Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GAUDIOSO ISO, JR. and JOEL TOLENTINO,
Petitioners,

- *versus* -

SALCON POWER CORPORATION (now SPC POWER CORPORATION) and DENNIS VILLAREAL,
Respondents.

G.R. No. 219059

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
LEONEN,*
REYES, A., JR.,
INTING, and
GAERLAN,** *JJ.*

Promulgated:

12 FEB 2020

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DECISION

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court seeking to set aside the Decision[2] dated October 9, 2013 and the Resolution[3] dated May 13, 2015 of the Court of Appeals (CA) in CA-G.R. CEB-SP Nos. 02781 and 06429.

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* Designated as additional member per Raffle dated February 3, 2020 in lieu of Associate Justice Ramon Paul L. Hernando (now a Member of the Court) who penned the CA Decision.

** Designated as additional member per Raffle dated February 3, 2020 in lieu of Associate Justice Edgardo L. Delos Santos (now a member of the Court) who recused from the case due to prior participation in the Court of Appeals.

[1] *Rollo*, Vol. 1, pp. 12-34.

[2] *Id.* at 38-49; penned by Associate Justice Ramon Paul L. Hernando (now a member of the Court) with Associate Justices Pampio A. Abarintos and Edgardo L. Delos Santos (now a member of the Court), concurring.

[3] *Id.* at 51-53; penned by Associate Justice Gabriel T. Ingles with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Germano Francisco D. Legaspi, concurring.

The Antecedents

As briefly summarized by the CA, the antecedents of the two consolidated cases are as follows:

> In **CA-G.R. CEB-SP No. 02781**, Gaudioso Iso, Jr., together with his fellow petitioners,[4] challenge the October 11, 2006 Decision of the National Labor Relations Commission (NLRC), Cebu City, in NLRC Case No. V-000562-2006, RAB Case No. VII-01-0132-2006 and its March 6, 2007 Resolution denying their Motion for Reconsideration. However, on June 10, 2009, William J. Yap, Allan A. Balugo, Glenn E. Comendador, Mario S. Amaya, Josefino U. Cucharo, Wilson M. Pogoy, Felix C. Cabigon, Zosimo A. Abao, Efrenilo N. Garcia, Oscar G. Cañete, Eduardo T. Roble and Mariano Y. Blanco, Jr. entered into a Compromise Agreement with [respondent] SPC Power Corporation (formerly Salcon Power Corporation). Thereafter, on June 11, 2010, the rest of the petitioners also executed a Compromise Agreement with [respondent]. Thus, on April 25, 2012, this Court rendered a Decision approving said Compromise Agreements and dismissing the instant Petition. On May 30, 2012, petitioner Iso filed his Motion for Reconsideration arguing that the dismissal of the case should not affect him as he was not a signatory to any of the Compromise Agreements. In response, the [respondent] stressed, in its Comment dated August 28, 2012, that the Compromise Agreements do not concern the validly dismissed petitioner as his monetary claims are directly connected or intertwined with his continued employment with the company. On July 24, 2013, petitioner Iso filed his Reply asserting that since his case for illegal dismissal [*i.e.*, CA-G.R. CEB-SP No. 06429] is still pending with this Court, it is premature to render his claims moot as there is a possibility that his dismissal would be declared illegal, thus entitling him to the benefits he claims.

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[4] William J. Yap, Ronilo N. Alferez, Allan A. Balugo, Federico M. Villanueva, Roberto T. Teleron, Raul C. Gonzaga, Jaime D. Saavedra, Samuel P. Arreglo, Mario Clint Longakit, Ray Manacat, Glenn E. Comendador, Arturo T. Tamarra, Jr., Mario S. Amaya, Pablito N. Cañete, Rufino B. Gasok, Mario R. Mendez, Aida Basilon, Silvestre C. Ceniza, Josefino U. Cucharo, Benjamin L. Rosellosa, Leviticus Barazon, Felixberto E. Labra, Mariano P. Carreon, Gil G. Orillo, Wilson M. Pogoy, Gilbert T. Aligato, Tranquilino C. Fiel, Jr., Dosomaru Ragaza, Roger Booc, Medardo V. Gacho, Eugenio A. Dela Corte, Amador R. Matin-Ao, Patricio Canoy, Edison M. Barinque, Zosimo A. Abao, Raymundo G. Villasencio, Isagani J. Canque, Edwin De Guma, Renato M. Oporto, Felix C. Cabigon, Benjamin Q. Susan, Jaime E. Villareal, Victor C. Calvo, Efrenilo N. Garcia, Eduardo E. Cobol, Crisostomo D. Panimdim, Wendel P. Castro, Rolando L. Maratas, Edgar M. Rivera, Oscar G. Cañete, Eduardo T. Roble, Celso A. Adlawan, Renato B. Abella, Catalino Cantalejo, Emmanuel F. Catingub, Nicolas Q. Bayabos, Jr., Salvador T. Besabella, Eduardo A. Repollo, Urbano Abelo, Mariano Y. Blanco, Jr., Edgar T. Ylanan and Noel P. Tura.

> In **CA-G.R. CEB-SP No. 06429**, petitioner Gaudioso Iso, Jr. and Joel Tolentino allege that they are the union officers of Salcon Power Independent Union (SPIU). They assert that since [respondent] refused to recognize their union, they filed a petition for certification election. On March 2007, a certification election was conducted wherein SPIU won as the employees' collective bargaining agent. On September 2007, the SPIU submitted a Collective Bargaining Agreement (CBA) proposal to [respondent]. However, [respondent] refused to submit a counterproposal. It also refused to bargain with SPIU pending its appeal with the Bureau of Labor Relations (BLR) concerning the cancellation of SPIU's union registration. On March 24, 2008, the BLR dismissed [respondent's] appeal. Thereafter, SPIU filed a notice of strike on the ground of [respondent's] refusal to bargain. On March 2, 2008, respondent gave in and agreed to bargain collectively with SPIU.
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> Petitioners aver that [respondent's] petition for cancellation of SPIU's union registration was a plot to remove them from the union. Likewise, petitioners assert that [respondent's] petition to purge and automatically remove supervisory employees from SPIU was filed for the same sinister purpose. Hence, SPIU decided to call a press conference on May 27, 2009. [Respondent] alleges that during the press conference, petitioners and Dr. Giovanni Tapang uttered false and malicious accusations against it. Worse, their statements were published in a newspaper of general circulation in the Visayas. Consequently, on July 27, 2009, [respondent] filed a criminal complaint for libel against petitioners and Dr. Tapang. Moreover, [respondent] filed a civil case for damages against them. On February 3, 2010, [respondent] issued show-cause notices to the petitioners, informing them that they are charged with serious misconduct, dishonesty, breach of trust and serious disobedience. Thereafter, hearings were conducted. On April 5, 2010, the petitioners were found guilty of the charges against them, which then prompted their dismissal from service. Aggrieved, the petitioners filed a complaint for illegal dismissal.[5]

No amicable settlement was reached before the Labor Arbiter (LA). Hence, the parties were ordered to submit their position papers. Thereafter, the LA rendered a Decision[6] dated December 28, 2010 finding that Gaudioso B. Iso, Jr. (Iso) and Joel Tolentino (Tolentino) (collectively, petitioners) were not illegally dismissed and that there was substantial evidence to support their dismissal. The LA found that petitioners committed serious misconduct when they made malicious imputations against Salcon Power Corporation, now SPC Power

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[5] *Rollo*, Vol. 1, pp. 39-40.

[6] *Id.* at 520-535; penned by Labor Arbiter Emiliano C. Tiongco, Jr.

Corporation (respondent SPC), which are totally unrelated to their collective bargaining negotiation efforts.[7] The alleged malicious statements are contained in the news item authored by Elias O. Baquero (Baquero) of Sun Star Cebu entitled "*Group calls for audit on Salcon for 'refund'*"[8] dated May 29, 2009, *viz.*:

> A CAUSE-ORIENTED group urged the government to audit SPC Power Corp. in Naga, Cebu to validate its claim that the power firm must refund consumers P738 million in excess payments that it received from the National Power Corp. (NPC).
>
> Dr. Giovanni Tapang, chairman of Samahan ng Nagtataguyod ng Agham at Teknolohiya para sa Sambayanan (Agham) said Cebuano power consumers have been overcharged.
>
> Tapang and Gaudioso Iso Jr., president of Salcon Power Independent Union (SPIU), called a press conference to announce that the SPC Power Corp. has profited roughly P738 million in the past 15 years. The NPC got the amount from increased rates, they said.
>
> Tapang and Iso said this is the reason they are supporting the call of Fr. Francisco "Paking" Silva for the Department of Energy (DOE) and the Energy Regulatory Commission (ERC) to jointly conduct an external audit on SPC Power, formerly Salcon Power.
>
> **Forum**
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> Silva, in a DOE forum early this month, said an external audit will inform the government and the public about the situation of the Naga Power Plant Complex, which has two thermal plants, two gas turbines and six diesel plants.
>
> Silva urged the DOE and ERC to review the contract between the SPC Power and NPC to protect the interest of the public.
>
> In explaining how they came up with the figure, Iso and SPIU Secretary Joel Tolentino said NPC has paid SPC Power an amount equivalent to the salaries of 354 employees for 15 years already. But there are only 190 employees hired by SPC Power, or a difference of 164 employees.
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> At an average of P25,000 a month in salary per employee, the amount would reach P4.1 million a month. For 15 years, that means a

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[7] *Id.* at 535.
[8] *Id.* at 252.

> total of P738 million which should be returned to the power consumers.
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> They said the P738 million is on the labor side only. If there is an external audit, it will be known that the SPC Power's "silent profit" could reach billions of pesos in terms of purchases of coal and other fuel products needed by the plant.
>
> **Profits**
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> The SPIU leaders alleged that SPC Power raked in profits at the expense of the government because they only manage the plant without spending money for its operations.
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> "They (SPC Power) are paid by the NPC for the 354 employees, of which they only absorbed and hired 190. The NPC supplied the fuel and still paid SPC Power the capacity and energy fees," Iso said.
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> Iso and Tolentino said this may be the reason SPC Power was able to buy NPC diesel plants in Bohol and Panay for US$5.9 million.[9]

To the LA, petitioners were validly terminated for uttering libelous statements against respondent SPC and not because of their union activities.

Unsatisfied with the LA's Decision, petitioners appealed to the National Labor Relations Commission (NLRC). However, the NLRC, in its Decision[10] dated June 24, 2011, affirmed *in toto* the Decision of the LA. The NLRC found petitioners guilty of serious misconduct and breach of trust under items (a) and (c) of Article 282 (now Article 297)[11] of the Labor Code.

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[9] *Id.*

[10] *Id.* at 81-98; penned by Presiding Commissioner Violeta Ortiz-Bantug with Commissioners Aurelio D. Menzon and Julie C. Rendoque, concurring.

[11] Art. 297. [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;
> x x x
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
> x x x.

Petitioners moved for reconsideration,[12] but the motion was denied in the NLRC's Resolution[13] dated August 31, 2011.

Aggrieved, petitioners filed a Petition for *Certiorari*[14] with the CA.

The CA's Ruling

Before the CA, the issue raised in CA-G.R. CEB-SP No. 06429 was whether or not the NLRC, in affirming the Decision of the LA that petitioners were validly dismissed, acted with grave abuse of discretion amounting to lack or excess of jurisdiction. The determination of such issue was crucial in resolving the issue in CA-G.R. CEB-SP No. 02781 which concerned the monetary claims of petitioner Iso that were directly connected with his continued employment with the company.

On October 9, 2013, the CA rendered the herein assailed Decision,[15] the dispositive portion of which reads:

> WHEREFORE, premises considered, this Court renders the following judgment in the Petitions at bar:
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> 1) In CA-G.R. CEB-SP No. 02781, the Court DENIES petitioner Gaudioso Iso, Jr.'s Motion for Reconsideration of Our April 25, 2012 Decision.
>
> 2) In CA-G.R. CEB-SP No. 06429, the Court DENIES the Petition for *Certiorari* of Gaudioso Iso, Jr. and Joel Tolentino for lack of merit. It AFFIRMS the assailed June 24, 2011 Decision of the public respondent NLRC and its August 31, 2011 Resolution. Costs on petitioners.
>
> SO ORDERED.[16]

The CA found that the findings of fact of the LA and the NLRC, with respect to the dismissal of petitioners for just causes, are fully

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[12] *Rollo*, Vol. 1, pp. 102-113.
[13] *Id.* at 100-101.
[14] *Id.* at 54-79.
[15] *Id.* at 38-49.
[16] *Id.* at 48.

supported by the evidence on record.[17] It ruled that petitioners' evidence utterly failed to repudiate the fact that they uttered libelous statements against respondent SPC during the press conference that they called.[18] It also noted that even the assistant city prosecutor found probable cause to indict petitioners for the crime of libel,[19] and such finding was affirmed by Judge Elmo M. Alameda of Branch 150, Regional Trial Court, Makati City, as evidenced by the Order[20] dated January 28, 2010 for the issuance of a warrant of arrest against petitioners.[21] Hence, the CA found proper the NLRC's affirmance of the validity of petitioners' dismissal.[22]

The CA rejected petitioners' contention that their dismissal was not commensurate to the infraction they committed.[23] Citing *Torreda v. Toshiba Information Equipment (Phils.), Inc., et al.,*[24] the CA held that libel is an act constituting serious misconduct which warrants dismissal from employment.[25] The CA thus considered the dismissal of petitioners as a valid exercise of respondent SPC's management prerogative.[26]

Consequently, the CA declared that the NLRC did not commit grave abuse of discretion in rendering its Decision which was based on factual and legal grounds and was not borne out of a whimsical exercise of judgment.[27] As regards Iso's claims under CA-G.R. CEB-SP No. 02781, the CA ruled that these have become moot. Since Iso's monetary claims are contingent upon his continued employment with respondent SPC, the CA held that the valid termination of his employment has barred him from demanding the benefits purportedly due him.[28]

Petitioners moved for reconsideration, but the CA denied the motion for lack of merit in its assailed Resolution[29] dated May 13, 2015.

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17 *Id.* at 45.
18 *Id.*
19 See Resolution dated December 28, 2009 penned by Assistant City Prosecutor Ma. Lorelai Andrea C. Dulig (*id.* at 270-275) and Information dated December 15, 2009 (*id.* at 276-277).
20 *Id.* at 278.
21 *Id.*
22 *Id.* at 45.
23 *Id.*
24 544 Phil. 71 (2007).
25 *Rollo*, Vol, 1, p. 45.
26 *Id.*
27 *Id.* at 45-46.
28 *Id.* at 46.
29 *Id.* at 51-53.

Hence, this petition.

Petitioners contend that on account of the length of service that they have devoted to the company plus the fact that respondent SPC failed to cite any specific damage it suffered for their alleged derogatory acts, the CA should have ruled that they are entitled to a penalty lesser than the supreme penalty of dismissal from service.[30] They insist that they are rank-and-file employees to whom the rule on proportionate penalty should be applied.[31]

Petitioners also point out that the instant case arose at the height of the heated collective bargaining negotiations between SPIU and respondent SPC.[32] In the course of the negotiations, respondent SPC claimed that the demand for equal pay made by SPIU is baseless and SPIU was confusing and misleading the public with dishonest statements. As this claim of respondent SPC appeared in local papers, Iso and Tolentino, as president and secretary of SPIU, respectively, felt that it was their duty to shed clarification on the matter and to clarify to the public that their demand was reasonable and within the capacity of the company. Hence, they called a press conference. However, in the present petition, they deny having uttered libelous statements during the scheduled press conference; and granting that they did, they claim that these were done with good intention and justifiable motives.[33]

Petitioners further claim that the contents of the alleged libelous statements were matters already of public knowledge, and aver that these had been openly described in the Senate.[34] Hence, they argue that the CA should have upheld their freedom of expression.[35] They also aver that the supposed defamatory statements were a fair comment on matters of public interest and made in response to the query of Baquero, the reporter of Sun Star Cebu; hence, the CA should have ruled that the remarks are covered by the rule on privileged communication.[36]

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30 *Id.* at 23.
31 *Id.* at 22.
32 *Id.* at 24.
33 *Id.*
34 *Id.* at 25.
35 *Id.*
36 *Id.* at 28-29.

Lastly, petitioners argue that the CA committed an error of law in not giving weight to the sworn statement of their witness, Roxanne Duran, to the effect that they did not utter the libelous statements being attributed to them.[37]

For their part, respondents in their Comment[38] argue the following: that the petition is fatally defective, having raised questions of fact and not questions of law;[39] that the factual findings of the LA and the NLRC, as affirmed by the CA, should be accorded great weight and respect;[40] that the petition is totally baseless;[41] that the CA did not err in affirming the decision of the NLRC, much less act with grave abuse of discretion in dismissing the petition for *certiorari* before it;[42] that petitioners' valid termination is but an exercise of the company's management prerogative, which is not tainted with bad faith and therefore should not be disturbed;[43] and that both law and equity demand that no affirmative relief be accorded to petitioners.[44]

The Issue

The core issue for the Court's resolution is whether the CA erred in affirming that petitioners were not illegally dismissed.

The Court's Ruling

The petition has no merit.

It is well settled in labor cases that the factual findings of the NLRC are accorded respect and even finality by the Court when they coincide with those of the LA and are supported by substantial evidence.[45] In this case, the CA affirmed the findings of fact of the LA and the NLRC with respect to the dismissal from service of petitioners for just causes. The CA noted that both the LA and the NLRC found

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37 *Id.* at 30.
38 *Id.* at 670-800.
39 *Id.* at 746.
40 *Id.* at 747.
41 *Id.* at 749.
42 *Id.* at 770.
43 *Id.* at 786.
44 *Id.* at.790.
45 *Grande v. Philippine Nautical Training Colleges*, 806 Phil. 601, 612 (2017).

petitioners to have uttered libelous statements against respondent SPC and held that such act constitutes serious misconduct, which is a ground for the termination of their employment.

Misconduct has been defined as an improper or wrong conduct. "It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."[46] For misconduct or improper behavior to be a just cause for dismissal, there must be a concurrence of the following elements: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.[47]

That petitioners are guilty of serious misconduct is duly substantiated by the records of the case.

In ruling that petitioners were guilty of serious misconduct, the LA elucidated:

> From the evidence presented, this Arbitration Branch finds substantial evidence to sustain the validity of [petitioners'] employment termination. It has to be clarified that [petitioners] were not terminated because of union activities. What triggered the termination of [petitioners] were their utterances of libelous statements against respondent company.
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> After the Makati City Prosecution Office resolved on December 28, 2009 x x x that [petitioners'] utterances constitute libelous statements thereby recommending the filing of the corresponding criminal case for libel, and that Hon. Elmo M. Alameda, Presiding Judge of the Regional Trial Court Branch 150, Makati City issued an Order dated January 28, 2010 x x x for the issuance of a warrant of arrest against [petitioners] and Giovanni Tapang, respondent company issued [petitioners] separate Show-Cause Notices dated February 02, 2010 x x x charging them with serious misconduct, dishonesty (for purportedly uttering, assisting in the and/or causing the publication of false and malicious statements, charges and rumors against the company and management) breach of trust and willful disobedience arising from supposed violation of the Company's Uniform Code of Conduct.

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[46] *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan et al.*, 815 Phil. 425, 435 (2017).
[47] *Id.* at 436.

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Evidently, despite [petitioners'] insistence that they did not make libelous statements during the press con on May 28, 2009, the response of Sun Star Cebu writer Elias Baquero destroyed whatever smokescreen that [petitioners] created. Writer Elias Baquero with certainty responded that he interviewed [petitioners] along with Dr. Tapang. They were the ones who supplied the figures and the details of the alleged "anomalies" at respondent company.

To this Arbitration Branch, the very evidence against [petitioners] is the news item written by Sun Star Cebu writer Elias Baquero which outlined the purported anomalies at respondent company at the expense of the government through the National Power Corporation. While [petitioners] denied by asserting that "these statements were not made by us" and that "(W)e did not tackle the profiting of SPC and we didn't have control over the content of said article" x x x, there is the response of writer Elias Baquero pointing to [petitioners] as the source of his news item. (Emphasis omitted.)

For obvious reason, the writer was in no position to personally come-up with the figures which appeared on his news item. The writer had no knowledge on the intricacies of the alleged anomalies. In fact, the writer identified [petitioners] as his source of information. It is off-tangent for [petitioners] to contend that respondent company should have charged writer Elias Baquero of libel because the latter merely wrote the information fed to him by [petitioners].

x x x x

Suffice it to say, [petitioners] who are officers of the union have the freedom to do acts in the furtherance of their right to self-organization. However, [petitioners] do not have the freedom to malign and make statements that would destroy the business reputation of respondent company. The malicious imputations of [petitioners] against respondent company constitute serious misconduct.[48]

The NLRC agreed with the LA that petitioners were guilty of serious misconduct and further found them to be guilty of breach of trust. It ratiocinated:

Article 282 of the Labor Code provides that serious misconduct is a valid cause for the employer to terminate an employee. x x x

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[48] *Rollo*, Vol. 1, pp. 527-534.

x x x x

> We take note of [petitioners'] conscious and willful act of publishing derogatory statements against respondent Salcon Power Corporation. There can be no doubt that [petitioners'] statements undermine the authority and credibility of the management of respondent company. [Petitioners'] actions likewise displayed the propensity to act against management's will. [Petitioners'] feat is inimical to the interest of their employers as it vilified their reputation. It must be noted that [petitioners] publicly hurled imputations upon respondent company during a press conference which was aired on television and for which a news report was published. Obviously, [petitioners] have committed an act which, by no stretch of the imagination, is considered serious misconduct. It bears stressing likewise that [petitioners] were ready with their statements during the press conference called by them and intended the publication and airing of the same as evidenced by the invitation of media outfits.
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> By their acts [petitioners] have also committed a breach of the trust reposed in them by respondent.
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> x x x x
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> x x x As employees upon whom trust and confidence were reposed by respondent, [petitioners] were expected to discharge of their functions with utmost professionalism and uprightness. However, [petitioners] betrayed this expectation.[49]

The rule is that the factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times, even finality because of the special knowledge and expertise they have gained from handling matters falling under their specialized jurisdiction.[50] Similarly, factual findings of the CA are generally not subject to the Court's review in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[51] The Court is not a trier of facts, and this rule applies with greater force in labor cases.[52]

Accordingly, respect must be accorded to the factual findings of the LA, the NLRC and the CA, all of which unanimously declared that

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[49] *Id.* at 93-96.

[50] *Symex Security Services, Inc. v. Rivera, Jr.*, G.R. No. 202613, November 8, 2017, 844 SCRA 416, 435, citing *General Milling Corporation v. Viajor*, 702 Phil. 532, 540 (2013).

[51] *Grande v. Philippine Nautical Training Colleges, supra* note 45.

[52] *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017, 846 SCRA 53, 65.

petitioners were guilty of uttering libelous statements against respondent SPC during the press conference that they called. It is well settled that "accusatory and inflammatory language used by an employee towards his employer or superior can be a ground for dismissal or termination,"[53] more so in this case where petitioners' utterance of accusatory statements came out in the news item dated May 29, 2009 authored by Baquero of Sun Star Cebu.

The Court is not swayed by petitioners' claim that their statements were done with good intention and justifiable motives. Neither is the Court moved by petitioners' assertion that the CA erred in not giving weight to the sworn statement of their witness, Roxanne Duran, to the effect that they did not utter the alleged libelous statements being attributed to them. Let it be noted that these matters are outside this Court's authority to act. Only questions of law are entertained in a Rule 45 petition.[54] As held in *Madridejos v. NYK-FIL Ship Management, Inc.*,[55] the Court does not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field.[56] Further, the Court does not replace its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[57]

Petitioners also fail to convince the Court that the penalty of dismissal from service is too harsh a penalty and disproportionate to the infraction they committed. Likewise, their arguments that their freedom of expression should have been upheld and that the supposed defamatory statements they uttered are covered by the rule on privileged communication deserve scant consideration.

In this case, it must be emphasized that petitioners are supervisory employees. Their respective contracts of permanent employment reveal

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[53] *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan, et al.*, *supra* note 46 at 437, citing *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 160 (2011). See also *De La Cruz v. National Labor Relations Commission*, 258 Phil. 432 (1989); *Autobus Workers' Union v. NLRC*, 353 Phil. 419 (1998); *Asian Design and Mfg. Corp. v. Hon. Deputy Minister of Labor*, 226 Phil. 20 (1986); and *Reynolds Phil. Corp. v. Estava*, 221 Phil. 614 (1985).

[54] *Symex Security Services, Inc. v. Rivera, Jr.*, *supra* note 50.

[55] 810 Phil. 704, 723 (2017).

[56] *Id.* at 723, citing *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9 (2012).

[57] *Id.* at 724.

that they were hired to supervisory and managerial positions.[58] As found by the NLRC, Iso, as the Head of the Maintenance-Electrical Section, "wielded actual direction and control over his subordinates as well as assigned electricians and ensured that the assigned tasks of these electricians were properly implemented on time." Moreover, he had access to vital company equipment and tools.[59]

On the other hand, Tolentino, as the Engineering Contract Administrator, "was entrusted with and had access to vital and confidential company documents, data and information." He was also a member of the due diligence teams which were tasked to conduct due diligence investigations of power plants; thus, he was exposed to highly confidential and classified documents of the plants.[60]

Undeniably, the NLRC was correct in holding that petitioners performed functions that pertain to those of supervisory classification. Indeed, the positions that petitioners held involved trust and confidence requiring them to discharge their functions with utmost professionalism and uprightness.

As held in *Supra Multi-Services, Inc., et al. v. Labitigan*,[61] a company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel who occupy positions of responsibility.[62] An employer cannot be compelled to retain employees who are guilty of acts inimical to its interests.[63] Besides, the power to dismiss employees is a recognized prerogative that is inherent in the employer's right to freely manage and regulate its business.[64]

Additionally, the fact that petitioners served the company for a considerable period of time will not help their cause.[65] It bears stressing that the longer the employees stay in the service of the company, the

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58 *Rollo*, Vol. I, p. 97.
59 *Id.* at 95.
60 *Id.*
61 792 Phil. 336 (2016).
62 *Id.* at 364, citing *Santos v. San Miguel Corporation*, 447 Phil. 264, 276-277 (2003).
63 *Id.*
64 *The Orchard Golf and Country Club v. Francisco*, 706 Phil. 479, 500 (2013), citing *Philippine-Singapore Transport Services, Inc. v. National Labor Relations Commission*, 343 Phil. 284, 290-293 (1997).
65 *Visayan Electric Co. Employees Union-ALU-TUCP, et al. v. Visayan Electric Company, Inc.*, 764 Phil. 608, 626 (2015).

greater is their responsibility for knowledge and compliance with the norms of conduct and the code of discipline in the company.[66] Also, the fact that respondent SPC did not suffer pecuniary or other forms of damages will not obliterate petitioners' betrayal of the trust and confidence reposed on them by respondent SPC.[67]

The Court notes the fact that respondent SPC was shown to have afforded petitioners their right to due process. In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing.[68] The employer is required to furnish the employees with two written notices before the termination of employment can be effected: (1) the first apprises the employees of the particular acts or omissions for which their dismissal is sought; and (2) the second informs the employees of the employer's decision to dismiss them.[69] There is compliance with the requirement of a hearing as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[70] In this case, petitioners were issued show-cause notices and were made to explain.[71] They were then subjected to investigation wherein they were given the opportunity to defend themselves.[72] Thereafter, respondent SPC found them guilty of the charges and issued notices of dismissal on April 5, 2000.[73] Accordingly, considering respondent SPC's compliance with procedural due process, there is no other logical conclusion than that petitioners' dismissal was valid.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated October 9, 2013 and the Resolution dated May 13, 2015 of the Court of Appeals in CA-G.R. CEB-SP Nos. 02781 and 06429 are **AFFIRMED** *in toto*.

SO ORDERED.

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66 *Id.*

67 See *PJ Lhuillier, Inc. v. Camacho*, 806 Phil. 413, 430 (2017).

68 *Distribution & Control Products, Inc./Tiamsic v. Santos*, 813 Phil. 423, 436 (2017), citing *New Puerto Commercial, et al. v. Lopez, et al.*, 639 Phil. 437, 445 (2010).

69 *Id.*

70 *Id.*

71 *Rollo*, Vol. 1, p. 533.

72 *Id.*

73 *Id.* at 91.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

MARVIC M.V.F. LEONEN
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice