

MELODY PAULINO LOPEZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LETRAN COLLEGE-MANILA, FR. ROGELIO ALARCON, O.P., FR. EDWIN LAO, O.P. AND MS. PERLY NAVARRO, RESPONDENTS.

G.R. No. 124548. October 08, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

The seminal issue to be resolved is whether a finding of illegal dismissal ipso facto results in reinstatement of the dismissed employee.

Petitioner Melody Paulino Lopez was employed[1] with private respondent Letran College Manila[2] from June 1979 to July 1, 1991.

The chronology of events as narrated by the NLRC[3] are as follows:

"On February 16, 1988 " a Career Orientation Day for elementary pupils of Colegio de San Juan de Letran, Manila - complainant Melody Paulino Lopez, then Guidance Counselor of the elementary department, conceived and implemented an agenda where 1,070 of elementary students had an opportunity to witness and mingle with military men in uniform, capped with the landing of helicopters on the quadrangle of the school compound with no less than Gen. Isleta and the late Col. Florendo on board. As it turned out, it was a demonstration of military capability for civilian consumption and entertainment, albeit, there were some exhibition of military presence and equipment.

On March 16, 1988, complainant wrote a letter (Exhibit '12-A') to Rev. Fr. Thomas L. Francisco, O.P., Rector of Letran College that the program held last February 26, 1988 was a success, lamenting, however, the objections of some quarters of said festivities in the aftermath of the event.

On February 21, 1991, complainant wrote a letter to respondent Rev. Fr. Rogelio Alarcon, O.P. to bring to his attention her problem of a feeling that a conspiracy of harassment, intimidation and persecution had set in to make her resign since the time she approached Gen. De Villa for help in the Career Orientation, (Exh. '13') not to mention that a group had conspired to have her son kicked out from a school.

Since then, complainant became a frequent recipient of several memoranda (Exh. 'A-1' and Exh. 'A-15') requiring complainant to explain in writing why she by-passed the OIC Director of Student Services on the filing of application for sick leave dated January 16, 1991 and the filing of requisition form dated January 22, 1991 and to remind complainant about the formalization of the agreement they had during the individual conference in the morning of March 15, 1991. Unsavory reports unknown to complainant surfaced in her 201 file, such as the letter-complaint of Dr. Alicia J. Ramos dated October 4, 1988 (Exh. 'A-16') and the incident report of Ms. Rosalinda S. Jarabelo dated September 29, 1988 (Exh. 'A-17') relating her humiliating experience when complainant challenged her to a fight.

After the Career Orientation, Mr. Moralino, Elementary Principal, ordered Dr. Ramos to remove complainant

as Elementary Guidance Counselor and she was replaced by another staff who had no experience in the school set-up. (p. 146, Records, tsn. p. 17, Nov. 7, 1991).

Complainant was given the position of Head Psychometrician whose responsibility was to supervise the test given to all the three (3) departments; elementary, high school and college, but when tests were given in the elementary department, Mr. Moralino ordered the security guard not to let complainant enter the elementary department. Mr. Moralino's attitude towards complainant became negative when he learned that complainant was a union member. (tsn. p. 17, Nov. 7, 1991).

Later, complainant was offered a sizable amount of money by respondents in exchange for her voluntary resignation by Mrs. Perly Navarro, (tsn. p. 20, Nov. 7, 1991) sometime in January 1991 for the reason that respondent Fr. Alarcon wanted her out, but complainant refused the offer.

But what finally snapped the employment connection of complainant with respondents was the incident of 16 February 1991.

It appears that complainant, who earlier had been suspended for five (5) days, reported for work to assist in giving entrance examination for high school students.

At around 11:00 A.M. of said date (February 16, 1991), Mr. Ramon Mendoza, an employee of the Guidance Counselor Office of Letran College, asked from the security guard for the key to the guidance counseling office, but respondent Fr. Edwin Lao, who was then with the security guard refused to give the key. Thus, Mr. Mendoza asked complainant Melody Paulino Lopez to intercede for him. At this point, what actually happened appears rather hazy in view of the conflicting versions. Respondents insist that complainant uttered indecent and obscene remarks against respondent Fr. Lao and on the other hand, complainant denied the accusation and in turn accused Fr. Lao for embarrassing and humiliating her.

As a consequence, complainant Lopez was placed under preventive suspension for thirty (30) days effective March 19, 1991 after she failed to submit written explanation for her alleged slanderous utterances and insulting epithets against respondent Fr. Lao on 16 February 1991.

On April 2, 1991, complainant filed a complaint with the Arbitration of this Commission for illegal suspension, praying for the lifting of said suspension, plus recovery of damages. (p. 2, Records)

In the meantime, an Ad Hoc Committee was organized by respondent Fr. Lao composed of Mr. Salvador Abantina, President of the Association, Mrs. Amerlina Gaerlan, Chairman, Ms. Ellen Ambas who later resigned because at one time she asked complainant to sign a termination paper which was against complainant's conscience and replaced by Mrs. Lita delos Reyes, an elementary teacher. (tsn, p. 28, Nov. 7, 1991)

The Ad Hoc Committee was tasked to look into the charges against complainant for serious misconduct and offense by the employee against the person of her employer.

Required to explain in writing, complainant Lopez did so on April 19, 1991.

On May 9, 1991, complainant received an official notice dated 08 May 1991 dismissing her from employment for alleged acts of serious misconduct, commission of a crime (grave oral defamation), insubordination, unfaithfulness to employer's interest, quarreling and challenging to a fight and loss of confidence.

Thus, on July 1, 1991, complainant filed a Motion To Amend Complaint amending her cause of action from illegal suspension to illegal dismissal. (p. 8, Records)"[4]

After hearing, the Labor Arbiter found that petitioner was dismissed for just cause and with due process. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, the instant complaint is hereby dismissed for lack of merit.

Respondent school is however ordered to pay complainant

[P4,500 x 12 years] P 27,000.00 separation pay.

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All other claims are also hereby dismissed for lack of merit.

SO ORDRED."[5]

On appeal, the National Labor Relations Commission (NLRC) ruled that there was an illegal dismissal due to absence of just cause and due process but ordered private respondents to grant petitioner separation pay in lieu of reinstatement. Petitioner's claim for damages was, however, dismissed. Thus,

"WHEREFORE, premises considered, the assailed decision should be, as it is hereby ordered REVERSED.

Respondents, therefore, are hereby ordered to pay complainant separation pay equivalent to one (1) month's salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year.

The complaint for damages is hereby dismissed for lack of merit.

SO ORDERED."[6]

Upon denial of the motion for reconsideration by the NLRC,[7] petitioner elevated the case via petition for certiorari, seeking reinstatement to her former position without loss of seniority rights and payment of backwages including damages and attorney's fees.

Petitioner asserts that in view of a finding by the NLRC that she was illegally dismissed by private respondent school, she should perforce be entitled to reinstatement without loss of seniority rights and payment of backwages. Otherwise stated, petitioner questions the ruling of the NLRC in awarding separation pay in lieu of reinstatement despite the fact that there was an illegal dismissal effected by private respondent school. Accordingly, she also seeks payment of backwages, allowances, and other benefits from the time of her illegal dismissal until her actual reinstatement.

We are in accord with the ratiocination of the NLRC that despite a finding of illegal dismissal against private respondent school, petitioner should not be reinstated. The pertinent portion of said NLRC resolution reads as follows:

"Besides, if such 'litany of misconduct' were indeed committed by herein complainant dating as far back in 1987, they were deemed to have been condoned (National Service Corp. v. NLRC, 168 SCRA 122), for how to(sic) explain the incontrovertible fact that, notwithstanding such 'litany of miscondacts,' complainant stayed on - and had even been promoted for the last thirteen (13) years of employment with respondents.

As adverted to earlier in this resolution, serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work is one of the grounds or just causes for termination of an employee.

The incident of February 16, 1991 wherein complainant allegedly uttered defamatory and offensive words against respondent Fr. Edwin Lao transpired when a certain Mr. Ramon Mendoza, an employee of the Guidance Counselor Office of Letran College asked from the security guard for the key to the guidance counseling office, but respondent Fr. Edwin Lao, O.P., who was then with the security guard refused to give the key. Mr. Mendoza asked complainant to intercede in his behalf. At this point, what actually happened appears rather hazy in view of the contrasting versions. Respondent Fr. Edwin Lao insisted that complainant uttered invectives against him to which vehemently complainant denied.

Note that the incident of February 16, 1991 occurred totally unrelated to the work of complainant as Head Psychometrician of respondent school. Complainant merely interceded in behalf of Mr. Mendoza in securing from the security guard the key to the guidance counselor office to which respondent Fr. Edwin Lao, who happened to be present, refused to give the said key. Whether or not complainant uttered defamatory words against respondent Fr. Edwin Lao on February 16, 1991 is of no moment, the focal inquiry being addressed is whether or not such alleged misconduct was in connection with, or in relation to, with the work of complainant as Head Psychometrician. Unfortunately, records is(sic) bereft of such fact.

However, this Commission is not unmindful of the incident of February 16, 1991 and its subsequent events when complainant, after interceding in behalf of a security guard, allegedly uttered indecent and obscene remarks against one Fr. Edwin Lao. As Head Psychometrician and an erstwhile guidance counselor of an exclusive catholic school noted for its teachings of moral uprightness, her demeanor subsequent thereto, to say the least, were far from ideal as a role model not only for the whole studentry, but for her peers.

In general, the remedy for illegal dismissal is the reinstatement of the employee to his former position without loss of seniority rights and the payment of backwages. But there may be instances as when reinstatement is not a viable remedy as where - as in this case - the relations between the employer and the employee have been so severely strained that it is not advisable to(sic) reinstatement (*Kingsize Manufacturing Corp. v. NLRC*, G.R. No. 110452-54, November 24, 1994.)"[8]

It seemed that private respondents took the February 16, 1991 incident as a leverage to ease out petitioner from private respondent school after having unearthed from her 201-file all the "litany of misconducts" petitioner allegedly committed throughout her thirteen (13) years of stay with private respondent school. These past infractions cannot be collectively taken as a justification for her dismissal from the service.

The fact remains that petitioner is not required to prove her innocence on the charges leveled against her but the burden rests upon private respondents to establish the valid cause of petitioner's termination. Where there is absence of clear, valid and legal cause of termination, the law considers it a case of illegal dismissal.[9] In termination cases, the burden of proving the just cause of dismissing an employee rests on the employer,[10] and his failure to do so would result in a finding that the dismissal is not justified.[11] Having failed to establish by concrete and direct evidence, no substantial basis exists for petitioner's dismissal.

Article 279 of the Labor Code, as amended, provides that "an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."

Pursuant to the said rule, illegally dismissed employees are entitled to reinstatement and full backwages. The phraseology of the law means that both reliefs are available to the illegally dismissed employee as a matter of course. However, if reinstatement is not possible, the employees are entitled to the grant of separation pay and full backwages.[12] At this instance, it must be stressed that the reliefs of separation pay and backwages are cumulative, not alternative remedies. Not infrequently had this Court ruled that separation pay shall be granted as an option to reinstatement if reinstatement can no longer be enforced due to the strained relations between the parties brought about by the litigation in this case.[13] Personal animosities have been generated due to the attendant circumstances of the case. Petitioner held much rancor in her heart against private respondents. Since reinstatement would not be to the best interest of the parties, in lieu thereof, the NLRC correctly awarded separation pay equivalent to one (1) month's salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year.

Anent petitioner's claim for backwages, it is interesting to note that while the Office of the Solicitor General

(OSG), representing the NLRC, made the observation that the NLRC was correct in finding that petitioner should be granted separation pay instead of being reinstated, it submits that the NLRC erred in failing to award her backwages.

We agree with the recommendation of the OSG that in addition to separation pay (which is in lieu of reinstatement), the petitioner should also be entitled to backwages. However, we want to rectify the erroneous stance of the OSG that in computing backwages,[14] the total amount derived from employment elsewhere by the employee from the date of dismissal up to the date of reinstatement, if any, should be deducted therefrom. It further stated that the computation of full backwages and presentation of proof as to income earned elsewhere by the illegally dismissed employee after his termination and before actual reinstatement should be ventilated in the execution proceeding before the Labor Arbiter concordant with Section 3, Rule 8 of the 1990 New Rules of Procedure of the National Labor Relations Commission.[15]

For clarity and emphasis at the expense of redundancy, we reiterate the jurisprudence laid down in our en banc Resolution in *Bustamante vs. NLRC*[16] with regard to illegal dismissals effected after March 21, 1989.[17] We ruled in recent cases[18] that an illegally dismissed employee is entitled to his full backwages from the time his compensation was withheld from him (which, as a rule, is from the time of his illegal dismissal) up to the time of his actual reinstatement. The legislative policy behind Republic Act No. 6715 points to "full backwages" as meaning exactly that, i.e. without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal.[19]

Considering that petitioner was terminated from service on May 8, 1991, which is after March 21, 1989, the ruling in *Bustamante vs. NLRC*[20] should be applied.

Proceeding further, petitioner assails the NLRC resolution disallowing her prayer for damages.

Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.[21]

We see no cogent reason to overrule the findings of the NLRC that petitioner is not entitled to moral and exemplary damages. There was no showing that her dismissal was effected in a wanton or oppressive manner.

In the same vein, we also rule that attorney's fees are not recoverable where there is no sufficient showing of bad faith on the part of private respondents. Under Article 2208(2) of the New Civil Code, the award thereof is justified if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act of the party against whom it is sought.

WHEREFORE, the assailed Resolution dated November 20, 1995 of the NLRC is AFFIRMED subject to the MODIFICATION that private respondents are also ordered to pay petitioner full backwages based on her last stated salary, to be computed from the date of dismissal from the service up to the date of finality of this decision, without any qualifications or deductions.

SO ORDERED.

Regalado, (Acting C.J.), Melo, Puno, and Mendoza, JJ., concur.

[1] As a Faculty Member, Guidance Counselor and later, Head Psychometrician with a last stated salary of P4,500.00/month.

[2] The other private respondents were:

Fr. Rogelio Alarcon, O.P. - Rector/President

Fr. Edwin Lao, O.P. - Treasurer/Personnel Director

Perly Navarro - Assistant Director for Personnel

[3] NLRC (Second Division) Resolution dated November 20, 1995, penned by Presiding Commissioner Raul T. Aquino, and concurred in by Commissioners Victoriano R. Calaycay and Rogelio I. Rayala.

[4] Ibid., Rollo, pp. 27-32.

[5] Decision of Labor Arbiter Geobel A. Bartolabac dated October 28, 1993 in NLRC-NCR Case No. 00-04-01957-91; Rollo, pp. 55-56.

[6] NLRC Resolution dated November 20, 1995; Rollo, p. 40.

[7] NLRC Resolution dated February 8, 1996; Rollo, p. 42.

[8] NLRC Resolution dated November 20, 1995; Rollo, pp. 37-40.

[9] General Baptist Bible College vs. NLRC, 219 SCRA, 549, 555 [1993].

[10] Ibid., Philippine Long Distance Telephone Company vs. NLRC, 276 SCRA 462, 468 [1997].

[11] General Baptist Bible College vs. NLRC, supra., citing Reyes & Lim Company, Inc. vs. NLRC, 201 SCRA 772, 775 (1991), which cited Starlite Plastic Corp. vs. NLRC, 171 SCRA 315 [1989].

[12] Valiant Machinery and Metal Corp. vs. NLRC, 252 SCRA 369 [1996].

[13] See Fernandez vs. NLRC, G.R. No. 108444 and Manila Electric Company vs. NLRC, G.R. No. 108769, November 6, 1997.

[14] Applying the rule prior to the "Mercury Drug Rule," citing Pines City Educational Center vs. NLRC, 227 SCRA 655, 664, 665; Comment of OSG, Rollo, pp. 103-104.

[15] Citing Ferrer vs. NLRC, 224 SCRA 410, 423; Comment of OSG, Rollo, p. 104.

[16] G.R. No. 111651, November 28, 1996, 265 SCRA 61.

[17] March 21, 1989 is the date of effectivity of Republic Act No. 6715, otherwise known as "The Herrera-Veloso Law," amending, among others, Article 279 (relating to backwages) of the Labor Code.

[18] Highway Copra Traders and/or Gerson Dulang (owner-operator)/Luzviminda Dulang vs. NLRC-Cagayan de Oro, and David Empeynado, G.R. No. 108889, July 30, 1998; Reynaldo B. Alfante vs. NLRC, et. al., G.R. No. 122655, December 15, 1997; Banana Growers Collective at Puyod Farms vs. NLRC, 276 SCRA 544 [1997]; Philippine Long Distance Telephone Company vs. NLRC, 276 SCRA 462 [1997]; Philippine Airlines, Inc. vs. NLRC, 276 SCRA 391 [1997]; Mabeza vs. NLRC, 271 SCRA 670 [1997]; Tan vs. NLRC, 271 SCRA 216 [1997]; Ala Mode Garments, Inc. vs. NLRC, 268 SCRA 497 [1997]; Dela Cruz vs. NLRC, 268 SCRA 458 [1997]; Aurora Land Projects Corp. vs. NLRC, 266 SCRA 48 [1997].

[19] Highway Copra Traders, et. al. vs. NLRC-Cagayan de Oro, et. al., *ibid.*

[20] *Supra.*

[21] Equitable Banking Corporation vs. NLRC, 273 SCRA 352, 379 [1997], citing Estiva vs. NLRC, 225 SCRA

169 [1993].

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