

**ST. MICHAEL'S INSTITUTE, FR. NICANOR VICTORINO AND
EUGENIA BLANCO, PETITIONERS, VS. CARMELITA A. SANTOS,
FLORENCIO M. MAGCAMIT AND ALBERT M. ROSARDA,
RESPONDENTS.**

G.R. No. 145280. December 04, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision[1] and Resolution[2] of the Court of Appeals dated March 20, 2000 and September 29, 2000, respectively, in CA-G.R. SP No. 53283 which modified the Decision[3] dated April 17, 1996 of the National Labor Relations Commission (NLRC) in NLRC Case No. NCR CA No. 007922-94 by ordering the payment of backwages in addition to the judgment of the NLRC directing the reinstatement of respondents Florencio M. Magcamit and Albert M. Rosarda to their former positions as teachers and the payment of separation benefits to respondent Carmelita A. Santos.

Petitioner St. Michael's Institute is an institute of learning located in Bacoor, Cavite with petitioner Fr. Nicanor Victorino as Director and petitioner Eugenia Blanco as the Principal and respondents Carmelita Santos, Florencio Magcamit and Albert Rosarda were regular classroom teachers. Respondent Santos began teaching at St. Michael's Institute in 1979 while respondents Magcamit and Rosarda joined its school faculty only in 1990. Their service with the school was abruptly interrupted when each of them was served a notice of termination of employment on September 20, 1993.[4]

The termination allegedly stemmed from an incident that occurred on August 10, 1993. On said date, a public rally was held at the town plaza of Bacoor, Cavite in the vicinity of petitioner school. The rally, organized and participated in by faculty members, parents and some students of petitioner school, was, among others, aimed at calling the attention of the school administration to certain grievances relative to substandard school facilities and the economic demands of teachers and other employees of St. Michael's Institute.

Petitioner Blanco, as school principal, sent each of the respondents identical memoranda dated August 11 and 12, 1993, requiring them to explain their acts of leading the aforementioned rally of students outside the school premises; preventing students from attending classes; and denouncing the school authority in their speeches.[5] Responding to the individual memorandum sent to them, respondents Magcamit and Rosarda, in separate letters dated August 13, 1993, denied all the accusations attributed to them, and explained that they were invited by the core group of parents and merely joined them in expressing their sentiments; that they did not denounce the school authority but, rather, the way it was being misused and abused.[6] On the other hand, respondent Santos, in a letter dated August 16, 1993, justified her actions as having been done "on behalf of her co-teachers with the parents' blessings" to denounce "the administration's corrupt practices more so the school director".[7]

Expressing a need for investigation, petitioner school Principal Blanco created an investigation committee composed of Atty. Sabino Padilla, Jr., legal counsel of the school, PNP Maj. Hermenegildo Phee, CAT

Commander, and Mrs. Zenaida Bonete, the School Registrar.[8] The Investigation Committee found that respondents had led and actively participated in the said rally, in which they denounced the Director of the Institute, petitioner Fr. Victorino, without justification, and consequently recommended their termination from service.[9] On September 20, 1993, each of the respondents were sent three (3) identical letters informing them of their termination from the service "for serious disrespect" to their superior, petitioner Fr. Victorino, and for "serious misconduct that resulted in the disruption of classes." [10]

Respondents Magcamit and Rosarda immediately filed on September 21, 1993 a complaint for illegal dismissal against the petitioners.[11] On October 12, 1993, a second complaint for illegal dismissal was filed by respondents Magcamit and Rosarda, this time with respondent Santos.[12] Both complaints were consolidated. On September 30, 1994, Labor Arbiter Leandro M. Jose rendered a joint decision to dismiss the complaints for lack of merit.[13] The Labor Arbiter found and declared that there was just cause for the dismissal of the respondents' complaints since they were guilty of dereliction of duty and insubordination for failing to exercise the very task that they are duty-bound to perform as teachers of petitioner school, that is, to conduct classes on August 10, 1993. In addition, the Labor Arbiter opined that the willful conduct of private respondents in disobeying the reasonable order of the school principal to conduct classes is a just cause for termination and falls within the ambit of Article 282 of the Labor Code. Besides, the Labor Arbiter stated that the airing of grievances could have been done in a more acceptable way, through the Parents-Teachers Association or any aggrupation of teachers, parents and students.

On appeal, the NLRC further found that during the early part of 1993, the high school faculty of St. Michael's Institute formed a labor union. Among the organizers of the union were respondents Magcamit, Santos and Rosarda, who were later elected as President, Director and PRO, respectively, of the labor union. Certain grievances were aired in a dialogue with the school administration headed by petitioner Fr. Victorino before the School Chancellor, Fr. Arigo. The dialogue proved futile. Sometime in March of 1993, petitioner school issued termination letters to the respondents and three (3) other faculty members.

Because of their termination, respondents filed a complaint for illegal dismissal before the NLRC. However, the case was settled amicably with the conditions that complainants therein would withdraw their case and that, in turn, the school authorities would create a grievance committee. Respondents promptly complied with the condition and withdrew their complaint for illegal dismissal. As to the creation of a grievance committee, the same had still not materialized as of August 10, 1993 when the public rally was conducted.

The NLRC concluded that there was no sufficient reason to uphold the validity of the termination of the respondents' employment as the August 10, 1993 rally which was purposely held to call the school's attention to the grievances of its teachers and students, could hardly be considered as without justification. Thus, the NLRC reversed the ruling of the Labor Arbiter and held that the respondents had been illegally dismissed.

Petitioners then brought a petition for certiorari[14] before this Court. They contend that the NLRC committed grave abuse of discretion in (a) reversing and setting aside the appealed decision on causes of action different from that raised by the respondents before the Labor Arbiter, (b) reversing the finding of the Labor Arbiter that the acts of petitioners were illegal, and (c) ordering the reinstatement of respondents Magcamit and Rosarda and payment of separation pay to respondent Santos.

The Court referred the certiorari petition to the Court of Appeals in line with the doctrine laid down in the case of *St. Martin Funeral Homes v. NLRC*, promulgated on September 16, 1998, wherein the Court declared that "all appeals from the NLRC to the Supreme Court via a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure should henceforth be initially filed in the Court of Appeals as the appropriate forum for relief desired in

strict observance of the doctrine on the hierarchy of courts." [15]

Acting on the petition, the Court of Appeals sustained the decision of the NLRC but further awarded backwages to respondents. Petitioners sought reconsideration of the said decision but the same was denied in a Resolution [16] dated September 29, 2000. Nonetheless, the appellate court modified the award of backwages to respondent Santos in that the same shall only be up to December 11, 1998, the date when she would have compulsorily retired from the service upon reaching sixty-five (65) years of age.

Dissatisfied, petitioners interposed this petition for review anchored on the following assignment of errors: [17]

- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT RESPONDENTS WERE GUILTY OF SERIOUS MISCONDUCT; WHICH MISCONDUCT WARRANTED THEIR DISMISSAL FROM THEIR EMPLOYMENT.
- THE HONORABLE COURT OF APPEALS GRAVE (sic) ERRED IN IGNORING THE RULINGS OF THIS HONORABLE COURT ON THE RIGHT AND PREROGATIVE OF THE EMPLOYER TO DISMISS ERRING EMPLOYEES FOR VIOLATION OF WORKING RULES AND REGULATIONS.
- THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT THE DISMISSAL OF RESPONDENTS WAS NOT DUE TO UNION ACTIVITY OR UNFAIR LABOR PRACTICE BUT WAS DUE RATHER TO THEIR DELIBERATE REFUSAL TO ATTEND TO THEIR CLASSES ON 10 AUGUST 1993 AND THEIR UTTERANCE OF FOUL AND OBSCENE REMARKS DIRECTED AT THE SCHOOL DIRECTOR, FR. NICANOR VICTORINO.
- THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT ORDERED NOT ONLY THE REINSTATEMENT OF RESPONDENTS BUT ALSO PAYMENT TO THEM OF BACKWAGES; THIS, DESPITE THE FACT THAT THE NATIONAL LABOR RELATIONS COMMISSION DELIBERATELY REFUSED TO AWARD THEM BACKWAGES AND SAID RESPONDENTS UNDISPUTEDLY DID NOT APPEAL THE NLRC DECISION.
- ASSUMING ARGUENDO THAT RESPONDENT CARMELITA SANTOS IS ENTITLED TO BACKWAGES, THE COMPUTATION OF HER BACKWAGES SHOULD BE UP TO 11 DECEMBER 1993, NOT UNTIL 11 DECEMBER 1998.

Petitioners take exception to the conclusion and ruling of the Court of Appeals that there was no just cause for the dismissal of the respondents. It is the petitioners' position that the appellate court failed to properly appreciate that the willful refusal of the respondents to perform the very task they were hired and required to do, that is to teach, was tantamount to serious misconduct which gave the petitioners the right to terminate the employment of the respondents. Furthermore, the dismissal of respondents for joining the public rally on August 10, 1993 was fully justified because not only were classes disrupted on that day but the public rally was accompanied by utterances of obscene, insulting or offensive words against their immediate superiors, more specifically petitioner Fr. Nicanor Victorino, Director of petitioner school. [18]

The petitioners' arguments fail to persuade us.

The employer's right to conduct the affairs of his business, according to its own discretion and judgment, is well-recognized. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. This is a management prerogative, where the free will of management to conduct its own affairs to achieve its purpose takes form. The only criterion to guide the exercise of its management prerogative is that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable and the corresponding penalties, when prescribed, commensurate to the

offense involved and to the degree of the infraction.[19]

In the instant case, the reason basically cited for the dismissal of respondents is serious misconduct or willful disobedience for dereliction of duty predicated on their absence for only one day of classes for attending a public rally and denouncing the school authority. The magnitude of the infraction must be weighed and equated with the penalty prescribed and must be commensurate thereto, in view of the gravity of the penalty of dismissal or termination from the service. What is at stake here is not simply the job itself of the employee but also his regular income therefrom which is the means of livelihood of his family.

We agree with the appellate court's conclusion that, under the attendant factual antecedents, the dismissal meted out on the respondents for dereliction of duty for one school day and denouncing school authority, appears to be too harsh a penalty. It must be noted that the respondents are being held liable for a first time offense and, in the case of respondent Santos, despite long years of unblemished service. Even when an employee is found to have transgressed the employer's rules, in the actual imposition of penalties upon the erring employee, due consideration must still be given to his length of service and the number of violations committed during his employment.[20] Where a penalty less punitive would suffice, whatever missteps may have been committed by the employee ought not to be visited with a consequence so severe such as dismissal from employment.[21] Moreover, the facts, as further established on appeal in the NLRC, paint out a picture that the respondents were singled out by the petitioners apparently for being officers of the teachers' union which they formed, despite the fact that several other teachers also joined the August 10, 1993 rally.

We reiterate the settled doctrine in termination of employment disputes that the burden of proof is always on the employer to prove that the dismissal was for a just and valid cause.[22] Evidence must be clear, convincing and free from any inference that the prerogative to dismiss an employee was abused and unjustly used by the employer to further any vindictive end.

Misconduct is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment.[23] As a just cause for termination, the misconduct must be serious, which implies that it must be of such grave and aggravated character and not merely trivial or unimportant. On the other hand, disobedience, as a just cause for termination, must be willful or intentional. Willfulness is characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination.[24] Not every case of insubordination or willful disobedience by an employee of a lawful work-connected order of the employer is reasonably penalized with dismissal. As we have stated, there must be reasonable proportionality between, on the one hand, the willful disobedience by the employee and, on the other hand, the penalty imposed therefor.[25] In the instant case, evidence is wanting on the depravity of conduct, and willfulness of the disobedience on the part of the respondents. Absence of one day of work to join a public rally cannot be of such great dimension as to equate it with an offense punishable with the penalty of dismissal. The reinstatement of the respondents is, thus, just and proper.

On the matter of the award of backwages, petitioners advance the view that by awarding backwages, the appellate court "unwittingly reversed a time-honored doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision." [26] We do not agree.

The fact that the NLRC did not award backwages to the respondents or that the respondents themselves did not appeal the NLRC decision does not bar the Court of Appeals from awarding backwages. While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, the Court of Appeals is imbued with sufficient authority and discretion to review matters, not

otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case[27] or to serve the interests of justice or to avoid dispensing piecemeal justice.[28]

Article 279 of the Labor Code, as amended, mandates that an illegally dismissed employee is entitled to the twin reliefs of (a) either reinstatement or separation pay, if reinstatement is no longer viable, and (b) backwages.[29] Both are distinct reliefs given to alleviate the economic damage suffered by an illegally dismissed employee[30] and, thus, the award of one does not bar the other. Both reliefs are rights granted by substantive law which cannot be defeated by mere procedural lapses.[31] Substantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules.[32] The order of the Court of Appeals to award backwages being a mere legal consequence of the finding that respondents were illegally dismissed by petitioners, there was no error in awarding the same.

Finally, we sustain the award of backwages to respondent Santos up to December 11, 1998, when respondent Santos became 65 years old. We do not subscribe to the view of the petitioners that payment of backwages to respondent Santos should be computed only up to December 11, 1993, when respondent Santos reached 60 years of age. It is worth noting that in their motion for reconsideration before the Court of Appeals, petitioners merely attached the Service Record and Baptismal Certificate of respondent Santos to support their contention that under respondent school's policy teachers retire upon reaching the age of 60 and, thus, the amount of backwages to respondent Santos should be up to December 11, 1993 only, when she reached 60 years of age. The documentary evidence appended to the instant petition for review by the petitioners, which is not a newly discovered evidence, to substantiate its view and belated allegation on the existence of a school policy to retire teachers upon reaching 60 years of age cannot be considered at this stage. Petitioners could have presented and offered in evidence documents on the existence of the alleged school policy before the Labor Arbiter or the NLRC but they failed to do so nor have they offered adequate explanation for their failure to present and offer the said documents in evidence. It is basic that evidence not formally offered before the court below cannot be considered on appeal.[33] Thus, such documents cannot be admitted, much less given probative value, in this appeal. To do so would be repugnant to the demands of justice and fair play. Let it be stressed that in petitions for review on certiorari, the jurisdiction of this Court in cases brought before it from the Court of Appeals is limited to reviewing questions of law, which involve no examination of the probative value of the evidence presented by the litigants or any of them.[34]

WHEREFORE, the instant petition is hereby **DENIED** and the assailed Decision and Resolution of the Court of Appeals dated March 20, 2000 and September 29, 2000, respectively, in CA-G.R. SP No. 53283 are **AFFIRMED**. Costs against the petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Quisumbing, JJ., concur.
Buena, J., on official leave.

[1] Penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Rodrigo V. Cosico and Wenceslao I. Agnir, Jr., Twelfth Division, Rollo, pp. 44-53.

[2] Rollo, pp. 54-60.

[3] Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Rogelio I. Rayala, Second Division, in NLRC Case No. NCR CA No. 007922-94, Rollo, pp. 108-120.

- [4] Court of Appeals (CA) Rollo, p. 101.
- [5] CA Rollo, pp. 82, 84-85.
- [6] CA Rollo, pp. 87-90.
- [7] CA Rollo, p. 84.
- [8] CA Rollo, p. 93.
- [9] CA Rollo, p. 94-100.
- [10] CA Rollo, pp. 99-101.
- [11] Docketed as NLRC Case No. RAB-IV-9-6119-93-C.
- [12] Docketed as NLRC Case No. RAB-IV-9-6156-93-C.
- [13] CA Rollo, pp. 60-72.
- [14] CA Rollo, pp. 10-45.
- [15] CA Rollo, p. 251.
- [16] See Note No. 2, *supra*.
- [17] Rollo, pp. 21-22.
- [18] Rollo, pp. 11-12.
- [19] Consolidated Food Corporation v. NLRC, 315 SCRA 129, 139 [1999]; Castillo v. NLRC, 308 SCRA 326, 336 [1999]; Arellano, Jr. v. NLRC, 278 SCRA 296, 302 [1997]; Manila Electric Company v. NLRC, 263 SCRA 531, 538 [1996]; Maya Farms Employees Organization v. NLRC, 239 SCRA 508, 514 [1994]; National Federation of Labor Unions v. NLRC, 202 SCRA 346, 355 [1991].
- [20] De Guzman v. NLRC, 312 SCRA 266, 277 [1999]; Philippine Long Distance Telephone Company v. NLRC, 303 SCRA 9, 14-15 [1999].
- [21] Austria v. NLRC, 312 SCRA 410, 430 [1999], Philippine Long Distance Telephone Company v. NLRC, *supra* at 15.
- [22] Mendoza v. NLRC, 310 SCRA 846, 856 [1999]; Austria v. NLRC, 310 SCRA 293, 300 [1999]; Maranaw Hotels and Resort Corporation v. NLRC, 303 SCRA 540, 544 [1999].
- [23] Surigao del Norte Electric Cooperative v. NLRC, 309 SCRA 233, 247 [1999].
- [24] Legahi v. NLRC, 318 SCRA 446, 456 [1999]; Vitarich Corporation v. NLRC, 307 SCRA 509, 519 [1999]; Dimabayao v. NLRC, 303 SCRA 655, 659 [1999]; Stolt-Nielsen Marine Services (Phils.), Inc. v. NLRC, 258 SCRA 643, 648 [1996].
- [25] Gold City Integrated Port Services, Inc. v. NLRC, 189 SCRA 811, 818 [1990].
- [26] Rollo, p. 12.
- [27] Heirs of Ramon Durano, Sr., et al. v. Spouses Angeles Sepulveda Uy, et al., G.R. No. 136456, October 24, 2000, p. 17; Philippine Commercial and Industrial Bank v. Court of Appeals, 159 SCRA 24, 31 [1988].
- [28] Catholic Bishop of Balanga v. Court of Appeals, 264 SCRA 181, 191 [1996]; Servicewide Specialists, Inc. v.

Court of Appeals, 257 SCRA 643, 653 [1996]; Korean Airlines Co., Ltd. v. Court of Appeals, 234 SCRA 717, 725 [1994]; Vda. de Javellana v. Court of Appeals, 123 SCRA 799, 805 [1983]; Ortigas, Jr. v. Lufthansa German Airlines, 64 SCRA 610, 633 [1975]; Saura Import & Export Co., Inc. v. Philippine Surety Co., Inc., 8 SCRA 143, 148 [1963].

[29] Art. 279. Security of Tenure. - x x x 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 is withheld from him up to the time of his actual reinstatement.

[30] Masagana Concrete Products v. NLRC, 313 SCRA 576, 596 [1999], Lopez v. NLRC, 245 SCRA 644, 650 [1995].

[31] Dela Cruz v. National Labor Relations Commission 299 SCRA 1, 12-13 [1998]; L.T. Datu & Co., Inc. v. NLRC, 253 SCRA 440, 453 [1996]; General Baptist Bible College v. NLRC, 279 SCRA 549, 558 [1993].

[32] Aurora Land Project Corp. v. NLRC, 266 SCRA 48, 67 [1997]; Radio Communications of the Philippines, Inc. v. NLRC, 210 SCRA 222, 227 [1992].

[33] Servicewide Specialists, Inc. v. Court of Appeals, supra at 655.

[34] Section 1, Rule 45, 1997 Rules of Civil Procedure; China Road and Bridge Corporation v. Court of Appeals, G.R. No. 137898, December 15, 2000, p. 7; Philippine National Bank v. Court of Appeals, G.R. No. 128661, August 8, 2000.

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