

## THE UNIVERSITY OF THE PHILIPPINES, ET AL., PETITIONERS VS. COURT OF INDUSTRIAL RELATIONS, ET AL., RESPONDENTS.

*G. R. No. 13054. December 26, 1958*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

On September 4, 1956, the University of the Philippines Employees' Welfare Association (UPEWA), a labor organization duly organized under the law, and one Tomas C. Tolibas, a member thereof, filed a complaint for unfair labor practice with the Court of Industrial Relations against the University of the Philippines, the U. P. College of Agriculture, and Prof. Dioscoro Lu Umali, which was referred to prosecutor Angel Calayag for investigation. After the latter had conducted the required investigation, he filed a formal complaint against respondents alleging that Umali interfered with, restrained and coerced the employees under him, in the exercise of their right to self-organization and to form a labor union of their own choosing; that respondents, acting and conspiring together, refused to reappoint Tolibas on June 30, 1956 and instead separated him from the service on July 1, 1956, all of which constitute unfair labor practice under pertinent provisions of Republic Act No. 875.

On November 2, 1956, respondents answered the complaint denying the charges of unfair labor practice and alleging that Tolibas was not reappointed for sufficient cause. After the case was heard before a commissioner, His Honor, Judge Jose S. Bautista, issued an order on July 8, 1957 ordering the reinstatement of Tomas C. Tolibas and enjoining respondents from discouraging the employees working in the U. P. College of Agriculture from affiliating with a labor union.

On July 24, 1957, respondents filed a motion for reconsideration reserving their right to present additional grounds in a written argument or memorandum they would file later, which in fact they did on August 2, 1957, wherein, in further support of their motion for reconsideration, they raised the following issues: (a) the Court of Industrial Relations has no jurisdiction over a labor case when the dispute involves an agency or instrumentality of the Government like the University of the Philippines; (b) the court has no jurisdiction over a case which does not involve an industrial dispute; and (c) the findings of fact of the court are contrary to the evidence. Complainant opposed the motion contending that the University of the Philippines is not a political subdivision or instrumentality of the Government, but a private corporation, and therefore it comes under the jurisdiction of the Court of Industrial Relations. The court sitting en banc denied the motion for reconsideration in a resolution entered on September 18, 1957. Respondents interposed the present petition for review.

The Court of Industrial Relations, in ordering respondents, now petitioners, to reinstate Tomas C. Tolibas with back pay from July 1, 1956, found that his non-reappointment was due to his activities in connection with the organization of the University of the Philippines Employees' Welfare Association, Los Baños Chapter, of which he was later elected as its vice president, for which reason he was discriminated against and persecuted and as a consequence separated from the service. The court found that these acts of discrimination which constitute unfair labor practice were committed by Dioscoro L. Umali who was then the head of the Division of Plant Breeding, Department of Agronomy, U. P. College of Agriculture, and the immediate chief of Tolibas. Thus, the pertinent

portion of the order reads:

"The evidence presented by respondents purporting to justify the non-reappointment, of Tomas G. Tolibas for alleged malfeasance, misfeasance, and dishonesty, failed to shake the weight of Tomas C. Tolibas' testimony to the effect that three days after the organization of the UPEWA-Los Baños Chapter on January 22, 1956, Dr. Dioscoro L. Umali summoned all the laborers under him to a meeting at the lecture hall of the Division of Plant Breeding, U. P. College of Agriculture at Los Baños, Laguna, and there inquired for the members and officers of the organized union. And significant at that meeting was the fact that Tolibas assumed all responsibility in the organization of the union as Vice-President thereof, without revealing who the members were that they might not be the target of reprisal. There is stronger reason to believe complainants on this point than give credence to the denial of Dr. Umali of said fact, considering that he admitted having advised the laborers under him not to affiliate with any outside organizations but rather form one of their own in Los Baños alone, similar to the organization of the student body of the U. P. College of Agriculture at Los Baños, Laguna. Evidently, Dr. Umali interfered, restrained, or coerced the laborers under him from joining the UPEWA-Los Baños Chapter, or affiliating their union with the UPEWA in Manila.

"And as Dr. Umali himself testified that he ordered one Albano to rotate Tolibas on any job he might be fitted after January 22, 1956 (the day the UPEWA-Los Baños Chapter was organized), the conclusion is inevitable, that he was being persecuted and driven to quit voluntarily. Since Tolibas would not quit, he was therefore not recommended for reappointment for the fiscal year July 1, 1956 to June 30, 1957, which was supposed to be the fourth fiscal year of his service were he not separated. His separation in this case is a clear case of discrimination as to hire or tenure of employment. It is clear from the record of this case that during the fiscal years 1953 to 1954, and 1954 to 1955 Tolibas was successively promoted, and then on August 11, 1955, he was reappointed for the fiscal year 1955 to 1956. Tolibas' sudden non-reappointment for the fiscal year July 1, 1956 to June 30, 1957 certainly raises a grave doubt as to the real motive of the staff of Dr. Umali in not recommending him for reappointment for the mid fiscal year, which fact had to be resolved in favor of Tolibas.

"Considering that the respondent had discriminatorily discharged Tomas C. Tolibas, because of union activity, the respondents are ordered to reinstate fully and immediately Tomas C. Tolibas with backwages from July 1, 1956 until reinstated without prejudice to seniority or other rights and privileges he had enjoyed before his separation." (Italics supplied)

It appears however from the evidence, which the industrial court did not mention in its order, that Tolibas was employed for the first time as a laborer in the Plant Breeding Division of the U. P. College of Agriculture on June 24, 1953 through the intercession of Prof. Umali whom he is now accusing of unfair labor practice; that he was employed under the Cornell Funds and his appointment was temporary in character in the sense that it was for one year only; that he was reappointed for another year from July 1, 1954 to June 30, 1955, which appointment was renewed for another year from July 1, 1955 to June 30, 1956; for the fiscal year 1955-1956, the Cornell allotment was P23,000, but it was reduced to P18,000 for the fiscal year 1956-1957, which reduction represented the wages of four laborers; that because of such reduction, the Plant Breeding Division under Prof. Umali was forced to reduce its personnel and to lay off four laborers, and to this effect that Division decided not to recommend the reappointment of those laborers whose work was not "satisfactory, among them was Tomas C. Tolibas; and that aside from Tolibas, the three other laborers who were recommended for separation were non-union members while those who were retained were union members.

Considering the foregoing facts which are supported by the evidence and which were not touched upon in its order by the industrial court, it is the sense of this Court that the university authorities were justified in ordering the separation of Tolibas, it appearing that he was a temporary employee and the funds allotted for his position were discontinued. We hold this view upon the theory that one who holds a temporary appointment has no fixed tenure of office and as such his employment can be terminated at the pleasure of the appointing power, there

being no need to show that the termination is for cause (Mendez vs. Ganzon, 101 Phil., 48). This view is supported by the following authorities:

"But there is one argument which justifies the separation from the service of petitioner and that refers to the fact that when he was appointed! he was not a civil service eligible and his appointment was merely temporary in nature. His appointment being temporary does not give him any definite tenure of office but makes it dependent upon the pleasure of the appointing power. A temporary appointment is similar to one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power. And one who bears such an appointment cannot complain if it is terminated at a moment's notice.

"Thus, in Villanosa, et al. vs. Alera, et al., G. R. No. L-10586, May 29, 1957, we held:

\* \* \* Since it is an admitted fact that the nature of the appointments extended to petitioners was merely temporary, the same cannot acquire the character of permanent simply because the items occupied refer to permanent positions. What characterizes an appointment is not the nature of the item filled but the nature of the appointment extended. If such were not the case, then there would never be temporary appointments for permanent positions. This is absurd. The appointments being temporary, the same have the character of 'acting appointments' the essence of which is that they are temporary in nature.' " (Cuadra vs. Cordova, 103 Phil., 391; See also Reyes, et al. vs. Dones, et al., 103 Phil., 884.)

Having reached the foregoing conclusion, we deem it unnecessary to discuss the points raised in connection with the charge of unfair labor practice or the issue of jurisdiction raised by the counsel of the University of the Philippines.

Wherefore, the order appealed from is hereby set aside, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

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