Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

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| **PETER ANGELO N. LAGAMAYO,** Petitioner, | **G.R. No. 227718** |
| | Present: |
| - *versus* - | GESMUNDO, *C.J., Chairperson,* CAGUIOA, INTING,* LOPEZ, M., and LOPEZ, J., *JJ.* |
| **CULLINAN GROUP, INC., and RAFAEL M. FLORENCIO,** Respondents. | Promulgated: NOV 11 2021 |

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**D E C I S I O N**

**LOPEZ, J., *J.*:**

Before this Court is a Petition for Review[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated January 29, 2016 and Resolution[3] dated October 17, 2016 of the Court of Appeals (*CA*) in CA-G.R. SP No. 127383.

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* Designated additional member *vice* Associate Justice Amy C. Lazaro-Javier per Raffle dated September 22, 2021.

1 *Rollo*, pp. 9-27.

2 Penned by Hon. Associate Justice Melchor Q.C. Sadang with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Edwin D. Sorongon, concurring; *id.* at 29-37-A.

3 Penned by Hon. Associate Justice Melchor Q.C. Sadang, with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Edwin D. Sorongon, concurring; *id.* at 39-40.

In this case, the Court takes the opportunity to clarify the confusion brought about by the challenged Decision of the CA, which found that petitioner was constructively terminated but for a just cause, and thus, the Court categorically declares that the existence of just cause for termination under Article 297 (formerly Article 282) of the Labor Code is inherently incompatible with the principle underlying constructive dismissal.

***The Antecedents***

Cullinan Group. Inc., (*CGI*) a company engaged in the production of jewelry, with respondent Rafael M. Florencio (*Florencio*), as its President.[4]

CGI hired Peter Angelo N. Lagamayo (*petitioner*) as a workshop supervisor on April 2, 2007, with the following basic pay and benefits: 1) ₱16,100.00 as basic salary, plus ₱7,900.00 "non-tax"; 2) ₱500.00 communication allowance; 3) 13th month pay; and 4) the cash equivalent of unused nine sick days leave and nine days vacation leave.[5]

Sometime in 2011, CGI called the attention of petitioner regarding several company violations reported in the workshop under his supervision, such as: gambling; imbibing alcoholic beverages; theft of 0.10 gram of gold on Job Orders; and taking of excess gold from the workplace.[6]

On February 8, 2011, the Manager/OIC of the Human Resource (*HR*) office informed petitioner that he was placed under preventive suspension.[7] Thinking that petitioner tolerated the said violations, CGI representatives sent him a Notice To Explain dated February 11, 2011, where he was informed that he committed the following offenses on account of his negligence: a) breach of trust and confidence, dishonesty; b) improper conduct and behavior; and c) negligence towards work responsibilities.[8]

On February 18, 2011, petitioner submitted a written explanation denying the charges against him.[9] In a hearing held on March 1, 2011, CGI informed petitioner that he was found guilty of the company charges. However, the latter implored that he be allowed to resign, to keep his record clean.[10] CGI agreed, but declined to give him separation pay owing to the fact that the offenses against him were proven.[11]

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4 *Id.* at 30.
5 *Id.*
6 *Id.* at 31.
7 *Id.* at 32.
8 *Id.*
9 *Id.* at 32.
10 *Id.* at 33.
11 *Id.*

On March 3, 2011, petitioner asked in writing for the lifting of his preventive suspension, but the same remained unheeded.[12] Later, he wrote a letter dated March 11, 2011, where he signified his intention to resign, but he asked the company to pay his unpaid wages, fringe benefits and separation pay.[13] The pertinent portion of the letter reads:

> **Should you allow me to resign**, let's observe strictly the requirements of the Labor Code. Please also consider also my unpaid wages, fringe benefits and separation pay.[14]

On April 4, 2011, the HR representative told petitioner to submit his resignation letter immediately.[15]

On July 11, 2011, petitioner filed a complaint for illegal dismissal, payment of backwages and separation pay in lieu of reinstatement.[16] He alleged that more than 30 days had lapsed from his preventive suspension, yet he was not reinstated. He also averred that the charges against him were unfounded and intended to remove him from his work, which constitutes constructive dismissal.[17]

Quite the contrary, respondents maintained that petitioner was not constructively dismissed, but terminated for a just cause.[18] They claimed that the employees in the jewelry workshop under his supervision were involved in various irregularities such as theft, gambling and drinking of alcohol within company premises, as attested to by other employees.[19] As a supervisor, his duty was to prevent such infractions, but he failed to do so on account of his negligence for which he was charged with "breach of trust and confidence, dishonesty" and "negligence towards work responsibilities."[20] Upon further investigation, CGI discovered that small amounts of gold were being stolen in each work job order since 2008,[21] for which respondents suffered a loss of ₱533,500.00.22 During the internal investigation, respondents found that petitioner was complicit with or tolerated the employees,[23] which led CGI to file criminal charges against them for Qualified Theft.[24]

Respondents asseverated that while they found just cause to support petitioner's termination, they allowed him to resign instead to keep his employment record clean, but they did not heed his request for payment of

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12 *Id.* at 32.
13 *Id.*
14 *Id.* at 12. (Emphasis supplied)
15 *Id.* at 32.
16 *Id.*
17 *Id.* at 33.
18 *Id.*
19 *Id.*
20 *Id.*
21 *Id.*
22 *Id.* at 36.
23 *Id.* at 33.
24 *Id.* at 36-37.

separation pay because he was found remiss in his duties as workshop supervisor.[25]

On February 29, 2012, the Labor Arbiter (*LA*) rendered a Decision which dismissed petitioner's Complaint for illegal dismissal.[26]

Aggrieved, he appealed to the National Labor Relations Commission (*NLRC*).[27]

On appeal, the NLRC affirmed the dismissal of the Complaint but with modification that petitioner is entitled to the payment of wages and benefits from March 11, 2011 up to July 11, 2011 or the period when he signified his intent to resign up to the date he filed his Complaint for illegal dismissal, in its assailed Decision dated July 31, 2012, the *fallo* of which reads:

> **WHEREFORE**, the Decision dated February 29, 2012 is hereby AFFIRMED with MODIFICATION that the Complainant is entitled to his wages and other benefits beginning March 11, 2011 up to July 11, 2011, computed as follows:
>
> a) Basic
> ₱ 18,000.00 x 4 = ₱ 72,000.00
>
> b) Allowance
> ₱ 6,000.00 x 4 = ₱ 24,000.00
> Total = ₱ 96,000.00
>
> The rest of the Decision is **AFFIRMED**.
>
> **SO ORDERED.**[28]

Petitioner moved for a reconsideration of the ruling aforesaid, but it was denied by the NLRC in its Resolution dated September 18, 2012.[29]

As mentioned, the CA held that petitioner was constructively dismissed but based on a just cause which is loss of trust and confidence.[30] It was not disputed that petitioner, being a workshop supervisor, was a managerial employee and therefore enjoyed the position of trust and confidence.[31] The evidence showed that some employees committed theft and violated company policies in the workshop that was under his direct supervision.[32] Respondents presupposed that petitioner was either negligent in supervising the workers or

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25 *Id.* at 33.
26 *Id.*
27 *Id.* at 34.
28 *Id.*
29 *Id.*
30 *Id.* at 35.
31 *Id.*
32 *Id.* at 36.

tolerated the irregularities.[33] For this reason, he was among those charged in the criminal complaint for Qualified Theft, although the trial court dismissed the case as to him.[34] This notwithstanding, the CA affirmed his dismissal, in its assailed Decision, the dispositive portion of which states:

> **WHEREFORE,** the petition is **DENIED** for lack of merit. The Decision dated July 31, 2012, and Resolution dated September 18, 2012 of the National Labor Relations Commission (Sixth Division) are **AFFIRMED.**
>
> **SO ORDERED.**[35]

Dissatisfied, petitioner filed a Motion for Reconsideration, but it was similarly denied by the CA, in its assailed Resolution.[36]

***Issues***

Unyielding, he filed the present petition and raised the following assignment of errors:[37]

> I.
>
> THE [CA] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT PETITIONER WAS DISMISSED FOR JUST CAUSE EVEN WHEN IT FOUND THAT PETITIONER WAS CONSTRUCTIVELY DISMISSED
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> II.
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> THE [CA] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT UPHELD THE DISMISSAL OF PETITIONER FOR BREACH OF TRUST AND CONFIDENCE

In his present petition, petitioner maintained the CA's finding that he was constructively dismissed since he was not reinstated after the lapse of his 30-day preventive suspension,[38] but assailed the finding of just cause on the basis of loss of trust and confidence.[39] He essentially argued that the criminal complaint, where he was indicted for Qualified Theft, cannot be used as basis for termination on the ground of loss of trust and confidence, since it was dismissed for lack of evidence.[40]

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33 *Id.*
34 *Id.* at 37.
35 *Id.* (Emphasis in the original)
36 *Id.* at 39-40.
37 *Id.* at 16-23.
38 *Id.* at 17.
39 *Id.* at 20.
40 *Id.* at 21.

In their Comment,[41] respondents averred that the dismissal of the criminal case against petitioner did not belie the presence of just cause for his dismissal since proof beyond reasonable doubt is not required, it being sufficient that there is reasonable ground for such loss of trust and confidence.[42] Moreover, the LA, NLRC, and CA have already evaluated the evidence presented by the parties and found petitioner to have committed breach of trust and confidence which justified his termination from employment.[43]

In refutation of the foregoing, petitioner filed a Reply,[44] where he reiterated that he was already considered to have been constructively dismissed on May 11, 2011 or after the lapse of his 30-day preventive suspension effective February 8, 2011.[45] He asserted that since he was already constructively dismissed, it is unjust to dismiss him again later for breach of trust and confidence.[46] Besides, no notice of termination for breach of trust and confidence was sent to him at any time until he filed his complaint for illegal dismissal on July 11, 2011.[47]

After a circumspect scrutiny of the arguments raised by the parties, the Court deems it prudent to also consider whether there was constructive dismissal, although it was not assigned as an error, because it is a question upon which the issue concerning the presence of just cause for petitioner's termination, may be determined.

Undoubtedly, Section 8 of Rule 51 of the Revised Rules of Court recognizes the expansive discretionary power of the appellate courts to consider errors not assigned on appeal.[48] It provides:

> Sec. 8. *Questions that may be decided.* — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision

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41 *Id.* at 129-152.
42 *Id.* at 136.
43 *Id.*
44 *Id.* at 153-158.
45 *Id.* at 154.
46 *Id.*
47 *Id.*
48 *Coca-Cola Bottlers Phils., Inc. v. IBM Local I*, 800 Phil. 645, 660 (2016).

and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[49]

The present case falls under the last exception. Petitioner appealed the finding of just cause for his termination, which makes the CA's ruling on his constructive dismissal open to further evaluation. Simply put, the finding on constructive dismissal, is a question upon which the determination of the presence of just cause for petitioner's termination is dependent, hence, We shall scrutinize the same, although not assigned as an error on appeal before this Court.

Indeed, in the spirit of liberality infused in the Rules, the appellate court may overlook the lack of proper assignment of errors and consider errors not assigned in the appeal.[50]

Viewed in this light, the Court shall resolve the following issues:

1) Whether petitioner was constructively dismissed from employment; and
2) Whether he is entitled to reinstatement and/ or separation pay and backwages.

***Our Ruling***

The petition is bereft of merit.

At the outset, questions of fact are generally beyond the ambit of a petition for review under Rule 45 of the Rules of Court as it is limited to reviewing purely questions of law. The rule, however, admits of exceptions such as when the factual findings of the reviewing tribunals are conflicting.[51]

It bears stressing that the NLRC and the LA dismissed petitioner's Complaint for Illegal Dismissal which meant that both labor tribunals found that petitioner was not illegally terminated. Meanwhile, the CA ruled that petitioner was constructively dismissed. Considering that the conclusions of

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49 *Id.*, citing *Buñing v. Santos*, 533 Phil. 610, 615-616 (2006).
50 *Id.*, citing *Dee Hwa Liong Electronics Corporation and/or Dee v. Papiona,* 562 Phil. 451, 456 (2007).
51 *Mejares v. Hyatt Taxi Services, Inc.*, G.R. Nos. 242364 & 242459 (Resolution), June 17, 2020.

the LA, as affirmed by the NLRC, conflict with those of the CA, the present case falls under the exception and the Court is thus constrained to re-examine whether petitioner was indeed terminated.

*I. The presence of just cause is inherently incompatible with the principle underlying constructive dismissal.*

To begin with, the dismissal of an employee may take the form of: a) an actual dismissal, or b) a constructive dismissal.

In termination of employment, "it is incumbent upon the employees to first establish the fact of their dismissal" [52] since "if there is no dismissal, then there can be no question as to the legality or illegality thereof."[53] Thereafter, the burden is shifted to the employer to prove that the dismissal was legal."[54]

Fundamental is the rule that an employee can be dismissed from employment only for a valid cause.[55] An employee's right not to be dismissed without just or authorized cause as provided by law, is covered by his right to substantial due process. [56] Under Article 297 of the Labor Code, an employer may terminate the services of an employee for the following just causes:

> Article 297. [282] *Termination by Employer.* — An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> (b) Gross and habitual neglect by the employee of his duties;
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> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
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> (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
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> (e) Other causes analogous to the foregoing.[57]

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52 *Dee Jay's Inn and Café v. Rañeses*, 796 Phil. 574-596 (2016), citing *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142, 146 (2011).

53 *Moll v. Convergys Philippines, Inc.*, G.R. No. 253715, April 28, 2021, citing *Symex Security Services, Inc. v. Rivera, Jr.* 820 Phil. 653, 667 (2017).

54 *Dee Jay's Inn and Café v. Rañeses*, *supra* note 52.

55 *Ting Trucking v. Makilan*, 787 Phil. 651 (2016).

56 *Clemente, Jr. v. ESO-Nice Transport Corporation*, G.R. No. 228231, August 28, 2019, citing *Brown Madonna Press, Inc. v. Casas*, 759 Phil. 479, 496-497 (2015).

57 *Bravo v. Urios College*, 810 Phil. 603, 617 (2017).

In the recent case of *Spouses Maynes v. Oreiro*,[58] this Court emphasized that "[t]he right to terminate employment based on just and authorized causes stems from a similarly protected constitutional guarantee to employers of reasonable return of investments."[59] Similarly, in *Del Rosario v. CW Marketing & Development Corporation* (*Del Rosario*),[60] the Court recognized the employer's authority to sever the relationship with an employee based on a just cause as it is founded on the guarantee to employers to reasonable return on investments enshrined in Article XIII, Section 3, paragraph 4[61] of the present Constitution. Along the same line, in *Cama v. Joni's Food Services Inc.*,[62] the Court stressed that "[o]urs is a system of laws, and the law in protecting the rights of the working man, authorizes neither the oppression nor the self-destruction of the employer." Likewise, in *Del Monte Fresh Produce (Phil.), Inc. v. Betonio*,[63] the Court underscored that "[i]t has long been established that an employer cannot be compelled to retain an employee who is guilty of acts inimical to his [or her] interests."

While the present Constitution accords protection to the right of the employers to reasonable return on their investments, "[t]he cardinal rule in termination cases is that the employer bears the burden of proof to show that the dismissal is for just cause, failing in which it would mean that the dismissal is not justified."[64] Termination without a just or authorized cause renders the dismissal invalid, and entitles the employee to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.[65]

Compliance with procedure provided in the Labor Code, on the other hand, constitutes the procedural due process right of an employee.[66] In termination based on just causes, the employer must comply with procedural due process by furnishing the employee a written notice containing the specific grounds or causes for dismissal.[67] The notice must also direct the employee to submit his or her written explanation within a reasonable period from the receipt of the notice. Afterwards, the employer must give the employee ample opportunity to be heard and defend himself or herself.[68] Any meaningful opportunity for the employee to present evidence and address the charges against him or her satisfies the requirement of ample opportunity to

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58 G.R. No. 206109, November 25, 2020.

59 *Del Rosario v. CW Marketing & Development Corporation*, G.R. No. 211105, February 20, 2019.

60 *Id.*

61 The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

62 469 Phil. 223 (2004).

63 G.R. No. 223485, December 4, 2019.

64 *Philippine Rabbit Bus Lines, Inc. v. Bumagat*, G.R. No. 249134 (Resolution), November 25, 2020.

65 *Clemente, Jr. v. ESO-Nice Transport Corporation*, *supra* note 56.

66 *Id.*

67 *Bravo v. Urios College*, *supra* note 57.

68 *Id.*

be heard.[69] Finally, the employer must serve a notice informing the employee of his or her dismissal from employment.[70]

An employee's removal for just or authorized cause but without complying with the proper procedure, on the other hand, does not invalidate the dismissal. It obligates the erring employer to pay nominal damages to the employee, as penalty for not complying with the procedural requirements of due process.[71]

Conversely, constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits.[72] It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him [or her] except to forego his [or her] continued employment.[73]

In *Bayview Management Consultants, Inc., v. Pre*,[74] the Court held that the test to determine whether the employer's conduct amounted to constructive dismissal is "whether a reasonable person in the employee's position would have felt compelled to give up his [or her] employment under the circumstances."

Constructive dismissal exists as an *involuntary resignation* on the part of the employee due to the harsh, hostile and unfavorable conditions set by the employer.[75] An act, to be considered as amounting to constructive dismissal, must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his [or her] employment.[76] By definition, constructive dismissal can happen in any number of ways.[77] At its core, however, is the gratuitous, unjustified, or unwarranted nature of the employer's action.[78] Constructive dismissal is therefore a *dismissal in disguise,*[79] or also known as constructive discharge.[80]

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69 *Id.*, citing *Perez v. Philippine Telegraph and Telephone Co.*, 602 Phil. 522, 541 (2009).

70 *Bravo v. Urios College, supra* note 57.

71 *Clemente, Jr. v. ESO-Nice Transport Corporation, supra* note 56.

72 *Macali v. Baliwag Lechon Manok, Inc.*, G.R. No. 251731 (Resolution), September 2, 2020, citing *Luis Doble, Jr. v. ABB, Inc.*, 810 Phil. 210, 229 (2017).

73 *Id.*

74 G.R. No. 220170, August 19, 2020, *citing Rodriguez v. Park N Ride, Inc.*, 807 Phil. 747, 757 (2017).

75 *Aguilar v. Burger Machine Holdings Corporation*, 536 Phil. 985, 992 (2006).

76 *Gemina, Jr. v. Bankwise, Inc.*, 720 Phil. 358, 370-371 (2013).

77 *Torreda v. Investment and Capital Corporation of the Philippines*, G.R. No. 229881, September 5, 2018, citing *St. Paul College Pasig v. Mancol,* 824 Phil. 520 (2018).

78 *Id.*

79 *Id.*

80 *Jacob v. First Step Manpower Int'l. Services, Inc.,* G.R. No. 229984, July 8, 2020, citing *Philippine Japan Active Carbon Corp. v. National Labor Relations Commission,* 253 Phil. 149, 152-153 (1989).

The nature of constructive dismissal as a dismissal in disguise enables the employers to do away with their obligation to prove just cause and comply with the twin requirements of notice and hearing before terminating their employees. Consequently, in the recent case of *Jacob v. First Step Manpower Int'l Services, Inc.*,[81] the Court held that **constructive dismissal is a form of illegal dismissal.** Simply put, constructive dismissal results in the employers' circumvention of the due process requirements of the law in terminating an employee, which effectively undermines their security of tenure.

Notably, "the law and jurisprudence guarantee to every employee security of tenure. This textual and the ensuing jurisprudential commitment to the cause and welfare of the working class proceed from the social justice principles of the Constitution that the Court zealously implements out of its concern for those with less in life."[82] Moreso, it is well to note that the right to work and the right to earn a living are protected property rights within the meaning of our constitutional guarantees enshrined in Article III, Section 1 of the Constitution[83] which the Court eruditely discussed in *JMM Promotion and Management, Inc. v. Court of Appeals*,[84] in this wise:

> A profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong.

To Filipino workers, the rights guaranteed under the foregoing constitutional provision translate to economic security and parity[85] that inevitably determine their quality of life. While the right to life under Article III, Section 1 guarantees essentially the right to be alive — upon which the enjoyment of all other rights is preconditioned,[86] it does not refer to mere existence but to a secure quality of life, which is inextricably woven to a person's right to work and right to earn a living.

Constructive dismissal is an affront to the working class, thus, in a plethora of cases,[87] the Court declared that in such instance, "[t]he law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer."

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81 *Id.* (Emphasis supplied)

82 *Mamaril v. Red System Co., Inc.*, 835 Phil. 781, 795-796 (2018).

83 Section 1, Article III of the Constitution guarantees:
No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.

84 260 SCRA 319, 330 (1996).

85 *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 281 (2009).

86 *Secretary of National Defense v. Manalo*, 589 Phil. 1, 50 (2008).

87 *Id.* See also *International Skill Development, Inc. v. Montealto, Jr.*, G.R. No. 237455 (Resolution), October 7, 2020 citing *CRC Agricultural Trading v. National Labor Relations Commission*, 623 Phil. 789, 799-800 (2009); and *Divine Word College of Laoag v. Mina*, 784 Phil. 546-560 (2016).

As it is a question of whether an employer acted fairly, it is inexorable that any allegation of constructive dismissal be contrasted with the validity of exercising management prerogative.[88] By management prerogative is meant the right of an employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers.[89] Although jurisprudence recognizes said management prerogative, it has been ruled that the exercise thereof, while ordinarily not interfered with,[90] is not absolute and is subject to limitations imposed by law, collective bargaining agreement, and general principles of fair play and justice.[91]

In *Malcaba v. ProHealth Pharma Philippines, Inc.*,[92] the Court described the concept of management prerogative in this manner:

> Every business enterprise endeavor to increase its profits. In the process, it may adopt or devise means designed towards that goal. In *Abott Laboratories vs. NLRC*, . . . We ruled:
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> > . . . Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.
>
> So long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them.[93]

Recognizing an employer's exercise of its management prerogatives, even "in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence."[94] Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[95] However, once the employee establishes a case of constructive dismissal, the employer has the burden of proving that the exercise of management prerogative is for "valid or legitimate grounds, such as genuine business necessity,"[96] and "not a mere subterfuge to get rid of an employee."[97]

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88 *Torreda v. Investment and Capital Corporation of the Philippines*, *supra* note 77.

89 *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 126 (2012), citing *Mercado v. AMA Computer College-Parañaque City, Inc.*, 618 SCRA 218, 237 (2010).

90 *Id.*, citing *Castillo v. NLRC*, 367 Phil. 605, 616 (1999).

91 *Morales v. Harbour Centre Port Terminal, Inc.*, *supra* note 89.

92 832 Phil. 460 (2018).

93 *Id.*, citing *San Miguel Brewery Sales Force Union v. Ople*, 252 Phil. 27, 31 (1989).

94 *Italkarat 18, Inc. v. Gerasmio*, G.R. No. 221411, September 28, 2020.

95 *Gemina, Jr. v. Bankwise, Inc.*, *supra* note 76, citing *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, 623 SCRA 244, 256 (2010).

96 *Caniogan Credit and Dev't Cooperative, Inc. v. Mendoza*, G.R. No. 194353 (Resolution), March 4, 2020.

97 *Sumifru (Philippines) Corp. v. Baya*, 808 Phil. 635, 644 (2017).

An example where the Court held that there was a valid exercise of management prerogative was exemplified in the case of *Chateau Royale Sports and Country Club, Inc. v. Balba (Chateau Royale Sports).*[98] In *Chateau Royale Sports*, the employer, a domestic corporation operating a resort complex in Nasugbu, Batangas, ordered some of its account executives stationed in Batangas to eventually report in its Manila office, to mitigate the serious disruptions in its operations, following the resignation of its Account Managers and Director of Sales and Marketing in the Manila office. In the said case, the Court held that "the resignations gave rise to an urgent and genuine business necessity that fully warranted the transfer" [99] of the employees concerned, thus:

> To start with, the resignations of the account managers and the director of sales and marketing in the Manila office brought about the immediate need for their replacements with personnel having commensurate experiences and skills. With the positions held by the resigned sales personnel being undoubtedly crucial to the operations and business of the petitioner, the resignations gave rise to an urgent and genuine business necessity that fully warranted the transfer from the Nasugbu, Batangas office to the main office in Manila of the respondents, undoubtedly the best suited to perform the tasks assigned to the resigned employees because of their being themselves account managers who had recently attended seminars and trainings as such. The transfer could not be validly assailed as a form of constructive dismissal, for, as held in *Benguet Electric Cooperative v. Fianza*, management had the prerogative to determine the place where the employee is best qualified to serve the interests of the business given the qualifications, training and performance of the affected employee.[100]

In the same vein, in *Automatic Appliances, Inc. v. Deguidoy (Automatic Appliances, Inc)*,[101] the Court upheld as valid the employer's decision to transfer an employee, who was failing to meet her quota, to a branch which needed additional personnel, since the transfer was "triggered by the need to streamline its operations," and also intended to help the employee increase her sales. Hence, in *Automatic Appliances, Inc.*, the Court held:

> It bears noting that AAI was engaged in the business of selling appliances and other similar products. Consequently, it had a right to aim for a high volume of sales output, and devise of ways and means to achieve a high sales target. In relation thereto, Deguidoy, as a sales coordinator, was tasked to assist the branch in achieving a high output of sales. Unfortunately, however, Deguidoy's sales performance at the Tutuban branch was very meager compared to that of the branch top performer, and consisted of a small contribution to the total branch output. This was based on AAI's records.
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> It becomes all too apparent that AAI's decision to transfer Deguidoy to the Ortigas branch was triggered by the need to streamline its operations. The Tutuban branch needed manpower, whose functions Deguidoy could not fulfill. Meanwhile, the Ortigas branch was frequented by lesser customers, and was in need of additional personnel, for which Deguidoy could adequately respond.

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98 803 Phil. 442 (2017).
99 *Id.* at 450-451.
100 *Id.*, citing *Benguet Electric Cooperative v. Fianza,* 425 SCRA 41, 50 (2004).
101 *Automatic Appliances Inc., v. Deguidoy*, G.R. No. 228088, December 4, 2019.

> In fact, the re-assignment was viewed as a means to aid her increase her sales target.[102]

Meanwhile, should the employer fail to prove the existence of a genuine business necessity, "the employer will be found liable for constructive dismissal."[103] An employee who has been constructively dismissed "is entitled to reinstatement without loss of seniority rights, full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement."[104] However, if the circumstances do not warrant reinstatement, say for instance, antagonism caused a severe strain in the relationship between the employee and the employer, a more equitable disposition would be an award of separation pay in addition to the employee's full backwages, allowances and other benefits.[105]

Juxtaposing the rules on termination by the employer under Article 297 (formerly Article 282) of the Labor Code against constructive dismissal, the Court opines that the principles underlying these concepts are diametrically opposing. The existence of just cause for termination under the Labor Code is anchored not only on the employer's prerogative to discipline its employees, but also on its right to reasonable returns on investment, since the law authorizes neither the oppression nor the self-destruction of the employer in protecting the rights of the working class. "Labor laws are not one-sided. Although the law bends over backwards to accommodate the needs of the working class, not every labor dispute shall be decided in favor of labor."[106] Therefore, termination by the employer of the employee for just causes enumerated under the Labor Code is valid and legal.

On the contrary, when an employee is *constructively* terminated, the employer forces the employee to relinquish the position he or she held by unfair or unreasonable means, thereby blatantly disregarding the need to comply with the substantive and procedural due process requirements of the law to validly terminate an employee. Otherwise stated, in constructive dismissal, the employer circumvents the due process requirements of the law in terminating an employee which effectively undermine their security of tenure. For this reason, an act amounting to constructive dismissal is considered void[107] because it inherently contravenes the law and the State's policy of affording protection to labor.

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102 *Id.*

103 *Sumifru (Philippines) Corp. v. Baya,* 808 Phil. 635, 644 (2017).

104 *Westmont Pharmaceuticals, Inc. v. Samaniego*, 518 Phil. 41, 52 (2006).

105 *Id.*

106 *Automatic Appliances, Inc. v. Deguidoy, supra* note 101, citing *Paredes v. Feed the Children Philippines, Inc.,* 769 Phil. 418, 442 (2015).

107 Article 5 of the Civil Code states that [a]cts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

Contemplating on these ruminations, the Court declares that the existence of just cause for termination presupposes that the employer *actually* terminates the erring employee under the grounds enumerated in Article 297 (formerly Article 282) of the Labor Code. Consequently, there is no just cause for constructive dismissal. If the employer proves that a legitimate ground exists for the termination of employment of an employee such as genuine business necessity in the conduct of its affairs, then its act will amount to a valid exercise of its management prerogatives. There is no illegal dismissal in such a case. If no valid ground exists for the termination of employment of an employee, then said employee would be illegally dismissed. An employee who is constructively dismissed is an illegally dismissed employee. This presupposes a finding that no just cause exists to justify his dismissal.

*II. Petitioner failed to prove that he was terminated in the first place.*

It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity.[108] However, it is likewise true that in constructive dismissal case, **the employee has the burden to prove first the fact of dismissal by substantial evidence.**[109] Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[110]

Here, petitioner anchors his claim of constructive dismissal solely on the fact that he was not reinstated, to his actual position or in the payroll, after his 30-day preventive suspension.[111]

The Court remains unswayed.

The broad definition of constructive dismissal encompasses various situations, "whereby the employee is intentionally placed by the employer in a situation which will result in the former's being coerced into severing his ties with the latter." [112] One such situation is where an employee is preventively suspended pending investigation for an indefinite period of time.[113]

CGI, as the employer has the power to discipline petitioner, who is its employee, which includes the imposition of the preventive suspension

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108 *Italkarat 18, Inc., v. Gerasmio, supra* note 94, citing *Boie Takeda Chemicals, Inc.*, 790 Phil. 582, 599 (2016).

109 *Id.* (Emphasis in the original)

110 *Vicente v. Court of Appeals*, 557 Phil. 777-788 (2007).

111 *Rollo*, pp. 18-19.

112 *Agcolicol Jr., v. Casiño*, 787 Phil. 516, 527 (2016).

113 *Id.*

pending investigation. Placing an employee under preventive suspension is allowed under Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, Series of 1997 (*Omnibus Rules*), which provide:

> Section 8. Preventive suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.
>
> Section 9. Period of suspension. — No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

In the recent case of *Every Nation Language Institute v. Dela Cruz*,[114] the Court held that "[p]reventive suspension is not a penalty but a disciplinary measure to protect life or property of the employer or the co-workers pending investigation of any alleged infraction committed by the employee." In the same vein, the Court in *Philippine Span Asia Carriers Corp. v. Pelayo*,[115] recognized the employer's right to investigate acts of wrongdoing by its employees, and thus held:

> It is an employer's right to investigate acts of wrongdoing by employees. Employees involved in such investigations cannot *ipso facto* claim that employers are out to get them. Their involvement in investigations will naturally entail some inconvenience, stress, and difficulty. However, even if they might be burdened — and, in some cases, rather heavily so — it does not necessarily mean that an employer has embarked on their constructive dismissal.

The right of employers to place their employees under preventive suspension emanates from their power to discipline them in the exercise of their management prerogative. Nonetheless, the law imposes the following conditions to safeguard the employees' welfare: *first*, the employer must prove that the employee's continued employment poses a serious and imminent threat to the employer's or co-workers' life or property; and *second*, the employee's period of preventive suspension should not exceed 30 days, otherwise, it is incumbent upon the employer to reinstate the employee, whether in the same position or in the payroll. When justified, the preventively suspended employee is not entitled to the payment of his [or her] salaries and benefits for the period of suspension.[116]

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114 G.R. No. 225100, February 19, 2020, citing *Gatbonton v. NLRC*, 515 Phil. 387, 398 (2006).

115 826 Phil. 776 (2018).

116 *Every Nation Language Institute v. Dela Cruz, supra* note 114.

In *Maula v. Ximex Delivery Express, Inc.*,[117] the Court stressed that "preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper."

*A. Petitioner's continued employment poses a serious and imminent threat to CGI's property.*

At this juncture, it bears stressing that petitioner is a supervisor in a workshop where CGI creates its jewelry.[118] During the investigation, respondents also discovered that some of the workers were stealing excess gold under petitioner's watch,[119] for which respondents suffered a loss of ₱533,500.00.[120] It is for this reason that petitioner was similarly indicted for Qualified Theft, although the case against him was dismissed by the trial court.[121]

As a workshop supervisor, petitioner had access to the company premises where production materials are stored. Moreover, he is likely privy to company records relevant to the pending investigation against him. Given petitioner's access to company property and records, he is in a position where he can sabotage not only the pending investigation against him, but also the company's operations. Evidently, there is a logical and reasonable connection between his position and the necessity for his preventive suspension. Thus, placing him under preventive suspension was justified.

*B. Petitioner's failure to call his subordinates' attention and take the necessary steps to enforce company policies in the workshop under his supervision, adversely reflected on his competence and integrity, sufficient enough for his employer to lose trust and confidence in him.*

Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence.[122] More so, in the case of supervisors or personnel occupying positions of responsibility, loss

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117 804 Phil. 365, 388 (2017).
118 *Rollo*, p. 30.
119 *Id.* at 33.
120 *Id.* at 36.
121 *Id.* at 37.
122 *Yabut v. Manila Electric Co.*, 679 Phil. 97, 112 (2012), citing *The Coca-Cola Export Corporation v. Gacayan*, 667 Phil. 594, 601(2011).

of trust justifies termination.[123] Loss of confidence as a just cause for termination of employment is premised from the fact that an employee concerned holds a position of trust and confidence.[124] This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property.[125] Thus, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.[126] The loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.[127]

To justify a dismissal based on loss of trust and confidence, "the concurrence of two conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence."[128]

These two requisites are present in this case.

As regards the first requisite, petitioner as a workshop supervisor is tasked, among others, to regularly monitor the performance of his subordinates and ensure that they comply with company policies at all times. In this regard, petitioner should promptly report any irregularity or breach of protocols to the concerned unit for appropriate action. Thus, he is expected to be on top of any situation that may occur in the workshop under his supervision. Such intricate position undoubtedly required full trust and confidence of the company. Indubitably, petitioner held a position of trust and confidence in the company.

As to the second requisite, that there must be an act that would justify the loss of trust and confidence, the degree of proof required in proving loss of trust and confidence differs between a managerial employee and a rank and file employee.[129] In *Lima Land, Inc. v. Cuevas*,[130] the Court distinguished between managerial employees and rank-and-file personnel insofar as terminating them on the basis of loss of trust and confidence; thus:

> But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. x x x
>
> As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an

123 *Id.*
124 *Id.*
125 *Id.*
126 *Id.*
127 *Del Rosario v. CW Marketing & Development Corp.*, *supra* note 59.
128 *Del Monte Fresh Produce (Phil.), Inc v. Betonio*, G.R. No. 223485, December 4, 2019.
129 *Id.*, citing *SM Development Corp. v. Ang*, G.R. No. 220434, July 22, 2019.
130 635 Phil. 36 (2010), as cited in *Del Monte Fresh Produce (Phil.), Inc v. Betonio*, *supra* note 128.

> employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.
>
> It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.

As earlier discussed, petitioner, as a workshop supervisor, holds a managerial position, entrusted with confidence on delicate matters, especially on the care and protection of his employer's property. He was held liable for "breach of trust and confidence dishonesty," among others, for failing to report his subordinates whom respondents discovered have committed the following infractions within company premises: i) gambling; ii) imbibing alcoholic beverages; iii) theft of 0.10 gram of gold on Job Orders; and iv) taking of excess gold from the workplace.[131]

Confronted with a similar situation in *Lapanday Foods Corp. v. Vale, Sr., (Lapanday)*,[132] the Court adjudged a Logistics / Warehouse Manager who failed to prevent three incidences of theft of cartons committed by a loader, some drivers and cargo helpers, under his supervision, to be grossly negligent which resulted in his employer's loss of trust and confidence in him. In *Lapanday*, the Court affirmed the findings of the Labor Arbiter in this way:

> According to the Labor Arbiter:
>
> As Logistics/Warehouse Manager, he is expected to closely monitor, supervise, direct, coordinate and control the overall activities of his subordinates within his area of responsibilities, the warehouse. Hence, **under the doctrine of command responsibility[,] complainant is held accountable for neglect of duties and with three incidents of pilferages which occurred right under his nose**, so to speak, **he therefore has lost the trust and confidence bestowed upon him by the company**.[133]

In the same vein, in *Del Rosario*,[134] Del Rosario, a Sales Supervisor failed to call the attention of her subordinates who falsified their payslips and identification cards using her company-issued computer, and to promptly report them to her superiors. As a result, the Court held that while she does not appear to have directly participated in the fraudulent scheme, she deliberately kept silent over her subordinates' actions which demonstrated her sheer apathy to the company and made her unworthy of her position as Sales

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131 *Rollo*, p. 31.
132 G.R. No. 204023, January 7, 2013 (Minute Resolution).
133 *Id.* (Emphasis supplied)
134 G.R. No. 211105, February 20, 2019.

Supervisor. In the said case, the Court ruled that her failure to call her subordinates' attention and take necessary precaution adversely reflected in her competence and integrity which served cause for her employer to lose trust and confidence in her, thus:

> As the supervisor, [Del Rosario] should have called the attention of those responsible for the scanning and editing of [payslips] and identification cards. However, she kept her silence and only divulged her knowledge thereof when the results of the investigation pointed out that the tampered documents originated from her computer. **Her failure to call her subordinates' attention and take the necessary precaution with regard to her computer, adversely reflected on her competence and integrity, sufficient enough for her employer to lose trust and confidence in her.**[135]

Likewise, in *Nokom v. National Labor Relations Commission (Nokom)*,[136] Nokom, a manager in the healthcare division of a pest control and sanitation company, failed to inform management that some offices within her division were overdeclaring their profits in their reports. In *Nokom*, the Court stressed that as a manager, it was part of her duties, among others, to detect fraud and irregularities in her department and thereafter report the same to management. Her failure to unearth the said anomalies constitutes fraud or willful breach of the trust reposed on her by her employer. In the said case, the Court affirmed the findings of the appellate court when it held:

> Indeed, **petitioner's failure to detect and report to the respondent company** [Rentokil] **the fraudulent activities in her division as well as her failure to give a satisfactory explanation on the existence of the said irregularities constitute 'fraud or willful breach of the trust** reposed on her by her employer or duly authorized representative.[137]

Similarly, in *Philippine Airlines, Inc. v. National Labor Relations Commission (PAL)*,[138] the Court affirmed the finding of loss of trust and confidence on a managerial employee, who failed to detect that a certain travel agency was fictitiously reporting ticket sales to claim commissions, which resulted in huge financial losses for the company. In *PAL*, the managerial employee, in her defense, asserted that she relied heavily on the work of her analyst. In the said case, the Court underscored the role of a manager's job which is to ensure that her subordinates are doing their assigned tasks competently and efficiently, and warded off her defense in this fashion:

> Ms. Quijano claims that she relied heavily on Ms. Curammeng's judgment competence to perform her work, particularly the "completeness of the documents" check. She argues that if she were to do the completeness check herself, there would be no need for the analyst. This argument, however, wittingly or unwittingly, misconceives the nature of her job. Precisely, her basic role and duty as a manager was to make sure that the analysts in her division were performing the tasks assigned to them. But Ms. Quijano did not see to it

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135 *Id.* (Emphasis supplied).
136 390 Phil 1228 (2000).
137 *Id.* at 1237.
138 648 Phil. 238 (2010).

> that the completeness check was actually being performed by Ms. Curammeng. This lapse in control, contributed materially to the double, multiple and fictitious reporting of tickets, and double claims for commissions perpetrated by Goldair. Ms. Quijano was certainly not expected to personally do and perform the completeness check herself. But as manager, it was clearly incumbent upon her to see to it that this completeness check was being done by her subordinates competently and efficiently. Yet, Ms. Quijano even failed to adopt ways and means of keeping herself sufficiently informed of the activities of her staff members so as to prevent or at least discover at an early stage the fraud being perpetrated on a massive scale by Goldair against her company.
>
> x x x x
>
> In private respondent's case, the Resolution underscored her acts of mismanagement and gross incompetence which made her fail to detect the irregularities in the Goldair account that resulted in huge financial losses for petitioner. x x x[139]

In another case, *Philippine Auto Components, Inc. v. Jumadla (PACI),*[140] the Court held that some managerial staff in charge of inventory breached the company's trust and confidence in them, when they failed to prevent the pilferage in the warehouse of a company engaged in the manufacturing of automotive products. In *PACI*, the Court applied the principle of *respondeat superior* or command responsibility in pointing out that while the said managerial employees may not have been directly involved in the pilferage, their negligence facilitated the unauthorized transporting of products out of the company's warehouse and their sale to third persons. In the said case, the Court ruled in this manner:

> x x x It is undisputed that at the time of their dismissal, Jumadla and Ariz were Inventory Control Leaders of PACI's Parts and Materials Handling and Control Group and Finished Goods and Stock in Delivery Group, respectively. They were responsible for ensuring the veracity of the daily and monthly reports as well as variance checking of all product models one (1) month before stock taking. Conejos, on the other hand, was the Senior Inventory Control Associate for Air Conditioner and Radiators. His primary duty was to verify that the shipping documents contained no discrepancies.
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> x x x x
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> x x x the police report showed that Loyola was caught in possession of PACI's products, which he transported to an unauthorized location. On the principle of *respondeat superior* or command responsibility alone, respondents are liable for negligence in the performance of their duties. The loss of a considerable amount of automotive products under their custody remained unrefuted. Their failure to account for this loss of company property betrays the trust reposed and expected of them. Further, respondents offered no explanation why PACI's products were in the custody of unauthorized persons. PACI's loss of trust and confidence was directly rooted in the manner of how they, as persons in charge of the inventory, had negligently handled the products. They may not have been directly involved in the pilferage of PACI's products, but their negligence facilitated the unauthorized transporting of

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139 *Id.* at 257.

140 801 Phil. 170 (2016).

> products out of PACI's warehouse and their sale to third persons. Thus, respondents had violated PACI's trust and for which their dismissal is justified on the ground of breach of confidence.[141]

Prescinding therefrom, when managers fail to uncover and promptly report the irregularities committed by their subordinates to management, even if the circumstances show that they did not actively participate in such fraudulent scheme, such lapse on their part suffices for the employer to lose its trust and confidence on them because the same constitutes neglect of duties and adversely reflects on their competence and integrity.

It is well to note that petitioner is a managerial employee and "[i]n the case of a managerial employee, mere existence of a basis for believing that he has breached the trust of his employer is enough."[142] Lamentably, petitioner, a workshop supervisor, failed to call his subordinates' attention on their infractions within company premises and report the same to management, which omission served as cause for respondents to believe that he is unworthy of the trust and confidence demanded by his position. "Surely, within the bounds of law, management has the rightful prerogative to take away dissidents and undesirables from the workplace. It should not be forced to deal with difficult personnel, especially one who occupies a position of trust and confidence, x x x else it be compelled to act against the best interest of its business."[143]

At this juncture, it is well to note that both the LA and NLRC are one in their findings that petitioner was remiss in his duties as workshop supervisor which served cause for respondents to lose their trust and confidence in him, and led both arbiter and NLRC to dismiss the latter's complaint for illegal dismissal. Surprisingly, the CA also arrived at the same conclusion, albeit its ruling on petitioner's constructive dismissal. It is a well-settled rule that "findings of fact of labor tribunals, when affirmed by the Court of Appeals, are accorded not only great respect but even finality."[144]

Thereupon, petitioner harps on the fact that the criminal case against him was dismissed, hence, the charge for loss of trust and confidence had no more leg to stand on.[145]

The Court remains unpersuaded.

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141 *Id.* at 184-185.

142 *International Container Terminal Services, Inc. v. Ang*, G.R. Nos. 238347 & 238568-69, December 9, 2020, citing *PJ Lhuillier, Inc. v. Camacho*, 806 Phil. 413, 428 (2017).

143 *Cebu People's Multi-Purpose Cooperative v. Carbonilla, Jr.*, 779 Phil. 563, 582 (2016).

144 *University of the Immaculate Conception v. Office of the Secretary of Labor and Employment*, 769 Phil. 630, 651 (2015).

145 *Rollo*, pp. 20-23.

The degree of proof required to justify loss of trust and confidence is merely substantial evidence.[146] Consequently, "[a]n employee's acquittal in a criminal case does not automatically preclude a determination that he [or she] has been guilty of acts inimical to the employer's interest resulting in loss of trust and confidence."[147] In *Lopez v. Alturas Group of Companies*,[148] the Court explained that an acquittal in a criminal case will not necessarily exonerate an employee from a charge of loss of trust and confidence, because labor cases require a lower degree of proof than criminal cases, thus the evidence adduced, may still prove the employee's culpability to warrant his or her termination, despite his or her acquittal:

> Corollarily, the ground for the dismissal of an employee does not require proof beyond reasonable doubt; as noted earlier, the quantum of proof required is merely substantial evidence. More importantly, the trial court acquitted petitioner not because he did not commit the offense, but merely because of the failure of the prosecution to prove his guilt beyond reasonable doubt. **In other words, while the evidence presented against petitioner did not satisfy the quantum of proof required for conviction in a criminal case, it substantially proved his culpability which warranted his dismissal from employment.**[149]

This principle was illustrated in the case of *Paulino v. NLRC (Paulino)*.[150] In *Paulino*, a telecommunications company, filed a criminal complaint against its cable splicer for Qualified Theft after it recovered several plant materials, which the said employee kept in his residence for one month and 11 days. In his defense, the employee claimed that he surrendered his service vehicle to the company's motor pool for body repairs. For this reason, he unloaded the company-issued plant materials contained in the vehicle and stored them at his residence for safekeeping. Consequently, the company terminated him based on loss of trust and confidence since he was suspected of stealing company properties. Later on, the employee was acquitted in the criminal case for Qualified Theft. In the said case, the Court affirmed the dismissal by the employer based on loss of trust and confidence of its employee, notwithstanding his acquittal in the criminal case for Qualified Theft, reasoning in this wise:

> x x x [n]otwithstanding petitioner's acquittal in the criminal case for qualified theft, respondent PLDT had adequately established the basis for the company's loss of confidence as a just cause to terminate petitioner. This Court finds that approach to be correct, since proof beyond reasonable doubt of an employee's misconduct is not required in dismissing an employee. Rather, as opposed to the "proof beyond reasonable doubt" standard of evidence required in criminal cases, labor suits require only substantial evidence to prove the validity of the dismissal.[151]

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146 *Lara v. Dermpharma, Inc.*, G.R. No. 199553, February 13, 2019 (Minute Resolution).

147 *Lopez v. Alturas Group of Companies,* 663 Phil. 121 (2011).

148 *Id.* at 31.

149 *Id.*, citing *Vergara v. National Labor Relations Commission*, 347 Phil. 161, 174 (1997). (Emphasis in the original)

150 687 Phil. 220, 228 (2012).

151 *Id.*

Likewise, in the case of *Concepcion v. Minex Import Corp./ Minerama Corp. (Concepcion)*,[152] the Court held that "the acquittal of the employee from the criminal prosecution for a crime committed against the interest of the employer did not automatically eliminate loss of confidence as a basis for administrative action against the employee." In *Concepcion*, a Sales Supervisor of a company engaged in the retail of semi-precious stones in various shopping centers in Metro Manila, failed to remit the three-day sales proceeds of the team totaling ₱50,912.00. According to her, she wrapped the amount in a plastic bag and deposited it in the drawer of the locked wooden cabinet of the kiosk. However, the following day, she reported to the Assistant Manager that the said amount was missing. Later on, she was indicted for qualified theft. Before the trial concluded, she was terminated from employment. In the said case, the Sales Supervisor argued that there was no evidence for her dismissal since she had not yet been found guilty beyond reasonable doubt of the crime charged.

In *Concepcion*, the Court underscored that the principle that an employee's acquittal in a criminal case will not preclude a determination in a labor case that he or she is guilty of acts inimical to the employer's interests, is not meant to diminish the value of employment, but only noted that "the loss of employment occasions a consequence lesser than the loss of personal liberty, and may thus call for a lower degree of proof."[153] Moreover, the Court also stressed that the employer is not required to be morally certain of the guilt of the erring employee by waiting for his or her conviction, since it may be too late as it could already be suffering losses potentially beyond repair, thus:

> Indeed, the employer is not expected to be as strict and rigorous as a judge in a criminal trial in weighing all the probabilities of guilt before terminating the employee. Unlike a criminal case, which necessitates a moral certainty of guilt due to the loss of the personal liberty of the accused being the issue, a case concerning an employee suspected of wrongdoing leads only to his termination as a consequence. The quantum of proof required for convicting an accused is thus higher — proof of guilt beyond reasonable doubt — than the quantum prescribed for dismissing an employee — substantial evidence. In so stating, we are not diminishing the value of employment, but only noting that the loss of employment occasions a consequence lesser than the loss of personal liberty, and may thus call for a lower degree of proof.
>
> It is also unfair to require an employer to first be morally certain of the guilt of the employee by awaiting a conviction before terminating him when there is already sufficient showing of the wrongdoing. Requiring that certainty may prove too late for the employer, whose loss may potentially be beyond repair. x x x[154]

Withal, the Court has reason to rule that petitioner's acquittal did not preclude a determination that he has been guilty of acts inimical to his

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152 679 Phil. 491 (2012), citing *Philippine Long Distance Telephone Co., v. National Labor Relations Commission*, 129 SCRA 163, 172 (1984).

153 *Id.*

154 *Id.*

employer's interest resulting in loss of trust and confidence, since neither a formal charge in court nor a conviction after criminal prosecution is indispensable.

*C. Petitioner failed to establish that his preventive suspension amounted to constructive dismissal.*

Notably, despite the presence of just cause for his dismissal, petitioner even admitted that he did not receive any notice of termination, written or otherwise.[155] In fact, petitioner did not even state the actual date of his alleged dismissal. Subsequently, he asserted that he was constructively dismissed solely on the fact that he was not reinstated, to his position or in the payroll, after his 30-day preventive suspension.[156]

The Court finds his contention utterly erroneous.

In *Consolidated Building Maintenance, Inc. v. Asprec Jr.*,[157] the Court explained that the 30-day period of preventive suspension under the Omnibus Rules should be construed to mean that "**the employer act within the 30-day period of preventive suspension by concluding the investigation either by absolving the respondents of the charges or meting corresponding penaly if liable.** Otherwise, the employer must reinstate the employee, or extend the period of suspension provided the employee's wages and benefits are paid in the *interim*."[158]

In the same vein, in the recent case of *Matalicia v. Iolcos Maritime Agencies Far East, Inc. (Matalicia)*,[159] the Court affirmed the ruling of the CA when the appellate court held that the employers "**have the obligation to finish their investigation within the 30-day period** and **reinstate the employee** to his [or her] former position **after the lapse of such period if no results are forthcoming.**" Consequently, during the preventive suspension, the employee has the right not to be dismissed until the lapse of the 30-day period, and to be reinstated to his or her position thereafter, in the absence of any concrete results.

Guided by the foregoing tenets, an employee's right is violated when: a) he or she is terminated from employment within the 30-day period of preventive suspension; or b) when the investigation is extended to more than

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155 *Rollo*, p. 154.

156 *Id.* at pp. 18-20.

157 832 Phil. 630 (2018), citing *Genesis Transport Service Inc. v. Unyon ng Malayang Manggagawa ng Genesis Transport, et al.*, 631 Phil. 350, 359 (2010). (Emphasis supplied)

158 *Id.*, citing *Mandapat v. Add Force Personnel Services, Inc.*, 638 Phil. 150, 156 (2010).

159 G.R. No. 246595, November 18, 2020 (Minute Resolution). (Emphasis supplied)

30 days without reinstatement to his or her former position, or in the payroll.[160]

Evidently, the first condition is not obtaining since respondents did not issue any notice of termination to petitioner in the first place.[161] The contention lies in the existence of the second condition as he maintained that he was indefinitely suspended when respondents failed to reinstate him after 30 days.[162]

In *Agcolicol Jr. v. Casiño*,[163] the Court enumerated instances when an employee's prolonged suspension amounted to constructive dismissal.

In *Pido v. National Labor Relations Commission*,[164] an employee was placed under preventive suspension, but the employer did not inform the employee that it was extending its investigation, that lasted for nine months. After the lapse of the 30-day period of suspension, the employer did not issue an order lifting the suspension or any official communication for the employee to assume his post or another post. He was also not paid his wages and other benefits during the extended period. In *Pido*, this Court found that the employer dawdled with the investigation in absolute disregard of the employee's welfare. For this reason, the Court considered the employee's prolonged suspension owing to the employer's neglect to conclude the investigation had ripened to constructive dismissal.

In another case, *C. Alcantara & Sons, Inc. v. National Labor Relations Commission*,[165] the Court held that the employer's imposition of a preventive suspension pending final investigation of the employee's case, coupled with the former's lack of intention to conduct said final investigation, amounted to constructive dismissal.

Moreover, in *Premiere Development Bank v. National Labor Relations Commission*,[166] the Court declared that the prolonged suspension of an employee to coerce him to submit to an inquiry, amounted to constructive dismissal because it was a predetermined effort to dismiss him from service in the guise of preventive suspension.

Similarly, in *Hyatt Taxi Services, Inc. v. Catinoy*,[167] the Court held that the employer's actions were tantamount to constructive dismissal when it failed to recall the employee to work after the expiration of the suspension,

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160 *Id.*
161 *Rollo*, p. 154.
162 *Id.* at 18-20.
163 787 Phil. 516, 529-530 (2016).
164 545 Phil. 507 (2007).
165 229 SCRA 109, 114 (1994).
166 293 SCRA 49, 59 (1998).
167 359 CRA 686, 697 (2001).

taken together with the former's precondition that the employee withdraw the cases filed against it. In said case, the employee involved reported for work after the lapse of his suspension but was barred from resuming his employment unless he withdraws the cases that he filed against his employer.

Resolving allegations of constructive dismissal is not a one-sided affair impelled by romanticized sentiment for a preconceived underdog. Rather, it is a question of justice that "hinges on whether, given the circumstances, the employer acted fairly in exercising a prerogative."[168] It involves the weighing of evidence and a consideration of the "totality of circumstances."[169]

*Apropos* to the foregoing, the Court adheres to the principle that, "[s]tatutory construction should not kill but give life to the law."[170] In *Spouses Belo v. Philippine National Bank,*[171] the Court thus held:

> It is well settled that courts are not to give a statute a meaning that would lead to absurdities. If the words of a statute are susceptible of more than one meaning, the absurdity of the result of one construction is a strong argument against its adoption, and in favor of such sensible interpretation. We test a law by its result. A law should not be interpreted so as not to cause an injustice. There are laws which are generally valid but may seem arbitrary when applied in a particular case because of its peculiar circumstances. **We are not bound to apply them in slavish obedience to their language.**

Mindful of management's discretion and prerogative to regulate all aspects of employment including the power to discipline its employees, and the need to give due regard to the rights of labor, the Court declares that "mere extension" of the 30-day period of preventive suspension alone will not amount to constructive dismissal. The interpretation of the 30-day limit should be in consonance with the intent of the law which is to ensure that "management prerogative may not be used as a subterfuge by the employer to rid himself [or herself] of an undesirable worker"[172] by means of coercion or intimidation.[173] because "this is precisely the essence of constructive dismissal."[174] Therefore, when the period of preventive suspension is extended, the totality of the circumstances must show that the prolonged suspension was tainted with bad faith or malice on the part of the employer to compel the employee to forego his or her employment, before the said extension may amount to constructive dismissal.

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168 *Philippine Span Asia Carriers Corp v. Pelayo, supra* note 115, citing *Manalo v. Ateneo de Naga University*, 772 Phil. 336, 383 (2015).

169 *Id.*, citing *Rodriguez v. Park N Ride Inc.*, 807 Phil. 747 (2017).

170 *Apo Fruits Corporation v. Court of Appeals*, 565 Phil. 418, 433-434 (2007).

171 405 Phil. 851 (2001), as cited in *William G. Kwong Management, Inc., v. Diamond Homeowners & Residents Association,* G.R. No. 211353, June 10, 2019. (Emphasis supplied)

172 *Meatworld International, Inc. v. Hechanova*, 820 Phil. 275 (2017), citing *Peckson v. Robinsons Supermarket Corporation*, 713 Phil. 471, 483 (2013).

173 *Castronomero v. Red Mane Security Agency,* G.R. No. 217399, June 13, 2016 (Minute Resolution).

174 *International Skill Development, Inc. v. Montealto,* Jr., G.R. No. 237455, October 7, 2020 (Minute Resolution).

Set against these parameters, the Court finds that petitioner's preventive suspension was neither indefinite nor did it amount to constructive dismissal, based on the following grounds:

*For one*, respondents already concluded the investigation against petitioner and made their findings known to him during his 30-day preventive suspension.

To restate, the obligation of the employer is to finish the investigation within the 30-day period of preventive suspension by absolving the employee or meting the corresponding penalty if he or she is found liable. Otherwise, the employer must reinstate the employee, to his or her position or in the payroll. Thus, the obligation to reinstate the employee arises only when the period of preventive suspension exceeded 30 days. Conversely, there is no duty to reinstate an employee, especially one who is found liable for breach of company policy, when the investigation was concluded within the 30-day period of preventive suspension.

It is well to note that petitioner was placed under preventive suspension on February 8, 2011.[175] Following the Omnibus Rules, his 30-day preventive suspension would have ended on March 11, 2011. On March 1, 2011, or 10 days prior to said date, respondents already finished their investigation and made the results known to petitioner that he was found guilty of violating company policy resulting in loss of trust and confidence, in a reconciliation hearing set for that purpose.[176] Clearly, there was no extension to speak of since respondents already terminated their investigation even before petitioner's 30-day preventive suspension ended. For this reason, petitioner's claim that he should have been reinstated is misplaced, if not unfounded, because respondents already found him liable during his 30-day preventive suspension.

*For another*, assuming that petitioner's preventive suspension was extended, the extension was not tainted with malice or bad faith, since it was meant to give petitioner a graceful exit from the company in lieu of termination. Jurisprudence[177] provides that the employers' decision to give their employees the chance to resign to save face rather than smear their employment records is perfectly within their discretion.

The ruling aforesaid was elucidated in the case of *Cosue v. Ferritz Integrated Development Corp.*,[178] where petitioner, a janitor / maintenance staff at the property division of a construction company, was preventively suspended for allegedly aiding or abetting theft of electrical wires in the

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175 *Rollo*, p. 32.
176 *Id.*
177 *Cosue v. Ferritz Integrated Development Corp.*, 814 Phil. 77, 87 (2017).
178 *Id.*

company premises. Later on, he was suspended for 25 days from July 16, 2014 to August 13, 2014, pending investigation. He returned on August 13, 2014, but was told to come back at a later day since the head of the property division was on leave. When petitioner came back on August 27, 2014, he was able to speak to the head of office and they agreed that he would voluntarily resign. However, he did not file his resignation, and eventually instituted his Complaint on the ground of constructive dismissal.

In the said case, the Court did not give credence to petitioner's claim that he was constructively dismissed when his employer allowed him to resign after his preventive suspension. Here, the Court even held that "**[the employers'] decision to give petitioner a graceful exit is perfectly within their discretion. It is settled that there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record.**"[179]

In the same vein, in *Martinez v. Fastfood Chain Corp.*,[180] the Court recognized the employer's practice of allowing an erring employee to resign to save him or her from the embarrassment of exposing his or her malfeasance, *viz*:

> It is not uncommon that an employee is permitted to resign to avoid the humiliation and embarrassment of being terminated for just cause after the exposure of her malfeasance. It is settled that there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record.

Echoes of the same ruling also resonated in *Central Azucarera de Bais, Inc. v. Siason (Siason)*,[181] where the Court affirmed the ruling of the NLRC which declared that **it is not an unlawful practice to ask an erring employee to resign.** In *Siason*, the employer discovered that an employee was involved in several questionable purchasing transactions in the company. Considering the employee's long tenure with the company, the employer gave her an option to voluntarily resign, rather than to force its hand, and let the employee deal with an investigation which might result in her dismissal. In the said case, the Court held that the employer's decision to give the employee a graceful exit rather than to file an action for redress is perfectly within the discretion of the former; as it is not uncommon that an employee is permitted to resign to avoid the humiliation and embarrassment of being terminated for just cause after the exposure of her malfeasance. It is settled that there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record, as in this case.[182]

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179 *Id.*

180 G.R. No. 195512, February 13, 2019 (Resolution) citing *Central Azucarera de Bais, Inc. v. Siason*, 764 SCRA 494 (2015).

181 *Id.*

182 *Id.*

Consequently, respondents were bound to issue a notice of termination after their investigation, but petitioner informed them in writing of his intention to resign, in his letter dated March 11, 2011, the pertinent portion of which reads:

> **Should you allow me to resign**, let's observe strictly the requirements of the Labor Code. Please also consider also my unpaid wages, fringe benefits and separation pay.[183]

Notably, petitioner failed to controvert the claim that he did offer to resign after respondents relayed the results of the investigation against him. Likewise, he did not even contend that he was threatened, intimidated or coerced to make such offer. What is apparent from the records of the case is that respondents allowed petitioner to resign to keep his employment record clean, but the parties had a disagreement on the payment of his separation pay, among others, owing to the fact that petitioner was found remiss in his duties as workshop supervisor.[184]

Settled is the rule that "a claim of constructive dismissal must be substantiated by clear, positive and convincing evidence."[185] With this in mind, the Court finds that petitioner failed to relay how respondents created a hostile working environment which compelled him to make such offer to resign. As a matter of fact, petitioner is silent whether he tried reporting back for work and whether he was barred from entering the company premises after the reconciliation hearing, which lends credence to respondents' claim that petitioner offered to resign out of his own volition. While petitioner laments respondents' decision regarding the payment of his separation pay, the Court in *Castromero v. Red Mane Security Agency,*[186] stressed that "**[t]he fact that [the employees] were dissatisfied or discontented with their employment xxx cannot be equated with unbearable working conditions." Indeed, "[n]ot every inconvenience, disruption, difficulty, or disadvantage that an employee must endure sustains a finding of constructive dismissal."**[187]

Similarly, in *Gemina, Jr. v. Bankwise, Inc. (Gemina, Jr.),*[188] the Court held that an employee who failed to prove that he was forced to go on leave by his employer had indeed fell short of establishing a case of constructive dismissal since the circumstances were neither clear-cut indications of bad faith nor some malicious design on the part of his employer to make his working environment insufferable. In *Gemina Jr.*, the employee failed to present a single letter or document that would corroborate his claim. Likewise, he had not claimed to have suffered a demotion in rank or diminution in pay or other benefits.

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183 *Rollo,* p. 12. (Emphasis supplied)
184 *Id.*
185 *Castromero v. Red Mane Security Agency,* G.R. No. 217399, June 13, 2016 (Minute Resolution).
186 *Id.*
187 *Philippine Span Asia Carriers Corp. v. Pelayo*, 826 Phil. 776 (2018) citing *Manalo v. Ateneo de Naga University,* 772 Phil. 366, 369 (2015).
188 *Supra* note 76.

In the same vein, in *Doctor v. NII*,[189] the Court ruled that "[w]ithout petitioners alleging their demotion in rank, diminution in pay, or involuntary resignation due to unbearable working conditions caused by the respondents as employers, there is no need to belabor the issue of constructive dismissal herein. Any discussion on constructive dismissal will be merely speculative and/or academic."

On the contrary, the Court held that there was constructive dismissal in the following cases: 1) when the employer appointed another person to the position which the employee then still occupied, the latter felt he was being eased out and this perception made him decide to leave the company;[190] 2) the employee was forced to resign because his salary was abruptly cut, his living conditions were unbearable, he was made to do illegal acts for his employer and he was reported as abscondee when he filed a complaint before the Philippine consulate;[191] and 3) when the employer wanted the employee to sign the prepared resignation letter which contained his name and details, so that it could effortlessly get rid of him.[192]

Nevertheless, none of the circumstances aforesaid were shown to be present in this case. All told, petitioner failed to present any proof to substantiate his claim of constructive dismissal.

*III. Petitioner's act of filing a complaint before he could be dismissed from employment is considered an informal voluntary termination of his employment.*

Resignation is the voluntary act of an employee who is in a situation where he or she believes that personal reasons cannot be sacrificed in favor of the exigency of the service and has no other choice or is otherwise compelled to dissociate himself or herself from employment. It is a formal pronouncement or relinquishment of an office and must be made with the intention of relinquishing the office, accompanied by the act of relinquishment or abandonment.[193]

The oft-repeated rule is that resignation is inconsistent with the filing of a complaint for illegal dismissal.[194] Nonetheless, in *Blue Eagle Management,*

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189 821 Phil. 251 (2017).

190 *Peñaflor v. Outdoor Clothing Manufacturing Corp.*, 632 Phil. 219, 228 (2010).

191 *International Skill Development, Inc. v. Montealto, Jr.*, G.R. No. 237455, October 7, 2020 (Minute Resolution).

192 *Torreda v. Investment and Capital Corporation of the Philippines*, G.R. No. 229881, September 5, 2018.

193 *Jacob v. Villaseran Maintenance Service Corp.*, G.R. No. 243951, January 20, 2021.

194 *Id.* citing *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 511 (2015).

*Inc. v. Naval*,[195] the Court declared that "the employee's filing of the complaint for illegal dismissal by itself is not sufficient to disprove that said employee voluntarily resigned."

Extant from the records of the case is the fact that petitioner was found liable for breach of company policy resulting in loss of trust and confidence. Despite the presence of just cause for his termination, respondents accepted petitioner's offer to resign to keep his employment record clean. However, respondents refused to pay his money claims, in view of the finding of liability on his part. Disgruntled, petitioner filed a complaint for illegal dismissal instead, with the sole purpose of collecting his separation pay, among others.

On this score, a judicious scrutiny of the established jurisprudence on the matter is crucial.

In the case of *Abad v. Roselle Cinema (Abad)*,[196] the Court ruled that an employee's act of filing a complaint before he or she could be dismissed from employment is considered an informal voluntary termination of employment. In *Abad*, one of the employees was asked to explain regarding the missing shortages and "overages" on the canteen stocks and remittances. She was also reminded to observe decorum in the workplace, as there were several instances when her suitors had been rude to the owner. The said employee, however, stated that she would rather resign than her personal life be interfered with. She then verbally offered to resign and left her station without getting her wage.[197] In this case, the Court declared that the truth of the matter is that before the employer could dismiss the employee on the ground of abandonment, the latter filed with the Labor Arbiter her complaint for illegal dismissal. Thus, while there was no showing that the employee formally resigned from work, her timing of filing a complaint for illegal dismissal before she can be terminated for just cause was tantamount to an informal voluntary termination of her employment.[198]

*Abad* was also cited in the later case of *Mehitabel, Inc., v. Alcuizar (Mehitabel)*,[199] which involved a purchasing manager of a company engaged in manufacturing high-end furniture for export. The company warned the employee to improve his dismal performance which delayed the production and delivery of the company's goods. Antagonized, the employee walked out of the office during working hours and gave word that he was quitting his job. Later on, he filed a complaint for illegal dismissal. In this case, the Court ruled that to declare as an absolute that the employee would not have filed a complaint for illegal dismissal if he or she had not really been dismissed is

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195 785 Phil. 133, 162 (2016).
196 520 Phil. 135, 149 (2006).
197 *Id.*
198 *Id.*
199 822 Phil. 863 (2017).

*non sequitur.*[200] Hence, apart from the filing of the complaint, the other circumstances surrounding the case must be taken into account. In this regard, the Court opined that realizing that his employment was at serious risk due to his habitual neglect of his duties, the employee jumped the gun on his employer by lodging a baseless complaint for illegal dismissal even though it was he who abandoned his employment.[201]

The more recent case of *Matalicia*[202] also reiterated the ruling of the Court in *Abad.* In *Matalicia,* the employee was the company's Finance Manager, who was later on charged with gross neglect of duties and breach of trust.[203] She was placed under preventive suspension until the conclusion of the investigation. She requested to be given ample time to submit an answer to the show cause letter, but she filed a case *via* the Single Entry Approach. Subsequently, she filed a Complaint for constructive dismissal against the company and averred that she had already been prejudged and could no longer get a fair investigation. Hence, the Court held that petitioner's act of filing a complaint for illegal dismissal before suffering an actual harm clearly manifested her intent to no longer return to work, thus voluntarily severing her employment with the company.[204]

As can be gathered in the cases of *Abad*, *Mehitabel* and *Matalicia,* an employee is also considered to have terminated his or her employment upon the concurrence of the following conditions: *first,* the employee faces an impending termination based on just cause; *second*, he or she filed a complaint for illegal dismissal in contemplation of the serious risk to his or her employment; and *third*, the surrounding circumstances reveal that the employee has no intention of returning to work, in which case the filing of the complaint becomes the overt act of voluntarily severing his or her employment ties.

Relatedly, in *Tuppil, Jr. v. LBP Service Corp.*,[205] the Court ruled that the filing of a complaint for illegal dismissal did not negate the voluntariness of the employee's resignation, since the complaint therein did not include a prayer for reinstatement. Similarly, in *Villaruel v. Yeo Han Guan*,[206] the Court held that an employee who filed a complaint for illegal dismissal without asking for reinstatement has no intention of returning to his employment.

In retrospect, the conditions aforesaid are obtaining in the case at bench. It is well to reiterate that petitioner filed his complaint for illegal dismissal after he was already informed of his impending termination during the reconciliation hearing held on March 1, 2011. When he learned that

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200 *Id.*
201 *Id.*
202 *Matalicia v. Iolcos Maritime Agencies Far East Inc., supra* note 159.
203 *Id.*
204 *Id.*
205 G.R. No. 228407, June 10, 2020 (Resolution).
206 665 Phil. 212-223 (2011).

respondents will not give him his money claims despite his offer to resign, he filed a complaint for illegal dismissal with the sole purpose of seeking payment of his separation pay, among others.[207] From the foregoing, it is clear that petitioner had no intention to return to work, thus he is considered to have voluntarily severed his employment.

Indeed, the Court has construed an employee's informal voluntary termination of employment as tantamount to his or her resignation. In doing so, the Court perceives such conduct as a "badge of guilt" on the part of the employee because in essence, the latter evades or thwarts the exercise by the employer of its prerogative to discipline him or her after observing due process. The Court declines to condone the employee's act of preempting and refusing to cooperate in a process sanctioned by law to weed out undesirable workers, for to do so, would not only tie the employer's hands but would also incapacitate them, to a point that legitimate measures to address employee iniquity would be futile.[208]

Consequently, jurisprudence [209] holds that an employee who had voluntarily severed [his or] her employment is not entitled to an award of separation pay and backwages, "unless there is a contract that provides otherwise or there exists a company practice of giving separation pay to resignees,"[210] Here, petitioner failed to prove his entitlement thereto, either *via* contract or company practice.

This notwithstanding, the records bear that respondents no longer appealed the Decision dated January 29, 2016 and Resolution dated October 17, 2016 of the CA in CA-G.R. SP No. 127383, which affirmed the ruling of the NLRC that granted petitioner his unpaid wages and benefits from March 11, 2011 up to July 11, 2011, amounting to ₱96,000.00.

It is well-settled that "when a party to an original action fails to question an adverse judgment or decision by not filing the proper remedy within the period prescribed by law, he loses the right to do so, and the judgment or decision, as to him [or her] becomes final and binding." Simply put, a party who does not appeal or file a petition for review is not entitled to any affirmative relief. [211] Due process and fair play dictate that a non-appellant may not be granted additional award or benefits nor may he or she be allowed to assail or ask the modification of the judgment, which was not appealed by him or her.[212] Conformably with this rule, the Decision of the CA directing respondents to pay petitioner his unpaid wages and benefits in the

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207 *Rollo*, p. 33.
208 *Philippine Span Asia Carriers Corp. v. Pelayo, supra* note 115.
209 *Matalicia v. Iolcos Maritime Agencies Far East, Inc., supra* note 159.
210 *Italkarat 18, Inc. v. Gerasmio*, G.R. No. 221411, September 28, 2020.
211 *Heirs of Pajares v. North Sea Marine Services Corp.*, G.R. No. 244437, September 14, 2020.
212 *Id.*

total amount of ₱96,000.00, is already final and executory as to respondents, since they failed to interpose an appeal.

**Our laws provide for a clear preference for labor.**[213] **This is in recognition of the asymmetrical power of those with capital when they are left to negotiate with their workers without the standards and protection of law.**[214] **Nonetheless, "our empathy with the cause of labor should not blind us to the rights of management,"**[215] **who also "has its own rights, [and] as such, are entitled to respect and enforcement in the interest of simple fair play."**[216] The preferential treatment given by our law to labor, however, is not a license for abuse.[217] It is not a signal to commit acts of unfairness that will unreasonably infringe on the property rights of the company. Both labor and employer have social utility, and the law is not so biased that it does not find a middle ground to give each their due.[218] **As a final note, the Court reiterates Our pronouncement in *Solidbank Corporation v. National Labor Relations Commission:***[219]

> x x x Out of its concern for those with less privileges in life, the Supreme Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[220]

**WHEREFORE**, the Petition for Review is **DENIED**. The Decision dated January 29, 2016 and Resolution dated October 17, 2016 of the Court of Appeals in CA-G.R. SP No. 127383 are hereby **AFFIRMED** with **MODIFICATION** in that petitioner Peter Angelo N. Lagamayo was not constructively dismissed but had voluntarily severed his employment. Meanwhile, the rest of the assailed Decision and Resolution pertaining to the award of his unpaid wages and benefits amounting to ₱96,000.00 stands.

**SO ORDERED.**

**JHOSEP Y. LOPEZ**
Associate Justice

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213 *Milan v. National Labor Relations Commission*, 753 Phil. 217, 239 (2015).
214 *Id.*
215 *Paulino v. National Labor Relations Commission*, *supra* note 150.
216 *Blue Eagle Management, Inc. v. Naval*, *supra* note 195, citing *Solidbank Corporation v. National Labor Relations Commission*, 631 Phil. 158, 174 (2010).
217 *Supra* note 213.
218 *Id.*
219 631 Phil. 158 (2010).
220 *Id.* at 174.

**WE CONCUR:**

**ALEXANDER G. GESMUNDO**
Chief Justice

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

**HENRI JEAN PAUL B. INTING**
Associate Justice

**MARIO V. LOPEZ**
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.

**ALEXANDER G. GESMUNDO**
Chief Justice