

**FELIX MONTEMAYOR, PETITIONER, VS. ARANETA UNIVERSITY FOUNDATION, JUAN SALCEDO, JR., TOMAS DAVID, MARTIN CELINO, MARCELO AMIANA, AS MEMBERS OF THE PANEL OF INVESTIGATORS, MEMBERS...**

*G.R. No. L-44251. May 31, 1977*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

The protection to labor mandate is more of a reality with the present Constitution expressly providing for security of tenure.[1] Moreover, for a university professor, aptly referred to as a tiller in the vineyard of the mind, there is the guarantee of academic freedom.[2] Nonetheless, for cause duly shown, there may be a forced termination of his services. It is essential though that prior to his removal, procedural due process be observed. The grievance alleged by petitioner in this case, a university professor, was that there was a failure to comply with such a requisite. When therefore respondent Secretary of Labor granted a clearance to the private respondent, the Araneta University Foundation,[3] for his dismissal for immorality, he instituted this certiorari proceeding. A thorough and exhaustive comment, considered as the answer, filed by Solicitor General Estelito P. Mendoza[4] with full support from the record, negates such a contention. There is no basis for a reversal. Certiorari does not lie.

It is undisputed that petitioner Felix Montemayor was a full-time professor of respondent Araneta University Foundation, serving as head of its Humanities and Psychology Department. Previously, he was on the faculty of other educational institutions. There was, on April 17, 1974, a complaint for immorality lodged against him by the Chaplain of the Araneta University Foundation for alleged immorality. Its then President, Dr. Juan Salcedo, Jr., created a committee to investigate such charge. The first hearing, which took place on April 24, 1974, was attended by petitioner as well as complainant with his two witnesses. One of them, Leonardo de Lara, submitted an affidavit. Petitioner sought the postponement of the investigation to May 3, 1974. It was granted. On that occasion, he was furnished a copy of the affidavit of the other witness, Macario Lacanilao. The accusation centered on conversations on sex and immoral advances committed against the person of Leonardo de Lara. There was cross-examination by petitioner of the witnesses against him. With the assistance of counsel, he filed on May 28, 1974 a motion to dismiss or to hold the hearing in abeyance. He likewise filed an affidavit to sustain his defense on June 17, 1974. The report and recommendation of the investigating committee came on July 8, 1974. It was adverse to petitioner, who was found morally responsible for the act complained of. The recommendation was for his demotion in rank by one degree. The then President Juan Salcedo, Jr., on August 5, 1974, adopted such recommendation and thereafter referred the same to the Board of Trustees of private respondent for appropriate action. Subsequently, on November 8, 1974, with new charges being filed by Professor Luis R. Almazan, one Jaime Castañeda, and Jesus Martinez against petitioner for conduct unbecoming of a faculty member, another committee was appointed. Then came his preventive suspension, ordered to last until the administrative investigation was concluded. There was a motion by petitioner for the postponement of the hearing

set for November 18 and 19, 1974, but the same was denied. The hearing proceeded in his absence. There was testimony by Professor Luis Almazan and Jaime Castañeda. Thereafter, on December 5, 1974, the Committee submitted its report finding the charges against petitioner to have been sufficiently established and recommending to the President and the Board of Trustees of the Araneta University Foundation his separation from the University, in accordance with Sections 116 and 351 of the Manual of Policies of the University. The Committee found as established: "1. That immoral advances on several occasions have been made by respondent [herein petitioner] on Prof. Luis Almazan; 2. That immoral advances have also been made by respondent on Jaime Castañeda, a student-employee of the University on several occasions; 3. That said immoral advances were frustrated because both Professor Almazan and Mr. Castañeda had refused to accept them; 4. That both witnesses and victims of said immoral advances have declared that the behavior of respondent was detrimental [and] prejudicial to the moral and educational standards of the Araneta University Foundation; 5. That because of said behavior, respondent should not continue as Professor in the University; and 6. That the acts of respondent complained of are offensive to good morals [and] inimical to the welfare of students and greatly prejudicial to [the] interest and educational objectives of the University, hence the same are highly reprehensible." [5] His dismissal was then ordered on December 10, 1974, effective November 15, 1974, the date of his preventive suspension. The University, on December 12, 1974, filed with the National Labor Relations Commission a report of his suspension and application for clearance to terminate his employment. Meanwhile, on November 21, 1974, petitioner in turn lodged a complaint with the National Labor Relations Commission against private respondents for reinstatement and payment of back wages and salaries, with all the privileges, benefits and increments attendant thereto. There was a motion to dismiss on the part of the latter. Both the labor arbiter and the National Labor Relations Commission found in favor of petitioner. He was ordered reinstated to his former position with back wages and without loss of seniority and other privileges. Petitioner's complaint for unfair labor practice was, however, dismissed. Private respondents appealed to respondent Secretary of Labor who, on July 14, 1976, set aside the Commission's order for his reinstatement. He found petitioner's dismissal justified. Nor was he persuaded by the plea that there was denial of due process. He was satisfied with the procedure followed by private respondent. Moreover, he could not have ignored the fact that the controversy between the parties was passed upon and the parties heard on their respective contentions in the proceedings before the labor agencies. Respondent University was however, required to pay complainant the amount of P14,480.00 representing the latter's accrued back wages which the former voluntarily offered to extend him. Dissatisfied with the Secretary's decision, petitioner filed this instant petition for certiorari.

1. The present Constitution, as noted, expanded the scope of the protection to labor mandate by specifying that the State shall assure the right of workers to security of tenure. This Court, as stressed in *Philippine Air Lines, Inc. v. Philippine Air Lines Employees Association* [6] is called upon to manifest "fealty to a constitutional command." [7] Subsequently, in *Almira v. B. F. Goodrich Philippines*, [8] it was the ruling of this Tribunal that even where disciplinary action against an employee is warranted, "where a penalty less punitive [than dismissal] would suffice, whatever missteps may be committed ought not to be visited with a consequence so severe." [9] An instructor or member of a teaching staff of a university was held, in the leading case of *Feati University V. Bautista*, [10] to be an employee. As such, he is entitled to that security of tenure guaranteed by the Constitution. The explicit pronouncement in *Feati University v. Bautista* was foreshadowed by *Far Eastern University v. Court of Industrial Relations*, [11] a 1962 decision. While a faculty member such as petitioner maybe dismissed, it must be for cause. What is more, there must be clearance from the Secretary of Labor. So it is provided in the Labor Code. [12]

2. The stand taken by petitioner as to his being entitled to security of tenure is reinforced by the provision on academic freedom which, as noted, is found in the Constitution. While reference therein is to institutions of higher

learning, it was pointed out in *Garcia v. The Faculty Admission Committee*[13] that academic freedom "is more often identified with the right of a faculty member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event that his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments. For the sociologist, Robert MacIver, it is 'a right claimed by the accredited educator, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation, or penalization because these conclusions are unacceptable to some constituted authority within or beyond the institution.'"[14] Tenure, according to him, is of the essence of such freedom. For him, without tenure that assures a faculty member "against dismissal or professional penalization on grounds other than professional incompetence or conduct that in the judgment of his colleagues renders him unfit" for membership in the faculty, the academic right becomes non-existent.[15] Security of tenure, for another scholar, Lovejoy, is "the chief practical requisite for academic freedom" of a university professor.[16] As with MacIver, he did not rule out removal but only "for some grave cause," identified by him as "proved incompetence or moral delinquency." [17]

3. The charge leveled against petitioner, that of making homosexual advances to certain individuals, if proved, did amount to a sufficient cause for removal. The crucial question therefore is whether it was shown that he was guilty of such immoral conduct. He is thus entitled to the protection of procedural due process. To paraphrase Webster, there must be a hearing before condemnation, with the investigation to proceed in an orderly manner, and judgment to be rendered only after such inquiry. As far back as 1915, the American Association of University Professors adopted the principle that "every university or college teacher should be entitled before dismissal or demotion, to have the charges against him stated in writing, in specific terms and to have a fair trial on these charges before a special or permanent judicial committee of the faculty or by the faculty at large. At such trial the teacher accused should have full opportunity to present evidence." [18] Thus the phrase, academic due process, has gained currency. Joughin referred to it as a system of procedure designed to yield the best possible judgment when an adverse decision against a professor may be the consequence with stress on the clear, orderly, and fair way of reaching a conclusion.[19]

4. The procedure followed in the first investigation of petitioner, conducted in June of 1974, did satisfy the procedural due process requisite. The same cannot be said of the November, 1974 inquiry when the petitioner had to face anew a similar charge of making homosexual advances. As admitted in the exhaustive comment of the Solicitor General: "On November 16, 1974, Montemayor, through counsel, moved for the postponement of the hearing set for November 18 and 19, 1974 but the same was rejected by the committee. The hearing proceeded as scheduled in the absence of Professor Montemayor and his counsel. In said hearing, Prof. Luis Almazan and Jaime Castañeda testified. On December 5, 1974, the Committee submitted its report finding the charges against Montemayor to have been sufficiently established and recommending to the President and the Board of Trustees of the Araneta University Foundation his separation from the University, in accordance with Sections 116 and 351 of the Manual of Policies of the University." [20] It does appear therefore that the members of such investigating committee failed to show full awareness of the demands of procedural due process. A motion by petitioner for postponement of the hearing, apparently the first one made; was denied. What is worse, in his absence the matter was heard with the committee losing no time in submitting its report, finding the charges against petitioner to have been sufficiently established and recommending his removal. If that were all, respondent Secretary of Labor cannot be sustained. Certiorari would lie. But such deficiency was remedied, as pointed out in the same comment of the Solicitor General, by the fact "that petitioner was able to present his case before the Labor Commission." [21] Then he continued: "Thus, the record discloses that at a mediation conference held on December 9, 1974, the parties appeared and, after all efforts at conciliation had failed, they agreed to submit their

dispute for compulsory arbitration. Several hearings were conducted by Labor Arbiter Atty. Daniel Lucas, Jr., wherein petitioner submitted his evidence supported by his affidavit impugning the regularity of the proceedings before the investigating committees and assailing the legality of his removal. The entire record of the administrative proceedings, including the transcript of the stenographic notes taken therein, was elevated to the Labor Commission for review. Petitioner herein, thru counsel, moved for reinstatement during the pendency of the case. In another motion, he prayed for the consolidation and joint hearing of his complaint for unfair labor practice against herein private respondents (NLRC Case No. R-IV-1060-74) with that of the application for clearance filed by the University to terminate Montemayor's employment. On the other hand, the University moved to dismiss the complaint for unfair labor practice against its officials on the ground that they were not complainant's employers and that their participation in the administrative case against the latter was official in nature. Respondent University also presented the affidavit of Thomas P. G. Neill, Dean of the Institute of Agricultural Business Administration and Chairman of the Committee created to investigate the charges of immorality against petitioner attesting to the regularity of the proceedings and the validity of the dismissal."<sup>[22]</sup> The legal aspect as to the procedural due process having been satisfied was then summarized by the Solicitor General thus: "All the foregoing clearly shows that petitioner was afforded his day in court. Finally, and more significant, is the fact that petitioner claims denial of due process in the proceeding had before the investigating committees and not in the proceedings before the NLRC wherein, as shown heretofore, he was given the fullest opportunity to present his case."<sup>[23]</sup>

5. The comment of the Solicitor General was submitted on January 4, 1977. The memorandum for petitioner was submitted on April 25. What immediately calls attention is that no attempt was made to refute specifically such recital of the Solicitor General, of decisive significance as far as the due process issue is concerned. Instead, the emphasis was on the alleged commission of an unfair labor practice by private respondent. Inasmuch as the Arbiter as well as the National Labor Relations Commission absolved private respondent from the charge of unfair labor practice, it would appear that the emphasis of counsel for petitioner was misplaced. Accordingly, there is nothing in the record that would militate against the contention of the Solicitor General that there was an observance of procedural due process.

WHEREFORE, the petition for certiorari is dismissed. No costs.

Barredo, Antonio, Aquino, and Martin, JJ., concur.

Concepcion, Jr., J., on leave.

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[1] According to Article II, section 9 of the Constitution: "The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."

[2] According to Article XV, section 8, par. (2) of the Constitution: "All institutions of higher learning shall enjoy academic freedom."

[3] The other private respondents are Juan Salcedo, Jr., Tomas David, Martin Celino, Marcelo Amiana, as members of the panel of investigators, members of the Board of Trustees, and Fr. Romeo Pelayo.

[4] He was assisted by Assistant Solicitor General Reynato S. Puno and Solicitor Jesus V. Diaz.

[5] Comment of the Solicitor General, 3-4.

[6] L-24626, June 28, 1974, 57 SCRA 489.

[7] Ibid, 496.

[8] L-34974, July 25, 1974, 58 SCRA 120.

[9] Ibid, 131. Cf. Biboso v. Victorias Milling Co., L-44360, March 31, 1977.

[10] L-21278, December 27, 1966, 18 SCRA 1191, per Zaldivar, J.

[11] 116 Phil. 235, per Concepcion, J., later C. J.

[12] According to Article 280 of the Labor Code: "In case of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to payment of back wages computed from the time his compensation was withheld from him up to the time of his reinstatement."

[13] L-40779, November 28, 1975, 68 SCRA 277.

[14] Ibid, 283-284. MacIver's opus is entitled, Academic Freedom in Our Time (1955). The excerpt quoted is found on page 6 of that work.

[15] MacIver, op. cit., 242.

[16] Lovejoy, Academic Freedom, I Encyclopedia of Social Sciences 384, 386 (1929).

[17] Ibid.

[18] Ibid.

[19] Cf. Loughin, Academic Due Process, in Baade and Everett, eds., Academic Freedom, 143-171 (1964).

[20] Comment of the Solicitor General, 3.

[21] Ibid, 10.

[22] Ibid, 11-12.

[23] Ibid, 12.

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