Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

IBM DAKSH BUSINESS PROCESS SERVICES PHILIPPINES, INC. (now known as CONCENTRIX DAKSH BUSINESS PROCESS SERVICES PHILIPPINES CORPORATION, Petitioner,	**G.R. No. 223125**
	Present:
	LEONARDO-DE CASTRO, *J.*,* *Acting Chairperson*, DEL CASTILLO, JARDELEZA, TIJAM, and GESMUNDO, *JJ.***
- versus -	
	Promulgated:
ROSALLIE S. RIBAS, Respondent.	JUL 11 2018

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DECISION

TIJAM, *J.*:

For Our resolution is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December 18, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 132908. The CA Resolution[3] dated February 22, 2016, denying IBM Daksh Business Process Services Philippines, Inc.'s (petitioner) motion for reconsideration, is likewise impugned herein.

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* Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018.
** Designated as Acting Member per Special Order No. 2560 dated May 11, 2018.
[1] *Rollo*, pp. 9-33.
[2] Penned by Associate Justice Nina G. Antonio-Valenzuela, concurred in by Associate Justices Fernanda Lampas Peralta and Jane C. Lantion; id. at 38-47.
[3] Id. at 83-84.

Factual Antecedents

Petitioner is an outsourcing company engaged in customer care services with foreign clientele.[4] Rosallie S. Ribas (respondent), on the other hand, was employed by the petitioner as a customer care specialist on July 6, 2010.[5]

On March 8, 2011, respondent was issued a Show Cause Memo for her absences on March 1, 2, 5, and 6, 2011, which reads:

> As per attendance report from workforce, you were tagged NCNS (No Call No Show) for four (4) consecutive working days (March 1, 2, 5, & 6, 2011).
>
> Based on the company's code of conduct, failure to report for work for 3 or more consecutive days is considered as absence without official leave (AWOL), and that all employees who are unable to report for work must call and notify their immediate supervisor/operations manager or department head at least four (4) hours before their scheduled shift regarding their intended absence. x x x.[6]

On March 13, 2011, respondent submitted her written explanation, which reads, in part, as follows:

> I was absent starting February 23rd until March 9th because of threatened pre-term labor & vaginal spotting. I texted my UM on the following days: February 23, 26, 27 to advise him that I wouldn't be able to report to work due to my health condition. I didn't received [sic] any reply nor any phone calls from him to advise me what needs to be done since I've been out of the office for 3 days now. On February 28th, I went to my OB to have myself checked because my condition isn't getting any better. My OB advised me that I needed to take a rest for another week (until March 9th) since the occurrence of my spotting had been on & off. That night, I texted my UM to tell him that I need to take a rest & that I have my medical certificate with me which would explain my condition. Again I didn't received [sic] any reply from my UM so I believed that everything is in order since I had already informed him of what's happening to me.[7]

Respondent was then formally charged with violation of the company's code of conduct for being absent for several days without leave or proper prior notice. A hearing therefor was conducted on March 16, 2011.[8]

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[4] Id. at 11.
[5] Id. at 11 and 112.
[6] Id. at 176.
[7] Id. at 176-177.
[8] Id. at 177.

Thereafter, having established that respondent committed the imputed acts, she was issued a termination letter effective April 8, 2011, which partly reads:

> Conclusion
>
> It was established that you committed Absence without Official Leave when you failed to report for work starting 1 March 2011 and again beginning 2 April 2011 without prior notice to your immediate manager. It can be substantiated from the foregoing circumstances that you violated the Company's Code of Conduct on Offenses against the Attendance. The evidence we have are substantial to establish that you violated the company policy.
>
> Decision
>
> Your act constitutes Serious Misconduct, a violation of the Company's Code of Conduct. In view of foregoing circumstances, Management is terminating your employment effective 8 April 2011.[9]

Arguing that her dismissal was illegal, respondent filed a complaint before the Labor Arbiter (LA). According to respondent, her absences were justified as she had a delicate pregnancy condition from February 23 to March 9, 2011 and that her son was sick of bronchopneumonia on April 2 and 3, 2011. She also maintains that she notified her immediate superior about her absences. Lastly, respondent argued that the penalty of dismissal is too harsh and not commensurate to the violation imputed against her.[10]

For its part, petitioner maintains that respondent was dismissed for cause and after compliance with due process. Respondent was found to have violated Section 6.5 of the company's Code of Conduct when she did not report to work without leave or notice for more than three consecutive days. According to petitioner, respondent's repeated absences without leave constitutes gross and habitual neglect of duty. It is petitioner's position that it merely exercised its management prerogative when it dismissed respondent for a cause.[11]

On April 23, 2013, the LA rendered a Decision[12] dismissing respondent's complaint for lack of merit.

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[9] Id. at 178.
[10] Id.
[11] Id. at 178-179.
[12] Rendered by Executive Labor Arbiter Fatima Jambaro-Franco; id. at 144-149.

On appeal, the National Labor Relations Commission (NLRC), in its Decision[13] dated June 28, 2013, in NLRC LAC No. 06-001767-13 that reversed and set aside the LA decision, ruling that respondent was illegally dismissed, ordering thus petitioner to reinstate respondent to her former position and to pay her backwages.

In its Resolution[14] dated August 30, 2013, however, the NLRC partially granted petitioner's motion for reconsideration,[15] ruling that respondent's dismissal was justified but nevertheless ordered petitioner to reinstate respondent to her former position sans backwages for reasons of equity and compassion.

On November 8, 2013, petitioner filed a petition for *certiorari*[16] before the CA, docketed as CA-G.R. SP No. 132743, questioning NLRC's August 30, 2013 Resolution. Petitioner argued therein that the NLRC committed grave abuse of discretion in ordering respondent's reinstatement despite its finding that there was a valid dismissal.

On November 28, 2013, respondent filed her own petition for *certiorari*[17] before the CA, docketed as CA-G.R. SP No. 132908, also questioning the NLRC's August 30, 2013 Resolution. For respondent, the NLRC committed grave abuse of discretion in ruling that there was a valid dismissal and for deleting the award of backwages.

Interestingly, the CA did not consolidate the two petitions despite clear notice[18] given to it by petitioner in its petition.

Thus, on January 20, 2015, the CA's Eleventh Division rendered a Decision[19] in CA-G.R. SP No. 132743, denying petitioner's petition and affirming the NLRC's August 30, 2013 Resolution. Specifically, the CA sustained the NLRC's findings that there was a valid dismissal but respondent should be reinstated to her former position sans backwages. This Decision became final and executory upon this Court's Resolution[20] dated November 9, 2015 in G.R. No. 219675, which reads:

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[13] Penned by Presiding Commissioner Alex A. Lopez, concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.; id. at 175-186.

[14] Id. at 204-209.

[15] Id. at 187-201.

[16] Id. at 211-231.

[17] Id. at 235-249.

[18] Id. at 256.

[19] Penned by Justice Franchito N. Diamante, concurred in by Associate Justices Japar B. Dimaampao and Melchor Q.C. Sadang; id. at 271-281.

[20] Id. at 282.

x x x – The Court resolves to:

1. **NOTE** counsel for petitioner's manifestation and motion dated 5 October 2015 stating that, after several considerations, petitioner decided that it will no longer pursue the filing of the petition for review on *certiorari*; and

2. **INFORM** the Court of Appeals and adverse parties that no petition for review has been filed in this case and that the judgment sought to be reviewed has now become final and executory, and to **DECLARE** this case **CLOSED** and **TERMINATED**.

On December 18, 2015, the CA Sixth Division rendered a Decision[21] in CA-G.R. SP No. 132908, granting respondent's petition and setting aside the Resolution dated August 30, 2013. Specifically, the CA ruled that respondent was illegally dismissed for employment and thus should be reinstated with payment of backwages. The CA further ruled that, in case reinstatement is no longer feasible, it ordered petitioner to pay respondent separation pay. Unlike the CA's Decision in CA-G.R. SP No. 132743, the CA's Decision in CA-G.R. SP No. 132908 became the subject of review in the case at bar.

Issue

Did the CA Sixth Division err in reversing and setting aside the NLRC Decision?

Ruling of the Court

We answer in the affirmative.

In the exercise of this Court's administrative supervision over the CA, this Court finds it proper and necessary to point out the CA's patent procedural blunder in failing to consolidate CA-G.R. SP No. 132743 and CA-G.R. SP No. 132908 despite notice. There is no question that the two petitions before the CA involved the exact same parties, same set of facts, and assailed the same NLRC Resolution. Further, the issues are not merely closely related but in fact, entirely identical as they both involved questions on the validity of respondent's dismissal from employment, propriety of reinstatement, and the propriety of awarding backwages.

Unfortunately, one of the evils sought to be prevented by the mandatory rule of consolidating such cases, has occurred – the CA rendered two conflicting and irreconcilable decisions on the matter. In the prior case, the CA affirmed the NLRC Resolution, in the subsequent case, the CA set

[21] Id. at 38-47.

the same aside. In the prior case, the CA ruled that there was a valid dismissal, in the subsequent, the CA ruled that it was illegal. While in both cases the CA ruled for reinstatement, in the prior case it was by reason of equity and compassion, while in the subsequent case it was simply because respondent was found to be illegally dismissed and the CA further ruled in the latter case that in case reinstatement is not feasible, separation pay should be given. Lastly, backwages were not awarded in the prior case, while the same was awarded in the subsequent case due to the finding of illegal dismissal.

Such conflict could have been avoided if only the CA had properly complied with the mandatory rule for the consolidation of petitions or proceedings relating to or arising from the same controversies.[22] Section 3(a), Rule III of the 2009 Internal Rules of the Court of Appeals has forthrightly mandated the consolidation of related cases assigned to different Justices, *viz.*:

> Section 3. Consolidation of Cases. – When related cases are assigned to different Justices, **they *shall* be consolidated and assigned to one Justice.**
>
> (a) Upon motion of a party with notice to the other party/ies, **or at the instance of the Justice to whom any or the related cases is assigned, upon notice to the parties, consolidation shall ensue when the cases involve the same parties and/or related questions of fact and/or law.** (Emphasis ours)

Thus, unlike in the trial stage where the consolidation of cases is permissive and a matter of judicial discretion, in the appellate stage, the rigid policy is to make the consolidation of all cases and proceedings resting on the same set of facts, or involving identical claims or interests or parties mandatory. Regardless of whether or not there was a request therefor, consolidation should be made as a matter of course. Indeed, this "mandatory policy eliminates conflicting results concerning similar or like issues between the same parties or interests even as it enhances the administration of justice."[23]

Notably, bordering an ethical discussion if proven to have been deliberately done, this Court cannot turn a blind eye on the fact that respondent's counsel never made mention of the final and executory CA Decision in CA-G.R. No. 132743.

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[22] *Re: Letter Complaint of Fabiana against Presiding Justices Reyes, Jr., et al.*, 713 Phil. 161, 174 (2013).

[23] Id. at 177.

Thus, at this juncture, this Court also reminds all counsels of this rigid policy of consolidating cases and their responsibility, not only to give prompt notice to the court of any related pending cases but also to move for consolidation thereof. In Administrative Matter No. CA-13-51-J, this Court explained that this responsibility proceeds from lawyers' express undertakings in the certifications against forum shopping that accompany their initiatory pleadings pursuant to Section 5[24] of Rule 7 and related rules in the Rules of Court.[25]

Facing now these conflicting decisions on the matter, this Court is constrained to reverse the assailed CA Decision herein and uphold the CA's ruling in CA-G.R. SP No. 132743 on the ground that the same has already attained finality. It is also important to note that petitioner, through counsel, already manifested that it will no longer pursue the filing of a petition for review on *certiorari* before this court.[26]

It cannot be denied that the CA's Decision in CA-G.R. SP No. 132743 became final and executory even before the rendition of the herein assailed CA Decision in CA-G.R. SP No. 132908.[27] It is a hornbook doctrine that once a judgment attains finality, it becomes immutable and unalterable. In a catena of cases, this Court has explained:

> A final and executory judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of factor or law and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. This is the doctrine of finality of judgment. It is grounded on fundamental considerations of public policy and sound practice that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law. Otherwise, there will be no end to litigations, thus negating the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance

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[24] Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[25] *Re: Letter Complaint of Fabiana against Presiding Justice Reyes, Jr., et al.*, supra at 177.

[26] *Rollo*, p. 282.

[27] Id.

> of peace and order by settling justiciable controversies with finality.[28] (Citation omitted)

The only exceptions to the rule on the immutability of final judgments are: (1) correction of clerical errors; (2) *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[29] None of these exists in this case. The case at bar is simply brought about by the patent procedural mistake committed in the appellate court.

At this point, there is nothing left to do but to uphold the ruling of the CA in the said Decision considering that the same is immutable, unalterable, binding between the parties, and conclusive to this Court.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated December 18, 2015 of the Court of Appeals in CA-G.R. SP No. 132908 is hereby **REVERSED and SET ASIDE**.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

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[28] *Lomondot, et al. v. Judge Balindong, et al.*, 763 Phil. 617, 627 (2015).
[29] *Sps. Navarra v. Liongson,* 784 Phil. 942, 954 (2016).

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALEXANDER G. GESMUNDO
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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)