

LEILANI C. SAGER, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, UNIVERSITY OF PERPETUAL HELP SYSTEM DALTA-CALAMBA CAMPUS/COL. ANTONIO LAPERAL TAMAYO, RESPONDENTS.

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed by petitioner Leilani C. Sager, which seeks to reverse and set aside the Decision and the Resolution[1] dated October 23, 2013, of public respondent National Labor Relations Commission (NLRC), Second Division, in NLRC-LAC Case No. 05-001542-13 (NLRC-RAB IV Case 08-01213-11-L).

The undisputed facts of the case from which the present action arose show that petitioner Leilani C. Sager was employed by private respondent University of Perpetual Help System Dalta-Calamba Campus on June 9, 2003 as Clinical Instructor, teaching several major subjects to nursing students. On May 31, 2011, petitioner was served with a notice of non-renewal of her employment contract, which reads, as follows:[2]

Date: 31 May 2011

To: Ms. Leilani C. Sager
B23 L6 Dumaguete St.,
Biñan, Laguna

From: University of Perpetual Help Systems Data

In order to implement some measure of staffing flexibility consistent with the University of Perpetual Help Systems Dalta's priorities, we have been constrained to realign our budgetary requirements, in order to make optimum use of our limited resources.

In this connection and as part of its streamlining program, the School has decided, after a thorough and an exhaustive study, to end your contract as a last recourse. With this endeavor, it is envisioned that a more efficient and effective service will be accorded to our students.

With this, we regret to inform you that management is constrained to end your services effective May 31, 2011. Please be assured that you shall be receiving your final pay as mandated under the law, as follows:

1) Prorated 13[th] month pay 2) Tax Refund

We would like to take this opportunity to acknowledge and express our sincerest gratitude to you for your valued support you have extended to the University of Perpetual Help Systems Dalta. We wish you good luck in your future endeavors.

Please be guided accordingly.

DR. ARNALDO S. DE GUZMAN

School Director

Aggrieved, petitioner filed against private respondents University of Perpetual Help System Dalta-Calamba Campus/Col. Antonio Laperal Tamayo, a complaint for illegal dismissal, non-payment of the last salary, non-payment of service incentive leave (SIL), underpayment of prior 13th month pay and non-payment of the proportionate 13th month pay corresponding to January up to May 2011, moral and exemplary damages and attorney's fees.

In her Position Paper[3], petitioner claimed that she is a regular employee and stressed that her dismissal was effected without just cause and in violation of her right to due process. Petitioner also demanded payment of her last salary from May 16 to 31, 2011 amounting to Php 15, 647.00 and service incentive leave which private respondents allegedly failed to pay since the start of her employment. In addition, petitioner claimed entitlement to moral and exemplary damages as well as the proportionate amount of 13th month pay corresponding to January up to May 2011.

On the other hand, private respondents, in their Position Paper[4], argued that private respondent school is the sole previous employer of petitioner. Thus, private respondent Antonio Laperal Tamayo, must be dropped as co-respondent since he is not a proper party-in-interest in this case. In addition, they alleged that petitioner is a part-time employee and her employment contract was simply not renewed after its expiration due to major financial reverses by reason of the uncontrollable drop in the enrollment of nursing students caused by non-employability of nurses locally and abroad. Stressing that petitioner is only a part-time employee and not a regular employee, private respondents pointed out petitioner's failure to obtain a master's degree in nursing, education, or other allied medical and health sciences in order to qualify as full-time faculty or academic member. They cited relevant provisions under Article V of Republic Act No. 9173, otherwise known as The Philippine Nursing Act of 2002, and CHED Memo Order (CMO) No. 5 Series of 2008 and Manual Regulations for Private Higher Education of 2008 (MORPHE 2008), as basis for their contention. Private respondents alleged that since petitioner is merely a part-time instructor, hence, she is not entitled to separation pay upon non-renewal of her part-time employment contract. Lastly, it is private respondents' assertion that they shall not be held liable for moral and exemplary damages because petitioner's termination was effected not in bad faith but based purely on management prerogative.

After considering the pleadings and supporting evidence of both parties, on January 30, 2013 Labor Arbiter Michaela A. Lontoc rendered a Decision[5], dismissing the complaint for illegal dismissal and claims for separation pay and backwages. The Labor Arbiter also denied the claims for 13th month pay and service incentive leave pay differentials, unpaid vacation/sick leave, moral and exemplary damages, and attorney's fees. With respect to petitioner's claim on the still unreleased monetary benefits, the Labor Arbiter ordered the payment of the same. The dispositive portion of the said Decision reads, as follows:[6]

WHEREFORE, the complaint for illegal dismissal and claims for separation pay and backwages are DISMISSED for lack of merit. The claims for 13th month pay and service incentive leave pay differentials, allegedly unpaid sick/vacation leave, stale checks and tax refund are DENIED for failure of complainants to substantiate the same. The claim for allegedly unpaid 13th month pay and service incentive leave pay is DENIED pursuant to Section 12, Rule V of the 2011 NLRC Rules of Procedure. Respondent School is, however, directed to release to the following complainants their still unreleased monetary benefits:

- 1) Cindy Capino – P40,567.65;
- 2) Romel Reyes – P5,544.00;
- 3) Zaldy Basañes – P15,285.69; and
- 4) Edmund Zuasola – P15,622.39.

Respondent School is further directed to issue to individual complainants a certificate of employment upon their written request therefor.

The claims for moral, exemplary damages and attorney's fee are DENIED for lack of legal and factual basis.

SO DECIDED.

On April 24, 2013, petitioner appealed the decision to the NLRC[7]. On August 23, 2013, Presiding Commissioner Raul T. Aquino rendered a Decision[8], modifying the above-cited decision, the dispositive portion of which reads, as follows:[9]

WHEREFORE, premises considered, the appealed Decision is hereby, AFFIRMED with MODIFICATION. Directing respondents to pay complainant Leilani Sager the amount of P48,295.61 representing her 13th month pay, last pay and tax refund.

The rest of the decision STANDS.

SO ORDERED.

On September 9, 2013, petitioner filed a Motion for Reconsideration,[10] which motion was, however, denied in the assailed Resolution[11] dated October 23, 2013.

Aggrieved, petitioner filed the instant petition, premised on the following grounds[12], to wit:

I.

THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONER'S EMPLOYMENT WAS LEGALLY TERMINATED; and

II.

THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PRIVATE PRIVATE RESPONDENTS HAVE VALID GROUND TO TERMINATE PETITIONER'S EMPLOYMENT CONTRACT.

Petitioner contends that she has become a regular employee of private respondent school, stressing that her services as a college professor and teacher of nursing students for almost eight years from June 9, 2003 until May 31, 2011 were necessary and desirable in private respondent school. Being a regular employee, she cannot be dismissed without proper observance of her right to due process as provided under the labor law.

Petitioner also contends that public respondent committed grave error as it failed to consider in its decision the fact that the basis for petitioner's termination, as referred to in the May 31, 2011 letter, was the alleged cost-cutting or budget realignment which private respondents wanted to undertake, and not the failure of petitioner to acquire a master's degree. Considering that the reason for petitioner's dismissal was the alleged cost-cutting or budget realignment, petitioner submits that private respondents failed to substantiate or present any proof of its streamlining program that would justify its valid exercise of management prerogative to terminate petitioner's employment. In line with this, petitioner stressed that the NLRC committed grave abuse of discretion when it affirmed the findings of the Labor Arbiter, as the same are directly inconsistent with the facts and evidence as appearing in the records of the instant case.

We find no merit in the instant petition.

To resolve the issue on the alleged illegal dismissal, it is necessary to settle the question of whether petitioner has attained regular employment status as a faculty or academic personnel. We find relevance to this issue the following provisions of the Manual of Regulations for Private Higher Education (MORPHE):

Section 35. Minimum Faculty Qualifications. The minimum qualifications of a faculty in higher education institutions shall be as follows:

1.) For undergraduate programs:

(a) Holder of a master's degree, to teach mainly in his/her major field and where applicable, a holder of appropriate professional license requiring at least a bachelor's degree for the professional courses. However, in specific fields where there is dearth of holders of master's degree, a holder of a professional license requiring at least a bachelor's degree may be qualified to teach. Any deviation from this requirement will be subject to regulation by the Commission.

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Section 36. Full-time and Part-time Faculty. As a general rule, all private higher education institutions shall employ full-time faculty or academic personnel consistent with the levels of instruction.

A full-time faculty or academic personnel is one who meets all the following requirements:

Who possesses at least the minimum academic qualifications prescribed under this Manual for all academic personnel;

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Section 118. Regular or Permanent Status. A full-time academic teaching personnel who has satisfactorily completed his/her probationary employment, and who possesses the minimum qualifications required by the Commission and the institution, shall acquire regular or permanent status if he/she is re-hired or re-appointed immediately after the end of his/her probationary employment. However, a regular or permanent academic teaching personnel who requests a teaching load equivalent to a part-time load, shall be considered resigned, and hence, may forfeit his/her regular or permanent status at the discretion of the management of the higher education institution and shall thereby be covered by a term-contract employment.

Under the aforecited rules, in order to be qualified as full-time academic personnel in a private higher education such as private respondent school, one must first obtain a master's degree.

The evidence on record reveals that petitioner does not have the required master's degree to qualify for full-time employment. The NLRC correctly pointed out that petitioner even admitted that she is merely a holder of a bachelor's degree, when she said in her memorandum of appeal that she is taking her master's degree in private respondent school for the purpose of securing such degree.

In addition, it is worth mentioning that, when petitioner signed the Teacher's Contract[13], she was deemed informed of the character of her part-time employment and to have signified that she subjected herself to the provisions of MORPHE. As held in *Herrera-Manaois vs. St. Scholastica's College*[14]:

"...private educational institutions in the tertiary level may extend "full-time faculty" status only to those who possess, inter alia, a master's degree in the field of study that will be taught. This minimum requirement is neither subject to the prerogative of the school nor to the agreement between the parties. For all intents and purposes, this qualification must be deemed impliedly written in the employment contracts between private educational institutions and prospective faculty members."

Since petitioner failed to satisfy the academic requirements for full-time employment, she may only be considered

a part-time academic personnel in private respondent school, despite the fact that she has been teaching there for almost eight years.

In line with the foregoing disquisition, we agree with the NLRC as it ruled that petitioner was not illegally dismissed. Petitioner cannot simply invoke lack of due process to justify her charge of illegal dismissal, because her employment contract was simply not renewed after its expiration. As previously held, a part-time teacher cannot acquire permanent status. Only when one has served as a full-time teacher can he acquire permanent or regular status. As a part-time lecturer, her employment as such ended when her contract expired.[15]

Accordingly, we sustain the ruling of the NLRC, which affirmed the Labor Arbiter's finding, as follows:[16]

Thus, as aptly stated by the Labor Arbiter “when respondent school decided not to renew the employment contracts of temporary, part-time teachers in May 2011, as part of its cost-cutting measures”, the complainant-appellant's failure “to submit the requisite documents to prove (her) qualification, (her) status did not ripen to a full-time, probationary employee. Xxx. Accordingly, their (including complainant-appellant Sager) expired at the end of each semester as reflected in their respective contracts, without any duty on the part of respondent school to give prior notice (Records, pp. 402-403). Clearly, no illegal dismissal is obtaining in this case.

Contrary to petitioner's assertion that the decision of the NLRC should be reversed on the ground that private respondents failed to present proof of its streamlining program that would justify the termination of petitioner's employment, we rule that such proof is not necessary because it is not the duty of private respondent school to renew her contract upon its expiration. Private respondent school merely exercised its prerogative not to rehire petitioner upon the expiration of her employment contract due to financial reverses.

We disagree with petitioner's claim that the NLRC committed grave abuse of discretion in rendering its decision. Petitioner failed to discharge the burden of proving its case with clear and convincing evidence. As held in *Purefoods Corporation vs. Nagkakaisang Manggagawa ng Purefoods Rank-and-file*[17]:

The Court reiterates that the petition for certiorari under Rule 65 of the Rules of Court filed with the CA will prosper only if there is clear showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of the NLRC. It was incumbent, then, for petitioner to prove before the appellate court that the labor commission capriciously and whimsically exercised its judgment tantamount to lack of jurisdiction, or that it exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and that its abuse of discretion is so patent and gross as to amount to an evasion of a positive duty enjoined or to act at all in contemplation of law.

In *Philippine Airlines vs. Tongson*, the Supreme Court held:[18]

It is axiomatic that factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. As long as the Decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties before them, all that is left is the Court's stamp of finality by affirming the factual findings made by the NLRC and the Labor Arbiter.

In this case, the factual findings of the Labor Arbiter and the NLRC are consistent with each other, that petitioner was not illegally dismissed from employment. It is presumed that both the Labor Arbiter and the NLRC considered the arguments and evidence presented by the parties in rendering their decision, and we see no compelling reason to reverse the same.

In view of the foregoing conclusion, there is no basis to discuss further petitioners' claim for reinstatement, full

backwages, damages and attorney's fees.

WHEREFORE, the instant petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

Baltazar-Padilla, P.J., and Inting, S.B., JJ., concur.

[1] Id. at 22-24.

[2] Id. at 205.

[3] Id. at 189-194.

[4] Id. at 118-146.

[5] Id. at 54-70.

[6] Id. at 69-70.

[7] Id. at 39-51.

[8] Id. at 26-38.

[9] Id. at 37-38.

[10] Id. at 107-117.

[11] Id. at 22-24.

[12] Id. at 9.

[13] See note 1, at 197-199.

[14] G.R. No. 188914, December 11, 2013.

[15] Id.

[16] See note 1, at 35.

[17] 563 SCRA 471, 479-480 (2008).

[18] 413 SCRA 344, 351 (2003).

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