# AKLAN COLLEGE, INCORPORATED AND MSGR. ADOLFO P. DEPRA, PETITIONERS, VS. RODOLFO P. GUARINO, RESPONDENT.

*G.R. NO. 152949. August 14, 2007*

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-152949/

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a petition for Review on Certiorari under Rule 45 of the Rules of Court filed by Aklan College, Incorporated (ACI) and Msgr. Adolfo P. Depra (Msgr. Depra) assailing the Decision[1] of the Court of Appeals (CA) dated March 9, 2001, and its Resolution[2] of April 5, 2002 in CA-G.R. SP No. 54035.

The undisputed facts, as summarized by the CA, are as follows:

> Private respondent Guarino was first hired in 1972 as an instructor by petitioner College.
>
> In 1974, private respondent was appointed as Acting Dean of the Commerce and Secretarial Department.
>
> On November 26, 1990, he was again appointed by the petitioner as Acting Personnel Director, in addition to his duties as acting dean. His appointment as Acting Personnel Director was in a temporary basis and until it is revoked by the President or Rector of the College. (Annex "A", Rollo, 32)
>
> A year after, private respondent went on leave for one year from November 4, 1991 up to November 4, 1992.
>
> On October 20, 1992, private respondent wrote the petitioner through its Rector informing the latter of his intention of reassuming his positions with the petitioner college.
>
> However, in petitioner's response, it informed private respondent that he cannot anymore reassume his former position as Acting Dean of the Commerce and Secretarial Department because he is not qualified for the position.
>
> Then, on November 10, 1992, petitioner formally informed private respondent that the Board of Trustees of the petitioner college has decided not to allow him to reassume his position as Acting Dean for the reason that he has not qualified to continue holding the position and that the position of Acting Personnel director has already been filled up by a regular incumbent.
>
> Hence, on November 11, 1992, private respondent filed the instant case for illegal dismissal against petitioner with the office of the Department of Labor in Kalibo, Aklan.[3]

On May 24, 1994, the Labor Arbiter (LA) handling the case rendered judgment dismissing the complaint for lack of merit.

Rodolfo P. Guarino (respondent) filed an appeal with the National Labor Relations Commission (NLRC). On March 9, 1995, the NLRC rendered a Decision reversing the LA, with the following dispositive portion:

> WHEREFORE, the respondents are hereby ordered to pay the complainant separation pay for his discharge from the position of Dean of Commerce and Secretarial Science, equivalent to one month pay for every year of service, a fraction of six months being considered one year.

> The respondents are further ordered to reinstate the complainant in his position as personnel director with full backwages from the time his salaries were withheld from him until his actual reinstatement, and as instructor without backwages.
>
> The respondents are furthermore ordered to pay the complainant 10% of the monetary awards as attorney's fees.
>
> Other claims are hereby DISMISSED for lack of sufficient evidence.
>
> Complainant's monetary awards up to March 10, 1995 are (sic) P149,955.85 computed as follows:

I Separation Pay as Dean
P 4, 395.50 x 17 years

P 74, 723.50

II Backwages as Personnel Director
(Nov. 10, 1992-March 10, 1995)
P 2,200 x 28 months

P 61, 600.00

Sub-total P 136, 323.50

II 10% ATTORNEY'S FEES
Grand total
P 13, 623.35
P 149, 955.85

Aggrieved by the Decision of the NLRC, petitioners filed a special civil action for certiorari with the CA. On March 9, 2001, the CA rendered judgment denying the petition and affirming the assailed decision of the NLRC.[5] Petitioners' Motion for Reconsideration was subsequently denied by the CA in its Resolution dated April 5, 2002.[6]

Hence, herein petition with a sole Assignment of Error, to wit:

> THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE WELL-SETTLED DOCTRINE LAID DOWN IN LA SALETTE OF SANTIAGO, INC. v. NLRC, 195 SCRA 80 [1991] THAT NO EMPLOYEE ATTAINS A SECOND SECURITY OF TENURE TO AN ADMINISTRATIVE POSITION.[7]

Petitioners contend that it is not a disputed fact that, during his employment with petitioner ACI, respondent held three concurrent positions: those of an instructor, Acting Dean of the Commerce Department and Acting Personnel Director; what petitioners refused to give back to respondent when he was sent a letter dated November 10, 1992 were his positions as Acting Dean and Acting Personnel Director; respondent was never stripped of his position as an instructor. Citing the case of La Salette of Santiago, Inc. v. National Labor Relations Commission,[8] petitioners assert that while an employee attains security of tenure as a member of the teaching staff of a private educational institution from which he could only be removed for cause, he cannot always aspire for a second tenure in an administrative position and can, therefore, be stripped of this position by the appointing power without the latter being held responsible for illegal dismissal. Petitioners argue that when private respondent was not allowed to re-assume his former administrative positions as Acting Dean and Acting Personnel Director but was still considered as an instructor and was even prodded to resume his teaching


Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

responsibilities, he could not be considered as having been illegally dismissed.

Petitioners further argue that there was no law or agreement which gave respondent additional tenure as dean; that his appointment as dean in a regular capacity was made dependent on his graduation with a degree of Master in Business Administration (MBA), as this is a requirement imposed by DECS Order No. 5, Series of 1990 as well as the Manual of Regulations for Private Schools; that petitioner was not able to finish his MBA which compelled petitioner ACI to withhold the position from him.

Petitioners also aver that respondent's appointment as Dean and Personnel Director was only in an acting but never in a regular capacity. Citing various rulings of this Court, petitioners contend that a bona fide appointment in an acting capacity is essentially temporary and revocable in character and the holder of such an appointment may be removed anytime even without hearing or cause.

On the other hand, respondent argues that petitioners' reliance on La Salette is misplaced, as the factual circumstances obtaining therein are materially different from those in the present case. Respondent contends that in La Salette, the complainant therein was appointed to various administrative positions for a definite or fixed term, while in the present case respondent was appointed as dean not for a fixed duration but for an indefinite period. In addition, respondent claims that by continuously serving as Dean of ACI's Commerce and Secretarial Department for more than 17 years, his assumption of the said office could not be considered as temporary. He claims that while he was not formally appointed as dean, he has acquired security of tenure as such pursuant to the provisions of Article 280 of the Labor Code.[9]

The Court finds the petition meritorious.

Respondent's termination as Acting Personnel Director is valid.

The factual milieu in La Salette is similar to the present case insofar as respondent's position as Personnel Director is concerned. In La Salette, the respondent therein occupied different administrative positions in various capacities every so often and for a period not exceeding three years. For three years, she was the principal of La Salette Jones High School. For the next three years she worked as teacher and Subject Area Coordinator of a sister school, La Salette of Santiago. Thereafter, for seven years, she was employed as a full-time instructor in still another sister corporation, La Salette College; and for two years of that period, she served as the Head of the Department of Education and Liberal Arts. After which, for three years, she was assigned as Assistant Principal of the High School Department of La Salette of Santiago, concurrently with her work as part-time instructor in La Salette College. For the last two years of her connection with the La Salette School System, she was designated as High School Principal of La Salette of Santiago. On this matter, the Court held as follows:

> What is immediately apparent from this second look at the material facts is that while Clarita Javier's work as teacher in the La Salette School System was more or less continuous, or was evidently intended to be on a permanent basis, her assignment in one administrative office or another-i.e., as high school principal, subject area coordinator, head of a college department, assistant principal- was not. In these administrative posts, she served in a non-permanent capacity, either at the pleasure of the school or for a fixed term. She could not but have become aware of the pattern in her employment relationship with her employer, of the duality in the nature of her employment, particularly of the non-permanent character of her stints in the administrative positions to which she was designated.
>
> There was therefore no cause for her to believe that security of tenure could be obtained by her in any of the administrative positions she held at one time or another. On the contrary, the temporariness of her occupancy of those administrative offices must have become quite apparent to her, in light of the facts. x x x[10]

In the present case, it is not disputed that respondent was appointed as Acting Personnel Director on November

26, 1990. He went on leave for one year from November 4, 1991 until November 4, 1992, after which he was no longer allowed to re-assume his administrative posts. Having assumed the position of Personnel Director in an acting capacity, respondent could not reasonably have expected that he had acquired security of tenure.

Moreover, in La Salette, the respondent's appointment to the various administrative positions she held were not even in an acting capacity. Yet this Court held that she never attained security of tenure with respect to these positions. In the present case, with all the more reason should respondent not expect that he has gained security of tenure, considering that his appointment was only in an acting capacity.

This Court has held that an acting appointment is merely temporary, or one which is good until another appointment is made to take its place.[11] And if another person is appointed, the temporary appointee should step out and cannot even dispute the validity of his successor's appointment.[12] The undisturbed unanimity of cases is that one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated anytime at the pleasure of the appointing power without need to show that it is for cause.[13]

Insofar as the principles governing permanent and temporary appointments are concerned, this Court finds the ruling in the more recent case of Achacoso v. Macaraig[14] relevant and instructive. While Achacoso served as the jurisprudential basis in cases involving the issue of security of tenure in career executive service positions in the government, this Court finds the rules on permanent and temporary appointments enunciated therein applicable to the present case.

This Court held in Achacoso that a permanent appointment can be issued only to a person who meets all the requirements for the position to which he is being appointed; a person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, only as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of persons who are qualified; the purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge the same pending the selection of a permanent or another appointee; the person named in an acting capacity accepts the position under the condition that he shall surrender the office once he is called upon to do so by the appointing authority.[15]

Consistent with the rulings in La Salette, Achacoso and the other cases cited above, respondent could not have attained security of tenure with respect to his position as Personnel Director of ACI. His termination as such is valid.

On the other hand, the factual circumstances are different with respect to respondent's appointment as Acting Dean of ACI's Commerce Department. In the present case, respondent was allowed to occupy the position of Acting Dean for a continuous period of 17 years, more or less, beginning in 1974 until he went on leave on November 4, 1991. Unlike the private respondent in La Salette, herein respondent's term as acting dean remained uninterrupted. In fact, there was not even any showing that he was handed any re-appointment paper or made to sign a renewal contract regarding the said position.

Nonetheless, the Court finds respondent's termination as Acting Dean also valid for the following reasons:

Petitioners assert that under DECS Order No. 5, Series of 1990, as well as Section 41 of the Manual of Regulations for Private Schools, the acquisition of a Master's degree has been made a requirement before a person can be appointed as Dean of an undergraduate program.

Article IV (1) (1.2) of DECS Order No. 5, Series of 1990, provides for the following minimum qualifications for the position of chairman, dean or director of a school's accounting program, to wit:

- Holder of a CPA certificate issued by the Professional Regulation Commission;

- Holder of at least a master's degree in business, accountancy, or business education;

- Teaching experience of at least three (3) years;

- The ability to lead and gain the confidence and respect of the faculty.

However, the Court finds that petitioners erred in relying upon the above-quoted provisions of DECS Order No. 5, Series of 1990, as its basis in dismissing respondent as the Acting Dean of its Commerce Department, because the said Order specifically applies only to the position of chairman, dean or director of a school's Accounting Department. Moreover, petitioners failed to refute respondent's contention in his Position Paper that the Department of Commerce to which he was assigned consists of many fields of study other than accounting.

The Court also notes that the Manual being referred to by petitioners is the 1992 Manual of Regulations for Private Schools (8[th] Edition). The 1992 Manual took effect at the beginning of the summer session of 1993.[16] Prior to its effectivity, what was in force was the 1970 Manual of Regulations (7[th] Edition). The alleged illegal dismissal of respondent took place on November 10, 1992. At the time of the dismissal, what was in effect was the 1970 Manual. Hence, it should have been the 1970 Manual, and not the 1992 Manual, that petitioners cited as their basis in dismissing respondent from his position as Acting Dean.

In any case, it must be pointed out that like the 1992 Manual, the 1970 Manual requires that a Dean of an undergraduate program must have acquired an appropriate graduate degree. Paragraph 69 of the 1970 Manual provides:

> 69. Administrative and supervisory officials should have the following minimum qualifications, duly supported by credentials on file with the school.
>
> - For principal of primary and/or intermediate schools, a holder of a Bachelor's degree in Elementary Education or equivalent with three years of successful teaching experience in the elementary grades.
>
> - For principal of secondary schools, a holder of a Bachelor of Science in Education degree or equivalent with three years of successful teaching experience in the high school.
>
> - College dean, a holder of an appropriate graduate degree with at least three years of successful college teaching experience.
>
> - Dean of the Graduate School, a holder of an appropriately earned doctorate degree with at least three years of successful graduate school teaching experience. (emphasis supplied)

Both the 1970 and 1992 Manuals were promulgated by the Department of Education, Culture and Sports (now, Department of Education) in the exercise of its rule-making power as provided for under Section 70[17] of Batas Pambansa Blg. 232, otherwise known as the Education Act of 1982. As such, these Manuals have the force and effect of law.[18]

Since the 1970 Manual imposes minimum requirements that must be complied with before a person can be appointed as a college dean, petitioner ACI is duty-bound to comply with these requirements. Otherwise, it runs the risk of incurring administrative sanctions from DECS.[19] In the present case, the fact that respondent was retained as an acting dean for 17 years did not give him a vested right to occupy in a permanent capacity the position to which he was appointed. Neither do his long years of service confer upon him the requisite qualifications which he does not possess. Not being a master's degree holder, he was never and could never have been appointed in a permanent capacity, as he is not qualified under the law. Thus, pursuant to the 1970 Manual, respondent's dismissal as acting dean of ACI's Commerce Department is valid.

Respondent's appointment as dean of petitioners' Commerce Department was also in an acting capacity. Hence,


Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

the Court finds the rulings in La Salette and Achacoso, which were earlier discussed, applicable.

The Court is not persuaded by respondent's contention that petitioner ACI is estopped from assailing respondent's qualification since it allowed the latter to continue occupying the position of acting dean for more than 17 years despite the said requirement being imposed by the DECS.

In the present case, the employment of respondent as Acting Dean is contrary to the express provisions of the 1970 Manual. It is settled that estoppel cannot give validity to an act that is prohibited by law, or one that is against public policy.[20] Neither can the defense of illegality be waived.[21] Hence, respondent's appointment as Acting Dean can never be deemed validated by estoppel.

Moreover, respondent cannot deny that he is aware of the fact that a master's degree in business administration is required of a person who is appointed to the position of ACI's Dean of Commerce. He never disputed petitioners' contention in their Answer/Position Paper[22] filed with the Labor Arbiter that he was indeed aware of this requirement. In fact, it was in his Memorandum-Proposal addressed to the Rector of ACI dated May 26, 1972[23] that respondent suggested that ACI grant him financial assistance so that he can go to graduate school and take up MBA. ACI acted favorably on his suggestion and awarded him a scholarship grant less than a month after the said Memorandum-Proposal was submitted.

In addition, one of the conditions imposed by petitioners upon respondent in their Scholarship and Employment contract was for him to serve as Dean of its Commerce Department after he finished his MBA. Despite the opportunity given him, respondent still failed to obtain an MBA. Nonetheless, respondent was still allowed to retain his position as Acting Dean. Under the foregoing circumstances, especially in light of the requirements imposed by law, petitioners' extension of respondent's appointment can be considered simply as an act of grace on the part of the former and may not be interpreted as a change of status from temporary to permanent. If the intention of the petitioners was to make respondent's appointment permanent, they would have done so by executing a different appointment paper considering the fact that the original appointment was of a temporary nature.

Moreover, the provisions of Article 280 of the Labor Code are not applicable to the present case especially with respect to the issue of respondent's acquisition of security of tenure. It is settled that questions respecting a private school teacher's entitlement to security of tenure are governed by the Manual of Regulations for Private Schools and not the Labor Code. Paragraph 75[24] of the 1970 Manual (now Section 93[25] of the 1992 Manual) lays down the requisites before a teacher can be considered as having attained a permanent status and therefore entitled to security of tenure. In La Salette, the Court was clear in ruling that, unlike teachers (assistant instructors, instructors, assistant professors, associate professors, full professors) who aspire for and expect to acquire permanency, or security of tenure, in their employment as faculty members, teachers who are appointed as department heads or administrative officials (e.g., college or department secretaries, principals, directors, assistant deans, deans) do not normally, and should not expect to, acquire a second status of permanency or an additional or second security of tenure as such officer. In the instant case, it is not disputed that respondent was never removed from his position as instructor. He was only dismissed from his capacity as Acting Dean and Acting Personnel Director.

As to respondent's right to procedural due process, this Court has held that there is no need of a notice to the acting appointee or any form of hearing.[26] Such procedural requirements apply where the officer is removable only for cause.[27] This Court reiterates the rule that a bona fide appointment in an acting capacity is essentially temporary and revocable in character and the holder of such appointment may be removed anytime even without hearing or cause.[28]


Study hands-free: podcast-style lessons with read-along highlighting - batas.org

As to respondent's entitlement to separation pay, the settled rule is that separation pay is the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is seeking another employment.[29] In the present case, while respondent was no longer allowed to return to his positions as Acting Dean and Acting Personnel Director he was, nonetheless, retained as an instructor. Hence, he could not be deemed as separated from the service because his employment as instructor remains.

On the other hand, if respondent chose to seek another employment as there is no showing in the present case that he returned to his position as instructor, petitioners should not be faulted and made to suffer the consequence of respondent's decision. In such a case he is deemed to have voluntarily resigned. Settled is the rule that an employee who voluntarily resigns from employment is not entitled to separation pay unless, however, there is a stipulation for payment of such in the employment contract or Collective Bargaining Agreement, or payment of the amount is sanctioned by established employer practice or policy.[30] There is no proof to show that the present case falls under any of the above-enumerated exceptions. Hence, the Court finds no cogent reason to award him separation pay.

WHEREFORE, the instant petition is GRANTED. The Decision of the Court of Appeals dated March 9, 2001 in CA-G.R. SP No. 54035, which affirmed the Decision of the National Labor Relations Commission, Fourth Division, Cebu City in NLRC Case No. V-0261-94 is REVERSED and SET ASIDE. The Labor Arbiter's Decision dated May 24, 1994 in RAB Case No. 0210-AKLAN-92 (06-11-700045-92), dismissing respondent's complaint for lack of merit, is REINSTATED.

No costs.

**SO ORDERED.**

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

---

[1] Penned by Justice Eloy R. Bello, Jr. and concurred in by Justices Eugenio S. Labitoria and Perlita J. Tria Tirona; rollo, p.30.

[2] CA rollo, p. 187.

[3] Id. at 120-121.

[4] CA Rollo, pp. 24-25.

[5] Id. at 120.

[6] Id at. 187.

[7] Rollo, p. 7.

[8] G.R. No. 82918, March 11, 1991, 195 SCRA 80.

[9] Article 280. Regular and Casual Employment. -- The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the

duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[10] La Salette of Santiago, Inc. v. National Labor Relations Commission, supra note 8, at 90.

[11] Castro v. Solidum, 97 Phil. 278, 280 (1955).

[12] Id. at 280.

[13] Jimenea v. Guanzon, 130 Phil. 263, 269 (1968); Santos v. Chico, 134 Phil. 291, 294 (1968); Barañgan v. Hernandez, 136 Phil. 607, 610 (1969).

[14] G.R. No. 93023, March 13, 1991, 195 SCRA 235.

[15] Achacoso v. Macaraig, supra note 14, at 239-240.

[16] Section 104, 1992 Manual of Regulations for Private Schools; Geslani v. National Labor Relations Commission, 323 Phil. 739, 747 (1996).

[17] SEC. 70. Rule-making Authority. - The Minister of Education, Culture and Sports charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations.

[18] Sarmiento, Manual of Regulations for Private Schools, Annotated, p. 501.

[19] Section 69 of BP Blg. 232 provides for the following:

SEC. 69. Administrative Sanction. - The Minister of Education, Culture and Sports may prescribe and impose such administrative sanction as he may deem reasonable and appropriate in the implementing rules and regulations promulgated pursuant to this Act for any of the following causes:

- Mismanagement of school operations;

- Gross inefficiency of the teaching or non-teaching personnel;

- Fraud or deceit committed in connection with the application for ministry permit or recognition;

- Failure to comply with conditions or obligations prescribed by this Code or its implementing rules and regulations; and

- Unauthorized operation of a school, or course, or any component thereof, or any violation of the requirement governing advertisements or announcements of educational institutions.

[20] Ouano v. Court of Appeals, 446 Phil. 690, 708 (2003).

[21] Id.

[22] CA rollo, p. 42.

[23] Annex "1," CA rollo, p. 49.

[24] 75) Full-time teachers who have rendered three consecutive years of satisfactory service shall be considered permanent.


*Bar review courses, mock exams and a study planner that keeps you on pace - batas.org*

[25] Section 93. Regular or Permanent Status. - Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

[26] Austria v. Amante, 79 Phil. 780, 784 (1948).

[27] Id.

[28] Marohombsar v. Alonto, Jr., G.R. No 93711, February 25, 1991, 194 SCRA 390, 395 citing: Austria v. Amante, supra note 26; Castro v. Solidum, supra note 11; Mendez v. Ganzon, 101 Phil. 48 (1957); Valer v. Briones, 118 Phil. 1442 (1963); Abaño v. Aguipo, 122 Phil. 990 (1965); Hojilia v. Mariño, 121 Phil. 280 (1965).

[29] Quebec v. National Labor Relations Commission, 361 Phil. 555, 564 (1999).

[30] Travelaire and Tours Corp. v. National Labor Relations Commission, 355 Phil. 932, 935 (1998).

ABOUT BATAS.ORG

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

### The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

### Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

### Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

### The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

### Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

### A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at https://batas.org**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.