

³ *Id.* at 118-119.

⁴ *Id.* at 96.

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NAME	DATE OF EMPLOYMENT
Annalyn E. Montarde	May 19, 2009
Jordan A. Almazan	December 18, 2010
Danilo A. Valencia	April 16, 2006
Chris Joseph B. Enar	October 12, 2009
Renante B. Rivarez	January 13, 2006
Jorge A. Gregorio	November 5, 2006
Michael A. Malabanan	September 21, 2008
Romeo Junior E. Gagante	June 2, 2010
Marcelino T. Lucero	January 22, 2011
Gerald S. Fajardo	December 10, 2007
Lorelyn C. Tengco	June 9, 2009
Fe L. Martinez	June 30, 2009
Nelia I. Oruga	October 2, 2006
Amie P. De Guzman	June 9, 2009
Mylene D. Quintos	May 28, 2009
Erick S. Pontipedia	January 26, 2011
Frederick M. Perez	September 23, 2011
Stephen C. Fortuna	April 26, 2011
Rick V. Arroyo	October 4, 2011
Eddie T. Lacasandile	December 1, 2011 ⁵

On December 1, 2012, Wyeth entered into a Service Agreement⁶ with Serman effective for a period of one (1) year commencing on December 1, 2012 until November 30, 2013. On even date, the workers executed their respective contracts of service⁷ stating that their contracts shall be “co-extensive” with Serman’s service agreement with Wyeth and shall automatically expire on November 30, 2013. At the instance of Wyeth, the duration of the Service Agreement was extended from December 1, 2013 to January 31, 2014.⁸ Thus, on December 1, 2013, the workers executed their respective contracts stating that their contracts shall be co-extensive with Serman’s service agreement with Wyeth and shall automatically expire on January 31, 2014.⁹

After the alleged expiration of their respective contracts, the workers, composed of several groups, filed their respective complaints¹⁰ for illegal dismissal, regularization, damages, attorney’s fees, capital share and dividend against Serman, Wyeth, and their respective officers.¹¹

Montarde, Almazan, Valencia, Enar, Rivarez, Gregorio, Malabanan, Gagante, Lucero, Fajardo, Tengco, Martinez, Oruga, De Guzman, and Quintos (collectively, Montarde Group) maintained that on January 29, 2014, Arnel Calleja (Calleja), Serman’s supervisor, confiscated their Serman Identification Cards and Wyeth Access Cards and instructed them not to report

⁵ Id.

⁶ *Rollo* (G.R. Nos. 246764-65), pp. 315-323.

⁷ Id. at 438-440, 447-461, 465-473, 477-479, 482-485, 489-491, 495-497, 501-503, 507-509, 513-515, 519-521, 525-527, 530-532, 536-538, 542-544, 548-550, 554-556.

⁸ Id. at 314.

⁹ Id. at 441-446, 462-464, 474-476, 480-481, 486-488, 492-494, 498-500, 504-506, 510-512, 516-518, 522-524, 528-529, 533-535, 539-541, 545-547, 551-553.

¹⁰ Id. at 756-770.

¹¹ Id.

to Wyeth due to the expiration of their contract. The Montarde Group insisted that they were illegally dismissed from employment because there was still an existing contract between Serman and Wyeth. They further claimed that Wyeth acted in bad faith because it resorted to labor-only contracting to prevent them from attaining regular status.¹²

Pontipetra, Perez, Fortuna, Arroyo, and Lacasandile (collectively, Pontipetra Group) claimed that they were illegally dismissed after an incident on January 17, 2014. They averred that on January 17, 2014, they went out of the compounding area to change their uniforms in the locker room and sign their attendance in the presence of Syril Paingas (Paingas), another supervisor of Serman. When they returned to their posts, Ed Laygo (Laygo), Wyeth's supervisor, allegedly questioned why it took them a long time to return to their posts. Calleja and Paingas instructed them not to report to Wyeth and proceed instead to Serman's office. They were allegedly given a blank sheet of paper and were directed to make an incident report but they refused. Instead, they asked for a "memo or termination letter." On the same day, they were issued a Member-Worker Notice¹³ requiring them to explain why a pre-termination of their contract should not be undertaken for leaving their posts without permission from their immediate superior. The Pontipetra Group alleged that they were dismissed without any legal basis and that they were not accorded procedural due process.¹⁴

Ruling of the Labor Arbiter

In a Decision¹⁵ dated November 17, 2014, Labor Arbiter (LA) Napoleon V. Fernando dismissed the complaint for illegal dismissal and regularization for lack of merit.¹⁶ The LA found Serman fully compliant with the requirements for legitimate job contracting.¹⁷ The LA further held that workers' assignment at Wyeth mainly consisted of support services in their capacity and designation as production helper. The LA concluded that Serman undertook the contracted services on its own, and assumed full responsibility over its outcome, free from the control of Wyeth.¹⁸

With regard to the orientation seminar conducted by Wyeth before the workers assumed their duties, the LA did not consider it an indication of control Wyeth exercised over them. It was found to be a reasonable measure to maintain the quality and cleanliness of its products.¹⁹

In holding that the workers were not illegally dismissed, the LA held that the deployment of the Montarde Group at Wyeth ended as a result of the expiration of the Service Agreement between Wyeth and Serman. This is also

¹² Id. at 97-98.

¹³ Id. at 873-880.

¹⁴ Id. at 98-99.

¹⁵ Penned by Labor Arbiter Napoleon V. Fernando; *rollo* (G.R. No. 246760-61), pp. 41-67.

¹⁶ Id. at 67.

¹⁷ Id. at 62-63.

¹⁸ Id. at 64.

¹⁹ Id.

true in the case of the Pontipedia Group who, after having been required by Serman to explain their unauthorized departure from the place of their assignment, failed to return to Serman's office to submit their explanation.²⁰

Ruling of the National Labor Relations Commission

On May 29, 2015, the National Labor Relations Commission (NLRC) rendered its Resolution,²¹ the dispositive portion of which states:

WHEREFORE, premises considered, the Decision dated 17 November 2014 is hereby **MODIFIED** ordering respondent-appellee Serman Cooperative to pay complainants-appellants their separation benefits for the duration of their employment contracts co-terminus with the Service Agreements with respondent-appellee Wyeth.

SO ORDERED.²²

In modifying the ruling of the LA, the NLRC found that an employer-employee relationship exists between the workers and Serman.²³ The NLRC considered the workers as fixed-term employees whose respective employment were terminated due to the expiration of their contracts. Thus, the NLRC ruled that there was no illegal dismissal.²⁴

The motion for reconsideration of the workers was denied in a Resolution dated August 12, 2015.²⁵

Ruling of the Court of Appeals

On June 26, 2018, the CA rendered its Decision,²⁶ the dispositive portion of which reads:

WHEREFORE, the Resolutions dated 29 May 2015 and 12 August 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000558-15 are **REVERSED** and **SET ASIDE**. Wyeth Phils., Inc. is hereby ordered to reinstate the complainants-appellants without loss of seniority rights and other privileges, namely: Annalyn E. Montarde, Jordan A. Almazan, Danilo A. Valencia, Chris Joseph B. Enar, Renante B. Rivarez, Jorge A. Gregorio, Michael A. Malabanan, Romeo Junior E. Gagante, Marcelino T. Lucero, Gerald S. Fajardo, Lorelyn C. Tengco, Fe L. Martinez, Nelia I. Oruga, Amie P. De Guzman, Mylene D. Quintos, Erick S. Pontipedia, Frederick M. Perez,

²⁰ Id. at 66.

²¹ Penned by Commissioner Pablo C. Espiritu, Jr. with the concurrence of Presiding Commissioner Alex A. Lopez; id. at 69-88.

²² Id. at 87.

²³ Id. at 84-85.

²⁴ Id. at 86.

²⁵ Penned by Commissioner Pablo C. Espiritu, Jr. with the concurrence Presiding Commissioner Alex A. Lopez; id. at 90-91.

²⁶ Supra note 2.

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Stephen C. Fortuna, Rick V. Arroyo, and Eddie T. Lacasandile, Wyeth Phils., Inc. and Serman Cooperative are ordered to pay, jointly and severally, their full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation is withheld up to the time of their actual reinstatement. Accordingly, the instant case is **REMANDED** to the Computation Department of the Labor Arbiter for the computation of the foregoing awards.

SO ORDERED.²⁷(Emphasis and italics in the original)

The CA ordered Wyeth to reinstate the workers without loss of seniority rights and other privileges. Wyeth and Serman were ordered to pay, jointly and severally, their full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation was withheld up to the time of their actual reinstatement. The case was remanded to the Computation Department of the Labor Arbiter for the computation of the monetary award.²⁸

In reversing the NLRC, the CA held that the evidence adduced by Wyeth merely proved that Serman was financially qualified as a legitimate contractor only with respect to its service agreements with Wyeth in 2009 to 2012 through their financial statements for the years 2009 to 2013.²⁹ The workers assigned at the compounding area were performing jobs that were necessary and desirable to the operations of Wyeth and were indispensable to the operations of Wyeth because they ensured the safety of Wyeth's products by checking the expiration dates and the condition of the sachets. They were also responsible for cartoning the sachets for distribution and exportation.³⁰ Also, the repeated and continuing need to rehire the workers is sufficient evidence of the necessity, if not indispensability, of their work to the business of manufacturing and distribution of milk products.³¹

The CA observed that various provisions of the Service Agreement reveal the extent of Wyeth's involvement in the supervision and control of the workers' performance.³² The CA pointed out that the power to dismiss workers, in the guise of a request to recall and change any undesirable or erring personnel, is the strongest indication of Wyeth's power of control as a direct employer.³³

The CA declared Wyeth as the real employer of the workers who are considered regular employees pursuant to Article 280 of the Labor Code.³⁴ Considering that they are regular employees of Wyeth, their employment may

²⁷ Id. at 115.

²⁸ Id.

²⁹ Id. at 106.

³⁰ Id. at 108-109.

³¹ Id. at 109.

³² Id. at 111.

³³ Id.

³⁴ Id. at 112.

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only be terminated for just or authorized causes under the Labor Code. As the supposed expiration of the Service Agreement does not constitute just or authorized causes which would justify their dismissal, and there was no compliance with the twin requirements of notice and hearing, the workers were illegally dismissed from employment. Thus, the CA concluded that they are entitled to reinstatement without loss of seniority of rights and other privileges and to their full backwages inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation was withheld up to the time of their actual reinstatement.³⁵

The motions for reconsideration Serman and Wyeth respectively filed were denied in a Resolution dated March 28, 2019.³⁶

In the petition³⁷ docketed as G.R. Nos. 246760-61, Serman maintains that, other than unloading raw materials, the workers were not in any way involved in the operation of Wyeth's machines, thus making their task not necessary or desirable to the business of Wyeth.³⁸ Assuming *arguendo* that dumping of raw materials is considered necessary or desirable to Wyeth's operations, Serman insists that this should not be the sole consideration in classifying it as a labor-only contractor. Serman argues that it exercises power of supervision and control over the workers as manifested *inter alia* in the preparation of work schedules, evaluation of work performance, discipline of workers, preparation of payroll, and payment of SSS, Philhealth, and Pag-IBIG remittances.³⁹ Serman also stresses that the workers were not illegally dismissed because the termination of their employment was caused by the expiration of the Service Agreement between Serman and Wyeth.⁴⁰

Meanwhile, in the petition⁴¹ docketed as G.R. Nos. 246764-65, Wyeth argues that: (1) Serman had sufficient proof of its substantial capitalization;⁴² (2) the workers were not performing jobs that were necessary and desirable to the operations of Wyeth;⁴³ (3) Wyeth did not have control over the workers' performance of their tasks;⁴⁴ and (4) the workers are not regular employees of Wyeth.⁴⁵

Thereafter, upon recommendation of the Division Clerk of Court, the petitions were consolidated.⁴⁶

In their Consolidated Comment,⁴⁷ the workers maintain that: (1) Serman did not possess substantial capital and ownership of the tools,

³⁵ Id. at 113, 115.

³⁶ Supra note 3.

³⁷ *Rollo* (G.R. No. 246760-61), pp. 12-32.

³⁸ Id. at 22-23.

³⁹ Id. at 25-29.

⁴⁰ Id. at 30.

⁴¹ *Rollo* (G.R. Nos. 246764-65), pp. 9-55.

⁴² Id. at 25-27.

⁴³ Id. at 27-35

⁴⁴ Id. at 35-46.

⁴⁵ Id. at 46-53.

⁴⁶ *Rollo* (G.R. Nos. 246760-61), p. 125.

⁴⁷ Id. at 163-172.

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equipment, and machineries as contemplated in Section 4(b) of Department Order (D.O.) No. 18-A;⁴⁸ (2) the duties of the workers are directly related, necessary or desirable to the manufacturing business of Wyeth;⁴⁹ and (3) Wyeth exercised control over the performance of the workers' tasks.⁵⁰

The Issues

The issues to be resolved are:

1. Whether Serman is engaged in labor-only contracting, thus making the workers regular employees of Wyeth; and
2. Whether the workers were illegally dismissed from their employment.

Ruling of the Court

The petitions are not meritorious.

Labor-only contracting is defined in Article 106 of the Labor Code as follows:

Article 106. *Contractor or Subcontractor.* – x x x
 There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.⁵¹

The policy of the State in prohibiting labor-only contracting is found in Department of Labor and Employment (DOLE) D.O. No. 18-A-11 which provides:

Section 6. *Prohibition Against Labor-only Contracting.* – Labor-only contracting is hereby declared prohibited. For this purpose, labor only contracting shall refer to an arrangement where:

(a) The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or

⁴⁸ Id. at 165.

⁴⁹ Id. at 165-169.

⁵⁰ Id. at 170-172.

⁵¹ Article 106, Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered).

(b) The contractor does not exercise the right to control over the performance of the work of the employee.⁵²

In resolving the issues presented before Us, it is worthy to point out the recent ruling of the Court in the case of *Alaska Milk Corporation v. Paez*.⁵³ which also involved production line helpers performing post-production tasks such as packaging of finished products, preparing raw materials, and monitoring of the release of defective products. These production helpers claimed to be regular employees of Alaska Milk Corporation (Alaska), a manufacturer of dairy products. The Court ruled that the production line helpers are employees of the job contractor, Asiapro Multipurpose Cooperative (Asiapro), responsible for deploying them. While Asiapro was not registered, it was able to prove that it possessed substantial capital and exercised control over the means and methods used by its workers-members in carrying out their duties. On the other hand, Alaska's other job contractor, 5S Manpower Services was considered a labor-only contractor after it failed to prove that it possessed substantial capital or investments as the record is bereft of any financial statements revealing its paid-up capital. The Court considered the following factors: (1) possession of substantial capital or investment; and (2) the job contractor's exercise of control and supervision over the workers.⁵⁴

In the present case, Serman has established that it is a duly-registered job contractor in compliance with D.O. No. 18-02, series of 2002. Serman has been registered with the DOLE as reflected in the certificates of registration issued on May 30, 2006,⁵⁵ May 19, 2009,⁵⁶ and June 26, 2012.⁵⁷ Nevertheless, the fact of registration simply prevents the presumption of being a mere labor-only contractor from arising. In distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case should be considered.⁵⁸

Serman failed to prove that it possesses substantial capital or investment as contemplated in D.O. No. 18-A-11 to be considered a legitimate job contractor.

The term "substantial capital" was only defined on November 14, 2011, when the amendments to D.O. No. 18-02 series of 2002 was reflected in D.O. No. 18-A-11 series of 2011. It states that:

(1) "Substantial capital" refers to **paid-up capital stocks/shares of at least Three Million Pesos (P3,000,000.00)** in

⁵² Rules Implementing Articles 106 to 109 of the Labor Code, as Amended, DOLE Department Order No. 18-A-11, November 14, 2011.

⁵³ G.R. Nos. 237277 and 237317, November 27, 2019.

⁵⁴ Id.

⁵⁵ *Rollo* (G.R. No. 246764-65), p. 295.

⁵⁶ Id. at 294.

⁵⁷ Id. at 293.

⁵⁸ *San Miguel Corporation v. Semillano*, 637 Phil. 115, 130 (2010).

the case of corporations, partnerships and **cooperatives** in the case of single proprietorship, a net worth of at least Three Million Pesos (P3,000,000.00).⁵⁹ (Emphasis supplied)

In the present case, Serman failed to establish that it possesses the required capital as revealed in its financial statements. Wyeth attached to its petition financial reports⁶⁰ of Serman showing the following information:

YEAR	ASSETS	PAID-UP CAPITAL	CAPITAL BUILD-UP
2004	P2,693,693.93	P176,000.00	P175,600.00
2005	P3,340,144.39	P182,500.00	P246,400.00
2006	P5,510,544.01	P202,500.00	P323,450.00
2007	P8,301,104.55	P308,500.00	P398,700.00
2008	P9,030,759.54	P238,000.00	P559,600.00 ⁶¹

Following the implementation of D.O. No. 18-A-11, Serman adopted changes to its Articles of Cooperation with the intention of complying with its capitalization requirement. These changes were explained in Serman's Notes to Financial Statements (as of and for the years ended December 31, 2013 and 2012; and as of and for the years ended December 31, 2014 and 2013), the pertinent portion of which is quoted below:

14. Share capital

On December 9, 2011, a Special General Assembly Meeting was held to amend the Articles of Cooperation of the Cooperative, in particular Article IX Capitalization, for the Cooperative to comply with the new Department Order No. 18-A of the Department of Labor and Employment in order to re-register the Cooperative as an independent job contractor.

The following amendment in the Articles of Incorporation of Cooperative was unanimously approved by at least two-thirds (2/3) of all members with voting rights:

That the Authorized Share Capital of this Cooperative is Ten Million Pesos (P10,000,000.00). Philippine currency divided into:

1. Seven Thousand Five Hundred (7,500) common share with par value of One Thousand (1,000) per share;
2. Five Thousand (5,000.00) preferred shares with par value of Five Hundred Pesos (P500.00) per share.

On February 21, 2012, the above amendment to the Articles of Cooperation and By-laws of the Cooperative was approved by Cooperative Development Authority.⁶²

A careful scrutiny of Serman's financial statements⁶³ would show that after the implementation of the amendments to Serman's Articles of Cooperation, the actual amount of paid-up capital for 2011 to 2014 are no

⁵⁹ Rules Implementing Articles 106 to 109 of the Labor Code, as Amended, DOLE Department Order No. 18-A-11, November 14, 2011.

⁶⁰ *Rollo* (G.R. No. 246764-65), pp. 122-165.

⁶¹ *Id.*

⁶² *Id.* at 185, 211.

⁶³ *Id.* at 166-215.

longer available in its financial statements. Instead, the relevant information on its equity⁶⁴ declared in its financial statements are as follows:

YEAR	ASSETS	SHARE CAPITAL	DONATED CAPITAL	STATUTORY FUNDS
2011	P11,601,320.35	P3,301,000.00	P500,000.00	P2,152,537.58
2012	P11,836,930.10	P3,712,050.00	P500,000.00	P1,864,319.32
2013	P11,416,026.00	P3,882,350.00	P500,000.00	P1,682,006.00
2014	P11,312,070.00	P3,910,500.00	P500,000.00	P1,549,061.00 ⁶⁵

Noticeably, while the share capital of Serman beginning 2011 was more than ₱3,000,000.00, it still failed to meet the required ₱3,000,000.00 paid-up capital requirement. Though both Serman and Wyeth filed their respective petition for review on *certiorari*, it was only Wyeth which attached to its petition the financial statements of Serman. However, a careful study of these financial statements reveal that there is no available information on the paid-up capital of Serman since the implementation of D.O. No. 18-A-11.

Assets, share capital, donated capital, and statutory funds cannot replace the paid-up capital requirement as these are separate and distinct accounting terminologies with differing purposes and implications on the financial standing of Serman. It is settled that a sum of assets, without more, is insufficient to prove that an entity is engaged in valid job contracting.⁶⁶ We cannot readily presume that the assets were those contemplated by D.O. No. 18-A-11 since Wyeth's allegation that Serman possesses substantial capital is not supported by the evidence on record.

Share capital refers to the money paid or required to be paid by the members for the conduct of the operation of the cooperative.⁶⁷ Meanwhile, paid-up capital pertains to the portion of the subscribed share capital which has been paid by the members of the cooperative.⁶⁸ Donated capital is defined as the subsidies, grants, donations and aids received by the cooperative from any person, whether natural or juridical, local or foreign both government and private.⁶⁹ Statutory funds or reserves refer to earnings of the cooperative allocated to various statutory accounts such as: (a) Reserved fund; (b) Education and training fund; (c) Community development Fund; and (d) Optional fund.⁷⁰

Since share capital refers to the total number of shares paid or required to be paid by its members, the paid-up capital of a cooperative is only a fraction or portion of share capital. Share capital is not automatically equivalent to the paid-up capital because it may include unpaid shares of the

⁶⁴ Id. at 307, 194.

⁶⁵ Id.

⁶⁶ Supra note 53.

⁶⁷ Cooperative Development Authority Memorandum Circular No. 2015-05 Series of 2015, paragraph (xii), Section 5; Rules and Regulations Implementing Certain Provisions of the Philippine Cooperative Code of 2008, Section 2.

⁶⁸ Rules and Regulations Implementing Certain Provisions of the Philippine Cooperative Code of 2008, Section 2.

⁶⁹ Id.

⁷⁰ Philippine Cooperative Code of 2008, as amended, Republic Act No. 9520, Article 86.

cooperative. The amount of paid-up capital may only be equal to the amount of share capital if all share capital have been paid.

D.O. No. 18-A-11 requires at least ₱3,000,000.00 paid-up capital for cooperatives to give rise to the presumption that one is engaged in permissible job contracting. As the parties claiming to be engaged in legitimate job contracting, Wyeth and Serman bear the onus of proving their claim. Though the financial statements of Serman for 2004 up to 2008 included information regarding the amount of its paid-up capital, this information is noticeably absent in Serman's financial statements beginning 2011. Hence, Wyeth and Serman failed to establish that the latter had sufficient capital as contemplated by the DO No. 18-A-11 to be considered a legitimate job contractor.

The workers performed duties and activities usually necessary or desirable to the manufacturing business of Wyeth.

In the service agreements entered into by Wyeth and Serman, the latter undertook to provide Wyeth with services which include:

1. Performs sorting of all finished Goods based on Request to Sort (RTS) recommended by the Quality Assurance Division.
2. Cartoning of 44g Sachets.
3. Cartoning of Finished Goods in Sachet packs for export requirements.
4. Sieving of rework powder in the sieving section.
5. Tapping of sachets in the Packaging Section
6. Acts as reliever due to unscheduled absences. As Reliever, the following functions shall be performed:
 - a. Preparation of bulk materials in the Macro Dispensing Section
 - b. Dumping of bulk materials in the Compounding Section
7. In case of absence of a regular employee, assists other Operators in:
 - a. Unwrapping and pushing of pallets of empty cans into the depalletizer infeed conveyor.
 - b. Assists in the manual palletizing of finished products in case the automatic cartoner and palletizer bogs down.
 - c. Observes the can blower and immediately notifies a regular employee in cases there are jammed cans in the conveyor. Pushes and emergency stop button to prevent further damage of the equipment.
8. During shutdown, assists the regular employees in the dismantling and cleaning of equipment in the filling room.
9. Quality Assurance Raw Materials Sampler – performs sampling on all new raw material deliveries, in house premises and rework powder according to approved

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Standard Operating Procedures (SOPs) and specifications.

10. Provides support to WYETH programs such as follows:
 - a. Team building
 - b. Safety measures
 - c. Survival training
 - d. Disaster, emergency preparedness
 - e. First-Aid⁷¹

It cannot be denied that the workers were performing duties and activities “usually necessary or desirable in the usual business or trade of the employer” pursuant to Article 280 of the Labor Code. The continuous re-hiring of the employees negates the claim of Serman and Wyeth that the tasks the workers performed were only ancillary to the manufacturing business of Wyeth. Workers assigned at the compounding area are indispensable to the operations of Wyeth because they ensure the safety of Wyeth’s products by checking the expiration dates and the condition of the sachets. They were also responsible for the cartoning of the sachets for distribution and exportation. Furthermore, the repeated and continuing need to rehire complainants is sufficient evidence of the necessity, if not indispensability, of their work to the business of manufacturing and distribution of milk products.⁷²

Admittedly, in performing the contracted out tasks, the parties specifically declared that:

c. SERMAN shall be free to use any means and methods not contrary to law, regulations and the provisions and spirit of this Agreement, which it believes will best enable it to perform the Services. SERMAN shall not be subject to the control and supervision of WYETH insofar as the means and methods to be employed by SERMAN, it being understood that WYETH is interested only in the results of SERMAN work under this Agreement.⁷³

In addition, Serman was required to assign its own personnel who will monitor the performance of the workers. The service agreement states:

3.5. SERMAN shall designate and make available to WYETH at all times a competent representative, who shall be part of SERMAN Personnel, with full authority to deal with WYETH on all matters pertaining to the implementation and enforcement of this Agreement and the performance of the Services. The representative shall coordinate with WYETH throughout the duration of this Agreement to ensure the accomplishment of WYETH’s desired result.⁷⁴

⁷¹ *Rollo* (G.R. No. 246764-65), p. 325.

⁷² *Id.* at 110.

⁷³ *Id.* at 316.

⁷⁴ *Id.* at 317.

However, despite the cited provisions, the underlying authority to choose who may continue to perform the contracted out tasks still lies with Wyeth. The service agreement provides:

3.6. SERMAN shall at all times maintain efficient and effective discipline over its Personnel. **WYETH shall have the right to report to SERMAN and protest any untoward act, negligence, misconduct, malfeasance, misfeasance or nonfeasance of any Personnel.** Although SERMAN alone shall have the right to discipline the Personnel, **WYETH may request SERMAN to recall and change any undesirable or erring Personnel.** SERMAN shall not continue to assign any Personnel whose trustworthiness, dependability or efficiency is doubted by WYETH. SERMAN shall ensure that, at all times, the Personnel shall not commit any act prejudicial or injurious to the name, reputation, business, and interest of WYETH.⁷⁵ (Emphasis supplied)

To Our mind, Wyeth's right to recall erring workers and request for their replacement is a manifestation of Wyeth's control over them. The procedure in requesting for the recall of workers is actually an indirect exercise of Wyeth's power to dismiss workers deployed by Serman who fail to meet the former's standards. The extent of Wyeth's involvement in the supervision, control, and even the dismissal of the workers is a strong indication of Wyeth's control over them as a direct employer.

Under the "control test," the employer is the person who has the power to control both the end achieved by his or her employees, and the manner and means they use to achieve that end. In this case, it must be highlighted that Wyeth requires Serman to observe certain standards in the performance of the contracted out tasks through its Key Performance Indicators which include the following categories: (1) 100% Safety Compliance; (2) 100% Compliance on the eCGMP of the principal; (3) zero incidence of unauthorized tardiness and absences; and (4) zero incidence of rejection related to scope of work performance.⁷⁶ Requiring observance of these key indicators is considered a manifestation of Wyeth's exercise of control and supervision. Wyeth cannot be reasonably expected to simply allow the workers to perform the contracted out tasks without adherence to these standards considering that the business of manufacturing and sale of nutritional products for infants, children, and mothers requires strict quality control. It is settled that "it is not essential that the employer actually exercises the power of control, as the ability to wield the same is sufficient."⁷⁷

⁷⁵ Id.

⁷⁶ Id. at 443.

⁷⁷ Supra note 53.

The workers were constructively dismissed from their employment.

In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds. In the present case, suddenly instructing the Montarde Group not to report to work before the expiration of the service agreement and sanctioning the Pontipetra Group for allegedly leaving their post without permission, the timing of which is suspicious, constitute constructive dismissal. Serman and Wyeth failed to rebut the claim of the workers that they were illegally dismissed.

Considering that the workers are regular employees of Wyeth, their employment may only be terminated for just or authorized causes under the Labor Code. As the supposed expiration of the Service Agreement does not constitute just or authorized cause that would justify their dismissal, and there was no compliance with the twin requirements of notice and hearing, the workers were illegally dismissed from employment. Thus, they are entitled to reinstatement without loss of seniority of rights and other privileges and to their full backwages inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation were withheld up to the time of their actual reinstatement.⁷⁸

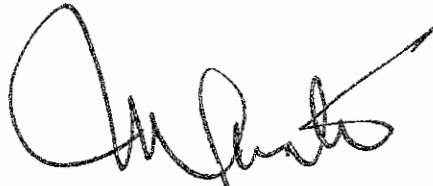
WHEREFORE, the petitions for review on *certiorari* of Serman Cooperative and Wyeth Philippines, Inc. are **DENIED**. The Decision dated June 26, 2018 and the Resolution dated March 28, 2019 of the Court of Appeals are **AFFIRMED**.

SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

⁷⁸ Rollo (G.R. No. 246760-61), pp. 113, 115.

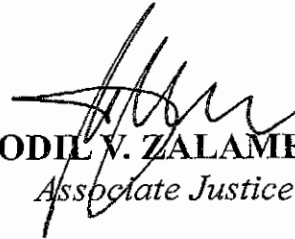
WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



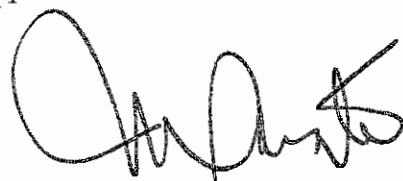
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice