Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOAQUIN LU,
Petitioner,

- *versus* -

TIRSO ENOPIA, ROBERTO ABANES, ALEJANDRE BAGAS, SALVADOR BERNAL, SAMUEL CAHAYAG, ALEJANDRO CAMPUGAN, RUPERTO CERNA, JR., REYNALDO CERNA, PETER CERVANTES, LEONARDO CONDESTABLE, ROLANDO ESLOPOR, ROLLY FERNANDEZ, EDDIE FLORES, ROLANDO FLORES, JUDITO FUDOLIN, LEO GRAPANI, FELIX HUBAHIB, JERRY JUAGPAO, MARCIANO LANUTAN, JOVENTINO MATOBATO, ALFREDO MONIVA, VICTORIANO ORTIZ, JR., RENALDO PIALAN, ALFREDO PRUCIA, PONCIANO REANDO, HERMENIO REMEGIO, DEMETRIO RUAYA, EDGARDO RUSIANA, NESTOR SALILI, VICENTE SASTRELLAS, ROMEO SUMAYANG, and DESIDERIO TABAY,
Respondents.

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G.R. No. 197899

Present:

CARPIO, *J.*, *Chairperson*,
PERALTA,
MENDOZA,
LEONEN, and
JARDELEZA, *JJ.*

Promulgated:

06 MAR 2017

DECISION

PERALTA, *J.*:

Before us is a petition for review on *certiorari* filed by Joaquin Lu which seeks to reverse and set aside the Decision[1] dated October 22, 2010 and the Resolution[2] dated May 12, 2011, respectively, of the Court of Appeals issued in CA-G.R. SP No. 55486-MIN.

The facts of the case, as stated by the Court of Appeals, are as follows:

> Petitioners (now herein respondents) were hired from January 20, 1994 to March 20, 1996 as crew members of the fishing mother boat F/B MG-28 owned by respondent Joaquin "Jake" Lu (herein petitioner Lu) who is the sole proprietor of Mommy Gina Tuna Resources [MGTR] based in General Santos City. Petitioners and Lu had an income-sharing arrangement wherein 55% goes to Lu, 45% to the crew members, with an additional 4% as "backing incentive." They also equally share the expenses for the maintenance and repair of the mother boat, and for the purchase of nets, ropes and *payaos*.
>
> Sometime in August 1997, Lu proposed the signing of a Joint Venture Fishing Agreement between them, but petitioners refused to sign the same as they opposed the one-year term provided in the agreement. According to petitioners, during their dialogue on August 18, 1997, Lu terminated their services right there and then because of their refusal to sign the agreement. On the other hand, Lu alleged that the master fisherman (*piado*) Ruben Salili informed him that petitioners still refused to sign the agreement and have decided to return the vessel F/B MG-28.
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> On August 25, 1997, petitioners filed their complaint for illegal dismissal, monetary claims and damages. Despite serious efforts made by Labor Arbiter (LA) Arturo P. Aponesto, the case was not amicably settled, except for the following matters: (1) *Balansi* 8 and 9; (2) 10% *piado* share; (3) *sud-anon* refund; and (4) refund of payment of motorcycle in the amount of ₱15,000.00. LA Aponesto further inhibited himself from the case out of "delicadeza," and the case was raffled to LA Amado M. Solamo.
>
> In their Position Paper, petitioners alleged that their refusal to sign the Joint Venture Fishing Agreement is not a just cause for their termination. Petitioners also asked for a refund of the amount of ₱8,700,407.70 that was taken out of their 50% income share for the repair and maintenance of boat as well as the purchase of fishing materials, as Lu should not benefit from such deduction.

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[1] Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Edgardo A. Camello and Nina G. Antonio-Valenzuela, concurring; *rollo*, pp. 38-59

[2] Per Associate Justice Edgardo A. Camello, with Associate Justices Edgardo T. Lloren and Melchor Quirino C. Sadang, concurring; *id.* at 76-79.

> On the other hand, Lu denied having dismissed petitioners, claiming that their relationship was one of joint venture where he provided the vessel and other fishing paraphernalia, while petitioners, as industrial partners, provided labor by fishing in the high seas. Lu alleged that there was no employer-employee relationship as its elements were not present, viz.: it was the *piado* who hired petitioners; they were not paid wages but shares in the catch, which they themselves determine; they were not subject to his discipline; and respondent had no control over the day-to-day fishing operations, although they stayed in contact through respondent's radio operator or checker. Lu also claimed that petitioners should not be reimbursed for their share in the expenses since it was their joint venture that shouldered these expenses.[3]

On June 30, 1998, the LA rendered a Decision[4] dismissing the case for lack of merit finding that there was no employer-employee relationship existing between petitioner and the respondents but a joint venture.

In so ruling, the LA found that: (1) respondents were not hired by petitioner as the hiring was done by the *piado* or master fisherman; (2) the earnings of the fishermen from the labor were in the form of wages they earned based on their respective shares; (3) they were never disciplined nor sanctioned by the petitioner; and, (4) the income-sharing and expense-splitting was no doubt a working set up in the nature of an industrial partnership. While petitioner issued memos, orders and directions, however, those who were related more on the aspect of management and supervision of activities after the actual work was already done for purposes of order in hauling and sorting of fishes, and thus, not in the nature of control as to the means and method by which the actual fishing operations were conducted as the same was left to the hands of the master fisherman.

The LA also ruled that the checker and the use of radio were for the purpose of monitoring and supplying the logistics requirements of the fishermen while in the sea; and that the checkers were also tasked to monitor the recording of catches and ensure that the proper sharing system was implemented; thus, all these did not mean supervision on how, when and where to fish.

Respondents appealed to the National Labor Relations Commission (*NLRC*), which affirmed the LA Decision in its Resolution[5] dated March 12, 1999. Respondents' motion for reconsideration was denied in a Resolution[6] dated July 9, 1999.

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3 *Id.* at 40-42.

4 Per LA Amado M. Solamo; *id.* at 82- 87; Docketed as Case Nos. RAB-11-08-50294-97 and RAB-11-08-50296-97.

5 Per Commissioner Oscar N. Abella, concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Leon G. Gonzaga, Jr.; *id.* at 89-97; docketed as NLRC CA No. M-004368-98.

6 *Id.* at 99-100

Respondents filed a petition for *certiorari* with the CA which dismissed[7] the same for having been filed beyond the 60-day reglementary period as provided under Rule 65 of the Rules of Court, and that the sworn certification of non-forum shopping was signed only by two (2) of the respondents who had not shown any authority to sign in behalf of the other respondents. As their motion for reconsideration was denied, they went to Us via a petition for *certiorari* assailing the dismissal which We granted in a Resolution[8] dated July 31, 2006 and remanded the case to the CA for further proceedings.

Petitioner filed its Comment to the petition. The parties submitted their respective memoranda as required by the CA.

On October 22, 2010, the CA rendered its assailed Decision reversing the NLRC, the decretal portion of which reads as follows:

> WHEREFORE, premises considered, the assailed March 12, 1999 Resolution of public respondent National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro City, is hereby REVERSED and SET ASIDE, and a new one is entered.
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> Thus, private respondent Mommy Gina Tuna Resources (MGTR) thru its sole proprietor/general manager, Joaquin T. Lu (Lu), is hereby ORDERED to pay each of the petitioners, namely, TIRSO ENOPIA, ROBERTO ABANES, ALEJANDRE BAGAS, SALVADOR BERNAL, SAMUEL CAHAYAG, ALEJANDRO CAMPUNGAN, RUPERTO CERNA, JR., REYNALDO CERNA, PETER CERVANTES, LEONARDO CONDESTABLE, ROLANDO ESLOPOR, ROLLY FERNANDEZ, EDDIE FLORES, ROLANDO FLORES, JUDITO FUDOLIN, LEO GRAPANI, FELIX HUBAHIB, JERRY JUAGPAO, MARCIANO LANUTAN, JOVENTINO MATOBATO, ALFREDO MONIVA, VICTORIANO ORTIZ, JR., RENALDO PIALAN, SEVERO PIALAN, ALFREDO PRUCIA, POCIANO REANDO, HERMENIO REMEGIO, DEMETRIO RUAYA, EDGARDO RUSIANA, NESTOR SALILI, RICHARD SALILI, SAMUEL SALILI, VICENTE SASTRELLAS, ROMEO SUMAYANG and DESIDERIO TABAY the following:
>
> > (1) SEPARATION PAY (in lieu of the supposed reinstatement) equivalent to one (1) month pay for every year of service reckoned from the very moment each petitioner was hired as fishermen-crew member of F/B MG-28 by MGTR until the finality of this judgment. A fraction of at least six (6) months shall be considered one (1) whole year. Any fraction below six months shall be paid *pro rata*;

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7 CA *rollo*, pp. 374-375; docketed as CA-G.R. SP No. 55486.

8 G.R. No. 147396.

> (2) FULL BACKWAGES (inclusive of all allowances and other benefits required by law or their monetary equivalent) computed from the time they were dismissed from employment on August 18, 1997 until finality of this Judgment;
>
> (3) EXEMPLARY DAMAGES in the sum of Fifty Thousand Pesos (₱50,000.00);
>
> (4) ATTORNEY'S FEES equivalent to 10% of the total monetary award.
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> Considering that a person's income or earning is his "lifeblood," so to speak, *i.e.*, equivalent to life itself, this Decision is deemed **immediately executory pending appeal** should MGTR decide to elevate this case to the Supreme Court.
>
> Let this case be referred back to the Office of the Labor Arbiter for proper computation of the awards. [9]

The CA found that petitioner exercised control over respondents based on the following: (1) respondents were the fishermen crew members of petitioner's fishing vessel, thus, their services to the latter were so indispensable and necessary that without them, petitioner's deep-sea fishing industry would not have come to existence much less fruition; (2) he had control over the entire fishing operations undertaken by the respondents through the master fisherman (*piado*) and the assistant master fisherman (*assistant piado*) employed by him; (3) respondents were paid based on a percentage share of the fish catch did not in any way affect their regular employment status; and (4) petitioner had already invested millions of pesos in its deep-sea fishing industry, hence, it is highly improbable that he had no control over respondents' fishing operations.

Petitioner's motion for reconsideration was denied by the CA in its Resolution dated May 12, 2011.

Aggrieved, petitioner filed the instant petition for review on *certiorari* citing the following as reasons for granting the same, to wit:

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> THE HONORABLE COURT OF APPEALS RENDERED THE ASSAILED DECISION CONTRARY TO LAW AND LOGIC BY CITING THE ABSENCE OF PROOF OF REQUISITES OF A VALID DISMISSAL AS BASIS FOR CONCLUDING THAT THE NLRC GRAVELY ABUSED ITS DISCRETION.

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9 *Rollo*, pp. 57-58. (Emphasis in the original)

II

THE HONORABLE COURT OF APPEALS EXCEEDED ITS JURISDICTION BY TREATING RESPONDENTS' PETITION FOR CERTIORARI UNDER RULE 65 AS AN ORDINARY APPEAL, AND BY INSISTING ON ITS OWN EVALUATION OF THE EVIDENCE.

III

THE HONORABLE COURT OF APPEALS RENDERED THE DECISION DATED 22 OCTOBER 2010 CONTRARY TO LAW AND THE EVIDENCE ON RECORD.

IV

THE HONORABLE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY MAKING ITS ASSAILED DECISION IMMEDIATELY EXECUTORY PENDING APPEAL IN SPITE OF THE FACT THAT RESPONDENTS DID NOT ASK FOR IMMEDIATE PAYMENT OF SEPARATION PAY AND OTHER CLAIMS, AND DESPITE THE CLAIM OF RESPONDENTS THAT MOST OF THEM ARE CURRENTLY EMPLOYED IN OTHER DEEP-SEA FISHING COMPANIES.[10]

Petitioner contends that no grave abuse of discretion can be attributed to the NLRC's finding affirming that of the LA that the arrangement between petitioner and respondents was a joint venture partnership; and that the CA, in assuming the role of an appellate body, had re-examined the facts and re-evaluated the evidence thereby treating the case as an appeal instead of an original action for *certiorari* under Rule 65.

We are not persuaded.

In *Prince Transport, Inc. v. Garcia*,[11] We held:

> The power of the CA to review NLRC decisions *via* a petition for *certiorari* under Rule 65 of the Rules of Court has been settled as early as this Court's decision in *St. Martin Funeral Homes v. NLRC.* In said case, the Court held that the proper vehicle for such review is a special civil action for *certiorari* under Rule 65 of the said Rules, and that the case should be filed with the CA in strict observance of the doctrine of hierarchy of courts. Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, the CA, pursuant to the exercise of its original jurisdiction over petitions for *certiorari,* is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. Section 9 clearly states:
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> x x x x
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> The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform

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10 *Id.* at 19.

11 654 Phil. 296 (2011).

> any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x.
>
> However, equally settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, made a factual finding not supported by substantial evidence. It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.[12]

Here, the LA's factual findings was affirmed by the NLRC, however, the CA found that the latter's resolution did not critically examine the facts and rationally assess the evidence on hand, and thus found that the NLRC gravely abused its discretion when it sustained the LA's decision dismissing respondents' complaint for illegal dismissal on the ground of lack of merit. The judicial function of the CA in the exercise of its *certiorari* jurisdiction over the NLRC extends to the careful review of the NLRC's evaluation of the evidence because the factual findings of the NLRC are accorded great respect and finality only when they rest on substantial evidence.[13] Accordingly, the CA is not to be restrained from revising or correcting such factual findings whenever warranted by the circumstances simply because the NLRC is not infallible. Indeed, to deny to the CA this power is to diminish its corrective jurisdiction through the writ of *certiorari.*[14]

The main issue for resolution is whether or not an employer-employee relationship existed between petitioner and respondents.

At the outset, We reiterate the doctrine that the existence of an employer-employee relationship is ultimately a question of fact. Generally, We do not review errors that raise factual questions. However, when there is a conflict among the factual findings of the antecedent deciding bodies like the LA, the NLRC and the CA, it is proper, in the exercise of Our equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings. In dealing with factual issues in labor cases, substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion is sufficient.[15]

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12 *Prince Transport, Inc. v. Garcia, supra,* at 308-309.

13 *Sugarsteel Industrial Inc. v. Victor Albina, et al.,* G.R. No. 168749, June 6, 2016.

14 *Id.*

15 *Javier v. Fly Ace Corporation, et al.,* 682 Phil. 359, 371 (2012).

In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the workers; (2) the power to control the worker's conduct; (3) the payment of wages by whatever means; and (4) the power of dismissal.[16] We find all these elements present in this case.

It is settled that no particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted.[17]

In this case, petitioner contends that it was the *piado* who hired respondents, however, it was shown by the latter's evidence that the employer stated in their Social Security System (*SSS*) online inquiry system printouts was MGTR, which is owned by petitioner. We have gone over these printouts and found that the date of the SSS remitted contributions coincided with the date of respondents' employment with petitioner. Petitioner failed to rebut such evidence. Thus, the fact that petitioner had registered the respondents with SSS is proof that they were indeed his employees. The coverage of the Social Security Law is predicated on the existence of an employer-employee relationship.[18]

Moreover, the records show that the 4% backing incentive fee which was divided among the fishermen engaged in the fishing operations approved by petitioner was paid to respondents after deducting the latter's respective *vale* or cash advance.[19] Notably, even the *piado's* name was written in the backing incentive fee sheet with the corresponding *vale* which was deducted from his incentive fee. If indeed a joint venture was agreed upon between petitioner and respondents, why would these fishermen obtain *vale* or cash advance from petitioner and not from the *piado* who allegedly hired and had control over them.

It was established that petitioner exercised control over respondents. It should be remembered that the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually supervises the performance of duties by the employee. It is enough that the former has a right to wield the power.[20]

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16 *Jo v. NLRC*, 381 Phil. 428, 435 (2000).

17 *Opulencia Ice Plant and Storage v. NLRC*, G.R. No. 98368, December 15, 1993, 228 SCRA 473, 478.

18 *Flores v. Nuestro*, 243 Phil. 712, 715 (1988), citing *Roman Catholic Archibishop of Manila v. Social Security Commission*, 110 Phil. 616, 621 (1961); *Insular Life Assurance Co. Ltd. v. Social Security Commission*, 113 Phil. 708, 713 (1961); *Insular Lumber Company v. SSS*, 117 Phil. 137, 140 (1963); *Investment Planning Corp. of the Phil. v. SSS*, 129 Phil. 143, 149 (1967); *SSS v. CA*, 140 Phil. 549, 551 (1969).

19 CA *rollo*, p. 465.

20 *Jo v. NLRC*, *supra* note 16, citing *Equitable Banking Corporation v. NLRC*, 339 Phil. 541, 558 (1997); *MAM Realty Development Corporation v. NLRC*, 314 Phil. 838, 842 (1995); *Zanotte Shoes v. NLRC*, 311 Phil. 272, 277 (1995).

Petitioner admitted in his pleadings that he had contact with respondents at sea via the former's radio operator and their checker. He claimed that the use of the radio was only for the purpose of receiving requisitions for the needs of the fishermen in the high seas and to receive reports of fish catch so that they can then send service boats to haul the same. However, such communication would establish that he was constantly monitoring or checking the progress of respondents' fishing operations throughout the duration thereof, which showed their control and supervision over respondents' activities. Consequently, We give more credence to respondents' allegations in their petition filed with the CA on how such control was exercised, to wit:

> The private respondent (petitioner) controls the entire fishing operations. For each mother fishing boat, private respondent assigned a master fisherman (piado) and assistant master fisherman (assistant piado), who every now and then supervise the fishing operations. Private respondent also assigned a checker and assistant checker based on the office to monitor and contact every now and then the crew at sea through radio. The checker and assistant checker advised then the private respondent of the condition. Based on the report of the checker, the private respondent, through radio, will then instruct the "piado" how to conduct the fishing operations.[21]

Such allegations are more in consonance with the fact that, as the CA found, MGTR had already invested millions of pesos in its deep-sea fishing industry.

The payment of respondents' wages based on the percentage share of the fish catch would not be sufficient to negate the employer-employee relationship existing between them. As held in *Ruga v. NLRC*:[22]

> x x x [I]t must be noted that petitioners received compensation on a percentage commission based on the gross sale of the fish-catch, *i.e.*, 13% of the proceeds of the sale if the total proceeds exceeded the cost of the crude oil consumed during the fishing trip, otherwise, only 10% of the proceeds of the sale. Such compensation falls within the scope and meaning of the term "wage" as defined under Article 97(f) of the Labor Code, thus:
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> > (f) "Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for

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21 CA *rollo*, p. 11.

22 260 Phil. 280 (1990).

> services rendered or to be rendered, and included the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee. x x x[23]

Petitioner wielded the power of dismissal over respondents when he dismissed them after they refused to sign the joint fishing venture agreement.

The primary standard for determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer.[24] Respondents' jobs as fishermen-crew members of F/B MG 28 were directly related and necessary to petitioner's deep-sea fishing business and they had been performing their job for more than one year. We quote with approval what the CA said, to wit:

> Indeed, it is not difficult to see the direct linkage or causal connection between the nature of petitioners' (now respondents) work *vis-a-vis* MGTR's line of business. In fact, MGTR's line of business could not possibly exist, let alone flourish without people like the fishermen crew members of its fishing vessels who actually undertook the fishing activities in the high seas. Petitioners' services to MGTR are so indispensable and necessary that without them MGTR's deep-sea fishing industry would not have come to existence, much less fruition. Thus, We do not see any reason why the ruling of the Supreme Court in *Ruga v. National Labor Relations Commission* should not apply squarely to the instant case, *viz.*:
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> > x x x The hiring of petitioners to perform work which is necessary or desirable in the usual business or trade of private respondent x x x [qualifies] them as regular employees within the meaning of Article 280[25] of the Labor Code as they were indeed engaged to perform activities usually necessary or desirable in the usual fishing business or occupation of private respondent.[26]

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23 *Ruga v. NLRC, supra,* at 291.

24 *Tan v. Lagrama*, 436 Phil. 190, 204 (2002).

25 Art. 280 of the Labor Code which provides:

Art. 280. *Regular and Casual Employment.* The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph; Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exist.

26 *Rollo*, pp. 45-46. (Emphasis and underscoring omitted)

As respondents were petitioner's regular employees, they are entitled to security of tenure under Section 3,[27] Article XIII of the 1987 Constitution. It is also provided under Article 279 of the Labor Code, that the right to security of tenure guarantees the right of employees to continue in their employment absent a just or authorized cause for termination. Considering that respondents were petitioner's regular employees, the latter's act of asking them to sign the joint fishing venture agreement which provides that the venture shall be for a period of one year from the date of the agreement, subject to renewal upon mutual agreement of the parties, and may be pre-terminated by any of the parties before the expiration of the one-year period, is violative of the former's security of tenure. And respondents' termination based on their refusal to sign the same, not being shown to be one of those just causes for termination under Article 282,[28] is, therefore, illegal.

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[29]

Respondents who were unjustly dismissed from work are entitled to reinstatement and backwages, among others. However, We agree with the CA that since most (if not all) of the respondents are already employed in different deep-sea fishing companies, and considering the strained relations between MGTR and the respondents, reinstatement is no longer viable. Thus, the CA correctly ordered the payment to each respondent his separation pay equivalent to one month for every year of service reckoned from the time he was hired as fishermen-crew member of F/B MG-28 by MGTR until the finality of this judgment.

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[27] Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

[28] Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:

a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
b. Gross and habitual neglect by the employee of his duties;
c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
e. Other causes analogous to the foregoing.

[29] Art. 279 of the Labor Code.

The CA correctly found that respondents are entitled to the payment of backwages from the time they were dismissed until the finality of this decision.

The CA's award of exemplary damages to each respondent is likewise affirmed. Exemplary damages are granted by way of example or correction for the public good if the employer acted in a wanton, fraudulent, reckless, oppressive or malevolent manners.[30]

We also agree with the CA that respondents are entitled to attorney's fees in the amount of 10% of the total monetary award. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[31]

The legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.[32]

Petitioner's contention that there is no justification to incorporate in the CA decision the immediate execution pending appeal of its decision is not persuasive. The petition for *certiorari* filed with the CA contained a general prayer for such other relief and remedies just and equitable under the premises. And this general prayer is broad enough to justify extension of a remedy different from or together with the specific remedy sought.[33] Indeed, a court may grant relief to a party, even if the party awarded did not pray for it in his pleadings.[34]

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated October 22, 2010 and the Resolution dated May 12, 2011 of the Court of Appeals in CA-G.R. SP No. 55486-MIN are hereby **AFFIRMED**. The monetary awards which are herein granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

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30 *McMer Corp., Inc. v. NLRC*, G.R. No. 193421, June 4, 2014, 725 SCRA 1, 24.

31 *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, 639 Phil. 1, 16 (2010).

32 *Leus v. St. Scholastica's College Westgrove*, G.R. No. 187226, January 28, 2015, 748 SCRA 378, 414; *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

33 *Prince Transport, Inc. v. Garcia*, *supra* note 11, at 314; See *BPI Family Bank v. Buenaventura*, 508 Phil. 423, 436 (2005), citing *Morales v. Court of Appeals*, 499 Phil. 655, 670 (2005), citing *Schenker v. Gemperle*, 116 Phil. 194, 199 (1962).

34 *BPI Family Bank v. Buenaventura, supra*, at 436-437, citing *Morales v. Court of Appeals, supra*; *First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc.*, 420 Phil. 902, 920 (2001).

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusion 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice