DAVAO MERCHANT MARINE ACADEMY, ALBERTO V. ALEJANDRE, ELIZABETH M. PARAMIO, VICENTE C. VIRTUDAZO, AURORA U. OGAYA, GLORIA S. URIARTE, LORENZO EDWIN EUSEBIO, NOEL N. ROSETE, CARLI...

G.R. NO. 144075. April 19, 2006

Ponente: CORONA, J.

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CORONA, J.:

This petition for certiorari brings to a close an illegal dismissal case brought by private respondent Alma E. Garcia against petitioners Davao Merchant Marine Academy (DMMA) and the members of its Board of Trustees.

DMMA is a private educational institution in Davao City. In June 1994, it hired private respondent Garcia to teach certain courses for the first semester of schoolyear 1994-1995. About a month after classes began, private respondent signed a contract designating her as a "contractual" employee with an academic load of 21 hours a week and stipulating that her employment was for a definite term, "from June 1, 1994 up to and including October 31, 1994."[1] Her contract was renewed for the second semester of the same schoolyear. The term of this new contract was from November 24, 1994 to March 31, 1995 and her weekly teaching load was increased to 30.75 hours.[2] For the first semester of schoolyear 1995-1996, she entered into a third contract[3] of employment with the school. She was given a weekly teaching load of 31.5 hours a week and a higher salary rate.[4] Under this third contract, Garcia's employment was from June 1 to October 31, 1995.[5]

Sometime in the first week of June 1995, petitioner DMMA called a faculty meeting during which it presented for the faculty's approval a new formula for computing the teachers' salaries. On DMMA's assurance that the new formula would result in higher pay for the teachers, a majority of the faculty voted to approve it. Garcia, to whom the formula did not make sense, abstained from voting.

Contrary to what DMMA had led the faculty to believe, the new formula actually caused a diminution of the teachers' salaries. Garcia took it upon herself to ask the school administration for an explanation but all she got was a copy of excerpts from the minutes of a meeting of DMMA's Board of Trustees held on October 11, 1995. It stated that "[t]he Board decided that there should be no changes in the formula for salary computation as of now because this was voted upon by the majority of the Faculty Members making this binding and legal."[6]

Not satisfied, she wrote a letter to DMMA's Board of Trustees on October 12, 1995. She reiterated her request for an explanation and opined that the school might have inadvertently violated labor laws since the new formula actually diminished the teachers' salaries.

On October 19, 1995, Garcia was summoned to the Office of the Executive Assistant to the President and confronted about her letter. She was told that DMMA was no longer comfortable working with her and that her employment would end on October 31, 1995.

She did not foresee such an abrupt and unexpected end to her teaching career at DMMA. She wanted her

employment to continue considering that, prior to her letter, the school administration had already posted the schedule of classes for the second semester, including those she would be handling. She had also been verbally notified by DMMA's chairman of academic affairs that she would be teaching night classes in the next semester. Hence, she filed a complaint against petitioners for illegal dismissal, money claims and damages at the National Labor Relations Commission (NLRC) Regional Arbitration Unit, Branch No. 11.

In their defense, petitioners alleged that Garcia had been hired as a chemistry teacher on a contractual basis and since the subjects assigned to her were offered only in the first semester, her services had to be dispensed with in the second semester.

The labor arbiter dismissed Garcia's complaint for lack of merit. He ruled that DMMA had hired her as a temporary employee under a valid fixed-term contract and therefore had the prerogative to terminate her employment at its pleasure.[7]

Respondent Garcia appealed to the NLRC. On November 28, 1996, the NLRC issued a resolution[8] reversing the labor arbiter's decision. It held that the termination of her services, which petitioners sought to justify on the ground that her latest employment contract had ended, was unwarranted as the contract was contrary to law and public policy for circumventing the law on security of tenure.[9] The NLRC believed that Garcia was not on equal footing with DMMA when she gave her conformity to the fixed-term contracts. She was made to sign these about a month after classes had already started when it was difficult for her to seek employment in another school.[10] Moreover, the NLRC found no truth in petitioners' allegation that Garcia was hired specifically to teach chemistry subjects offered only in the first semester. The evidence on record showed that she was also teaching subjects other than chemistry and had in fact even been slated to handle chemistry laboratory classes for the second semester of school year 1995-1996.[11] Thus, the NLRC declared petitioners liable for illegally dismissing Garcia and ordered them to pay her backwages, salary differentials, moral and exemplary damages and attorney's fees.[12] In a subsequent resolution,[13] the NLRC denied petitioners' motion for reconsideration.

In due time, petitioners elevated the case to the Court of Appeals (CA) through a petition for certiorari under Rule 65 of the Rules of Court. The CA agreed with the NLRC's findings and held that the fixed-term contracts relied on by petitioners could not meet the standards laid down in Brent School Inc. v. Zamora.[14] It denied the petition for lack of merit and affirmed the NLRC resolutions in toto.[15] Petitioners' motion for reconsideration was likewise denied.[16]

Seeking a review and reversal of the CA decision, petitioners now come to us on a petition for certiorari under Rule 65 of the Rules of Court.

Petitioners would have us set aside the CA decision and uphold their stand that Garcia's fixed-term employment contract with the school satisfied the standards set forth in Brent.[17] But the remedy by which they mean to attain this end is erroneous. Petitioners knew, or ought to have known, that at the threshold of every special civil action for certiorari, one seeking the writ must show, on pain of dismissal, that resort to such an extraordinary remedy can be justified only in the "absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law." Petitioners fail in this regard for there is nothing in their petition, not even an allegation, that they had no appeal or any other efficacious remedy against the CA decision. We therefore dismiss the petition.

There is no excuse for petitioners' erroneous choice of remedy. In Heirs of Marcelino Pagobo v. Court of Appeals,[18] this Court ruled in no uncertain terms that redress from the CA's adverse decision in a special civil action for certiorari under Rule 65 should not be sought under the same Rule but rather under Rule 45.[19] After all, Rule 45 is clear that decisions, final orders or resolutions of the CA in any case, i.e., regardless of the nature of

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the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[20] And in an even earlier case,[21] this Court stated that the remedy to obtain a reversal or modification of a decision on the merits, as petitioners are attempting to do here, is appeal.[22] This is true even if the error ascribed to the appellate court is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in its decision.[23] Therefore, petitioners' allegation that the CA "committed grave abuse of discretion amounting to lack or excess of jurisdiction"[24] in rendering its decision and resolution "in a manner contrary to law and applicable jurisprudence on the matter"[25] does nothing to advance their cause.

The period to appeal under Rule 45 is 15 days from notice of judgment or denial of a duly-filed motion for reconsideration.[26] Since petitioners made a timely motion for reconsideration of the adverse decision of the CA, their period to bring the matter to us on appeal began when they received notice of the CA's denial of their motion, May 2, 2000.[27] Therefore, petitioners had until May 17, 2000 to file a petition for review on certiorari with this Court. Petitioners lost their right to appeal when they allowed that period to lapse without having filed either a petition for review or even a motion for extension[28] of time to file one. Consequently, the decision of the CA became final and executory.

Petitioners cannot now use this special civil action for certiorari, an extraordinary remedy, as a mode of obtaining a reversal of a decision they omitted to bring to us on appeal. Time and again, this Court has held that the special civil action for certiorari is not and cannot be made a substitute for a lapsed appeal.[29] A petition under Rule 65 is an independent action that cannot be availed of as a proxy for the lost remedy of an appeal under Rule 45, especially if the loss or lapse was occasioned by one's own neglect or error in the choice of remedies.[30] We need not belabor this point for the rule and the exception that proves it are stated quite succinctly in Federation of Free Workers v. Inciong:[31]

> While the special civil action of certiorari may be availed of in the alternative situation where an appeal would not constitute a plain, speedy, and adequate remedy, this is on the theoretical assumption that the right to appeal is still available in the case. If, however, the remedy by appeal had already been lost and the loss was occasioned by petitioner's own neglect or error in the choice of remedies, certiorari cannot lie as a substitute or a tool to shield the petitioner from the adverse consequences of such neglect or error.[32]

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Sandoval-Gutierrez, Acting Chairperson, Azcuna, and Garcia, JJ., concur.
Puno, (Chairperson), J., on leave.

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[*]On leave[*]Acting Chairperson[***] Alma E. Garcia passed away on April 29, 2003 and was substituted by her husband, Bienamer D. Garcia.

[1] Rollo, p. 181.

[2] Id., p. 182

[3] Id. p. 183

[4] Id.

[5] Id.

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[6] Id., p. 184.

[7] Id., pp. 71-74.

[8] Id., pp. 48-63.

[9] Id., p. 54.

[10] Id., p. 55.

[11] Id., p. 56.

[12] Id., p. 62.

[13] Id., pp. 65-68.

[14] G.R. No. 48494, 5 February 1990, 181 SCRA 702. In Brent, this Court held that "since the entire purpose behind the development of the legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter." Id. at 716.

[15] Rollo, pp. 30-43.

[16] Id., pp. 45-46.

[17] Supra note 14.

[18] G.R. No. 121687, 16 October 1997, 280 SCRA 870.

[19] Id. at 883.

[20] Id.; National Irrigation Administration v. Court of Appeals, G.R. No. 129169, 17 November 1999, 318 SCRA 255, 264.

[21] Mercado v. Court of Appeals, No. L-44001, 10 June 1988, 162 SCRA 75.

[22] Id. at 87.

[23] Id.

[24] Petition for certiorari, rollo, p. 9.

[25] Id.

[26] RULES OF COURT, Rule 45, Sec. 2.

[27] Supra note 12.

[28] On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an

extension of thirty (30) days only within which to file the petition. RULES OF COURT, Rule 45, Sec. 2.

[29] Government Insurance Service System v. Olisa, 364 Phil. 59 (1999); Limpot v. Court of Appeals, G.R. No. 44642, 20 February 1989, 170 SCRA 367, 375; Fernando v. Vasquez, L-26417, 30 January 1970, 31 SCRA 288, 294.

[30] National Irrigation Administration v. Court of Appeals, 376 Phil. 362 (1999).

[31] G.R. No. 49983, 20 April 1992, 208 SCRA 157

[32] Id. at 164.

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