Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SRL INTERNATIONAL MANPOWER AGENCY, represented by SEVILLA SARAH SORITA and AKKILA CO., LTD., UAE and/or AL SALMEEN,
Petitioners,

- *versus* -

PEDRO S. YARZA, JR.,
Respondent.

G.R. No. 207828

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
HERNANDO,
INTING,
GAERLAN, and
DIMAAMPAO, *JJ.*

Promulgated:

FEB 14 2022

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DECISION

HERNANDO, *J.*:

This petition for review on *certiorari*[1] assails the March 25, 2013 Decision[2] and June 18, 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 126776, which set aside the July 23, 2012 Resolution[4] and then reinstated the March 29, 2012 Decision,[5] both rendered by the National Labor Relations Commission (NLRC), in NLRC NCR OFW Case No. (L) 06-09977-11, NLRC LAC (OFW-L) No. 01-000111-12.

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[1] *Rollo*, pp. 26-47.

[2] Id. at 6-20. Penned by Presiding Justice Remedios Salazar-Fernando and concurred in by Associate Justices Normandie B. Pizarro and Manuel M. Barrios.

[3] Id. at 21-23. Penned by Presiding Justice Remedios Salazar-Fernando and concurred in by Associate Justices Normandie B. Pizarro and Manuel M. Barrios.

[4] Id. at 194-201. Penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III.

[5] Id. at 161-171. Penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III.

The Facts:

Respondent Pedro S. Yarza, Jr. (Yarza) alleged that the petitioners SRL International Manpower Agency (SRL) and Akkila Co. Ltd. UAE (Akkila, collectively, petitioners), SRL's foreign principal, hired him as a Project Manager for a duration of two years. His employment contract[6] states that his monthly basic salary is AED 8,000.00/month, in addition to a transportation allowance of AED 2,000.00/month, and inflation allowance of AED 2,200.00/month. Yarza departed for the United Arab Emirates (UAE) on October 14, 2010.[7]

On March 24, 2011, Yarza was repatriated to the Philippines with an instruction to renew his visa, and with the condition that he should return 10 days after its processing. Although Yarza complied with all the requirements, petitioners terminated his employment without prior notice and due process. To his surprise, he received a termination letter[8] dated May 22, 2011 from Akkila. Yarza claimed that he enjoys security of tenure since he was contracted to serve for 24 months and was hired based on his credentials. Withal, they failed to prove that he was dismissed based on a just or authorized cause, or under the employment contract.[9]

Consequently, on June 29, 2011, Yarza filed a complaint[10] for illegal dismissal, payment of salary for the unexpired portion of his contract, refund of transportation fare, and moral damages against the petitioners.[11]

On the other hand, SRL confirmed that Akkila and Al Salmeen Trading Est. (Al Salmeen), purportedly both owned by Mr. Haytham Akkila, are its foreign principals. Akkila informed SRL that it needed manpower for its Qatar project; hence, the latter posted the job opening. In view of this, Yarza submitted his application as Project Manager. In July 2010, SRL received word from Akkila that the latter was interested in hiring Yarza. Afterwards, SRL forwarded Yarza's documents to Akkila for the processing of his employment visa.[12]

However, unknown to SRL, Akkila and Yarza directly contacted each other regarding Yarza's deployment. To SRL's surprise, Akkila sent a visit visa for Yarza instead of an employment visa. SRL protested and informed Akkila that Yarza cannot be deployed under a visit visa since it would violate the rules of the Philippine Overseas Employment Agency (POEA). Akkila and Yarza insisted on using the visit visa, stating that they have a mutual and voluntary agreement. SRL objected as it wanted to strictly follow POEA's requirement that an overseas worker should be deployed under an employment visa.

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6 Id. at 73-75.
7 Id. at 106.
8 Id. at 79.
9 Id. at 7.
10 Id. at 291-292; "Complaint," records, unpaginated.
11 Id.
12 Id. at 8.

Nonetheless, SRL turned over to Yarza all of his documents including the visit visa. From then on, SRL did not facilitate Yarza's deployment under the visit visa as Yarza handled it on his own. SRL argued that it did not agree to act as the local manpower agency of Akkila with respect to Yarza's deployment under the visit visa, given that the employment contract was between Akkila and Yarza only.[13]

SRL additionally asserted that on April 4, 2011, Akkila informed it that Yarza returned to the Philippines after working from October 2010 until April 2011 under the visit visa. Akkila claimed that Yarza will apply for deployment anew under an employment visa. Furthermore, Yarza will process his POEA Overseas Employment Certificate (OEC) himself. SRL told Akkila and Yarza that Yarza cannot obtain the OEC on his own, as he needs SRL, the authorized local agency of Akkila, to secure it for him.[14]

When SRL started processing Yarza's documents, the latter underwent a medical examination to assess his fitness for work. SRL informed Yarza that he has to submit to a medical examination since the deployment will be treated as an entirely new one. SRL then referred Yarza to its accredited clinic, Seamed Medical Clinic (Seamed). However, Seamed declared that Yarza was unfit for work due to Uncontrolled Diabetes Mellitus Type II, which was reflected in a Medical Certificate[15] dated May 10, 2011. SRL disclosed the finding to Akkila and informed the latter that if it is still interested, it should send a waiver indicating its willingness to hire Yarza notwithstanding his unfitness for work. Akkila replied that it has a strict qualification not to hire an applicant who is not fit for work. Subsequently, in a letter dated May 22, 2011, Akkila informed Yarza that he cannot be hired due to medical reasons.[16]

Ruling of the Labor Arbiter:

In a Decision[17] dated November 14, 2011, the Labor Arbiter (LA) dismissed Yarza's complaint for lack of merit.[18] He found that there was no employer-employee relationship between Yarza and the petitioners with respect to his initial employment with Akkila.[19] Additionally, there was no substantial evidence to hold SRL liable for the deployment of Yarza. On the contrary, Yarza processed and facilitated his own deployment under the visit visa. The contract of employment did not indicate SRL's name as a contracting party, and none of its officers was a signatory to the document. While the contract was verified by the Office of the Assistant Labor Attaché, it does not automatically follow that SRL secured it for Yarza.[20]

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[13] Id.
[14] Id. at 8-9.
[15] Id. at 239.
[16] Id. at 8-9.
[17] Id. at 105-112. Penned by Labor Arbiter Elias H. Salinas.
[18] Id. at 112.
[19] Id. at 109.
[20] Id. at 110.

The lack of proof showing that Yarza's employment and travel documents were duly processed by POEA proves that he left as an undocumented worker. Absent evidence that SRL had any participation in Yarza's deployment, it cannot be held liable for his employment under a visit visa.[21] Furthermore, SRL is not accountable for the aborted re-deployment of Yarza. The "unfit for work" finding and the lack of waiver from Akkila/Al Salmeen (regarding his medical condition) are justifiable reasons for not pushing through with Yarza's re-deployment. After all, the POEA Rules and Regulations mandate that recruitment agencies should only select medically and technically-qualified recruits.[22]

Moreover, the LA held that Yarza's unfitness for work was a just cause for his dismissal. Since there was no illegal dismissal, there is no reason to grant Yarza's prayer for the payment of his salaries for the unexpired portion of his contract.[23]

Aggrieved, Yarza appealed[24] to the NLRC.

Ruling of the National Labor Relations Commission:

In a Decision[25] dated March 29, 2012, the NLRC found that the e-mail correspondence[26] between Yarza and the petitioners established the latter's active participation throughout the processing of Yarza's documents, as well as after the issuance of his visit visa. From the start, SRL acted as the recruitment agency of its foreign principal, Akkila.[27] Additionally, the NLRC found that Yarza's termination was illegal. The petitioners failed to justify Yarza's dismissal on the ground of illness or disease, regardless if the reason for his termination was diabetes. The petitioners did not secure a certification from a competent public health authority declaring that Yarza's diabetes cannot be cured within a period of six months even with proper medical treatment.[28]

In view of these, the NLRC found that Yarza should be entitled to his salaries for the unexpired portion of his employment contract, in accordance with *Serrano v. Gallant Maritime Services, Inc.* (*Serrano*).[29] However, pursuant to Republic Act No. (RA) 10022[30] which amended RA 8042,[31] illegally

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21 Id.
22 Id. at 111-112.
23 Id. at 112.
24 Id. at 115-125.
25 Id. at 161-171.
26 Id. at 131-142.
27 Id. at 166-167.
28 Id. at 168-169.
29 601 Phil. 245-324 (2009).
30 Entitled "AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES." Approved: March 8, 2010.
31 Entitled "AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT

terminated overseas workers should only be granted the salary of three months for every year of the unexpired term, despite the earlier declaration of unconstitutionality of the said provision by *Serrano*.[32]

Yarza's basic salary was AED 8,000.00 per month, and his contract was for 24 months, or two years. His contract was pre-terminated on the sixth month. Consequently, Yarza is entitled to three months' worth of salaries for every year of service or for a total of six months. Nonetheless, Yarza is not entitled to damages due to lack of proof. All the same, the NLRC granted Yarza attorney's fees at the rate of ten percent (10%) since he was compelled to secure the services of a lawyer to pursue his claims.[33]

The dispositive portion of the NLRC's March 29, 2012 Decision reads:

> WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The appealed Decision is **REVERSED** and **SET ASIDE**, and another one is rendered directing the respondents-appellees [petitioners], jointly and severally, to pay complainant-appellant [Yarza] the amount of **DHS 48,000.00** or the equivalent thereof in Philippine currency at the time of payment, plus 10% thereof by way of attorney's fees.
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> SO ORDERED.[34]

The petitioners filed a motion for reconsideration[35] which the NLRC partly granted in a Resolution[36] dated July 23, 2012. The NLRC maintained its finding that SRL actively participated in the recruitment, documentation and deployment of Yarza in October 2010, even if he was not officially recognized as SRL's recruit due to the absence of POEA documents.[37]

Nonetheless, it changed its position and subsequently ruled that the failure to redeploy Yarza was not due to any act or omission of the petitioners but because Yarza did not pass the pre-employment medical examination (PEME) and thus, he was disqualified.[38] The NLRC noted that as a condition for the grant of its license, SRL is required to submit a verified undertaking to the POEA that it shall only deploy medically and technically-qualified overseas employment applicants, and that a violation may result in the cancellation of its license. Withal, overseas workers must undergo the PEME in a clinic accredited by the POEA, and the results of the medical exam would form part of the workers' documents.[39]

WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES." Approved: June 7, 1995.

32 *Rollo*, p. 169.
33 Id. at 170.
34 Id.
35 Id. at 172-184.
36 Id. at 194-201.
37 Id. at 199.
38 Id.
39 Id. at 199-200.

In this case, since Yarza was declared unfit for work, the petitioners cannot be faulted for the unfortunate development. Moreover, Akkila cannot be expected to employ an unfit worker. Simply put, the failure to redeploy Yarza was not due to any breach committed by SRL or Akkila, but because of his medical disqualification. Hence, the relief available to Yarza is the equivalent of one month salary as separation pay.[40]

The dispositive portion of the NLRC's July 23, 2012 Resolution states:

> WHEREFORE, premises considered, respondents-appellees' [petitioners'] motion for reconsideration is partially GRANTED. The complaint for illegal dismissal is DISMISSED for lack of merit, and [the] award of UAE DHs 48,000.00 in Our Decision dated March 29, 2012 is DELETED. Respondents-appellees [petitioners] are ordered, jointly and severally to pay complainant [Yarza] the amount of UAE Dirham EIGHT THOUSAND (**UAE Dhs 8,000.00**) representing medical separation pay, plus ten percent (10%) thereof as and for attorney's fees.
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> SO ORDERED.[41]

Dismayed, Yarza appealed[42] to the CA.

Ruling of the Court of Appeals:

The CA, in its assailed March 25, 2013 Decision,[43] partly granted Yarza's appeal and reinstated the NLRC's March 29, 2012 Decision. It ruled that Yarza was illegally dismissed and should be paid his salaries in accordance with RA 10022.[44] It found that SRL cannot evade its liability by simply denying its participation in Yarza's deployment. Even if the foreign principal directly entered into a contract with the overseas worker, the recruitment agency, as the local manning agent, is jointly and solidarily liable with its principal. It pointed out that Al Salmeen/Akkila does not have a personality in the Philippines unless it acts through a licensed local manning agent. Hence, as Al Salmeen/Akkila's local representative, SRL should have ensured that Yarza was properly documented and deployed. SRL cannot be allowed to act as an inutile third party feigning ignorance of the transactions leading to Yarza's deployment.[45]

The CA held that substantial evidence showed that SRL actively participated in Yarza's deployment wherein he worked six months out of a two-year contract, before being instructed to return to the Philippines.[46] It quoted with approval the NLRC's findings in its March 12, 2012 Decision, *viz.*:

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40 Id. at 200.
41 Id. at 200-201.
42 Id. at 202-217.
43 Id. at 6-20.
44 Id. at 12.
45 Id.
46 Id. at 13.

> The e-mail messages between [Yarza] on one hand and the [petitioners] on the other, reveal a lot about the relationship between the parties herein x x x. **The series of communications encompass the period from June 7, 2010 (interview period) up to October 4, 2010 (issuance of plane ticket for [Yarza]).** The e-mail messages dated July 23, 2010 and July 24, 2010 x x x [pertain] to the **employment offer which was received by [SRL] from [Akkila], and which was forwarded to [Yarza] for his signature.** The e-mail messages dated September 20, 2010 and September 27, 2010 reveal that **[Yarza] received his visa from one 'Joh Gutierrez' of [SRL].** Finally, the e-mail message dated October 4, 2010 was sent by [Akkila] to [SRL] **in connection with the booking of [Yarza] for his flight to Abu Dhabi, UAE. Notably, all throughout the processing of the papers and documents (including visa and ticket) of [Yarza], both [SRL and Akkila] actively participated.** More so, even after the issuance of the visa, [Akkila] still communicated **with [SRL] in connection with the e-ticket** of [Yarza]. **Quite significantly, [SRL] informed [Akkila] that [Yarza] is 'now ready for mobilization on October 6, 2010.'** Thus, there was never a point when [SRL] absconded from the transaction to deploy [Yarza]. The series of e-mail messages belie the claim of [SRL] that [Yarza] directly communicated with [Akkila]. The pieces of evidence clearly reflect that from the beginning, [SRL] acted as the recruitment agency of [Yarza] for its foreign principal [Akkila].[47] (Emphasis supplied).

Also, the CA noted that the NLRC, in its July 23, 2012 Resolution, reiterated its finding that SRL actively participated in Yarza's recruitment and deployment, as follows:

> Accordingly, we find no cogent reason to deviate from our earlier findings that **[SRL] had actively participated in the recruitment, documentation and eventual deployment of [Yarza] in October 2010.** The fact that [Yarza] may not have been officially documented as a recruit and deployed applicant of [SRL] as shown by the absence of contract registration and processing with the POEA, will not militate against this finding, considering that no employment visa was secured in favor of [Yarza], such that his initial deployment was undertaken on a visit visa, a fact that was known to [SRL].[48] (Emphasis supplied).

The CA likewise noted that the petitioners did not question the NLRC's aforementioned finding. Hence, insofar as the issue of employer-employee relationship is concerned, NLRC's ruling is already binding and conclusive on the petitioners. This is because they failed to file a petition for *certiorari* before the CA assailing the NLRC's findings on that aspect.[49]

Moreover, the CA emphasized that Yarza was contracted to work for Akkila for a period of two years. When Yarza was sent back to the Philippines, this period was yet to expire as he had only worked for six months. In addition, instead of a Standard Employment Contract, the petitioners merely furnished Yarza with an Offer of Employment,[50] which the latter actually brought to the attention of the former. As such, Yarza's lack of proper documentation does not mean that he can no longer be protected by labor laws. SRL, although fully

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47 Id.
48 Id. at 14.
49 Id.
50 Id. at 73-75.

aware of the situation, still deployed Yarza. For this reason, the petitioners are effectively bound by the terms of the Offer of Employment. To allow the petitioners to benefit from their wrongdoing would be unjust. As a recruitment agency, SRL's primary obligation is to protect the rights and ensure the welfare of overseas workers like Yarza.[51]

The CA ruled that while it was not the petitioners' fault that Seamed found Yarza unfit for work due to diabetes, his situation was caused by their actions. Had SRL been vigilant in its obligations as a local placement agency when Yarza was first deployed on October 14, 2010, his predicament could have been avoided.[52]

Also, Yarza's case was not merely a matter of cancellation of deployment due to medical reasons but rather a premature and illegal termination of employment. Hence, the petitioners should have complied with Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code. Notably, Akkila even stated in its May 22, 2011 letter that Yarza's "'*employment* at Akkila Company Ltd. will be *terminated* with effect from May 23, 2011.'"[53]

The CA held that the petitioners did not validly dismiss Yarza on the ground of disease, regardless of whether Yarza's ailment cannot be cured within six months.[54] The Medical Certificate[55] issued by Seamed is not the certification contemplated by the law. Thus, for the petitioners' failure to secure a certification from a competent public authority, they did not prove that the alleged disease was a valid ground to dismiss Yarza. In other words, the petitioners illegally terminated Yarza from employment.[56]

Nonetheless, the CA denied Yarza's claim for his salary for the entire unexpired portion of the contract. It found that the doctrine pronounced in *Serrano v. Gallant Maritime Services*[57] *(Serrano)* cannot apply in this case. The *Serrano* doctrine was promulgated on March 24, 2009. However, on March 8, 2010, Congress enacted RA 10022, which reinstated the provision found in RA 8042 regarding the "three-month cap" for every year of the unexpired term. Yarza was dismissed on May 22, 2011, when RA 10022 was already in effect. Hence, the NLRC, in its Decision dated March 29, 2012, correctly computed Yarza's salary for the unexpired portion of the contract based on RA 10022. Furthermore, the CA explained that the Court has yet to rule on the constitutionality of RA 10022. Thus, all laws should be presumed constitutional and must be applied.[58]

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51 Id. at 14.
52 Id. at 15-16.
53 Id. at 16.
54 *See:* LABOR CODE, Art. 284 and Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code.
55 CA *rollo*, p. 187.
56 *Rollo*, pp. 17-18.
57 601 Phil. 245-324 (2009).
58 *Rollo*, pp. 18-19.

The dispositive portion of the CA's assailed Decision states:

> **WHEREFORE**, premises considered, the instant petition is **PARTLY GRANTED**. The assailed Resolution dated July 23, 2012 of the National Labor Relations Commission (NLRC), Third Division in NLRC NCR OFW Case No. (L) 06-09977-11 NLRC LAC (OFW-L) No. 01-000111-12 is hereby **SET ASIDE**. The Decision of public respondent NLRC dated March 29, 2012 is hereby **REINSTATED**. No costs.
>
> **SO ORDERED**.[59] (Emphasis in the original)

SRL asked for a reconsideration[60] which the CA denied in a Resolution[61] dated June 18, 2013.

Discontented, SRL filed a petition for review on *certiorari*[62] before this Court and raised the following –

Issues:

> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED IN THE HEREIN ASSAILED DECISIONS THAT THE PETITIONERS DID NOT QUESTION THE FINDINGS OF THE NLRC AS TO THE ISSUE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES.
>
> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT RESPONDENT WAS ILLEGALLY DISMISSED [FROM] EMPLOYMENT.
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> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT RESPONDENT IS ENTITLED TO ATTORNEY'S FEE.[63]

SRL insists that it had no employer-employee relationship with Yarza with respect to his initial deployment in October 2010. It points out that the contract was exclusively between Al Salmeen/Akkila and Yarza. Although SRL initially processed Yarza's employment documents, it ceased to do so when it learned that Al Salmeen/Akkila secured a visit visa instead of an employment visa, in violation of POEA rules.[64] SRL contends that Yarza made representations (by submitting the certification of completion of the Pre-Departure Orientation Seminar [PDOS] dated August 27, 2010)[65] that it was involved with his initial deployment as Al Salmeen/Akkila's local placement agency even when it ceased processing his documents when it discovered the issuance of a visit visa.[66]

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59 Id. at 19.
60 Id. at 66-72.
61 Id. at 21-23.
62 Id. at 26-47.
63 Id. at 34-35.
64 Id. at 35-36.
65 Id. at 126.
66 Id. at 37.

SRL maintains that the Invoice[67] dated January 27, 2011 does not prove employer-employee relationship but only shows that it rendered services to Al Salmeen/Akkila such as the posting of manpower requirements and the processing of Yarza's documents including medical service, among others. However, these services were rendered prior to the issuance of the visit visa. In the same way, the e-mail messages involving SRL were exchanged prior to the issuance of a visit visa. Thus, SRL asserts that the controlling document should be the employment contract between Yarza and Al Salmeen/Akkila, especially when they communicated with each other directly without SRL's involvement.[68]

SRL avers that although it is the local manning agent of Al Salmeen/Akkila, it does not follow that it should, at all times, be held jointly and severally liable with its principal, especially when Yarza directly contracted with the foreign principal without its participation and approval. It stresses that Yarza's deployment was through direct hiring, without the involvement of the local agency.[69]

Moreover, the petitioners state that disease is one of the authorized causes to terminate employment. Hence, choosing not to redeploy Yarza was allowed since he was only an applicant. The petitioners cannot be held liable for the failure to redeploy him since he failed to pass the PEME due to diabetes. The POEA rules require recruitment agencies to select only medically and technically-qualified recruits.[70]

They posit that the requirement to submit a certification from a competent public health authority confirming Yarza's unfitness for work can be dispensed with since Seamed is duly-accredited by different government agencies anyway.[71] Lastly, they add that the award of attorney's fees is not justified because Yarza's dismissal was valid.[72]

Yarza counters that after he returned to the Philippines on March 24, 2011, his employment visa from the UAE arrived on April 28, 2011. He complied with the other requirements but instead of redeploying him, he was required to submit to another PEME despite already undergoing the same before his initial deployment. He was reluctant to do so since he was not a new applicant and because his contract had a duration of two years. He alleges that SRL compelled him to undergo the PEME anew under threat of not being able to return to UAE and continue with his two-year contract. Thereafter, Seamed found him unfit for work as he is suffering from diabetes. After a while, Akkila sent him a letter dated May 22, 2011 terminating his employment effective May 23, 2011 due to his health condition.[73]

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67 Id. at 127.
68 Id. at 38-39.
69 Id. at 39-40.
70 Id. at 42-43.
71 Id. at 43.
72 Id. at 44.
73 Id. at 258.

He alleges that there is an employer-employee relationship between him and SRL, despite the latter's insistence that it was not his employer. He points out that SRL did not question the NLRC's findings that it was the local manning agent of Al Salmeen/Akkila. Hence, SRL is already bound by the said finding and can no longer raise it as an issue before the Court.[74] He enumerates the following circumstances showing that SRL is the local agency of Al Salmeen/Akkila: 1) Yarza underwent the PDOS prior to his deployment and the Overseas Placement Association of the Philippines (OPAP) certified that he attended the PDOS with SRL as recruitment agency; 2) while he was working in UAE, SRL billed him AED 8,239.00 representing service and medical fees in connection with his employment; 3) SRL purchased Yarza's E-ticket[75] for his travel to UAE; and 4) prior to his initial deployment, Yarza had a series of correspondence with SRL regarding his employment.[76]

Yarza maintains that the petitioners illegally dismissed him. He asserts that since he was not a new applicant, he should not have been subjected to a new PEME since his prior PEME has not yet expired, and that his second PEME should not affect his valid and existing employment contract.[77] In any case, the finding of diabetes is not a valid ground to terminate his employment. The petitioners failed to secure a medical certificate from the physician concerned and a certification from a competent public health authority to certify that his disease is of such nature that it cannot be cured within a period of six months even with proper medical treatment.[78]

He states that due process was not observed before terminating his employment, as he was not provided the required notices and hearing. Additionally, he insists that the petitioners are liable for damages and attorney's fees because his dismissal was tainted with malice and bad faith.[79] Lastly, he posits that the issues raised in the instant petition are purely factual in nature which do not warrant the exercise of the discretionary appellate jurisdiction of the Court. Factual findings of the NLRC, when affirmed by the CA, are conclusive and binding upon the parties and the Court.[80]

Thus, the main issue is whether or not Yarza was illegally dismissed.

Our Ruling

The petition has no merit. Yarza is entitled to his claims.

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74 Id. at 260-261.
75 Id. at 129-130.
76 Id. at 262.
77 Id. at 263.
78 Id. at 264-265.
79 Id. at 266-267.
80 Id. at 268-269.

In a petition for review on *certiorari* under Rule 45 of the Rules of Court, as a general rule, only questions of law may be resolved by the Court. "Not being a trier of facts, [the Court] is not duty bound to re-examine and calibrate the evidence on record."[81] One of the recognized exceptions[82] is when, as in this case, the findings of the CA are contrary to that of the labor tribunals.[83] Hence, the Court must re-assess the facts then apply the corresponding statutes, rules, and jurisprudence.

The "Offer of Employment" is invalid since it was not approved by the POEA.

At the root of the controversy is the validity of the "Offer of Employment" which served as Yarza's "contract" during his initial deployment under the visit visa. There is no dispute that his deployment did not pass through the official channel, specifically the POEA. "Under our Labor Code, employers hiring [Overseas Filipino Workers or] OFWs may only do so through entities authorized by the Secretary of the Department of Labor and Employment.[84] Unless the employment contract of an OFW is processed through the POEA, the same does not bind the concerned OFW because if the contract is not reviewed by the POEA, certainly the State has no means of determining the suitability of foreign laws to our overseas workers."[85] Moreover, the "Offer of Employment" states that the rules and regulations found in UAE's labor laws should apply,[86] which is contrary to our country's policies concerning labor contracts and security of tenure. To stress,

> Security of tenure remains even if employees, particularly the Overseas Filipino Workers (OFWs), work in a different jurisdiction. Since the employment contracts of OFWs are perfected in the Philippines, and following the principle

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[81] *Quines v. United Philippine Lines, Inc.*, G.R. No. 248774, May 12, 2021, citing *Leoncio v. MST Marine Services (Phils.), Inc.*, 822 Phil. 494, 504 (2017).

[82] Id., citing *Sps. Miano v. Manila Electric Co.*, 800 Phil. 118, 123 (2016).
The general rule for petitions filed under Rule 45 admits exceptions, to wit: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) **The findings of the Court of Appeals are contrary to those of the trial court;** (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

[83] Id.

[84] *Dagasdas v. Grand Placement and General Services Corp.*, 803 Phil. 463-477 (2017), citing Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015 [LABOR CODE], Article 18.

> Article 18. Ban on Direct-Hiring. – No employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempted from this provision.

[85] Id. at 477, citing *Industrial Personnel & Management Services, Inc. v. De Vera*, 782 Phil. 230-247 (2016).

[86] *Rollo*, pp. 74, 244.

> of *lex loci contractus* (the law of the place where the contract is made), these contracts are governed by our laws, primarily the Labor Code of the Philippines and its implementing rules and regulations.[87] At the same time, our laws generally apply even to employment contracts of OFWs as our Constitution explicitly provides that the State shall afford full protection to labor, whether local or overseas.[88] Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights.[89]

The "Offer of Employment" was perfected when Yarza agreed to the same while he was still in the Philippines, and then consented to be deployed abroad. In fact, he already commenced with his duties under the said contract until his sudden repatriation. However, the "Offer of Employment" is invalid since it was not approved by the POEA and because it runs contrary to the Constitution's principles as well as existing labor laws.

Notwithstanding the invalidity of the "Offer of Employment," an employer-employee relationship exists.

Absent a valid employment contract, the Court must then consider the attendant circumstances to determine if there is an employer-employee relationship between Akkila and Yarza. To ascertain the existence of this association, the following elements should be evident: "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it. However, the power of control refers merely to the existence of the power, and not to the actual exercise thereof.[90] No particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted.[91] However, a finding that such relationship exists must still rest on some substantial evidence."[92]

For the first element, Akkila selected and engaged the services of Yarza, precisely because he was deployed through a visit visa under Akkila's instruction and endorsement. For the second element, Akkila did not deny that it paid Yarza's wages with the "Offer of Employment" as reference. Likewise, the third element exists since Akkila has the power to dismiss Yarza. In fact, it did so when it issued the termination letter dated May 22, 2011. Lastly, the

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87 *Dagasdas v. Grand Placement and General Services Corp.*, supra note 84 at 474, citing *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403-422 (2014).

88 Id. at 474-475, citing CONSTITUTION, Art. XIII, § 3.

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

89 Id. at 475, citing *Industrial Personnel & Management Services, Inc. v. De Vera*, 782 Phil. 230-244 (2016).

90 *Dusol v. Lazo*, G.R. No. 200555, January 20, 2021, citing *Mendiola v. CA*, 529 Phil. 339, 352 (2006).

91 Id., citing *Lu v. Enopia*, 806 Phil. 725, 738 (2017).

92 Id., citing *Javier v. Fly Ace Corp.*, 682 Phil. 359, 372 (2012).

fourth element is present since Akkila had control over Yarza's work conduct, which included the means and methods he would employ to produce the results required by the company. Akkila did not show proof that it took no part in directing Yarza's job output. More importantly, Akkila did not appeal the finding of employer-employee relationship before the CA. Hence, it is bound by such conclusion.[93] Thence, an employer-employee relationship was established notwithstanding the absence of a valid and POEA-approved contract.

Both substantial and procedural due process were not observed.

Since an employer-employee relationship exists, the petitioners should accord Yarza due process, both substantial and procedural, before terminating his employment. To comply with substantive due process, Yarza can only be dismissed for a just or authorized cause, the absence of which renders his dismissal illegal.[94] As earlier mentioned, under Article 294 [279][95] of the Labor Code, as an employee, Yarza is entitled to security of tenure.

Akkila dismissed the services of Yarza on the ground of disease, which is found in Article 299 [284] of the Labor Code. The said provision essentially provides that "an employer would be authorized to terminate the services of an employee found to be suffering from any disease if the employee's continued employment is prohibited by law or is prejudicial to his health or to the health of his fellow employees."[96] Specifically, it states the following:

> ARTICLE 299 [284]. *Disease as Ground for Termination.* – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: x x x[97]

This provision is supplemented by Section 8, Title 1, Book Six of the Omnibus Rules Implementing the Labor Code, as follows:

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93 See: *WG&A Shipping Lines, Inc. v. Spouses Asuncion*, G.R. No. 225975 *(Notice)*, January 12, 2021, citing *Manese v. Jollibee Foods Corporation*, 697 Phil. 322, 337 (2012). "[A] party who has not appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below."; *Parayday v. Shogun Shipping Co., Inc.*, G.R. No. 204555, July 6, 2020. "[P]arties who do not appeal from a judgment can no longer seek modification or reversal of the same." *Wyeth Philippines, Inc. v. Construction Industry Arbitration Commission*, G.R. Nos. 220045-48, June 22, 2020 citing *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Tri Joint Venture*, 818 Phil. 27, 72 (2017). 'Issues not raised on appeal are already final and cannot be disturbed.'

94 See *Omniworx, Inc. v. Odon*, G.R. Nos. 207216 & 208154, January 26, 2021, citing *Serrano v. National Labor Relations Commission*, 387 Phil. 345, 352-353 (2000).

95 Article 294 [279]. *Security of Tenure.* – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

96 *Omniworx, Inc. v. Odon*, supra, citing *Perpetual Help Credit Cooperative, Inc. v. Faburada*, 419 Phil. 147, 156-157 (2001).

97 LABOR CODE, Article 299.

> SECTION 8. *Disease as a ground for dismissal.* – Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave of absence. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.[98]

To be considered valid, the dismissal on the ground of disease must satisfy two requisites: "(a) the employee suffers from a disease which cannot be cured within six months and his/her continued employment is prohibited by law or prejudicial to his/her health or to the health of his/her co-employees, and (b) a certification to that effect must be issued by a competent public health authority."[99]

Akkila did not present any certification from a competent public health authority citing that Yarza's disease cannot be cured within six months, or that his employment is prejudicial to his health or that of his co-employees. Absent this certification, Akkila failed to comply with Article 299 [284] of the Labor Code as well as Section 8, Title 1, Book Six of the Omnibus Rules Implementing the Labor Code. In other words, Yarza's dismissal was not based on a just cause.

Apart from this, Akkila did not accord Yarza procedural due process. It is settled that "the employer must give the concerned employee at least two notices before his or her termination. Specifically, the employer must inform the employee of the cause or causes for his or her termination, and thereafter, the employer's decision to dismiss him. Aside from the notice requirement, the employee must be accorded the opportunity to be heard."[100]

In this case, Akkila did not give Yarza any form of notice or opportunity to explain his side. Akkila unilaterally dismissed him by simply issuing a letter dated May 22, 2011. Additionally, Akkila sent this termination letter after it already issued a "new" Contract of Employment[101] dated April 15, 2011 to him. Clearly, Akkila, after discovering that Yarza was deemed unfit for work due to diabetes, sought to immediately sever ties with him. This is regardless of Akkila's prior "contract" with Yarza, particularly the "Offer of Employment," which indicated that the duration of his employment would run for two years.

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[98] Omnibus Rules Implementing the Labor Code, dated May 27, 1989.

[99] *Omanfil International Manpower Development Corp. v. Mesina*, G.R. No. 217169, November 4, 2020, citing *Duterte v. Kingswood Trading Co., Inc.*, 561 Phil. 11, 18 (2007); *Crayons Processing, Inc. v. Pula*, 555 Phil. 527, 537 (2007); *Manly Express, Inc. v. Payong, Jr.*, 510 Phil. 818, 824 (2005).

[100] *Dagasdas v. Grand Placement and General Services Corp.*, supra note 84 at 478, citing *EDI-Staffbuilders International, Inc. v. National Labor Relations Commission*, 563 Phil. 1, 28-29 (2007).

[101] *Rollo*, pp. 76-77.

Also, Yarza was instructed to return after more than five months from his initial deployment, still within the duration of his two-year contract. Even if Akkila contends that Yarza was under probation, and assuming that the "Offer of Employment" was valid, the document states that the probation period would only last for three months. From Yarza's deployment until his sudden repatriation, three months undoubtedly passed already.[102] Hence, the lapse of three months converted Yarza's status into a regular employee,[103] if the "Offer of Employment" were to be followed. Furthermore, Akkila sent an explanation letter[104] to a mediator of POEA during the initial stage of the case. It admitted that Yarza was granted a visit visa to evaluate Yarza's work performance first, which is akin to placing him under probation.

In any case, even without considering the contract or the probation period, Akkila violated the requirements of procedural due process before terminating an employee from work.[105] Yarza believed that he temporarily returned to the country for the purpose of securing a work visa, under the impression that such was required to continue with his two-year contract. Yet, it eventually led to his dismissal without just cause, prior notice, and opportunity to be heard.

The petitioners are solidarily liable to Yarza.

We now discuss the liabilities of Akkila and SRL with respect to Yarza's deployment. The recent case of *Corpuz, Jr. v. Gerwil Crewing Phils., Inc.*,[106] is instructive:

> Sec. 18, Article II and Sec. 3, Article XIII of the 1987 Constitution accord all members of the labor sector, **without distinction as to place of deployment**, full protection of their rights and welfare.[107] Republic Act (R.A.) No. 8042 (The Migrant Workers and Overseas Filipinos Act of 1995) confirms this State policy by declaring that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, **documented or undocumented**, are adequately protected and safeguarded.[108] Evidently, Congress enacted R.A. No. 8042 to institute the policies on overseas employment and to establish a higher standard of protection and promotion of the welfare of migrant workers.[109]

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[102] Id. at 73.

[103] See: LABOR CODE, Art. 296 [281].
ART. 296. [281] Probationary Employment. – Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

[104] *Rollo*, pp. 241-242.

[105] See *Dagasdas v. Grand Placement and General Services Corp.*, supra note 84 at 478.

[106] *Corpuz, Jr. v. Gerwil Crewing Phils., Inc.*, G.R. No. 205725, January 18, 2021.

[107] Id., citing *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 281 (2009).

[108] Id., citing Section 2 (e) of RA 8042.

[109] Id., citing *Industrial Personnel and Management Services, Inc. v. De Vera*, 782 Phil. 230, 241 (2016).

One of the safeguards incorporated in R.A. No. 8042 is found in Sec. 10 which provides for the solidary and continuing liability of recruitment agencies against monetary claims of migrant workers. **These pecuniary claims may arise from employer-employee relationship or by virtue of law or contract, and may include claims of overseas workers for damages**. Sec. 10 reads:

> SEC. 10. *Money Claims*. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, **the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.**
>
> **The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several.** This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.
>
> **Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.**
>
> x x x x (Emphases supplied)

The cases of *Interorient Maritime Enterprises, Inc. v. National Labor Relations Commission (Interorient)*[110] and *Becmen Service Exporter and Promotion, Inc. v. Spouses Cuaresma (Becmen)*[111] affirm the continuing responsibility of recruitment agencies in ensuring the welfare and safety of overseas Filipino workers. In *Interorient*, the Court held that the employer has the obligation to ensure the safe return of a distressed worker.[112] In *Becmen*, the Court stressed that recruitment agencies are expected to extend assistance to migrant workers, especially those who are in distress. x x x[113]

x x x x

We also ruled in *Becmen* that the acts and omissions of the foreign principal

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[110] Id., citing *Interorient Maritime Enterprises, Inc. v, National Labor Relations Commission*, 330 Phil. 493 (2009).
[111] Id., citing *Becman Service Exporter and Promotion, Inc. v. Spouses Cuaresma*, 602 Phil. 1058 (2009).
[112] Id., citing *Interorient Maritime Enterprises, Inc. v, National Labor Relations Commission*, supra at 510.
[113] Id., citing *Becman Service Exporter and Promotion, Inc. v. Spouses Cuaresma*, 602 Phil. 1058, 1076 (2009).

> and the recruitment agencies on the plight of the migrant workers and their families ran against public policy. Their indifference undermined and subverted the interest and general welfare of our Filipino workers abroad who are entitled to full protection under the law. As such, they shall be liable to pay moral and exemplary damages, as well as attorney's fees.[114]
>
> Verily, R.A. No. 8042 did not limit the responsibility of recruitment agencies to the recruitment and deployment of Filipino workers to foreign countries. As DOLE-accredited agencies, they entered into a covenant with the State to promote the safety and welfare of Filipino workers. They have, in fact, undertaken to ensure that the 'contracts of employment are in accordance with the standard employment contract and other applicable laws, regulations and collective bargaining agreements.'[115] This responsibility exists during the lifetime of the employment contract and shall continue despite substitution, amendment or modification of the agreement.[116]

In the case at bench, even if Yarza's employment contract was not previously approved by the POEA, he should still be protected by our labor laws precisely because an employer-employee relationship was established. As found by the NLRC, which the CA quoted with approval, SRL participated in Yarza's initial deployment despite its insistence that it ceased to process his documents after discovering that a visit visa was secured instead of a work visa. According to the time stamps and the contents of the e-mail correspondence, SRL participated, one way or another, and acted as Akkila's local manning agent.

Based on substantial evidence,[117] Yarza proved SRL's solidary liability with its foreign principal, Akkila/Al Salmeen. This is notwithstanding Yarza's undocumented status or SRL's insistence on its supposed non-participation. SRL cannot evade liability by simply refusing to process an overseas worker's documentation yet at the same time admit to being the local manning agent of a foreign principal which invalidly dismissed an employee. The CA correctly found that Yarza's predicament was caused by SRL and Akkila, which should not be countenanced. As the local placement agency, SRL should have employed measures to ensure that Yarza's deployment would be in accordance with existing policies, from the beginning of the employment until its end.

Yarza is entitled to his salaries for the unexpired portion of his contract.

Even if the "Offer of Employment" is invalid, the existence of an employer-employee relationship entitles Yarza to claim for the payment of his

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[114] Id.

[115] Id., citing Section 1 (e), Rule II, Part II, 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers.

[116] Id., citing third paragraph of Section 10, R.A. No. 8042.

[117] 2019 Amendments to the 1989 Revised Rules on Evidence, Rule 133, § 6: [T]hat amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

salaries for the unexpired portion of his contract. Relevantly, both the NLRC and the CA rendered their rulings before the Court resolved anew the issue on the constitutionality of the cap of three-month pay for every year of service on an overseas worker's money claims. To recall, the Court, in *Serrano*, already declared such provision unconstitutional. Yet, Congress enacted RA 10022 which reinstated the same notwithstanding the Court's earlier pronouncement in *Serrano*. Specifically, Section 7 of RA 10022 amended Section 10 of RA 8042, *viz.*:

> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement if his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract **or for three (3) months for every year of the unexpired term**, whichever is less. (Emphasis supplied).

Hence, the Court, in *Sameer Overseas Placement Agency, Inc. v. Cabiles* (*Sameer*),[118] again "declared unconstitutional the cap of three-month pay for every year of service. It also upheld the imposition of interest rate of 12% per *annum* on the placement fee specifically set by law, nay, unaffected by *Bangko Sentral ng Pilipinas* Circular No. 799 setting the rate of interest at 6% per annum."[119]

Sameer stresses that "when a law or a provision of law is null because it is inconsistent with the Constitution, the nullity cannot be cured by reincorporation or reenactment of the same or a similar law or provision. A law or provision of law that was already declared unconstitutional remains as such unless circumstances have so changed as to warrant a reverse conclusion."[120] However, there are no noted relevant changes in the surrounding circumstances, as RA 10022 merely reinstated the provision after the Court already declared it unconstitutional in *Serrano*.

Additionally, the Court declared that an unconstitutional clause in the law, being inoperative at the outset, confers no rights, imposes no duties and affords no protection.[121] Withal, even if Yarza's dismissal became effective on May 22, 2011, or when RA 10022 was already in force, "the declaration of unconstitutionality found in the *Serrano* case promulgated in March 2009 [and subsequently the *Sameer* case promulgated in August 5, 2014] shall retroactively apply."[122]

Thus, Yarza should receive his unpaid salaries corresponding to the unexpired portion of his contract (based on the "Offer of Employment") at the

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[118] *International Skill Development, Inc. v. Montealto, Jr.*, G.R. No. 237455, October 7, 2020, citing *Sameer Overseas Placement Agency, Inc. v. Cabiles*, supra note 87.
[119] Id.
[120] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, supra note 87 at 432-433.
[121] See *Sameer Overseas Placement Agency, Inc. v. Bajaro*, 699 Phil. 37, 47 (2012).
[122] Id.

rate of AED 8,000.000 per month. Out of the 24 months, he still had around 19 months left to work, had he not been abruptly dismissed. He is thus entitled to a total of AED 152,000.000 (19 months x AED 8,000.00). Additionally, as provided in RA 8183,[123] the peso equivalent of his monetary award should be computed based on the prevailing exchange rate at the time of payment.[124]

Yarza is entitled to moral and exemplary damages as well as attorney's fees.

The Court likewise finds it proper to award moral and exemplary damages, amounting to ₱100,000.00 each.[125] According to recent jurisprudence,[126] "Sec. 10 of R.A. No. 8042 allows the migrant worker to claim moral and exemplary damages in connection with the employment contract or as provided by law. In *Becmen*,[127] the Court imposed moral damages by reason of misconduct on the part of the employer under Article 2219 (10) of the Civil Code, which allows recovery of such damages in actions referred to in Article 21.[128] The Court also ordered the payment of exemplary damages to set an example to foreign employers and recruitment agencies on how to treat and act on the plight of distressed Filipino migrant workers."[129]

Yarza, although he assented to his initial deployment under a visit visa, was unceremoniously repatriated even when his two-year contract based on the "Offer of Employment" has not yet expired. He was suddenly ordered to return to the Philippines under the instruction to procure an employment visa, when such visa should have been secured from the beginning. He could not have known that another PEME would be required of him which would lead to the unexpected declaration of his unfitness for work.

Moreover, Yarza is entitled to attorney's fees at the rate of 10% under Article 2208 of the Civil Code for the following reasons: "(1) exemplary damages are also granted; (2) [Akkila and SRL] acted in [bad faith] in dealing

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[123] Entitled "An Act Repealing Republic Act Numbered Five Hundred Twenty-Nine, As Amended, Entitled 'An Act to Assure the Uniform Value of Philippine Coin and Currency," approved on June 11, 1996.

[124] *International Skill Development, Inc. v. Montealto, Jr.*, supra note 118, citing Republic Act No. 8183, § 1.
SECTION 1. All monetary obligations shall be settled in the Philippine currency which is legal tender in the Philippines. However, the parties may agree that the obligation or transaction shall be settled in any other currency at the time of payment.

[125] *Corpuz, Jr. v. Gerwil Crewing Phils., Inc.*, supra note 106, citing CIVIL CODE, Art. 2229.
ARTICLE 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[126] See also: *International Skill Development, Inc. v. Montealto, Jr.*, supra note 118, citing *Meco Manning & Crewing Services, Inc. v. Cuyos*, G.R. No. 222939, July 3, 2019.
"[T]he award of moral damages is proper where the dismissal was tainted with bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy. On the other hand, exemplary damages are recoverable when dismissal was done in a wanton, oppressive, or malevolent manner."

[127] *Corpuz, Jr. v. Gerwil Crewing Phils., Inc.*, supra note 106, citing *Becman Service Exporter and Promotion, Inc. v. Spouses Cuaresma*, 602 Phil. 1058 (2009).

[128] Id.

[129] Id.

with [Yarza]; (3) this involves recovery of wages and (4) [Yarza] was compelled to litigate and to incur expenses to protect his rights."[130] Additionally, in view of *Nacar v. Gallery Frames*,[131] all the monetary awards should incur interest at the rate of six percent (6%) per *annum* reckoned from the finality of judgment until fully paid.

To reiterate, the liability of petitioners should be solidary, "as provided under Section 10[132] of RA 8042 or the Migrant Workers and Overseas Filipinos Act of 1995, as amended, which mandates that the principal/employer, recruitment/placement agency, and its corporate officers and directors in case of corporations, shall be solidarily liable for money claims arising out of employer-employee relationship with [OFWs]."[133] SRL cannot hide behind the excuse of presumed non-participation in acts leading to a worker's unjust dismissal and yet benefit from being the local manning agent when it is convenient or profitable.

WHEREFORE, the petition is hereby **DENIED**. The March 25, 2013 Decision and June 18, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 126776 are **AFFIRMED with MODIFICATIONS** in that the petitioners SRL International Manpower Agency, represented by Sevilla Sarah Sorita, and Akkila Co., Ltd., UAE and/or Al Salmeen, are hereby **ORDERED** to indemnify, jointly and severally respondent Pedro S. Yarza, Jr. the following amounts:

1. His unpaid salaries amounting to AED 152,000.000 or its Philippine Peso equivalent at the time of payment, corresponding to the unexpired portion of his employment contract ("Offer of Employment");
2. Moral damages in the amount of One Hundred Thousand Pesos (₱100,000.00);
3. Exemplary damages in the amount of One Hundred Thousand Pesos (₱100,000.00);
4. Attorney's fees equal to ten percent (10%) of the total monetary award; and
5. Costs of suit.

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[130] *International Skill Development, Inc. v. Montealto, Jr.*, supra note 118.

[131] 716 Phil. 267 (2013).

[132] Section 10. Money Claims. – x x x
The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

x x x (RA 8042, As amended by RA 10022 "An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes," March 8, 2010.)

[133] *Jebsens Maritime, Inc. v. Gutierrez*, G.R. No. 244098, March 3, 2021

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

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

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I hereby 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