

ATTY. SERAFIN LOPEZ, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION SEVENTH DIVISION, CEBU CITY AND MOUNT CARMEL COLLEGE, REPRESENTED BY FR. CLYDE C. SALITRERO, SCHOOL...

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Decision[2] promulgated on June 14, 2013 of the National Labor Relations Commission (NLRC) Seventh (7[th]) Division, Cebu City, as well as the Resolution[3] of the same NLRC dated September 30, 2013 in NLRC Case No. VAC-04-000176-2013 which denied the Motion for Reconsideration[4] of herein petitioner.

The Antecedents

Version of the Petitioner[5]

Petitioner Atty. Serafin Lopez, Jr. alleged that he was employed as a teacher by the private respondent Mount Carmel College, without interruption since July 1, 2005.

On May 29, 2012, private respondent through the College Dean Fr. Gabriel Dolotina orally informed petitioner that he would no longer have teaching loads effective June 1, 2012.

On June 13, 2012, the Bachelor of Arts Program Coordinator John Cris Pacto, upon inquiry, also orally informed petitioner that he will not have any teaching load effective the first semester of school year 2012-2013.

On June 18, 2012, the Bookkeeper and Payroll In-charge Noel Montebon hinted petitioner that he is no longer included in the payroll of the private respondent school effective June 2012.

Due to these circumstances, petitioner wrote the School President Fr. Clyde C. Salitrero. In his letter, petitioner complained to the School President that he was illegally dismissed and thus, demanded for his separation pay. However, in a Reply-Letter, Fr. Clyde C. Salitrero sustained the termination of the petitioner and also denied his claim for separation pay and other benefits. The School President explained that petitioner could not be given any teaching load because the latter failed to submit a Letter of Intent.

On this issue, petitioner insisted that he was able to submit a letter through the Dean, as advised by the School President himself. In the said letter, petitioner expressed his desire to continue teaching with a request for authority/allowance to practice law by rearranging his subjects, as suggested by the Dean.

Subsequently, petitioner was constrained to file a Complaint with the Department of Labor and Employment (DOLE), Bacolod City.

Version of the Private Respondent[6]

Private respondent posited that petitioner was hired as a part-time teacher from June 2004 to March 2005.

Pursuant to the guidelines imposed by the Commission on Higher Education (CHED), particularly on the minimum academic qualifications of academic teaching personnel, petitioner was on probationary employment for six (6) consecutive semesters or starting school year 2005-2006 until school year 2007-2008. Thus, in 2008, petitioner finished his probationary employment; but, he still failed to meet the minimum academic qualifications for academic teaching personnel in the undergraduate programs, which among others include the acquisition of a masteral degree in relation to the field or subject assigned thereto, as set forth in Sections 35 and 36 of the Manual of Regulations for Private Higher Education of 2008.

In the succeeding years, the petitioner and the private respondent entered into a Contract of Employment. For school year 2011-2012, petitioner was given an employment contract which starts at June 1, 2011 and ends at May 31, 2012.

Private respondent also extends educational loans to its teachers in pursuit of higher learning or career advancement. Petitioner availed of this privilege and studied Bachelor of Laws at the University of Negros Occidental. In view thereof, petitioner incurred a monetary obligation to the private respondent in the amount of P24,196.00.

Petitioner was among the successful examinees who passed the 2011 BAR examinations. A few weeks thereafter, petitioner intimated to the private respondent school his desire to teach on a part-time basis in the next school year of 2012-2013, as he will devote his time to practice law. In petitioner's letter addressed to the school, the latter asked that he be allowed to handle related subjects everyday, starting 5:00 o'clock in the afternoon and to practice his law profession.

Private respondent accommodated the request of herein petitioner; hence, it was surprised when it received a letter from the petitioner alleging that he was illegally dismissed and thus entitled to separation pay.

The Ruling of the Labor Arbiter

In a Decision[7] dated February 25, 2013, Labor Arbiter Jessie G. Sullano ruled that petitioner was a regular employee. However, as to the aspect of dismissal, the labor arbiter posited that there was no illegal termination to speak of, as petitioner was merely informed that he will not be given his regular teaching load as he requested to be on a part-time basis. The decretal portion of the decision states:

"WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant case for Illegal dismissal against respondent Mount Carmel College, Inc., for lack of merit.

All other claims are hereby denied for want of evidence.

SO ORDERED."[8]

The Ruling of the National Labor Relations Commission

In its assailed Decision[9] promulgated on June 14, 2013, the National Labor Relations Commission affirmed the findings of the Labor Arbiter. The dispositive portion of the decision reads, to wit:

WHEREFORE, premises considered, the Decision of Labor Arbiter Jessie G. Sullano, dated 25 February 2013, is hereby AFFIRMED.

SO ORDERED.[10]

Aggrieved, petitioner then filed a Motion for Reconsideration.[11] However, such motion was also denied by the NLRC in a Resolution[12] dated September 30, 2013.

Undeterred, petitioner comes before Us raising the sole issue, to wit:

Public respondent NATIONAL LABOR RELATIONS COMMISSION SEVENTH DIVISION had acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction (Rule 65, Sec. 1 of the Rules of Court) and there is no appeal or plain or speedy and adequate remedy in the ordinary course of law in issuing the said disputed DECISION and RESOLUTION. Such DECISION and RESOLUTION must be annulled or modified and petitioner must be granted incidental reliefs as law and justice may require.

The Ruling of this Court

The petition is not meritorious.

At the crux of the present controversy is the determination of whether or not petitioner was illegally dismissed by the private respondent.

To begin with, it must be borne in mind that (f)actual 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 bind us when supported by substantial evidence.[13]

Applying the aforecited tenet, We do not find any reason to depart from the findings of the lower tribunals especially since petitioner substantially failed to prove his allegation of dismissal.

It bears stressing that substantial evidence is more than a mere scintilla. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[14]

Moreover, before the burden of proof shifts to the employer to prove the validity of the employee's dismissal, the employee must first sufficiently establish that he was indeed dismissed from employment.[15]

In the case at bench, facts would reveal that petitioner, after passing the BAR examinations, wrote a letter addressed to the private respondent school disclosing his desire to handle subjects starting 5:00 o'clock in the afternoon and to practice his new profession. Salient portions of the letter read as follows:

x x x

Sir:

Kindly be informed that I will continue working with Mount Carmel College.

However, inasmuch as I took and passed the 2011 Bar Examinations, I would like to request that I be allowed to handle related subjects starting 5PM daily and to practice law.

Your indulgence is highly appreciated.

Truly yours,

SERAFIN P. LOPEZ JR.
College Instructor[16]

Indeed, it is evident from the letter that although petitioner expressed his intention to continue teaching, this intent must also be understood in conjunction with his request to teach related subjects beginning 5:00 o'clock in the afternoon and his desire to practice law. Certainly, with the tenor of his request, it can be logically construed that petitioner intends to teach on a part-time basis. Hence, as a natural consequence thereof, he was not given his regular teaching load.

In his last foray to buttress his claim of illegal dismissal and to disparage the import of the letter he wrote, petitioner laments that he never intended to teach part-time and that he wrote such a letter only because of the suggestion made by the school officials. We find such reasoning flimsy and weak, in light of the evidence presented and the factual findings of the lower tribunals.

Further, this Court opines that Section 118 of the Manual of Regulations for Private Higher Education issued by the Commission on Higher Education (CHED) finds application in the circumstance elucidated in the instant case. To stress on this matter, Section 118 of the Manual of Regulations for Private Higher Education is hereinunder reproduced as follows:

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 a 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. (emphasis supplied)

Section 118 illustrates a specific situation wherein a regular academic teaching personnel is considered resigned and has forfeited his regular status. This specific instance applies squarely in the present case considering that petitioner voluntarily requested for a teaching load equivalent to a part-time load. Thus, in view of Sec. 118, petitioner was stripped off of his regular status and its corresponding rights to tenure, and by implication is now covered by a term-contract of employment, which unfortunately in this case has already expired.

Furthermore, We also note that the letter-reply sent by the private respondent through Fr. Clyde C. Salitrero to the petitioner shows that the former only acceded to the request made by the petitioner. Pertinent portions of the letter-reply states as follows:

Dear Atty. Lopez,

Being a new lawyer, the school understood your position and decided to respect your decision. Acting in good faith on the basis of your manifestation coupled with the fact that you did not submit the required Letter of Intent (which is supposed to be submitted on February 15, 2012), you were not given a load for this semester. By the non-submission of the LOI, the school was fully convinced of your decision not to teach. It is for this reason alone that you have no load for now.

It is worthy to note at this point that the school merely acted out of consideration of your wishes. x x x.[17]

Hence, based upon the foregoing disquisitions, it is apparent that petitioner was not illegally dismissed, corollary thereto he is not entitled to separation pay and the other monetary benefits he prayed for.

Verily, We cannot also subscribe grave abuse on the part of the NLRC, as it merely acted and appreciated the evidence proffered before it in accordance with the rules and jurisprudence.

Settled is the rule that a court or tribunal may only be considered to have acted in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment, which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[18] Failure to substantiate these requisites, the claim of grave abuse of discretion cannot be upheld.

WHEREFORE, in view of the foregoing, the Petition is DENIED. The assailed Decision and Resolution in NLRC

Case No. VAC-04-000176-2013 of the National Labor Relations Commission (NLRC), Seventh Division, Cebu City, promulgated on June 14, 2013 and September 30, 2013, respectively are hereby AFFIRMED.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] See Petition, rollo, pp. 3-168.

[2] Rollo, pp. 21-29.

[3] Rollo, p. 132.

[4] Rollo, pp. 119-130.

[5] See Petition, Brief Statement of the Case, rollo, pp. 7-8. (Portions are culled therefrom)

[6] See Position Paper (For the Respondent), Statement of the Case, Statement of Facts, rollo, pp. 159-160. (Portions are culled therefrom)

[7] Rollo, pp. 135-145.

[8] Rollo, p. 145.

[9] Rollo, pp. 21-29.

[10] Rollo, p. 28.

[11] Rollo, pp. 119-130.

[12] Rollo, pp. 132.

[13] *New City Builders, Inc. v. NLRC*, G.R. No. 149281, June 15, 2005, citing *Stamford Marketing Corporation, et al. vs. Julian, et al*, G.R. No. 145496, 24 February 2004 citing *Abalos vs. Philex Mining Corporation*, 441 Phils. 386, 395 [2002].

[14] *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, citing *Abosta Shipmanagement Corporation v. National Labor Relations Commission (First Division)*, G.R. No. 163252, July 27, 2011, 654 SCRA 505, 513-514. (emphasis omitted)

[15] *Ledesma, Jr. v. NLRC*, G.R. No. 174585, October 19, 2007.

[16] Refer to the NLRC Decision, rollo, p. 26. (emphasis omitted)

[17] Refer to the Labor Arbiter Decision, rollo, p. 141. (emphasis omitted)

[18] *Santos v. People*, G.R. No. 173176, August 26, 2008.

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