

AMY N. PERILLO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION), COMPUTER COMMUNICATION DEVELOPMENT INSTITUTE, LEGAZPI CITY/RAMON SENERO MORALEDA, RESPONDENTS.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Before the Court is a petition for certiorari under Rule 65, 1997 Rules of Civil Procedure, as amended, assailing the following Decision and Resolution of public respondent National Labor Relations Commission (NLRC) in NLRC LAC No. 05-001628-12:

(1)

Decision dated October 25, 2012[1] which affirmed the labor arbiter's Decision dated April 10, 2012 in NLRC Case No. RAB V 10-00223-11 dismissing petitioner's complaint for constructive dismissal, and

(2)

Resolution dated January 22, 2013[2] which denied petitioner's motion for reconsideration of the Decision dated October 25, 2012.

THE ANTECEDENTS

On June 23, 1997, petitioner Amy N. Perillo was hired as part-time instructor by private respondent Computer Community Development Institute, Legazpi City (private respondent CCDI, for brevity).[3] After completing her probationary period, petitioner became one of private respondent CCDI's full-time instructor, teaching management and computer subjects.[4] She also served as private respondent CCDI's coordinator for the National Service Training Program (NSTP).[5]

According to petitioner, for the first semester of school year 2011-2012, she was assigned to teach Modern Office Management, a three (3)-unit subject only, instead of her usual twenty four (24)-unit load per semester. Then, even before the start of classes, said three (3)-unit subject was dissolved.[6] Petitioner was not given any other teaching assignment. She was also replaced as NSTP coordinator and dropped from the roll of private respondent CCDI's faculty members. At that time, the administrator of private respondent CCDI was private respondent Ramon Senero Moraleda.

However, according to private respondents, petitioner voluntarily resigned when she refused the twenty four (24)-unit teaching load offered to her and accepted only one (1) subject since she was also hired as full-time faculty in Forbes College.[7] The teaching load rejected by petitioner[8] was taken-over by Myra Mella, the person recommended by petitioner as her replacement.[9]

On October 19, 2011, petitioner filed with the labor arbiter a complaint[10] against private respondents CCDI and

Ramon Senero Moraleda for constructive dismissal, praying for payment of full backwages, separation pay, 13[th] month pay, moral and exemplary damages and attorney's fees.[11] Allegedly, petitioner was a full-time and permanent instructor, yet she “was deprived of the twin notice requirement for termination of employment.”[12]

Private respondent CCDI admitted in its position paper[13] that petitioner's 13[th] month pay for the period January 14, 2010 to March 19, 2011 amounting to P7,176.13 remained unpaid, but denied that the latter was constructively dismissed.

As the parties failed to amicably settle, the labor arbiter directed the filing of their respective position papers. On April 10, 2012, the labor arbiter rendered a Decision[14] holding that petitioner was full-time faculty of private respondent CCDI and had not been paid her 13[th] month pay. Nonetheless, the complaint for constructive dismissal was dismissed based on the findings that (i) petitioner never controverted private respondents' evidence showing that she was the one who refused the teaching load offered to her for the first semester of school year 2011-2012 and was only willing to teach one (1) subject at private respondent CCDI, and (ii) petitioner also sought payment of separation pay in lieu of reinstatement. Thus:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING the complaint for constructive dismissal for lack of merit.

However, respondent COMPUTER COMMUNICATION DEVELOPMENT INSTITUTE, LEGAZPI CITY, having admitted liability thereof, is hereby ordered to pay complainant AMY N. PERILLO the amount of Php7,176.13 representing her 13[th] month pay.

SO ORDERED.”[15]

Petitioner filed an appeal[16] before public respondent NLRC. In a Decision dated October 25, 2012, public respondent NLRC affirmed the labor arbiter's dismissal of the complaint. Thus:

“WHEREFORE, premises considered, judgment is hereby rendered DISMISSING this appeal for lack of merit. The decision of the Labor Arbiter dated April 10, 2012 is hereby AFFIRMED.

SO ORDERED.”[17]

Petitioner filed a motion for reconsideration[18] of the Decision dated October 25, 2012. In a Resolution dated January 22, 2013,[19] public respondent NLRC denied the motion for reconsideration “for lack of merit.”[20]

Thereupon, petitioner file the present petition which is premised on the arguments that:

“The petitioner was constructively dismissed by the respondent institution.

x x x

x x x

x x x

The petitioner is entitled to separation pay, backwages, moral and exemplary damages and attorney's fees.”[21]

THE ISSUE

Whether public respondent NLRC gravely abused its discretion in affirming the labor arbiter's dismissal of petitioner's complaint for constructive dismissal.

THE COURT'S RULING

In its Decision dated October 25, 2012, public respondent NLRC affirmed the labor arbiter's dismissal of the complaint for constructive dismissal for the reasons that (i) petitioner must be considered resigned when she refused the full teaching load offered to her by private respondent CCDI; (ii) petitioner's bare claim that she did not refuse the load offered to her cannot prevail over Myra Mella's affidavit declaring that petitioner refused to accept said teaching load because she was already employed full-time by Forbes College; and, (iii) petitioner's acceptance of a teaching post at Forbes College was confirmed by the latter. Said public respondent NLRC:

“In this, case respondents' proof of resignation is the affidavit of Myra Mella stating that complainant refused to accept the load she was being offered. It stated therein that complainant-appellant recommended Ms. Mella to the respondents-appellees as her substitute. This is due to the fact that complainant-appellant was already employed full time with Forbes College as of the 1[st] semester of 2011-2012.

For her part, complainant-appellant denied refusing to accept the full load she was being offered which would have had the effect of her resigning.

We are convinced that she had in fact resigned when she did not accept the offer of a full teaching load. We find her denial insufficient to overcome the averment of Ms. Mella.

A bare denial is an inherently weak defense and has been invariably viewed by the Supreme Court with disfavor, for it can be easily concocted but difficult to prove x x x. (People of the Philippines vs. Nene Quiamanlon y Malog, G.R. No. 191198, January 26, 2011).

Moreover, applying Section 2 Rule 5 of the 2011 NLRC Rules of Procedure on availing all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons. We verified with Forbes College the above averment on complainant-appellant's employment. Ms. Mella's affidavit was validated by Forbes College when it stated that as of June 1, 2011 complainant-appellant had starting teaching therein. Thus, complainant-appellant is deemed to have resigned when she did not accept the offer from respondents-appellees of a full teaching load for school year 2011-2012 because she could not fulfill her duties as a full-time teacher with the latter since she was already employed with Forbes College.”[22]

Petitioner contends that public respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in so ruling. Allegedly, (i) “the uncorroborated, biased and self-serving statement of Myra Mella, who stands to benefit in the termination of the petitioner since she (Myra) had taken up almost all of the latter's semestral load for the first semester of school year 2011-2012,”[23] “cannot be the sole proof that the petitioner, indeed, resigned from her post;”[24] (ii) “petitioner has no reason to resign”[25] and “it would be preposterous and against human nature for an average earner to suddenly give up her only source of income for an unsure and perhaps, a less lucrative employment;”[26] (iii) “there was no indication, i.e., resignation letter, letter of refusal of semestral load, that the petitioner intended to leave the respondent institution;”[27] and, (iv) “the fact that the petitioner filed a complaint for illegal dismissal dated 19 October 2011 is inconsistent with the claim that she had left her job.”[28]

The arguments deserve scant consideration.

Notably, the petition in effect seeks a reassessment of facts and evidence introduced in the case, contrary to the general rule that in certiorari proceedings under Rule 65, 1997 Rules of Civil Procedure, the appellate court does not assess and weigh the sufficiency of evidence upon which the labor arbiter and public respondent NLRC based their conclusion.[29] It bears stressing that review of labor cases is confined to questions of jurisdiction or grave abuse of discretion.[30]

In labor disputes, public respondent NLRC's findings are said to be tainted with grave abuse of discretion when its conclusions are not supported by substantial evidence.[31] Substantial evidence is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[32] Factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when the findings are supported by substantial evidence.[33]

Notably, the labor arbiter and public respondent NLRC were unanimous in finding that petitioner was not constructively dismissed, as she must be considered resigned when she refused the twenty four (24)-units teaching load offered to her by private respondent CCDI. This finding is well supported by substantial evidence consisting of (i) the affidavit of Myra Mella, petitioner's recommended substitute;[34] (ii) the unsigned Faculty Loading[35] showing the twenty four (24)-unit teaching load offered by private respondent CCDI to petitioner; (iii) a list showing that only one (1) student intended to enroll in the three (3)-unit subject accepted by petitioner;[36] and, (iv) Certificate of Matriculation[37] of the aforesaid student.

Contrary to petitioner's claim, the filing of resignation letter is not the only instance that an instructor and/or a professor in a tertiary institution may signify his/her resignation. Under the Manual of Regulations for Private Higher Education of 2008,[38] an instructor and/or a professor in a tertiary institution is considered resigned if he/she requests a part-time teaching load. The last sentence of Section 118 reads:

“SEC. 118. Regular or Permanent Status. — x x x 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.”

While the Manual of Regulations for Private Higher Education of 2008 only provides for the maximum teaching load of a full-time faculty,[39] jurisprudence had established that part-time faculty usually carries a teaching load of not more than twelve (12) units.

Apropos is Saint Mary's University vs. Court of Appeals,[40] wherein the Supreme Court ruled that respondent therein was not illegally dismissed when petitioner therein did not give him any teaching assignment as he was only part-time faculty of the school. Said the Supreme Court:

“A perusal of the various orders of the then Department of Education, Culture and Sports prescribing teaching loads shows that the regular full-time load of a faculty member is in the range of 15 units to 24 units a semester or term, depending on the courses taught. Part-time instructors carry a load of not more than 12 units.

The evidence on record reveals that, except for four non-consecutive terms, respondent generally carried a load of twelve units or less from 1992 to 1999. There is also no evidence that he performed other functions for the school when not teaching. These give the impression that he was merely a part-time teacher. Although this is not conclusive since there are full-time teachers who are allowed by the university to take fewer load, in this case, respondent did not show that he belonged to the latter group, even after the university presented his teaching record. With a teaching load of twelve units or less, he could not claim he worked for the number of hours daily as prescribed by Section 45 of the Manual. Furthermore, the records also indubitably show he was employed elsewhere from 1993 to 1996.

Since there is no showing that respondent worked on a full-time basis for at least three years, he could not have acquired a permanent status. A part-time employee does not attain permanent status no matter how long he has served the school. And as a part-timer, his services could be terminated by the school without being held liable for illegal dismissal. Moreover, the requirement of twin-notice applicable only to regular or permanent employees could not be invoked by respondent.

Yet, this is not to say that part-time teachers may not have security of tenure. The school could not lawfully terminate a part-timer before the end of the agreed period without just cause. But once the period, semester, or 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.”

In fine, petitioner must be considered resigned by her request that she be allowed to teach only one (1) subject, out of the twenty four (24)-unit teaching load offered to her. The teaching assignment she requested and accepted, which was later dissolved because of lack of sufficient enrollees, is only a three (3)-unit subject.

Moreover, the fact that petitioner filed a complaint for constructive dismissal does not negate the finding of voluntary resignation in the present petition. In resolving labor disputes, labor tribunals are mandated to also look into the surrounding circumstances of each case and not merely rely on the presumption that the filing of the complaint for illegal dismissal is inconsistent with the claim that the complainant had left his/her job. As held in *Abad vs Roselle Cinema*:^[41]

“Thus, petitioners’ filing of the complaint for illegal dismissal should not have been the NLRC’s sole consideration in determining whether, indeed, they have been illegally dismissed. The filing of a complaint for illegal dismissal should be taken into account together with the surrounding circumstances of a certain case. In *Arc-Men Food Industries Inc. v. NLRC* [272 SCRA 366, May 7, 1997], the Court ruled that the substantial evidence proffered by the employer that it had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. “This is clearly a non sequitur reasoning that can never validly take the place of the evidence of both the employer and the employee.””

Ineluctably, considering that petitioner was not constructively dismissed, there is no basis to order payment of separation pay, backwages, moral and exemplary damages and attorney’s fees.

In sum, public respondent NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the labor arbiter’s dismissal of petitioner’s complaint, as the dismissal was in accordance with law and prevailing jurisprudence. To justify the grant of the extraordinary remedy of certiorari, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon them.^[42] “Grave abuse of discretion,” under Rule 65, has a specific meaning.^[43] An act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. In order to be qualified as “grave,” the abuse of discretion must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.^[44] This is not the case here.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Sorongon[*] and Manahan,**] JJ., concur.

[1]pp. 79-84, Rollo

[2] pp. 90-91, Id.

[3] pp. 27, 37 and 50, Id.

[4] pp. 40-41, Id.

- [5] p. 41, Id.
- [6] p. 61, Id.
- [7] pp. 57-58, Id.
- [8] pp. 55 and 60, Id.
- [9] pp. 57-58, 59 and 63, Id.
- [10] p. 25, Id.
- [11] pp. 25 and 32-33, Id.
- [12] pp. 28-32, Id.
- [13] pp. 50-52, Id.
- [14] pp. 66-71, Id.
- [15] p. 71, Id.
- [16] Notice of Appeal, p. 72, Id.
- [17] p. 84, Id.
- [18] pp. 85-88, Id.
- [19] pp. 90-91, Id.
- [20] p. 91, Id.
- [21] pp. 10-14, Id.
- [22] pp. 82-84, Id.
- [23] p. 12, Id.
- [24] Id.
- [25] Id.
- [26] pp. 12-13, Id.
- [27] p. 13, Id.
- [28] Id.
- [29] Protacio vs. Laya Mananghaya & Co., 582 SCRA 417, March 25, 2009
- [30] Duty Free Philippines Service, Inc. vs. Tria, 675 SCRA 222, June 27, 2012
- [31] Ramos vs. BPI Family Bank, G.R. No. 203186, December 4, 2013
- [32] Office of the Ombudsman vs. Reyes, 658 SCRA 626, October 5, 2011
- [33] Gan vs. Galderma Philippines, Inc., 688 SCRA 666, January 17, 2013
- [34] pp. 57-58, Rollo
- [35] pp. 55 and 60, Id.

[36] p. 61, Id.

[37] p. 62, Id.

[38] Commission on Higher Education (CHED) Memorandum Order No. 40, s. of 2008 dated July 31, 2008

[39] SEC. 119. Regular Teaching Load. — The regular teaching load of full-time academic teaching personnel shall be determined by the higher education institution but in no case shall exceed 24 units per semester or term.

[40] 453 SCRA 61, March 8, 2005

[41] 485 SCRA 262, March 24, 2006

[42] Ramos vs. BPI Family Bank, G.R. No. 203186, December 4, 2013

[43] Alliance for Nationalism and Democracy (ANAD) vs. Commission on Elections, G.R. No. 206987, September 10, 2013

[44] Secretary of the Department of Finance vs. Court of Tax Appeals (Second Division), G.R. No. 168137, August 7, 2013

[*]Vice Associate Justice Myra V. Garcia-Fernandez, per Office Order No. 240-14-ABR dated May 23, 2014

[**]Vice Associate Justice Francisco P. Acosta, per Office Order No. 241-14-ABR dated May 23, 2014

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