

[WITH RESOLUTION OF JULY 14, 1960]*G.R. No. L-14885. May 31, 1960*

Ponente: LABRADOR, J.

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This is a petition to review the decision of the Court of Appeals, affirming that of the Court of First Instance, which ordered defendant Mapua Institute of Technology to reinstate plaintiff Marcelino S. Manalo to his position as professor in said school to pay him the sum of P6,000 for every school year from the school year 1955-1956 until he shall have been finally reinstated; to pay him attorney's fees in the sum of P1,800, and pay him his costs.

The record discloses that plaintiff Marcelino S. Manalo was taken in as instructor in College Physics in the Mapua Institute of Technology on August 1, 1947, without any definite period and without any written contract of employment. He taught continuously until the school year 1955-1956, at which year his annual salary had reached P6,000. However, before the opening of classes in June, 1956, the registrar of the school, upon orders of the President, informed him that his services were no longer needed. Plaintiff appealed to the school authorities to intercede for him, but to no avail, so he sought redress in court. The Court of First Instance found that plaintiff was dismissed without any justifiable cause, and rendered the judgment mentioned above. Not satisfied with said judgment, defendant entity appealed to the Court of Appeals.

The Court of Appeals found that plaintiff, upon noticing that his name was not included in the list of faculty members in the school prospectus for the year 1956-1957, approached Mr. Tomas Mapua, the school president, to find out the reason for such omission. Mr. Mapua then called his attention to the charges brought against the school librarian, Mrs. Constancia de Jesus, by plaintiff's aunt-in-law, Mrs. Esperanza Llanes-Santos, and intimated to plaintiff that the latter suggest to his aunt that she withdraw the charges. Plaintiff said he knew nothing about said charges, but promised to take steps to comply with the request of Mr. Tomas Mapua. However, plaintiff's mission was unsuccessful, and for this reason he was dropped from the faculty of the Mapua Institute of Technology.

Defendant entity claims that the reason for plaintiff's dismissal is its having lost confidence in him for having committed a serious breach of professional ethics, in that instead of returning the library card of a student of the school, which had come into his possession, he furnished it to the committee that was investigating the charges against the school librarian; and for having furnished a copy of the prospectus of the school to said committee and the name of one of defendant's employees who was later on subpoenaed to testify by the committee.

Plaintiff denied the above charges. He admits having given the name of a member of the library staff of Mapua, but claims that he did not know the purpose of the person who had asked it of him. As regards his having furnished the committee with a copy of the school's prospectus for the year 1956-1957, it is of common knowledge that school prospectus are for distribution to the public, and therefore, as the Court of Appeals rightly observed, his act may not be considered as a breach of professional ethics.

So the Court of Appeals found that the real cause for plaintiff's dismissal was his failure to convince his aunt to

drop the charges against the school librarian. Said Court considered the dismissal without any justifiable cause and without notice, and affirmed the judgment of the Court of First Instance. Defendant now petitions this Court to review the ruling of the Court of Appeals.

Petitioner assigns only one error, which is:

"The Court of Appeals erred in ordering the reinstatement of the respondent-appellee Marcelino S. Manalo and the payment of his back wages on the ground that he was dismissed without justifiable cause and without notice, in violation of Republic Act No. 1052."

Petitioner argues that the Court of Appeals erroneously applied the provisions of Republic Act No. 1052, as well as the case of *Yu Ki Lam, et al. vs. Micaller, et al.*, 99 Phil., 902; 52 Off. Gaz. (14) 6146. Petitioner does not dispute the finding of the Court of Appeals that respondent was dismissed without justifiable cause, but claims that under the provisions of Republic Act No. 1052, he should only have been made to pay respondent one month's salary in lieu of lack of notice to terminate his services, instead of being ordered to reinstate him to his former teaching position with back wages. He further contends that in the *Micaller* case, the petitioners therein were required to reinstate respondent because the former were found guilty of unfair labor practice, whereas the case at bar does not involve any unfair practice, but is a dismissal with failure to comply with the requirements of Republic Act No. 1052.

Respondent, on the other hand, claims that Republic Act No. 1052, as amended by Republic Act No. 1787, does not apply, because the Mapua Institute of Technology is not a commercial, industrial or agricultural enterprise, and that, besides, Republic Act No. 1052 authorizes the employer, under some conditions, to terminate relationship with his employees, when the dismissal is not prohibited by law. In this case, respondent argues, petitioner has committed an act constituting unfair labor practice, and he may not, therefore, invoke the said legal provision. We find both contentions to be without merit.

Without deciding whether a college or university, like the petitioner Mapua Institute of Technology, is an industry which falls under the provisions of the Industrial Peace Act (Rep. Act No. 875), we hold that the act of the petitioner in discharging the respondent, even if made without just cause, cannot be considered as an unfair labor practice. Unfair labor practices on the part of employers are defined in Section 4 (a) of Republic Act No. 875, and refer particularly to interference with, restraint or coercion of employees, in the exercise of the right to organize into labor organizations, or to prevent them from joining labor organizations, to discriminate against them in regard to hire or tenure of employment, to discourage membership in any labor organizations, etc.

The next and more important issue is whether the dismissal of the respondent by the petitioner may be governed by the provisions of Republic Act No. 1052, as amended by Republic Act No. 1787. Respondent claims that the said act does not apply in the case at bar because the petitioner is not a commercial, industrial or agricultural enterprise, whereas the petitioner argues that the said law should apply. It must be remembered that cases decided by our courts requiring the reinstatement of dismissed employees, have occurred in the government service where the Philippine Civil Service guarantees a tenure of office or permanency of employment. But no such tenure or permanency in office can be claimed on behalf of professors or teachers of private schools, colleges or universities. Their employment is not an official or governmental one and must be subject to the ordinary rules of contract. So the question to be resolved is reduced to this: When there is no specific contract between a school, college or university and a teacher or professor therein as to the period of employment, what law or rule should apply?

Under the Civil Code, there is no provision governing the relative rights of a teacher or professor, and those of the school, college or university that wants to dispense with the services of the former. There was a provision in the

Code of Commerce (Art. 302) which grants employees dismissed from their positions a salary for a period of one month, or separation pay known as "mesada." But upon the repeal of this provision by the Civil Code of the Philippines, the Congress of the Philippines sought to fill the void created by such repeal by the enactment of Republic No. 1052, which has been superseded by Republic Act No. 1787, and which reads as follows:

"Section 1. In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employment with just cause; or without just cause in the case of an employee by serving written notice on the employer at least one month in advance or one-half month for every year of service of the employee, whichever is longer, a fraction of at least six months being considered as one whole year.

"The employee, upon whom no such notice was served in case of termination of employment without just cause may hold the employer liable for damages.

"The employee, upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice."

Without declaring that a private college or university like the Mapua Institute of Technology is a commercial, industrial, or agricultural establishment, we believe that there being no special law governing the dismissal or separation of professors from colleges and universities, the provisions of Republic Act No. 1052, as amended by Republic Act No. 1787, should be made to apply. Authority for such a course of action is 78 Corpus Juris Secundum 617, which says:

"Contracts between private schools and teachers or other instructors are governed, in general, by the rules applicable to other contracts of employment."

An additional reason for applying Republic Act No. 1052, as amended, is the fact that the petitioner herein is not a non-profit institution, so that we presume that the element of gain may have been at least a secondary, although not the principal purpose of the institution. We are supported in this belief and conclusion by the fact that the petitioner itself has invoked in its favor the provisions of said Republic Act No. 1052, perhaps considering itself to be a commercial establishment.

Respondent's counsel cites in the latter's favor the case of *Yu Ki Lam, et al., vs. Micaller, et al.*, 99 Phil., 902; 52 Off. Gaz. (14) 6146. We have, however, revoked the principle contained in that case in the cases of *Gutierrez vs. Bachrach Motor Co., Inc.*, 105 Phil., 9 and in the case of *Monteverde vs. Casino Español*, 103 Phil., 377; 55 Off. Gaz. (16) 2888, wherein we said:

"But we agree with the trial court that, even if there were no cause for separation, defendant can still separate appellant from the service under the provisions of Republic Act No. 1052. Section 1 of this Act provides that 'In case of employment, without a definite period, in a commercial, industrial or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance.' In other words, as long as that notice is given, the relation may be terminated. In the present case defendant has complied with this requirement when, in lieu of that notice, it paid an amount equivalent to one month salary to appellant."

The other cases cited by counsel for respondent are clearly beyond the issue and have no bearing to the case at bar.

We, therefore, come to the conclusion that the provisions of Republic Act No. 1052, as amended by Republic Act No. 1787, should govern the case at bar. In accordance therewith, the decision of the Court of Appeals is hereby reversed, and respondent considered separated from the service. However, he should be given a separation pay in

an amount equivalent to his salaries or wages corresponding to the required period of notice. Respondent having been employed by petitioner for a period of nine years, he is entitled to five months notice before his services in the school may be terminated. As the evidence submitted in the trial court shows that when respondent's services were actually dispensed with, he was receiving an annual salary of P6,000, or a monthly salary of P500, he should be given a compensation of P2,500. Without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Barrera and Gutierrez David, JJ., concur.
Concepcion, J., concurs in the result.

RESOLUTION

July 14, 1960

LABRADOR, J.:

Counsel for petitioner has filed a motion to reconsider the decision on the ground that the respondent was separated from the service of the petitioner in April, 1956, for which reason Republic Act No. 1052, before its amendment by Republic Act No. 1787, should be applied and respondent declared entitled only to one month's pay. Republic Act No. 1052 is substantially the same as the amendatory act, so our decision still holds, except as to the amount of the mesada. We find that the motion is well founded and we hereby modify the dispositive part of the decision to read as follows:

"We, therefore, come to the conclusion that the provisions of Republic Act No. 1052 should govern the case. In accordance therewith the decision of the Court of Appeals is hereby reversed and respondent considered legally separated from the service as of the end of April, 1956. He is hereby declared entitled to receive one month's pay or P500, and petitioner is hereby ordered to pay the said sum to respondent. Without costs." So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concur.

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