

FELICITAS P. LAXAMANA, PLAINTIFF-APPELLANT, VS. DR. GREGORIO C. BORLAZA, PRESIDENT OF THE PHILIPPINE NORMAL COLLEGE, DEFENDANT-APPELLEE.

G.R. No. L-26965. September 20, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Prompted by the publication in the monthly student organs of the Philippine Normal College, *The Torch* and *The Torch Newsette*, of certain items[1] which he viewed as an unkind, discourteous and unfair approach in the treatment of the subjects there discussed, the then president of the said educational institution, Emiliano C. Ramirez,[2] issued on August 27, 1964 a memorandum directed to Felicitas P. Laxamana, in her capacity as Director of Publications, requesting that more care be exercised in guiding the students in the preparation of editorials and articles, at the same time calling Director Laxamana's attention to an earlier communication[3] from the PNC President proposing certain guidelines aimed at impressing upon the members of the editorial staff the need for propriety, justice and decency in the discharge of their tasks. The PNC President observed that it would be desirable " * * if the Director of Publications would have the page proofs of *The Torch* and *The Torch Newsette* gone over before they are finally printed, by Mr. Edilberto Dagot (a representative of the PNC President) who will then take up with her (Director of Publications) such suggestions as this Office may find it necessary to make from time to time." Less than two months later the PNC President issued a second memorandum, dated October 14, 1964, formally informing the Director of Publications of the constitution of the 1964-65 Board of Management of *The Torch*. Again inviting attention to the PNC President's instructions[4] given when Felicitas P. Laxamana was first designated Director of Publications in 1961, this second memorandum requested the early convening of the newly-reconstituted Board of Management " * * to restudy the policies of the *Torch* affecting its editorial and reportorial practices and business management."

Viewing these twin memoranda as violative of Article III, Section 1 and Article XIV, Sections 4 and 5, of the Constitution,[5] Director Laxamana filed a complaint against the PNC President on December 4, 1964 in the Court of First Instance of Manila, alleging that the said memoranda should be annulled on the ground that they "abridge the fundamental liberties of thought, speech and press, unburden the State from the obligation to patronize arts and letters, deny the Philippine Normal College the right to enjoy academic freedom, and relieve it from the duty to develop moral character, personal discipline, and civic conscience and to teach the duties of citizenship to its students." Alleging further that the PNC President was bent on removing her as Director of Publications by shifting her to a full-time teaching assignment, Laxamana prayed for a writ of preliminary injunction to prevent the enforcement of the assailed directives and to restrain her possible removal as Director of Publications pending determination of the merits of her complaint.

On January 13, 1965 — even before the PNC President filed his answer[6] ? Laxamana was relieved as Director of Publications and advised by the PNC President to assume a full-time teaching assignment in the English department of the college, effective immediately, without any change in professorial rank and salary. Her relief

was ordered pursuant to Resolution No. 606 of the Board of Trustees dated November 10, 1964, which reads:

"RESOLUTION NO. 606 of the BOARD OF TRUSTEES

Shifting the present Director of Publications to full-time teaching without changing her professorial rank and salary under Resolution No. 85 of the Board of Trustees dated May 29, 1961, quoted as follows:

'No. 85 — Authorizing the President to shift any professor or instructor (not vested (sic) by the board) from administrative position to professorial job or vice versa, provided that there will be no change in the salary, status, or rank of the professor or instructor affected. This is requested in order to promote coordination and efficiency in the administration of the College.

The Board requested that the President submit individual cases for consideration.'

APPROVED"

In the defendant's answer filed on January 27, 1965, he prayed that the complaint be dismissed for lack of cause of action, and opposed the issuance of a preliminary injunction on the ground that the act sought to be enjoined, i.e. the relief of the plaintiff as Director of Publications, was already a *fait accompli*. On February 2, 1965 the court below denied the prayer for preliminary injunction. Thereafter certain developments^[7] moved Laxamana to file, with previous leave of court, a couple of supplemental complaints intended to seek additional relief in the form of damages she allegedly suffered as a result of what she termed as the PNC President's "oppressive" acts.

On October 4, 1966 the court rendered judgment dismissing the complaint, upon a finding that the assailed directives had been issued in the legitimate exercise by the PNC President of his administrative and supervisory authority for the orderly management of the college and the preservation of discipline therein. The court likewise ruled that Laxamana's relief as Director of Publications was valid, on the premise that since Laxamana was never appointed, but merely designated, as Director of Publications, she could be replaced anytime.

In this appeal taken by Laxamana from the said decision she maintains that the trial court erred in not declaring the questioned directives as unconstitutional, as well as in not finding that she had been denied due process when she was relieved as Director of Publications.

The arguments adduced by the appellant assailing, on constitutional grounds, the validity of the twin directives issued by the PNC President, have become academic. What was particularly objected to in the PNC President's first memorandum dated August 27, 1964 was his suggestion therein that the page proofs of the student organs be gone over by his representative (Mr. Dagot) before they were finally published. However, even before January 27, 1965, when the PNC President filed his answer to the amended complaint, the questioned portion of the said memorandum had already been recalled.^[8] With said recall — a fact which is not disputed by Laxamana — there appears to be no longer any justiciable point to be threshed out in this regard. Concerning the second memorandum dated October 14, 1964, which was really nothing more than a request for the newly-constituted board of management of the Torch, chaired by Laxamana as Director of Publications, to convene so that the existing policies of the student organs might be restudied with an eye towards improving the editorial and reportorial policies, We fail to see how such a request, coming as it did from the head of the institution, could be considered as an abridgment of the fundamental liberties of thought, speech, press and academic freedom. The restudy suggested was designed to improve certain phases of editorial and reportorial practices which, the PNC President felt, as he made clear in memorandum of August 27, 1964, did not come up to acceptable standards of fairness. At that stage anyway there was yet no actionable violation, or even threat of violation, of the constitutional liberties so assiduously sought to be guarded.

One of the appellant's prayers in her supplemental complaint below was for her to be restored as Director of

Publications, the position from which she was relieved on January 13, 1965 by authority of Resolution No. 606 of the PNC board of trustees, hereinbefore quoted. It is contended that in view of her appointment on September 24, 1963 as "Associate Professor II (Range 48) (Director of Publications)," she may not be shifted to a full-time teaching assignment simply on the strength of the aforementioned resolution of the board of trustees. Her removal, it is further argued, was illegal because it was ordered without her having been accorded due process of law.

In the first place, it should be pointed out that there was no such position as "Director of Publications" in the official plantilla of the Philippine Normal College, nor any separate emolument to be paid the incumbent — which probably explains why only a regular faculty member, not a new appointee, could be designated thereto. Secondly, it is quite farfetched to argue that Laxamana's appointment of September 24, 1963 as "Associate Professor II (Range 48) (Director of Publications)" operated to prevent her being shifted to full-time instructional duties. The addition of the phrase "Director of Publications" in parenthesis in Laxamana's appointment was evidently intended only to make it clear that her promotion to the position of Associate Professor II did not necessarily terminate her designation as Director of Publications, which was originally extended to her while she was holding the position of Assistant Professor III, and at the same time to avoid any claim that the Director of Publications should necessarily be the one occupying said position, which she vacated upon her promotion. Since the appellant was the Director of Publications merely by designation and not by permanent appointment, as indeed, there was no such position in the college plantilla to which a permanent appointment could be made, it cannot be said that she was illegally removed therefrom when she was directed to assume a full-time teaching job as Associate Professor II.

It is relevant to note in this connection that when Laxamana was designated as Director of Publications on August 29, 1961 Resolution No. 85 of the Board of Trustees was already in existence, having been passed the previous May 29, which resolution authorized the President "to shift any professor or instructor (not vested by the Board) from administrative position to professorial job or vice-versa, provided there will be no change in salary, status, or rank of the professor or instructor affected." And when Laxamana was shifted to full-time teaching on November 10, 1964 it was not by act of President Ramirez but by the Board itself in its resolution No. 606. The issue on this point, as we view it, is one of authority, and since the Board had the power to withdraw Laxamana's designation, without affecting her salary, rank or status as Associate Professor II, the question of whether or not she had been heard is not of decisive relevance.

But indeed it cannot correctly be said that the plaintiff was not allowed to explain her side. Extant in the record are significant references to pertinent communications from her addressed to the President. The latter's memorandum of August 27, 1964 requested that "more care be exercised in guiding the students in preparing the editorials and articles in The Torch and Newsette," calling attention particularly to certain guidelines previously laid down. The second memorandum (of August 31, 1964) expressed regret that she had "misread and misunderstood" many things in the first, and that she had used "very intemperate language in various parts of her reply" thereto. Then it went on to state:

* * * * *

"The main purpose of the said memorandum of this Office was to remind you of the need for more attention to helping students so that their experiences in writing for the The Torch will not only develop their proficiency in written English but also promote their character development. If, as seems evident, you cannot see what is wrong with the article and the editorial in question, the following may help you:

1. The faculty members, especially those who have given up the joy of family life and devoted themselves completely to the teaching profession deserve gratitude, respect, and consideration for their feelings. If the

students want humor and fun, let it not be at the expense of these devoted members of the faculty. It cannot rightly be said that "humor is healthy" when a student writes that these old maids in the profession be pushed into a ditch.

2. There is no question as to the rightness of what was said in the editorial regarding the merit of Senator Puyat as a new member of the Board. The question is about what the editorial failed to say out of courtesy and fairness to the other Board Members, especially to the one who had been replaced by the new Member, Senator Katigbak. Here is one opportunity to help our student writers in the observance of the amenities and in the exercise of fairness."

The next paragraph, in an obvious spirit of conciliation and harmony, then recalled and cancelled the previous suggestion that the page proofs of the student publications be gone over by Edilberto Dagot of the President's office so that he might "take up with her such suggestions as this office may find it necessary to make from time to time".

The concluding paragraph of the President's memorandum is a model of restraint. It reads: "This office has always been for giving students as much latitude for free expression as possible within the bounds of propriety, justice and decency. It is hoped that you will be big enough to admit that there is room for improvement in the student writers are being advised and guided (sic) * * *."

Evidently the differences between the plaintiff, as Director of Publications, and the administration of the Philippine Normal College, through its President and Board of Trustees, involved a question of policy in respect of the student publications in said college. On this score, it appearing that such differences were nigh irreconcilable, the policy-determining body must prevail.

WHEREFORE, the appealed decision is hereby affirmed. No pronouncement as to costs in this instance.

Concepcion, C.J., Zaldivar, Castro, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Fernando, J., concurs and files a separate opinion to express his viewpoint.

Barredo, J., took no part.

[1] Specially taken note of were an article (The Torch, August 1963) in which a student wrote unkindly of "old maids" in the faculty and an editorial (The Torch Newsette, June 1964) which paid tribute to a new member of the PNC board at the expense of the old members who were made to appear as having neglected the welfare of the college.

[2] By resolution of this Court dated August 6, 1971, Gregorio C. Borlaza was substituted for original respondent Emiliano C. Ramirez.

[3] As early as 1961 when Felicitas P. Laxamana was first designated Director of Publications, the PNC president suggested certain guide-lines which he considered pertinent for the effective supervision of the student organs. In particular, the following items were stressed, to wit:

"3. As a matter of policy, the Director of Publications is held responsible for the contents of the published materials in the student organ. Controversial issues, especially those that attack the administration of the (college) government and of the College are of course to be avoided.

"4. Articles that border on indecency are not to be given space in the publication.

"5 The Torch is not to be the forum for airing personal grievances. In case of doubt one way or the other,

materials should be referred to this Office for appraisal or comment."

[4] These instructions were embodied in a communication from the PNC President dated August 29, 1961 addressed to Felicitas P. Laxamana, advising the latter of her designation as Director of Publications effective September 1, 1961. Among the items stressed were those enumerated in footnote no. 2.

[5] Section 1 of Article III provides: "Section 1. (1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

Section 4 and portions of section 5 of Article XIV read:

"SEC. 4. The State shall promote scientific research and invention. Arts and letters shall be under its patronage. The exclusive right to writings and inventions shall be secured to authors and inventors for a limited period.

"SEC. 5 * * * All schools shall aim to develop moral character, personal discipline, civic consciousness, and vocational efficiency, and to teach the duties of citizenship. * * * Universities established by the State shall enjoy academic freedom. * * *"

[6] By order dated December 4, 1964 the lower court deferred consideration of Laxamana's plea for the issuance of a preliminary injunction "until the defendant shall have filed his answer."

[7] On February 4, 1965 the PNC President — acting upon a report of the head of the English department that Laxamana had not been meeting her regular classes since she was shifted to full-time instructional duties — ordered the college cashier to withhold payment of her salary effective January 18, 1965. Barely a week later, or on February 12, 1965, the PNC President caused the office of the Director of Publications fitted with a new lock, thereby preventing Laxamana from making use of the same.

[8] The recall was made in the PNC President's memorandum of August 31, 1964, which states in part as follows:

"* * * * *

This Office is not particular about the method or procedure provided the objectives of promoting the character development of the students through their experiences in writing for *The Torch* be achieved. Thinking that Mr. Dagot could help because of his past service to the *Torch* of which you have nothing but high praise, we thought of making that help available to you even after his detail in this Office. Since the help does not seem to be welcome anymore, we respect your thinking and feeling on the matter. After all Mr. Dagot had requested to be given full-time assignment in the English Department. Since the plan specifically involves him alone, and since he may not remain long in his present detail, the said plan might as well be called off. But something must be done to minimize the possibility of overlooking important details of student guidance like those referred to in the foregoing. It is requested, therefore, that you meet the Board of Management as soon as possible and work out one such plan, furnishing this Office a copy for its information."

CONCURRING OPINION

FERNANDO, J.:

One would indeed be hard put not to yield concurrence with the opinion of the Court that easily measures up to the high standard one expects from the pen of Justice Makalintal. The relevant facts have been sorted out with masterly skill and precision. Only those necessary for adjudication did survive the rigorous scrutiny. As a result, no possible objection can be raised to the law that was applied. Thus, I am in full agreement with what has been written. Nonetheless, considering incidents apparent in the record, happily now devoid of significance from the strict juridical stand-point, I feel that a short concurrence is not inappropriate. That way attention may be directed

to practice or practices which did give rise to my mind to serious doubts as to the extent of the loyalty shown by the then officials of the Philippine Normal College to the guarantees of free speech and free press. This is not to deny that reasons of meticulous craftsmanship coupled with painstaking analysis of the legal questions still left open, after a retreat from what could have been an indefensible position on the part of the respondent, did call for a limitation on what otherwise could have been a more extensive survey of the state of the law. There is to be sure the traditional reluctance of courts to stray even a bit from the circumscribed boundaries of the issues properly before it. That is to be responsive to the restraint traditionally associated with the jurist's art. Even with due deference to such considerations, however, it would not, to my way of thinking, be indulging in unorthodoxy if certain observations as to the primacy to the freedom of the mind are given expression.

It may serve the cause of emphasis, not of clarity, if specific reference be made to what I have in mind. As stated in the opinion of Justice Makalintal: "Prompted by the publication in the monthly student organs of the Philippine Normal College, The Torch and The Torch Newsette, of certain items which he viewed as an unkind, discourteous and unfair approach in the treatment of the subjects there discussed, the then president of the said educational institution, Emiliano C. Ramirez, issued on August 27, 1964 a memorandum directed to Felicitas P. Laxamana, in her capacity as Director of Publication, requesting that more care be exercised in guiding the students in the preparation of editorials and articles, at the same time calling Director Laxamana's attention to an earlier communication from the PNC President proposing certain guidelines aimed at impressing upon the members of the editorial staff the need for propriety, justice and decency in the discharge of their tasks. The PNC President observed that it would be desirable '*** if the Director of Publications would have the page proofs of The Torch and The Torch Newsette gone over before they are finally printed, by Mr. Edilberto Dagot (a representative of the PNC President) who will then take up with her (Director of Publications) such suggestions as this Office may find it necessary to make from time to time.' Less than two months later the PNC President issued a second memorandum, dated October 14, 1964 formally informing the Director of Publications of the constitution of the 1964-65 Board of Management of The Torch. Again inviting attention to the PNC President's instructions given when Felicitas P. Laxamana was first designated Director of Publications in 1961, this second memorandum requested the early convening of the newly-reconstituted Board of Management '*** to restudy the policies of the Torch affecting its editorial and reportorial practices and business management.'"[1]

Of course as correctly noted in the decision, with the recall of the memorandum of August 27, 1964 the matter had become academic. With the second one dated October 14, 1964, merely limited to informing petitioner of the new board of management, it could likewise be considered as not calling for any judicial appraisal as to its possible effects. I am disturbed nonetheless by the meaning, not implausible, that could be attached to them. They would, for me, run counter to the primacy, the high estate accorded the right of free expression, if viewed as indicative of a tendency to impose censorship or to predicate liability for its exercise. That is to ignore a fundamental postulate of our constitutional system. No law shall be passed abridging the freedom of speech or of the press. *** So reads our Constitution.[2] That is a guarantee of the liberty to discuss publicly and truthfully any matter of public interest without previous censorship or subsequent punishment.[3] There is to be then no restraint imposed in advance on the communication of views or liability to be incurred whether in libel suits,[4] prosecution for sedition,[5] or action for damages,[6] or contempt proceedings[7] unless there be a clear and present danger substantive evil that Congress has a right to prevent. It is to be added that administrative penalties may realistically, for those who live by their employment, be even more of a deterrent to the exercise of this constitutional right.

The vital need in a constitutional democracy for freedom of expression is undeniable whether as a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social, including political, decision-making, and of maintaining the balance between stability and change.[8] The trend as

reflected in Philippine and American decisions is to recognize the broadest scope and assure it the widest latitude. Nowhere should there be greater respect for its commands than in educational institutions. It would make a mockery of academic freedom if there is the gnawing fear on the part of those competent to contribute with their knowledge gained through years of study and research that what they say, or what they write, if displeasing to the powers that be, could be visited with retribution. Nor is it a fine example for students if such an atmosphere would infect the campus. While there is no particular right of petitioner violated in the light of the facts as duly found, what did transpire bodes ill for the spirit of free inquiry which should permeate campus life.

As was so well put by Chief Justice Warren in *Sweezy vs. New Hampshire*:^[9] "The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."^[10]

An excerpt from the concurring opinion of Justice Frankfurter in the same case is equally illuminating: "Progress in the natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypothesis and speculation. The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. The problems that are the respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized dealing, by way of manageable division of analysis, with interpenetrating aspects of holistic perplexities. For society's good — if understanding be an essential need of society — inquires into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's well being, except for reasons that are exigent and obviously compelling. These pages need not be burdened with proof, based on the testimony of a cloud of impressive witnesses, of the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university. It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearless-ness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor."^[11]

This brief expression of my views, while perhaps not essential for the disposition of this case, will, I trust, not be without effect, even if minimal, on heads of educational institutions, whether public or private. I close with a reiteration of my full concurrence with the legally impeccable opinion of Justice Makalintal.

[1] Opinion of the Court, pp. 29-30.

[2] Art. III, Sec. I(8), Constitution of the Philippines.

[3] Cf. *Thornhill vs. Alabama*, 310 US 88 (1940); *U.S. vs. Bustos*, 37 Phil. 731, 740 (1918); *Planas vs. Gil*, 67 Phil. 61, 81 (1939); *U.S. vs. Perfecto*, 43 Phil. 58, 62 (1922) and *Gonzales vs. Commission on Elections*, L-27833, April 18, 1969, 28 SCRA 835.

[4] *U.S. vs. Bustos*, 37 Phil. 731 (1918); *Quisumbing vs. Lopez*, 96 Phil. 510 (1955).

[5] *U.S. vs. Perfecto*, 43 Phil. 58 (1922).

[6] Yap vs. Boltron, 100 Phil. 324 (1956).

[7] People vs. Alarcon, 69 Phil. 265 (1939); Teehankee vs. Director of Prisons, 76 Phil. 756 (1946); In re Sotto, 82 Phil. 595 (1949); Cabansag vs. Fernandez, 102 Phil. 152 (1957); People vs. Castelo H. Abaya, L-11816, April 23, 1962; Bridges vs. California, 314 US 252 (1941); Pennekamp vs. Florida, 328 US 331 (1946); Craig vs. Harney, 331 US 367 (1947); Woods vs. Georgia, 370 US 357 (1962).

[8] Emerson, Toward a General Theory of the First Amendment, p. 3 (1966).

[9] 354 US 234 (1957).

[10] Ibid, at 250.

[11] 354 US 234, 261-262 (1957)

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