

MA. RICHELLE I. SIMON, LEAN ANDREW E. BARRIOS, YVETTE U. BUENACOSA, MARIVIC M. DEL MUNDO, ANGELA G. MERRERA, RANDOLPH G. PASCUBILLO, MA. ELENA A. SALONGA, JULIUS U. TEPORA, MARI...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari[1] under Rule 65 of the Rules of Court, as amended, seeking to annul and set aside the Resolution[2] of respondent National Labor Relations Commission, Sixth Division on April 29, 2011 in NLRC LAC No. 07-001551-10 which granted private respondent's motion for reconsideration and reinstated the Labor Arbiter's decision[3] dated June 2, 2010 dismissing the complaint for illegal dismissal.

Petitioners' version of the facts is as follows:

Petitioners, all holders of a Master's Degree in Nursing, were employed by private respondent Far Eastern University-Institute of Nursing (FEU-IN) as instructors/teachers. Four of them namely, Marivic Del Mundo, Ma. Elena Salonga, Ma. Richelle Simon and Marien Lina Tumbali had been employed with private respondent for an uninterrupted period of five and a half (5 ½) years. On their sixth semester, they were made to work on a part time status. On their seventh semester until their eleventh semester, they were given full time status. Petitioner Aileen Vinoya on the other hand, had been employed with private respondent for four (4) continuous years or eight (8) semesters while the other five (5) petitioners were on their sixth semester or three (3) years of teaching had they not been illegally dismissed by private respondent.

On November 5, 2009, Professor Moira Uy, private respondent's level II Coordinator informed petitioners about an order coming from private respondent's management that the former should no longer be given any teaching load because all of petitioners reached their fifth (5th) semester of teaching already and if they are allowed one more semester to teach, private respondent would be forced to recognize them as regular employees. Professor Uy emphasized that management will not entertain any appeal because it is the final decision on the matter. Petitioners contended that they would have attained the status of regular employment if they were allowed to teach in the second semester of academic year 2009-2010; that they are all qualified to become regular teachers/instructors because they all have masteral degrees in nursing; and that their teaching performance was outstanding because they constantly received almost perfect ratings. Hence, petitioners filed a complaint for illegal dismissal with the Labor Arbiter, praying for reinstatement, payment of full backwages, damages and attorney's fees.

Private respondent's version of the facts, states:

In the second semester of academic year 2009-2010, petitioners were no longer hired as teachers/instructors because the number of enrollees for the nursing course of FEU-IN declined. Private respondent emphasized that petitioners were contractual employees who failed to complete the six (6) consecutive semesters required in order for a teacher/instructor to be considered as permanent; that petitioners were aware of their status as contractual

employees and they demanded the return of their retirement fund contributions; and that private respondent prayed for the dismissal of petitioners' complaint and their money claims.

On June 2, 2010, Labor Arbiter Ariel Cadiente Santos rendered a decision[4] dismissing petitioners' complaint for illegal dismissal.

Petitioners filed with the NLRC a Memorandum of Appeal[5] dated July 13, 2010. In a Decision dated October 29, 2010, the NLRC reversed and set aside the decision of the Labor Arbiter, the dispositive portion of which reads:

“WHEREFORE, premises considered, the DECISION is REVERSED and Respondents are ordered to IMMEDIATELY REINSTATE the Complainants to their work without loss of seniority rights and other privileges. Respondents are also ordered to pay Complainants their full backwages in the amount of P4,220,988.60 per attached Computation, damages of P30,000.00 each and 10% attorney's fees.

SO ORDERED.”[6]

Pursuant to the aforementioned decision, petitioner filed a Motion for Issuance of Partial Writ of Execution[7] and another Reiterative Motion for Issuance of Partial Writ of Execution⁸ which was not acted upon.

Private respondent filed a Motion for Reconsideration[9] dated November 30, 2010 and a Supplement to Motion for Reconsideration[10] dated January 26, 2011. Petitioners filed a Comment/Opposition[11] on the said motion for reconsideration on December 16, 2010.

On April 29, 2011, the NLRC issued a Resolution[12], the dispositive portion of which reads:

“WHEREFORE, finding the instant Motion for Reconsideration to be in compliance with form and substance the same is hereby GRANTED and OUR assailed Decsicion promulgated on October 29, 2010 is hereby REVERSED AND SET ASIDE, reinstating in toto the Decision of Labor Arbiter Ariel Cadiente Santos.

SO ORDERED.”[13]

Hence, petitioners filed the instant petition on the followinghg ground:

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REVERSED AND SET ASIDE ITS DECISION DATED OCTOBER 29, 2010 AND REINSTATING IN TOTO THE DECISION OF LABOR ARBITER ARNEL CADIENTE SANTOS.

Petitioners contend that they would have become regular employees of private respondent had they been allowed to teach in the second semester of academic year 2009-2010; that they were dismissed in order to prevent them from attaining regular status as private respondent's teachers/instructors; and that they are entitled to reinstatement without loss of seniority rights and other privileges, full backwages, damages and attorney's fees.

The petition is bereft of merit.

“Academic personnel”[14] in private schools, colleges and universities are governed by the 1992 Revised Manual of Regulations for Private Schools, Eighth (8th) Edition (DECS Order No. 92-92 dated August 10, 1992)[15] which provides:

Section 91. Employment Contract. Every contract of employment shall specify the designation, qualification, salary rate, the period and nature of service and its date of effectivity, and such terms and conditions of employment as may be consistent with laws and the rules, regulations and standards of the school. A copy of the contract shall be furnished the personnel concerned.

Section 92. Probationary Period. - Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis.

Section 93. Regular or Permanent Status. – Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

In *University of Sto. Tomas vs. NLRC*,^[16] the Supreme Court ruled that for a private school teacher to acquire permanent status in employment, the following requisites must concur: 1) the teacher is a full-time teacher; 2) the teacher must have rendered three (3) consecutive years of service; and 3) such service must have been satisfactory.

Thus, it is only after one has satisfactorily completed the probationary period of three (3) consecutive school years and is rehired that a teacher acquires full tenure as a regular or permanent employee.^[17] Accordingly, no vested right to a permanent appointment shall accrue until the teacher or employee has completed the requisite three-year period necessary for the acquisition of a permanent status.^[18]

The common practice is for the employer and the teacher to enter into a contract, effective for one school year. At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year –since it would be the third school year – of probationary employment. At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation. Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract. It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status.^[19]

Furthermore, it is important that the contract of probationary employment specify the period or term of effectivity. The failure to stipulate its precise duration could lead to the inference that the contract is binding for the full three-year probationary period.^[20]

All this does not mean that academic personnel cannot acquire permanent employment status earlier than after the lapse of three years. The period of probation may be reduced if the employer, convinced of the fitness and efficiency of a probationary employee, voluntarily extends a permanent appointment even before the three-year period ends. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground; or, a shorter probationary period may be incorporated in a collective bargaining agreement. But absent any circumstances, which may unmistakably show that an abbreviated probationary period has been agreed upon, the three-year probationary period governs.^[21]

In the case at bar, the labor arbiter was correct in ruling that none of petitioners qualified as regular teachers of private respondent. Petitioners argued that five of them rendered at least five (5) years of teaching for private respondent. There was no evidence shown by petitioners however, that they have rendered at least three (3) years

of service as full-time teachers and with satisfactory ratings. The mere rendition of service for three consecutive years does not automatically ripen into a permanent appointment. It is necessary that petitioners are full-time teachers, and that their services are satisfactory.

Significantly, the drop in private respondent's enrollment was clearly established. The enrollment statistics from year 2005 up to 2010 was laid down in Annex "51".[22] Thus, private respondent cannot be faulted from not renewing petitioners' teaching contracts. As previously discussed, contracts of employment of probationary teachers are generally on a school year or term basis. Once a period, semester, or school term ends, there is no obligation on the part of the school to renew the contract of employment for the next period, semester or term. Likewise, there is no obligation on the part of the school to give teaching load to a probationary teacher whose contract has not been renewed.

It must further be borne in mind that a school enjoys academic freedom, a guarantee that enjoys protection from the Constitution no less. Section 5(2) Article XIV of the Constitution guarantees all institution of higher learning academic freedom, which includes the right of the school or college to decide and adopt its aims and objectives, and to determine how these objectives can best be attained, free from outside coercion or interference, save possibly when the overriding public welfare calls for some restraint. The essential freedoms subsumed in the term "academic freedom" encompass the freedom of the school or college to determine for itself: 1) who may teach; 2) who may be taught; 3) how the lessons shall be taught; and 4) who may be admitted to study.[23]

In sum, this Court finds no grave abuse of discretion on the part of public respondent in issuing the assailed Resolution dated April 29, 2011 and affirming the ruling that petitioners were not illegally dismissed. As a rule, in certiorari proceedings under Rule 65 of the Rules of Court, as amended this Court does not assess and weigh the sufficiency of evidence upon which the labor arbiter and the public respondent based their conclusions, the query being limited to the determination of whether or not public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision.[24] As an exception to this rule, this Court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.[25]

In this case, the factual issues have already been determined by the labor arbiter and affirmed by respondent NLRC. Indeed, factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are generally accorded not only respect, but even finality, and are binding upon this Court.[26] Further, respondent NLRC was already given the opportunity to review its ruling and correct itself when private respondent filed its motion for reconsideration of respondent NLRC's initial ruling in favor of petitioners. In fact, respondent NLRC granted the motion for reconsideration filed by private respondent, reversed its previous ruling and reinstated the decision of the labor arbiter dismissing the complaint of petitioners. Thus, respondent NLRC had more than one opportunity to resolve the issues of the case and in fact reversed itself upon a reconsideration.[27]

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Tijam, N. G., Chairperson and Lopez, M. V., JJ., concur.

[1] Rollo, pp. 3-44.

[2] Rollo, pp. 45-51.

[3] Rollo, pp. 235-243.

[4] Rollo, pp. 235-243.

[5] Rollo, pp. 245-258.

[6] Rollo, p. 67.

[7] Rollo, pp. 262-264.

[8] Rollo, pp. 265-266.

[9] Rollo, pp. 72-79.

[10] Rollo, pp. 267-269.

[11] Rollo, pp. 271-275.

[12] Rollo, pp. 45-51.

[13] Rollo, p. 51.

[14] Section 4, subsection (m), No. 4(c) of the 1992 Revised Manual of Regulations for Private Schools (8th Edition) reads:

“Section 4. Definition of Terms. – Except as otherwise provided, the terms below shall be construed as follows:

xxx xxx xxx

m) “Members of the school Community” refers to the general membership of every private school established in accordance with law and duly authorized by the Department to operate certain educational programs or courses. The term includes, either singly or collectively, the following:

xxx

4) “School personnel” means the persons, singly or collectively, working in a private school. They are classified as follows:

xxx xxx xxx

c) “Academic Personnel” includes all school personnel who are formally engaged in actual teaching service or in research assignments, either on full-time or part-time basis, as well as those who possess certain prescribed academic functions directly supportive of teaching, such as registrars, librarians, guidance counselors, researchers and other similar persons. They include school officials responsible for academic matters, and may include other school officials. xxx

[15] DECS Order No. 92-92 dated August 10, 1992 was repealed by DEPED Order No. 088-10 in June 24, 2010 or the 2010 Revised Manual of Regulations for Private Schools in Basic Education.

[16] G.R. No. 85519, February 15, 1990.

[17] Magis Young Achievers’ Learning Center vs. Manalo, G.R. No. 178835, February 13, 2009.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Rollo, pp. 397-398.

[23] Mercado vs. AMA Computer College, Paranaque City, Inc., G.R. No. 183572, April 13, 2010.

[24] Danzas Intercontinental, Inc. vs. Daguman, G.R. No. 154368, April 15, 2005.

[25] Ibid.

[26] Hypte R. Aujero vs. Philippine Communications Satellite Corporation, G.R. No. 193484, January 18, 2012.

[27] Jennifer Abraham vs. National Labor Relations Commission, Philippine Institute of Technical Education (PITE) and School Administrator Jaime Magnanao, G.R. No. 143823, March 6, 2001.

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