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WHEREFORE, premises considered, the petition for review in G.R. No. 100513 is DISMISSED for lack of merit, while the judgment appealed from in G.R. No. 111559, except for the above mentioned modification, is AFFIRMED in all other respects.

SO ORDERED.

Bellosillo (Acting Chairman), Vitug and *Kapunan, JJ.*, concur.

Padilla, J ., on leave.

FIRST DIVISION

[G.R. No. 102467. June 13, 1997]

EQUITABLE BANKING CORPORATION, Chairman MANUEL L. MORALES, President & Director **GEORGE L. GO,** Vice-Chairman & Director **RICARDO J. ROMULO,** Vice-Chairman & Director **JOHN C.B. GO, Director HERMINIO B. BANICO,** Director **FRANCISCO C. CHUA,** Director **PETER GO PAILIAN,** Director **RICARDO C. LEONG,** Director **JULIUS T. LIMPE and** Director **PEDRO A. ORTIZ,** *petitioners, vs.* **HON. NATIONAL LABOR RELATIONS COMMISSION,** First Division, **and RICARDO L. SADAC,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* MOTION FOR RECONSIDERATION OF NLRC DECISION, A PREREQUISITE; RELAXED IN CASE AT BAR.—** The filing of a motion for reconsideration of a decision of the NLRC is prerequisite to the elevation of the case to this Court on a petition for *certiorari.* The rule is aimed at enabling the commission to look into and correct its error or

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mistake, if any has been committed, without the precipitate intervention of this Court. The failure to allow that opportunity for whatever reason is ordinarily a fatal procedural defect that could warrant the dismissal of the petition. In this case, petitioners, instead of waiting for the resolution by the NLRC of their motion for reconsideration, posthaste filed the instant petition. Its prematurity notwithstanding, the instant petition for *certiorari* was given due course in order not to unduly delay the final disposition of the case considering that the issues involved have heretofore been ventilated practically to the limit by the parties.

2. **LABOR AND SOCIAL LEGISLATION; EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.—** In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal, and (4) the power to control the employee's conduct, with the control test generally assuming primacy in the overall consideration. The power of control refers to the existence of the power and not necessarily to the actual exercise thereof. It is not essential, in other words, for the employer to actually supervise the performance of duties of the employee; it is enough that the former has the right to wield the power.

3. **ID.; EMPLOYMENT; TERMINATION BY EMPLOYER; REQUISITES.—** Under the Labor Code, an employee may be validly dismissed if these requisites are attendant: (1) the dismissal is grounded on any of the causes stated in Article 282 of the Labor Code, and (2) the employee has been notified in writing and given the opportunity to be heard and to defend himself as so required by Section 2 and Section 5, Rule XIV, Book V, of the Implementing Rules of the Labor Code.

4. **ID.; ID.; ID.; GROUNDS; WILLFUL BREACH OF TRUST; ELUCIDATED.—** Article 282(c) of the Labor Code provides that "willful breach by the employee of the trust reposed in him by his employer" is a cause for the termination of employment by an employer. Ordinary breach of trust will not suffice, it must be willful and without justifiable excuse. This ground must be founded on facts established by the employer who must clearly and convincingly prove by substantial evidence the facts and incidents upon which loss

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of confidence in the employee may fairly be made to rest; otherwise, the dismissal will be rendered illegal.

5. **ID.; ID.; ID.; JUST CAUSE; NOT PRESENT IN CASE AT BAR.**— Petitioners' stated loss of trust and confidence on private respondent was spawned by the complaints leveled against him by the lawyers in his department. A wide latitude of discretion is given an employer in terminating the employment of managerial employees on the ground of breach of trust and confidence. In order to constitute a "just cause" for dismissal, however, the act complained of must be related to the performance of the duties of the employee such as would show him to be thereby unfit to continue working for the employer. Here, the grievances of the lawyers, in main, refer to what are perceived to be certain objectionable character traits of private respondent. Although petitioners have charged private respondent with allegedly mishandling two cases in his long service with the bank, it is quite apparent that private respondent would not have been asked to resign had it not been for the letter-complaint of his associates in the Legal Department.

6. **ID.; ID.; ID.; DUE PROCESS; MANDATORY.**— Failure to comply with the procedural requirements for terminating one's employment taints the dismissal with illegality. This procedure is mandatory, any judgment reached by management without that compliance can be considered void and inexistent. While it is true that the essence of due process is simply an opportunity to be heard or, as applied in administrative proceedings, an opportunity to explain one's side, meetings in the nature of consultation and conferences such as the case here, however, may not be valid substitutes for the proper observance of notice and hearing. For having violated private respondent's right to due process private respondent shall, considering the attendant circumstances particularly his repeated, but unheeded, request for a hearing, be entitled to an amount of P5,000.

7. **ID.; ID.; ILLEGAL DISMISSAL; MORAL AND EXEMPLARY DAMAGES, WHEN PROPER.**— Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent

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manner. Malice or bad faith, the lesser evil of the two, the Court has once said, "implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with furtive design or ill will."

8. **ID.; ID.; ID.; BACKWAGES AND RETIREMENT BENEFITS IN LIEU OF REINSTATEMENT; PROPER IN CASE AT BAR.**— The controversy spawning this case has generated not too little personal animosities. Reinstatement, which is the consequence of illegal dismissal, has markedly been rendered undesirable. Private respondent shall, instead, be entitled to backwages from the time of his dismissal until reaching sixty (60) years of age (1995) and, thereupon, to retirement benefits in accordance with Article 287 of the Labor Code and Section 14, Rule 1, Book VI, of the Implementing Rules of the Labor Code.

9. **REMEDIAL LAW; FORUM-SHOPPING; NOT PRESENT HERE.**— The allegation that private respondent was guilty of forum-shopping deserves scant consideration. Suffice it said that, for forum-shopping to exist, both actions should involve a common transaction with essentially the same facts and circumstances and raise identical causes of action, subject matter and issues. Certainly, the filing by private respondent of a criminal action for libel during the pendency of this illegal dismissal case could not constitute forum-shopping.

APPEARANCES OF COUNSEL

Vicente Abad Santos, William R. Veto and *Romulo C. Felixmena* for petitioners.

Froilan M. Bacungan for private respondents.

D E C I S I O N

VITUG, *J.*:

In the special civil action of *certiorari*, the petitioners, in order to have a reasonable chance of success, must be able to come up with proof that the tribunal, board or officer against whom the petition is brought has, in the exercise of judicial or

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quasi-judicial function, acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. In the instant petition, the Court is asked to rule against the National Labor Relations Commission ("NLRC") in holding private respondent Ricardo L. Sadac, Vice-President for the Legal Department and General Counsel of petitioner Equitable Banking Corporation, to have been a regular employee of the bank whose services could only be terminated in accordance with the Labor Code. Petitioner bank submits that the services of private respondent, its legal counsel, could be dispensed with at anytime pursuant to the provision on the cessation of lawyer-client relationship under Rule 138 of the Rules of Court.

The facts, essentially, do not appear to be in dispute.

Private respondent Sadac was appointed, effective 01 August 1981, Vice-President for the Legal Department of petitioner bank by its then President, Manuel L. Morales, with a monthly salary of P8,000.00, plus an allowance of P4,500.00 and a Christmas bonus equivalent to a two-month salary.[1] On 08 December 1981, private respondent was also designated as the bank's General Counsel. Private respondent had these functions:

"Duties & Responsibilities

- Provides legal advice to the Board of Directors and Management of the Bank.
- Takes charge of all Bank cases arising from bank transactions and rendering opinions on legal questions in connection therewith.
- Insures effective conduct of litigation, collection of past due accounts, and investigation of irregularities and other legal matters affecting the interest of the Bank.
- Participates in action of major character, financing, amendments to the Articles of Incorporation and By-laws of the Bank, changes in corporate structures acquisition and disposal of important segments of enterprises or real estate, determination of action to comply with statutory and other government requirements.

[1] *Rollo*, p. 422.

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- Directs, plans, coordinates and maintains supervision and control over the staff of the Legal Department.
- Provides for and insures proper documentation and notarization of all Bank transactions.
- Assumes primary responsibility in the account of continuing research and studies on questions of law affecting the Bank and its subsidiary corporations and the formulation and development of legal opinions.
- Recommends appointments, promotions, transfers and disciplinary actions involving Legal Department personnel.
- Establishes and maintains effective discipline, work performances, high level of morale and cooperation among the staff.
- Performs such other duties as may be assigned from time to time by the President and the Board of Directors."[2]

The turning point in the relationship among the parties surfaced, when, on 26 June 1989, nine lawyers[3] of the bank's Legal Department, who were all under private respondent, addressed a "letter-petition" to the Chairman of the Board of Directors, accusing private respondent of abusive conduct, inefficiency, mismanagement, ineffectiveness and indecisiveness.[4] The individual written complaints of each of the nine lawyers were attached to the "letter-petition." Private respondent was furnished with a copy of the letter.

Private respondent promptly responded and manifested an intention to file criminal, civil and administrative charges against the nine lawyers. Petitioner Morales, by now Chairman of the Board of Directors, called the contending lawyers to a conference in his office in an attempt to resolve their differences. The

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[2] *Ibid.*, p. 453.

[3] They are (1) Abelardo G. Luzano, (2) Elpidio R. Viernes, (3) Roberto Buenaventura, (4) Erlando A. Abrenica, (5) Nolan V. Oloroso, (6) Caridad V. Galvez, (7) Bienvenido A. Salinas, (8) Hercules O. Cabug-os, and (9) Danilo N. Tungol.

[4] *Rollo*, pp. 263-264.

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meeting held on 29 June 1989, in the presence of Vice-President for Personnel and Human Relations Dean Alejandro C. Reyes, apparently did not amount to much and only resulted, it would seem, in a broad commitment of the parties to implement the "existing procedures and practices in the Legal Department."[5] The dialogue was marked, in fact, by "rancorous and very heated altercation" between private respondent and his subordinates. Mr. Morales considered the problem serious enough to merit the Board's attention. In its meeting on 11 July 1989, the Board of Directors, apprised of the situation, adopted a resolution directing one of its directors, petitioner Herminio B. Banico, to look further into the matter and to "determine a course of action for the best interest of the bank."

Petitioner Banico met with the complaining nine lawyers on 17 July 1989. He was warned that if private respondent were to be retained in his position, the lawyers would resign *en masse*. The following day, Mr. Banico saw private respondent. The latter denied the charges leveled against him. Although the two would appear to have explored various alternatives and avenues to solve the crisis, nothing positive, however, came out of their meeting. Convinced that reconciliation was out of the question, Mr. Banico, on 08 August 1989, submitted a report to the Board of Directors with these findings:

"a. *ABUSIVE CONDUCT*

"There is no doubt at all, in my mind that the charge of 'abusive conduct' against Atty. Sadac, in his treatment in varying degrees, of the complaining lawyers, is true, as this is supported by overwhelming evidence. Atty. Sadac himself, in effect, admitted this when he proffered his apologies in the presence of the Chairman in the 'confrontation' held in the latter's office.

"b. *MISMANAGEMENT*

"In my study and investigation, I found abundant evidence to support a finding of mismanagement of the Legal Department by Atty. Sadac.

"c. *INEFFICIENCY, INEFFECTIVENESS, AND INDECISIVENESS*

[5] *Ibid.*, pp. 373-374.

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"The above specific charges are each proven and/or established by the same nature of evidence."[6]

Two days later, or on 10 August 1989, Mr. Morales issued a memorandum to private respondent which, among other things, pertinently stated:

"x x x. The Board, however, feels that because during all its existence of almost forty (40) years, the Bank never had in its employ any senior officer who had compelled it to resort to the unfortunate, sorry and nasty spectacle of conducting a formal hearing (which of course is distasteful to all parties concerned) of whatever charge such as the one lodged against you just to terminate your services, consonant with the due process requirements of the Constitution, the Labor Code, the Implementing Regulations thereof and other pertinent laws, it has chosen the more compassionate option of waiting for your voluntary resignation from your employ with the Bank.

"In the meantime, since all the lawyers under you, by petitioning for a change in leadership of the department despite the fact that all these lawyers have all been hired and promoted to their positions upon your recommendation, have thus shown lack of confidence in you, the Board feels it has no reason to continue reposing confidence in you and therefore elected to exercise its prerogative as your client, under the rules of client and lawyer relationship to direct Atty. William R. Veto, Legal Counsel of the Bank these many years to appear in substitution of you in all the cases in which you are presently appearing as counsel of record for the Bank. For this purpose, the Bank as your client, therefore, instructs you to deliver the folders of pleadings and documents of all cases you are now personally handling and submit a list of all the cases where you appear as the counsel of record for the bank and the corresponding titles thereof not later than the close of office hours on Tuesday, August 15, 1989 so that the Legal Counsel of the Bank, Atty. William R. Veto,

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[6] On 13 December 1989, petitioner Herminio Banico stated that, in arriving at his findings, he considered the facts that private respondent was, by his own admission, Dean of the College of Law of the University of Manila, head of the Review Center which conducted Pre-Bar Review, and president and owner of the Excellent Overseas Employment Services, a recruitment office. As such, to the mind of Mr. Banico, it was simply "unbelievable" that private respondent could fulfill his promise to be "an efficient, effective and decisive Bank's General Counsel." (*Ibid.*, pp. 364-366.)

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could file his substitution of appearance in all said cases where you are counsel of record. Atty. Veto has already been instructed and authorized by the Board to take over from you the functions that you are now performing in the Legal Department."[7]

Reacting to the above memorandum, private respondent, on 14 August 1989 addressed a letter to Board Chairman Morales, furnishing the other members of the Board, to the effect that the report of Mr. Banico contained libelous statements and that the implementation of the chairman's memorandum would lead to an illegal dismissal. Pointing out that he could not now in conscience resign in the face of Mr. Banico's "baseless and libelous findings," private respondent requested for a full hearing by the Board of Directors so that he could clear his name.[8]

On 17 August 1989, petitioner Ricardo J. Romulo, Board Vice-Chairman, answered private respondent. Mr. Romulo stressed that private respondent's services were not terminated by the Board which, instead, was merely exercising its managerial prerogative "to control, conduct (its) business in the manner (it) deems fit and to regulate the same." In reply to private respondent's request for a formal hearing, Mr. Romulo reiterated the Board's decision that it would be to the best interest of all concerned if the "distasteful spectacle" of a hearing would not be resorted to "in order to adhere to (the bank's) long standing compassionate policy."[9] Mr. Romulo also said:

"We would like to emphasize that our decision as a Board did not dismiss you from the service of the Bank. All that the Board is saying to you is that it has lost its confidence in you and therefore it is patiently awaiting your resignation of course with your right of retirement pay in accordance with the policy adopted by the Bank under these situations. Trust or confidence like love are feelings which emanate from the heart and, as the song goes, 'once a heart is torn apart it is never the same again.' So also, confidence like a tooth once pulled can never be restored."[10]

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[7] *Ibid.*, pp. 134-135.

[8] *Ibid.*, pp. 136-140.

[9] *Ibid.*, pp. 141-146.

[10] *Ibid.*, p. 141.

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In his memorandum of 28 August 1989 to the members of the Board, private respondent again made a request for a full hearing and cautioned that, under Section 31 of the Corporation Code, individual members of the Board could be held accountable for voting or assenting to patently unlawful acts of the corporation.

On 31 August 1989, Mr. Romulo wrote back expressing, in part, as follows:

"7. The charge that you have been constructively dismissed is likewise without basis because as we said before, you are free to remain in the employ of the bank if you so wish, even if the bank were to incur the tremendous expense of continuing to pay your high salary just so it can continue to adhere to its compassionate policy of avoiding ruining the future of any of its officers by a possible dismissal for cause which is certainly bound to leak to the public. It is believed, however, that there is no law which can compel an employer to give any of his employees any particular work at all."[11]

Mr. Romulo stated that the bank's confidence on private respondent had been lost "most especially in the light of (his) threats" and that the latter could "bring the matter up in the appropriate forum."[12]

Undaunted, private respondent, in his memorandum of 07 September 1989 to the individual members of the Board of Directors, persisted in his request for a formal investigation.[13] Having been unheeded, private respondent, on 09 November 1989, filed with the Manila arbitration branch of the NLRC, a complaint, docketed NLRC Case No. 00-11-05252-89, against herein petitioners for illegal dismissal and damages.[14]

After learning of the filing of the complaint, the Board of Directors, on 21 November 1989, adopted Resolution No. 5803 terminating the services of private respondent "in view of his

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[11] *Ibid.*, p. 171.

[12] *Ibid.*, pp. 168-172.

[13] *Ibid.*, pp. 173-182.

[14] *Ibid.*, pp. 123-133.

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belligerence" and the Board's "honest belief that the relationship" between private respondent and petitioner bank was one of "client and lawyer." Private respondent was removed from his office occupancy in the bank and ordered disentitled, starting 10 August 1989, to any compensation and other benefits. The Board instructed management to take the necessary steps to "defend itself and all the members of the Board of Directors" from private respondent's complaint.[15]

Pursuing their stand that the association between the bank and private respondent was one of a client-lawyer relationship, herein petitioners filed a motion to dismiss the complaint with the NLRC on the ground of lack of jurisdiction.[16] Private respondent, opposing the motion, insisted on the existence of an employer-employee relationship between them.[17] In their reply, petitioners added another ground for seeking a dismissal of the complaint, i.e., that under the ruling in Besa *vs.* PNB,[18] the rule governing the duration of private respondent's term was provided for by the Rules of Court and not by the Labor Code.[19]

Following an exchange of position papers and other pleadings, Labor Arbiter Jovencio Ll. Mayor, Jr., on 02 October 1990, rendered a decision dismissing the complaint for lack of merit.[20] The Labor Arbiter was convinced that the relationship between petitioner bank and private respondent was one of lawyer-client based on the functions of the latter which "only a lawyer with highly trained legal mind, can effectively discharge."[21] He distinguished the instant controversy from the situation in *Hydro Resources Contractors Corporation vs. Pagalilauan*[22] in that

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[15] *Ibid.*, p. 491.

[16] *Ibid.*, pp. 183-193.

[17] *Ibid.*, pp. 195-199.

[18] 33 SCRA 330.

[19] *Rollo*, p. 202.

[20] *Ibid.*, pp. 762-781.

[21] *Ibid.*, p. 769.

[22] 172 SCRA 399.

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herein private respondent, he said, only performed functions encompassed by the practice of law while in *Hydro Resources*, the involved lawyer was a "mere legal assistant" tasked with certain duties not all that related to the practice of law. The Labor Arbiter concluded that the complaint stated no cause of action because a lawyer-client relationship should instead be governed by Section 26, Rule 138, of the Rules of Court. On whether or not there were valid grounds to terminate the services of private respondent, the Labor Arbiter, noting the "letter-petition" of the nine subordinate lawyers of private respondent, said:

"x x x. The truth and veracity of these complaints were respectively affirmed under oath by each and every one of these nine subordinate lawyers in their individual affidavits (Annexes '1-J' to '1-R', inclusive), (*Ibid.*). From these individual statements, it can be culled that complainant has been charged, among others, with committing such acts as shouting and insulting lawyers even in the presence of clients, having frequent outbursts of temper, being indecisive even on simple and fundamental questions, of devoting time to private and personal matters such that he is always out of the office, of being closed and narrow-minded to the ideas of subordinates, and other similar acts. These charges were never refuted by herein complainant and instead narrated a general refutation x x x."[23]

The Labor Arbiter brushed aside private respondent's claim that he was denied due process, holding that private respondent was "heard exhaustively on the matter of the charge lodged against him" and that, "for valid practical reasons," petitioners "were not in a position to accede" to the demand for a formal hearing.[24]

On appeal, the NLRC concluded differently. On 24 September 1991, the First Division of the NLRC rendered a resolution[25] reversing the decision of the Labor Arbiter. It held that private

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[23] *Rollo*, p. 773.

[24] *Ibid.*, p. 780.

[25] Penned by Commissioner Romeo B. Putong and concurred in by Commissioner Vicente S.E. Veloso. Commissioner Edna Bonto-Perez took no part.

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respondent was an employee of petitioner bank which "never stated that complainant was an outside counsel for he was never so"[26] as against the pronouncement of the Court in *Hydro Resources* that distinguished between an in-house counsel and an *outside* counsel hired on a retainer basis. Certain other circumstances that likewise did not escape NLRC's attention were that petitioner George L. Go, the bank's president, had enjoined private respondent to attend a bank-sponsored symposium on Japanese investment on 08 September 1989 at the Hotel Intercontinental; that in petitioners' letter of 31 August 1989, private respondent was referred to as *an employee*; that in another letter, dated 24 November 1989, petitioner admitted having terminated private respondent's *employment* and requested the return of the 1988 Mitsubishi Galant 1800 which he had acquired through the bank's car plan; and that, through a communication of 02 January 1990 of the Personnel and HRD Department, the bank announced that private respondent's employment had been terminated effective 21 November 1989.

Turning to the issue of whether or not the employment of private respondent was terminated for cause, the NLRC held that because he had not been afforded a hearing in accordance with law, there was no factual basis to support the allegation of loss of confidence made by petitioners who, instead, had relied on the doctrine of *res ipsa loquitor*.

The NLRC ruled that private respondent was denied the right to due process with the bank's failure to observe the twin requirements of notice and hearing. The 10th August 1989 memorandum could not have been a substitute for notice because it did not manifest petitioners' intention to dismiss him from employment, and neither the meeting between private respondent and the complaining lawyers nor those held between private respondent and petitioner Banico could be considered the "investigations" which private respondent had consistently sought.

For having been made to undergo unnecessary embarrassment by being stripped of his functions and made "to undergo the

[26] *Rollo*, p. 93

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sad and painful experience of reporting to office every day doing nothing," the NLRC, citing *Sibal vs. Notre Dame of Greater Manila*,[27] awarded damages.

The NLRC, thereby concluded:

"WHEREFORE, in view of all the foregoing considerations, let the Decision of October 2, 1990 be, as it is hereby, SET ASIDE and a new one ENTERED declaring the dismissal of the complainant as illegal, and consequently ordering the respondents jointly and severally to reinstate him to his former position as bank Vice-President and General Counsel without loss of seniority rights and other privileges, and to pay him full backwages and other benefits from the time his compensation was withheld to his actual reinstatement, as well as moral damages of P100,000.00, exemplary damages of P50,000.00, and attorney's fees equivalent to Ten Percent (10%) of the monetary award. Should reinstatement be no longer possible due to strained relations, the respondents are ordered likewise jointly and severally to grant separation pay at one (1) month per year of service in the total sum of P293,650.00 with backwages and other benefits from November 16, 1989 to September 15, 1991 (cut-off date subject to adjustment) computed at P1,055,740.48, plus damages of P100,000.00 (moral damages), P50,000.00 (exemplary damages) and attorney's fees equal to Ten Percent (10%) of all the monetary award, or a grand total of P1,649,329.53.

"SO ORDERED."[28]

Petitioners filed a motion,[29] opposed by private respondent,[30] for a reconsideration of the resolution.

The motion for reconsideration was still pending when private respondent, following an exchange of yet additional pleadings, filed an urgent *ex parte* motion for immediate reinstatement

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[27] 182 SCRA 538, citing Callanta *vs.* Carnation Philippines, Inc., 145 SCRA 268, holding that one's employment, profession, trade or calling is a "property right," the wrongful interference of which is an actionable wrong.

[28] *Rollo*, pp. 116-117.

[29] *Ibid.*, pp. 1021-1050.

[30] *Ibid.*, pp. 1051-1080.

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grounded on Article 223 of the Labor Code.[31] On 07 November 1991, NLRC Executive Clerk Pascual Y. Reyes addressed a communication, with the letterhead of the First Division of the NLRC, to Attys. Vicente Abad Santos and William R. Veto, counsel for petitioners, which read:

"G R E E T I N G S:

"Consistent with the NLRC New Rules and Procedure on Appeal under Republic Act 6715, amending Article 223 of the Labor Code, RESPONDENT(s) is/are hereby directed within ten (10) calendar days from receipt of this Order:

"To immediately reinstate complainant under the same terms and conditions prevailing prior to his dismissal or separation or, at RESPONDENT(s) option to reinstate him in the payroll, and to submit proof of compliance thereof, otherwise, a Writ of Execution shall issue."[32]

Petitioners filed a motion to quash the "untitled document" which was claimed to be "highly irregular." Private respondent countered, on the strength of the ruling in *Aris (Phil.) Inc. vs. NLRC*,[33] that even before its amendment by Section 12 of R.A. 6715, Article 223 of the Labor Code already allowed execution of decisions of the NLRC pending their appeal to the Secretary of Labor and Employment, and that, under Section 2, Rule XII, of the New Rules of Procedure of the NLRC, Executive Clerk Reyes could be said to be performing a function similar or equivalent to that discharged by the Clerk of Court of the Court of Appeals.

Petitioners, on their part filed an urgent motion for immediate resolution of their motion for reconsideration,[34] on account of what was felt to be the "dubious legality" of the directive for reinstatement.

Pending the above incidents, particularly the motion for reconsideration of NLRC's resolution that has reversed the Labor

[31] Article 223 of the Labor Code mandates that a decision reinstating a dismissed employee shall be immediately executory.

[32] *Rollo*, p. 120.

[33] 200 SCRA 246.

[34] *Rollo*, pp. 1109-1112.

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Arbiter's decision, petitioners have filed the instant petition for *certiorari*, with prayer for the issuance of a writ of preliminary injunction, before this Court. The petition questions the resolution of the NLRC finding that an employer-employee relationship existed between petitioner bank and private respondent invoking the rulings in *Besa vs. PNB*[35] and *Asis vs. Minister of Labor and Employment*,[36] against that of *Hydro Resources Contractors vs. Pagalilauan*;[37] that the facts on record do support valid grounds for terminating the employment of private respondent; and that due process has been duly observed. The petition likewise assails the NLRC for its monetary awards and in omitting to resolve the allegation of forum-shopping committed by private respondent.

This Court required petitioners to post a cash bond in the amount of P500,000.00 for the issuance of a temporary restraining order.[38]

Prefatorily, the Court must state that the filing of a motion for reconsideration of a decision of the NLRC is prerequisite to the elevation of the case to this Court on a petition for *certiorari*. The rule is aimed at enabling the commission to look into and correct its error or mistake, if any has been committed, without the precipitate intervention of this Court.[39] The failure to allow that opportunity for whatever reason is ordinarily a fatal procedural defect that could warrant the dismissal of the petition.[40]

In this case, petitioners, instead of waiting for the resolution by the NLRC of their motion for reconsideration, posthaste filed the instant petition. Its prematurity notwithstanding, the instant petition for *certiorari* was given due course in order

[35] *Supra*.

[36] 171 SCRA 237.

[37] *Supra*.

[38] *Rollo*, p. 1133.

[39] Philippine National Construction Corporation (PNCC) *vs.* NLRC, 245 SCRA 668.

[40] Labudahon *vs.* NLRC, 251 SCRA 129.

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not to unduly delay the final disposition of the case considering that the issues involved[41] have heretofore been ventilated practically to the limit by the parties.

While the Court agrees with private respondent that execution pending appeal may be ordered by the NLRC,[42] it is equally true, however, that where the dismissed employee's reinstatement would lead to a strained relation between the employer and the employee or to an atmosphere of antipathy and antagonism, the exception to the twin remedies of reinstatement and payment of backwages can be invoked and reinstatement, which might become anathema to industrial peace, could be held back pending appeal.[43] Nevertheless, the Court is not prepared to preempt the NLRC and conclude that the directive for reinstatement is of "dubious" character.[44] It can be assumed that had petitioners waited for NLRC's resolution on the motion for reconsideration, the question on the regularity in the issuance of the directive for reinstatement could have perhaps properly been delved into.

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[41] Villarama *vs.* NLRC, 236 SCRA 280.

[42] Aris (Phil.) Inc. *vs.* NLRC, *supra.*

[43] See Philippine Telegraph and Telephone Corporation (PT&T) *vs.* NLRC, 251 SCRA 21.

[44] Petition, pp. 3-5. In his affidavit of 08 April 1991, Atty. Manuel B. Curato, an associate of Atty. William R. Veto, counsel for petitioners, narrated that when he personally filed the motion to quash the "untitled document" or the directive for reinstatement of private respondent, he went to the office of Executive Clerk Pascual Y. Reyes to inquire whether the said document was authorized by the NLRC because at that time their law office had not yet received a copy of a motion for reinstatement. Without answering his query, Reyes referred him to a certain Emmie Alvarez of the First Division of the NLRC, who, in turn, referred him to a certain Ruben, allegedly the executive secretary of Commissioner Romeo Putong, the *ponente* of the herein questioned Resolution. Ruben had the folder of the case with him but when he (Curato) asked for a copy of the motion filed by private respondent or an order of the NLRC directing the issuance of the "untitled document," Ruben told him to come back on 11 November 1991.

When he went back to the NLRC on said date, he was furnished by Atty. Cruz with a copy of an unverified *ex-parte* motion for the issuance of an order of reinstatement which appeared on its face to have been filed with the NLRC on 26 September 1991 or two days after the issuance of

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The existence of an employer-employee relationship is, itself, a factual question[45] well within the province of the NLRC. Considering, nevertheless, that its findings are at odds with the Labor Arbiter, the Court sees it fit to dwell a bit into the issue.[46]

In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal, and (4) the power to control the employee's conduct, with the control test generally assuming primacy in the overall consideration. The power of control refers to the existence of the power and not necessarily to the actual exercise thereof. It is not essential, in other words, for the employer to actually supervise the performance of duties of the employee; it is enough that the former has the right to wield the power.[47]

The NLRC, in the instant case, based its finding that there existed an employer-employee relationship between petitioner bank and private respondent on these factual settings:

"It was complainant's understanding with respondent Morales that he would be appointed and assigned to the Legal Department as vice President with the same salary, privileges and benefits granted by the respondent bank to its ranking senior officers. He was not hired as lawyer on a retainership basis but as an officer of the bank.

"Thus, the complainant was given an appointment as Vice President, Legal Department, effective August 1, 1981, with a monthly salary of P8,000.00, monthly allowance of P4,500.00, and the usual two months Christmas bonus based on basic salary likewise enjoyed by the other officers of the bank.

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the Resolution of 24 September 1991. He went to see Commissioner Bartolome Carale who, when showed a copy of the "untitled document," remarked that he did not know anything about it so that he asked his secretary to secure a copy thereof. When Curato went down from Carale's office, he saw private respondent at the office of Dominador M. Cruz. (*Rollo*, pp. 1113-1114).

[45] Mainland Construction Co., Inc. *vs.* Movilla, 250 SCRA 290.

[46] Jimenez *vs.* NLRC, 256 SCRA 84.

[47] MAM Realty Development Corporation *vs.* NLRC, 244 SCRA 797, citing Zanotte Shoes/Leonardo Lorenzo *vs.* NLRC, 241 SCRA 261.

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"Then, as part of the ongoing organization of the Legal Department, the position of General Counsel of the bank was created and extended to the complainant. In addition to his duties as Vice President of the bank, the complainant's duties and responsibilities were so defined as to prove that he was a bank officer working under the supervision of the President and the Board of Directors of the respondent bank.

"In his more than eight years employment with the respondent bank, the complainant was given the usual payslips to evidence his monthly gross compensation. The respondent bank, as employer, withheld taxes due to the Bureau of Internal Revenue from the complainant's salary as employee. Moreover, the bank enrolled the complainant as its employee under the Social Security System and Medicare programs. The complainant contributed to the bank Employees' Provident Fund.

"When the respondent bank changed its payroll accounting system in September 1988 by appointing SGV & Co. to handle it and Far East Bank & Trust Company to pay the salaries and other benefits of Equitable Banking Corporation officers, the complainant was included as one of corporate officers. Specifically, that there were eleven Far East Bank and Trust Company credit memos starting October 13, 1988 up to September 13, 1989 received by the complainant from FBTC crediting his salary and Christmas bonus to his account with FBTC per instruction of the respondent bank.

"Inasmuch as the complainant and the lawyers in the Legal Department were receiving salaries and other benefits as other bank officers and employees, the attorney's fees, documentary and notarial fees earned in the exercise of their profession as in-house lawyers were not given to or even shared with them, instead all were credited to the income of the bank. In 1987 and 1988, the complainant and his subordinate lawyers were able to generate by way of attorney's fees, documentary and notarial fees a total income of P973,028.00 for the bank('s) benefit. In turn, the respondent bank shouldered the professional tax and Integrated Bar of the Philippines dues of the complainant and his subordinate lawyers. Further proofs that there existed employer-employee relationship between the respondent bank and the complainant are the following, to wit:

"(1) Complainant's monthly attendance, like those of other bank officers, was recorded by the Chief Security Officer and reported to the Office of the President with copy of the report furnished to the bank Personnel and HRD Department.

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"(2) Complainant was authorized by the President to sign for and in behalf of the bank contracts covering legal services of lawyers to be retained by the respondent bank for its branches on periodical retainership basis.

"(3) Complainant participated as part of management in annual Management Planning Conferences which started in 1986 on objective-setting and long-range planning in response to the requirement of the rapidly changing environment.

"(4) Respondent bank extended to complainant the benefit (of) a car plan like any other qualified senior officer of the bank.

"(5) Respondent bank since 1982 continuously reported and included the complainant as one of its senior officers in its statements of financial condition holding the position of Vice President. These bank statements have been distributed and circularized to the public, including bank clients and government entities.

"(6) Complainant, like other bank officers, prepared his biographical data for submission to the Central Bank after his assumption of duties in 1981. Thereafter, and pursuant to the regulations of the Central Bank, he has been required to update annually his biographical data."[48]

It would virtually be foolhardy to so challenge the NLRC as having committed grave abuse of discretion in coming up with its above findings. Just to the contrary, NLRC appears to have been rather exhaustive in its examination of this particular question (existence or absence of an employer-employee relationship between the parties). Substantial evidence, which is the quantum of evidence required to establish a fact in cases before administrative and quasi-judicial bodies, connotes merely that amount of relevant evidence which a reasonable mind might accept to be adequate in justifying a conclusion.[49]

The rulings in *Besa* and *Asis*, cited by petitioners, could not be all that controlling in this instance. In both cases, the question of whether or not the parties had an employer-employee

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[48] *Rollo*, pp. 93-97.

[49] Reno Foods, Inc. *vs.* NLRC, 249 SCRA 379, citing Sec. 5, Rule 133, Rules of Court and Manila Electric Co. *vs.* NLRC, 198 SCRA 681.

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relationship was not the focal point of controversy. In *Besa*, the Court said:

"Petitioner's reliance on the constitutional provision against removal without cause is misplaced. It is appropriate to invoke it when an officer or employee in the civil service enjoying a fixed term is made to lose his position without warrant or justification. It certainly finds no application when the duration of one's term depends on the will of the appointing power. That is so where the position held is highly confidential in character. Such is the case of the Chief Legal Counsel of respondent Philippine National Bank. That is our answer to the specific question before us. Our decision is limited to the validity of the action taken by respondent Bank. We do not by any means intimate an opinion as to the legal consequences attaching to an action similar in character taken by any other office or agency of the government concerning a lawyer in its staff, especially one who was not employed precisely because of the marked degree of confidence reposed in him, but rather because of his technical competence.

"As far as the petitioner is concerned, however, it is our conclusion that he could not plausibly contend that there was a removal in the constitutional sense as what did take place was a termination of official relation. Accepting as he did the position of chief legal adviser, the essence of which is the utmost degree of confidence involving such 'close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals' whether of personal trust or official matters, he could not have been unaware that his term could be cut short any time without giving rise to any alleged infringement of the above constitutional safeguard. There was no removal which according to such a mandate is only allowable for cause. Hence the lack of persuasive character of petitioner's plea."[50]

And in *Asis*, the Court held:

"The Deputy Minister found that the evidence satisfactorily established that the Central's suspension of the petitioner's and others' monthly ration of gasoline and LPG, had been caused by unavoidable financial constraints; that such a suspension, in line with its conservation and cost-saving policy, did not in truth effect any significant diminution of said benefits, since the petitioner was

[50] *Supra*, at pp. 333-334.

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nevertheless entitled to reimbursement of the actual amount of gas consumed; that petitioner had encouraged his co-employees to file complaints against the Central over the rations issue, and this, as well as his institution of his own actions, had created an atmosphere of enmity in the Central, and caused the loss by the Central of that trust and confidence in him so essential in a lawyer-client relationship as that theretofore existing between them; and that under the circumstances, petitioner's discharge as the Central's Legal Counsel and Head of the Manpower & Services Department was justified. The Deputy Minister's order of dismissal was however subsequently modified, at the petitioner's instance, by decreeing the payment to the latter of separation pay equivalent to one month's salary for every year of service rendered."[51]

It was, in fact, *Hydro Resources* which directly confronted the issue; there, the Court ruled:

"A lawyer, like any other professional, may very well be an employee of a private corporation or even of the government. It is not unusual for a big corporation to hire a staff of lawyers as its in-house counsel, pay them regular salaries, rank them in its table of organization, and otherwise treat them like its other officers and employees. At the same time, it may also contract with a law firm to act as outside counsel on a retainer basis. The two classes of lawyers often work closely together but one group is made up of employees while the other is not. A similar arrangement may exist as to doctors, nurses, dentists, public relations practitioners, and other professionals."[52]

The existence of an employer-employee relationship, between the bank and private respondent brings the case within the coverage of the Labor Code. Under the Code, an employee may be validly dismissed if these requisites are attendant: (1) the dismissal is grounded on any of the causes stated in Article 282 of the Labor Code, and (2) the employee has been notified in writing and given the opportunity to be heard and to defend himself as so required by Section 2 and Section 5, Rule XIV, Book V, of the Implementing Rules of the Labor Code.[53]

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[51] *Supra*, at pp. 240-241.

[52] *Supra*, at pp. 402-403.

[53] Jones *vs.* NLRC, 250 SCRA 668.

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Article 282(c) of the Labor Code provides that "willful breach by the employee of the trust reposed in him by his employer" is a cause for the termination of employment by an employer. Ordinary breach of trust will not suffice, it must be willful and without justifiable excuse.[54] This ground must be founded on facts established by the employer who must clearly and convincingly prove by substantial evidence[55] the facts and incidents upon which loss of confidence in the employee may fairly be made to rest; otherwise, the dismissal will be rendered illegal.[56]

Petitioners' stated loss of trust and confidence on private respondent was spawned by the complaints leveled against him by the lawyers in his department. The letter-complaint signed by the nine lawyers read:

"June 26, 1989

"Mr. Manuel L. Morales
Chairman, Board of Directors
Equitable Banking Corporation

"S i r :

"With utmost respect, we have taken the liberty of seeking your intercession on the problems besetting the Legal Department.

"For a long time, we have kept silent, containing within us the abusive conduct and inefficiency of our department head, Atty. Ricardo L. Sadac, if only to preserve cohesion among us. But we have reached the breaking point where we could endure no more except to speak out. We realize the gravity of our action and its possible repercussions but we only have ourselves to blame if we remained silent.

"Atty. Sadac's insults to the lawyers which are totally uncalled for and made even in the presence of clients are simply too much for a fellow lawyer. His outburst of temper on inconsequential matters

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[54] Falguera *vs.* Linsangan, 251 SCRA 364.

[55] Pilipinas Bank *vs.* NLRC, 215 SCRA 750.

[56] Philippine Savings Bank *vs.* NLRC, G.R. No. 111173, 04 September 1996, citing Philippine Commercial International Bank *vs.* NLRC, 247 SCRA 614.

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have now become commonplace in the department. His mismanagement, ineffectiveness as a head and indecisiveness on basic legal questions have adversely affected the smooth operation of the department and the output of the lawyers. He berates rather than inspires, delays rather than facilitates. Each lawyer's complaint are (sic) attached hereto attached (sic) as Annexes 'A', 'A-1' to 'A-8'.

"At present, we are disgruntled on how he runs the department and our morale is at its ebb. While our only desire is to work under an auspicious environment and under an effective head, we could not do so because of the General Counsel.

"We, therefore, respectfully pray for an immediate change in the department leadership in order to pave the way for a more effective system, a new image for the department, and restore professionalism and the dignity of the lawyers.

"Please accept our assurances that the interest of the bank is primordial to us as we pledge our total commitment and unflinching loyalty to this institution.

"Thank you."[57]

Concededly, a wide latitude of discretion is given an employer in terminating the employment of managerial employees on the ground of breach of trust and confidence.[58] In order to constitute a "just cause" for dismissal, however, the act complained of must be related to the performance of the duties of the employee such as would show him to be thereby unfit to continue working for the employer.[59] Here, the grievances of the lawyers, in main, refer to what are perceived to be certain objectionable character traits of private respondent. Although petitioners have charged private respondent with allegedly mishandling two cases in his long service with the bank, it is quite apparent that private respondent would not have been asked to resign had it not been for the letter-complaint of his associates in the Legal Department.

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[57] *Rollo*, pp. 263-264.

[58] San Antonio *vs.* NLRC, 250 SCRA 359.

[59] Aris Philippines, Inc. *vs.* NLRC, 238 SCRA 59.

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Confident that no employer-employee existed between the bank and private respondent, petitioners have put aside the procedural requirements for terminating one's employment, i.e., (a) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought, and (b) another notice informing the employee of the employer's decision to dismiss him.[60] Failure to comply with these requirements taints the dismissal with illegality. This procedure is mandatory, any judgment reached by management without that compliance can be considered void and inexistent.[61] While it is true that the essence of due process is simply an opportunity to be heard or, as applied in administrative proceedings, an opportunity to explain one's side,[62] meetings in the nature of consultation and conferences such as the case here, however, may not be valid substitutes for the proper observance of notice and hearing.[63]

Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.[64]

The Court has deliberated closely on this case and, after reviewing all the facts and circumstances heretofore described, it is its considered view that petitioners have not been motivated by malice or bad faith nor have they acted in wanton, oppressive or malevolent manner such as to warrant a judgment against them for moral and exemplary damages. Malice or bad faith, the lesser evil of the two, the Court has once said, "implies a conscious and intentional design to do a wrongful act for a

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[60] Jones *vs.* NLRC, *supra.*

[61] Nitto Enterprises *vs.* NLRC, 248 SCRA 654, citing Pepsi-Cola Bottling Co., Inc. *vs.* NLRC, 210 SCRA 277.

[62] Philippine Phosphate Fertilizer Corp. *vs.* Torres, 231 SCRA 335.

[63] San Antonio *vs.* NLRC, *supra.*

[64] Estiva *vs.* NLRC, 225 SCRA 169.

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dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with furtive design or ill will."[65]

It, too, then follows that the individual petitioners may not be held solidarily liable with the bank. In *Santos vs. NLRC*,[66] the Court has explained the rule quite elaborately; thus:

"A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. Nevertheless, being a mere fiction of law, peculiar situations or valid grounds can exist to warrant, *albeit* done sparingly, the disregard of its independent being and the lifting of the corporate veil. As a rule, this situation might arise when a corporation is used to evade a just and due obligation or to justify a wrong, to shield or perpetrate fraud, to carry out similar other unjustifiable aims or intentions, or as a subterfuge to commit injustice and so circumvent the law. In *Tramat Mercantile, Inc., vs. Court of Appeals* [238 SCRA 14, 19], the Court has collated the settled instances when, without necessarily piercing the veil of corporate fiction, personal civil liability can also be said to lawfully attach to a corporate director, trustee or officer; to wit: When —

"'(1) He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;

"'(2) He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;

"'(3) He agrees to hold himself personally and solidarily liable with the corporation; or

"'(4) He is made, by a specific provision of law, to personally answer for his corporate action.'

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[65] Far East Bank and Trust Company *vs.* Court of Appeals, 241 SCRA 671, 675.

[66] 254 SCRA 673.

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The case of petitioner is way off these exceptional instances. It is not even shown that petitioner has had a direct hand in the dismissal of private respondent enough to attribute to him (petitioner) a patently unlawful act while acting for the corporation. Neither can Article 289 of the Labor Code be applied since this law specifically refers only to the imposition of *penalties* under the Code. x x x.

"It is true, there were various cases when corporate officers were themselves held by the Court to be personally accountable for the payment of wages and money claims to its employees. In *A.C. Ransom Labor Union-CCLU vs. NLRC* [142 SCRA 269], for instance, the Court ruled that under the Minimum Wage Law, the responsible officer of an employer corporation could be held personally liable for nonpayment of backwages for "(i)f the policy of the law were otherwise, the corporation employer (would) have devious ways for evading payment of back wages." In the absence of a clear identification of the officer directly responsible for failure to pay the backwages, the Court considered the President of the corporation as such officer. The case was cited in *Chua vs. NLRC* [182 SCRA 353] in holding personally liable the vice-president of the company, being the highest and most ranking official of the corporation next to the President who was dismissed, for the latter's claim for unpaid wages.

"A review of the above exceptional cases would readily disclose the attendance of facts and circumstances that could rightly sanction personal liability on the part of the company officer. In *A.C. Ransom*, the corporate entity was a family corporation and execution against it could not be implemented because of the disposition posthaste of its leviable assets evidently in order to evade its just and due obligations. The doctrine of "piercing the veil of corporate fiction" was thus clearly appropriate. *Chua* likewise involved another family corporation, and this time the conflict was between two brothers occupying the highest ranking positions in the company. There were incontrovertible facts which pointed to extreme personal animosity that resulted, evidently in bad faith, in the easing out from the company of one of the brothers by the other.

"The basic rule is still that which can be deduced from the Court's pronouncement in *Sunio vs. National Labor Relations Commission* [127 SCRA 390]; thus:

> "'We come now to the personal liability of petitioner, Sunio, who was made jointly and severally responsible with petitioner

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company and CIPI for the payment of the backwages of private respondents. This is reversible error. The Assistant Regional Director's Decision failed to disclose the reason why he was made personally liable. Respondents, however, alleged as grounds thereof, his the being owner of one-half (1/2) interest of said corporation, and his alleged arbitrary dismissal of private respondents.

"'Petitioner Sunio was impleaded in the Complaint in his capacity as General Manager of petitioner corporation. There appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of private respondents. His act, therefore, was within the scope of his authority and was a corporate act.

"'It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. Petitioner Sunio, therefore, should not have been made personally answerable for the payment of private respondents' back salaries.'

"The Court, to be sure, did appear to have deviated somewhat in *Gudez vs. NLRC* [183 SCRA 644]; however, it should be clear from our recent pronouncement in *Mam Realty Development Corporation and Manuel Centeno vs. NLRC* [244 SCRA 797] that the *Sunio* doctrine still prevails."[67]

For having violated private respondent's right to due process private respondent shall, considering the attendant circumstances particularly his repeated, but unheeded, request for a hearing, be entitled to an amount of P5,000.00.

The allegation that private respondent was guilty of forum-shopping deserves scant consideration. Suffice it said that, for forum-shopping to exist, both actions should involve a common transaction with essentially the same facts and circumstances and raise identical causes of action, subject matter and issues.[68]

[67] At pp. 681-685.

[68] International Container Terminal Services, Inc. *vs.* Court of Appeals, 249 SCRA 389.

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Certainly, the filing by private respondent of a criminal action for libel during the pendency of this illegal dismissal case could not constitute forum-shopping.

The controversy spawning this case has generated not too little personal animosities.[69] Reinstatement, which is the consequence of illegal dismissal, has markedly been rendered undesirable. Private respondent shall, instead, be entitled to backwages from the time of his dismissal until reaching sixty (60) years of age (1995)[70] and, thereupon, to retirement benefits in accordance with Article 287 of the Labor Code and Section 14,[71] Rule 1, Book VI, of the Implementing Rules of the Labor Code.[72]

WHEREFORE, the herein questioned Resolution of the NLRC is AFFIRMED with the following MODIFICATIONS: That private respondent shall be entitled to backwages from termination of employment until turning sixty (60) years of age (in 1995)

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[69] Private respondent is requesting for the disqualification in this case of Associate Justice Josue Bellosillo who is allegedly a "very close friend of both Herminio B. Banico and William R. Veto, petitioner and counsel for the petitioners respectively" (*Rollo*, 1427).

[70] Private respondent turned sixty (60) years old in 1995 (*Rollo*, p. 1374).

[71] "Sec. 14. Retirement benefits.— (a) An employee who is retired pursuant to a *bona fide* retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein or to termination pay equivalent at least to one-half month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year.

(b) Where both the employer and the employee contribute to the retirement plan, agreement or policy, the employer's total contribution thereto shall not be less than the total termination pay to which the employee would have been entitled had there been no such retirement fund. In case the employer's contribution is less than the termination pay the employee is entitled to receive, the employer shall pay the deficiency upon the retirement of the employee.

(c) This Section shall apply where the employee retires at the age of sixty (60) years or older."

[72] Villena *vs.* NLRC, 193 SCRA 686.

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and, thereupon, to retirement benefits in accordance with law; that private respondent shall be paid an additional amount of P5,000.00; that the award of moral and exemplary damages are *deleted*; and that the liability herein pronounced shall be due from petitioner bank alone, the other petitioners being *absolved* from solidary liability. No costs.

SO ORDERED.

Bellosillo (Acting Chairman), Kapunan and *Hermosisima, Jr., JJ.*, concur.

Padilla, J., on leave.

SECOND DIVISION

[G.R. Nos. 110817-22. June 13, 1997]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCELINO A. BUGARIN,** *accused-appellant.*

SYLLABUS

1. **CONSTITUTIONAL LAW; 1987 CONSTITUTION; ARTICLE VIII, SECTION 14; THE DECISION OF THE TRIAL COURT FAILED TO EXPRESS THEREIN CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED; CASE AT BAR.**— We take up first accused-appellant's charge that the decision of the trial court does not state the grounds therefor. Indeed, the Constitution provides in part in Art. VIII, § 14 that "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." This requirement is reiterated and implemented by the 1985 Rules of Criminal Procedure as provided in Rule 120, § 2. The decision of the trial court falls short of this requirement in at least three respects. First, it does not contain an evaluation