TECHNOLOGICAL INSTITUTE OF THE PHILIPPINES TEACHERS AND EMPLOYEES ORGANIZATION (TIPTEO) AND ITS MEMBER MAGDALENA T. SALON, PETITIONERS, VS. THE HON. COURT OF APPEALS AND TECHNOL...

G.R. No. 158703. June 26, 2009

Ponente: BRION, J.

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BRION, J.:

Before this Court is the petition for review on certiorari[1] challenging the Amended Decision dated May 22, 2003 of the Court of Appeals (CA) in the case Technological Institute of the Philippines v. Technological Institute of the Philippines Teachers and Employees Organization, CA G.R. SP No. 66896.[2]

THE FACTUAL BACKGROUND

The facts of the case, set out in the original CA decision promulgated on November 20, 2002,[3] are summarized below.

Petitioner Magdalena T. Salon (Salon) was a College Instructor 3 of the Humanities and Social Science Department (HSSD) of respondent Technological Institute of the Philippines (TIP) and a member of the Technological Institute of the Philippines Teachers and Employees Organization (TIPTEO). She commenced employment with the TIP on June 13, 1989.

On October 24, 2000, the TIP received complaints from students claiming that Salon was collecting P1.50 per page for the test paper used in the subject she was teaching at the time. She reportedly asked her students not to write on the test papers; these test papers were not returned to the students after the test. An allegation was made, too, that Salon committed an anomaly in the grading of her students.

Acting on the written complaints, the TIP - through Ms. Josephine Royer (Ms. Royer), the school's Assistant Faculty Coordinator - sent Salon a memorandum dated October 30, 2000 asking her to explain within 72 hours why she should not be disciplined on the basis of the complaints.[4]

Salon answered the charges on October 31, 2000.[5] She explained that she collected only P0.50 for each page of the test papers, which sum she spent in photocopying the papers; the amount collected was within the limits the school had set. She admitted that she asked her students not to write on the test papers because there was no space on these papers where they could write their answers; it would be preferable to use the test booklets also provided to the students.

On the alleged grade manipulation, Salon explained that the incident involved the son of a fellow faculty member who actually failed her subject. Her fellow faculty member and mother of the student, upon learning of her son's failing grade, tried to persuade Salon to give her son a passing grade for fear that the father, if he learned of the failing mark, would harm his son. Salon claimed that she did not accede to the request; she gave the student a

grade of 6.0 or "dropped" instead of giving him a grade of 5.0 or "failed."

The TIP created a three-man committee to conduct a formal investigation of the charges.[6] The committee called a hearing on November 16, 2000 and issued the following findings:[7]

> Recommendation:
>
> - Evidences (sic) show that Ms. M.T. Salon has changed the grade of Mr. Joseph Florante Manalo. She disregarded the TIP grading system when she gave a grade of 6.0 (officially dropped) inspite of the class performance records. She admitted that the grade is 5.0 (failed) but made it 6.0 (officially dropped) which according to her is 'lesser degree of failure' because Mr. Joseph Florante Manalo, is the son of a co-faculty, Mrs. Elma Manalo in HSSD. She also changed the entry in the class record. The class record was already submitted to TIP so that this is already a TIP document.
>
> - With regards to the printed test questionnaires, Mrs. M.T. Salon has violated Memorandum No. P-66 SY 1992-1993 by not getting the approval of the department officer. It is unauthorized selling which the General Disciplinary Sanctions (Memorandum No. P-2 s. 1999-2000) classifies as a GRAVE offense.
>
> - The committee recommends the application of the corresponding sanction as contained in the General Disciplinary Sanctions (Memo No. P-3 s. 1999-2000) which is dismissal.
>
> - The recommendation shall take effect only after the approval of the President.

On December 4, 2000, the office of TIP President Dr. Teresita U. Quirino notified Salon of the termination of her service as member of the faculty of HSSD effective thirty (30) days from receipt of the notice.[8] The dismissal was based on the investigation committee's recommendations.

Salon sought assistance from TIPTEO which then requested the TIP that a joint grievance investigation be conducted to take up her dismissal. The TIP denied the request arguing that Salon's dismissal was not proper for the grievance machinery because the ground for dismissal was a violation of the school's rules and regulations.

Faced with this denial, TIPTEO opted to file a complaint for illegal dismissal with the National Conciliation and Mediation Board (NCMB) in the National Capital Region. At the NCMB, the parties agreed to submit the dispute to Voluntary Arbitrator Alfonso C. Atienza for voluntary arbitration.

On July 14, 2001, the voluntary arbitrator rendered an award in Salon's favor.[9] The arbitrator ruled that Salon was dismissed without a valid cause and without due process. He found that the school was unable to prove by substantial evidence that Salon committed the acts charged. At the most, the arbitrator concluded that the TIP only proved that there was no permission, written or verbal, before Salon prepared and sold the test papers to her students. On the due process issue, the arbitrator found that Salon was not afforded an opportunity for a real investigation because she was denied the right to counsel; neither was she afforded the right to a hearing under the grievance procedure of the CBA and under the Labor Code.

The voluntary arbitrator ordered the TIP to reinstate Salon as College Instructor 3 with full backwages, but suspended her for one month "for not getting a written permission from responsible officials of the school in charging students with the cost of examination papers."

The TIP sought the reconsideration of the award, but the voluntary arbitrator denied the motion on September 16, 2001. The TIP thereupon elevated the case to the CA through a petition for review. In a decision promulgated on November 20, 2002, the appellate court affirmed the voluntary arbitration award resulting in the dismissal of the petition.[10] The appellate court agreed with the voluntary arbitrator that nothing in the TIP rules warrants the dismissal of a faculty member for selling examination papers without the school's written permission. It was not

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convinced that the infraction committed by Salon is a grave offense referred to in Memorandum No. P-25 s. 2000-2001 that the TIP cited as justification for the dismissal of Salon.[11] The relevant portion of this memorandum reads:

> 1. In line with the school's thrust to provide quality education and service to its students, a photocopy center is created with the major task of servicing students on their handout requirements.
>
> x x x
>
> 4. Please discuss these to your respective faculty members on one of your department meetings.
>
> x x x
>
> 4.1 Explain to them the objectives for the creation of said photocopy center. Emphasize to them that they are not authorized to sell instructional materials, and to do so is a grave offense. Explain further that this is one of the reasons why the center is being formed.
>
> x x x
>
> 4.2 Make clear to them that services of the photocopy center shall be limited to required handouts and instructional materials assigned by faculty members and will not include other photocopy needs of the student.

The CA ruled that examination papers do not fall within the term "instructional materials" that the memorandum covers; the memorandum only covers handouts and instructional materials needed by students and assigned by their teachers. The CA explained that from their nature and use, handouts and instructional materials are entirely different from examination papers; instructional materials are used to present and convey lessons to the students; whereas, examination papers measure the students' degree of comprehension of their lessons.

On a related matter, the CA held that if Salon committed an infraction, it should be limited to the fact that she did not ask the Faculty Coordinator and the Department Head to determine the cost of the papers which she disseminated among her students, as required under paragraph 4 of Memorandum No. P-22 s. 1988-1989.[12] Additionally, the CA held that Salon could be cited for tampering with the grade of her student Joseph Florante Manalo (Manalo) - a violation of the TIP grading policy.

Undeterred, the TIP moved for the reconsideration of the CA decision. The CA granted the motion and handed down the now assailed amended decision on May 22, 2003.[13] It examined the facts for the second time and concluded that it erred in excluding examination papers from the ambit of the term "instructional materials." It reasoned out that "examination papers play as much, maybe even more importance in the determination of a student's aptitude than any kind of instructional material x x x to exclude examination papers from the perimeters of the term 'instructional materials' would amount to an incongruity." The CA also faulted Salon for changing the grade of Manalo from 5.0 (failed) to 6.0 (officially dropped) after the grades had been submitted.

For the reason that the infractions committed by Salon "were unrefuted and proven," the CA found basis for the TIP's decision to dismiss her for the commission of a grave offense. This notwithstanding, the appellate court deemed it "in accord with justice and equity to award her separation pay," in consideration of Salon's more than ten (10) years of service to TIP and because she had not previously been involved in any similar act or one that warrants a heavier penalty.

Accordingly, the CA annulled its decision dated November 20, 2002[14] as well as that of the Voluntary Arbitrator dated July 14, 2001.[15] It declared that Salon was dismissed for a valid cause, but awarded her separation pay at one month's basic salary for every year of service. From this decision, Salon and TIPTEO (now represented by the present counsel upon the demise of Mr. Antonio Diaz who had assisted her [Salon] from the

beginning) now come before this Court to challenge the amended CA decision.

THE PETITION

The petition submits that the CA erred:

- In ruling that Salon was dismissed for a valid cause.

- In not finding that Salon was denied procedural due process.

- In not dismissing the petition outright despite its failure to attach a certified statement of material dates in violation of Section 3, Rule 46 in relation to Rule 65 of the Rules of Court, and Revised Circular No. 1-88.

On the first ground, Salon and her union bewail the CA's shifting appreciation of the nature of test/examination papers, from "non-instructional" material to "instructional" material relying on the same policy document of the school, Memorandum No. P-25 s. 2000-2001.[16] They contend that the appellate court's change of mind was not supported by any authority. Citing the dictionary definition[17] of "instructional" and "test," they argue that "instructional material" and "test papers" are two different things; "test" is "a series of questions, problems, etc., intended to measure the extent of knowledge, aptitudes, intelligence, and other mental traits"; "instructional" is an adjective which means "pertaining or relating to instruction; educational; containing information."

Further, petitioners posit that it is incorrect to conclude that Salon is guilty of selling photocopied test questionnaires to her students; she was not selling but merely securing reimbursement for the personal expenses she incurred in the preparation of the test papers. Salon cited as authority Memorandum No. P-22 s. 1988-1989,[18] which expressly set guidelines for the cost of stenciled examination papers, P0.40 for newsprint, and P0.60 for whitewove paper.

Charging the students for the examination papers could have been avoided according to Salon had TIP performed its obligation of providing test and examination papers to the students; faculty members, who are not allowed to use school computers and typewriters in the preparation of the materials, had to type and photocopy the examination papers at their own expense and for which they had to seek reimbursement.

On the violation of the school's grading system, Salon submits that she did it for a noble intention; she changed the grade of Manalo - the son of a fellow faculty member - from a failing mark of 5.0 to a grade of 6.0 (dropped) to lessen the impact of the student's mother's guilt and to keep the student from being punished by his father, as she explained in her letter dated November 14, 2000 to TIP President Dr. Teresita Quirino.[19]

Salon claims that when she realized that she violated the TIP's grading system, she consciously tried to rectify her error; on October 20, 2000, during the submission and re-checking of her grading sheets, she asked the permission of Ms. Royer to use the Arlegui computer room to correct the grade of Manalo, but Ms. Royer directed her to defer the correction until the date set by the Registrar's Office for the final audit of grades; the scheduled date, however, was overtaken by her dismissal from her teaching post. She submits that there was no malice in what she did or an intent to violate the school's grading system; at the very least, she committed an error in judgment that does not warrant the harsh penalty of dismissal; her dismissal would violate the constitutional guaranty of security of tenure.

On the due process issue, Salon points out that the investigation of the charges against her was a "hoax"; no genuine investigation took place as she stated in her affidavit dated June 27, 2001;[20] the investigation was merely a gripe session where the complaining students hurled a barrage of malicious allegations against her; she was not afforded an opportunity to defend herself and to be represented by counsel of her own choice or a

representative from the union. Salon further submits that the TIP failed to comply with the two-notice requirement before she was terminated from employment - (1) a first notice apprising her of the particular acts or omission for which she was being dismissed, and (2) a second notice informing her of the school's decision to dismiss her. She contends that the first notice issued by the TIP merely directed her to submit her explanation regarding the "selling of photocopied examination," and did not inform her that this was a ground for dismissal.

In her third assignment of error, Salon faults the CA for not dismissing the TIP's petition outright for its failure to attach a certified statement of material dates in violation of Section 3, Rule 46 in relation with Rule 65 of the Rules of Court and Revised Circular No. 1-88. She submits that a perusal of the TIP's petition for review, dated October 1, 2001,[21] reveals that there was no verified statement of material dates accompanying the petition - a defect which cannot be cured by the incorporation of material dates in the body of the petition.

Petitioners pray that the CA's amended petition be set aside; that Salon's dismissal be declared illegal; and that she be reinstated with full backwages.

THE CASE FOR TIP

The TIP's Comment dated September 5, 2003[22] and Memorandum dated March 25, 2002[23] commonly justify Salon's dismissal on grounds of: (1) tampering or falsifying the grade of a student, which is a serious misconduct and an act of dishonesty and, (2) selling of test papers without the approval of the school, which is a grave offense under the Manual of Regulations for Private Schools and TIP's general disciplinary sanctions.[24]

On the first infraction, the TIP laments that the Voluntary Arbitrator ignored Salon's involvement in the incident on the excuse that the complaint was not notarized. The TIP brushes aside the technical deficiency and focuses on the substance of the offense charged - that Salon admitted that she changed the grade of her student Manalo from a failing grade of 5.0 to a mark of 6.0, which means that the student did not fail, but "officially dropped" the subject; the act constituted tampering, a violation not only of the school's explicit rules and regulations, but also of the Manual of Regulations for Private Schools; the alteration of the grade of her student constituted serious misconduct in relation with the performance of Salon's duties that rendered her unfit to continue working for the school; it was also an act of dishonesty, a clear disregard of her duty to serve as an example to her students and to others. While Salon claimed that she did it with the noble intention of giving the student a lesser degree of failure, it was a clear falsification of student records, which is a valid ground for termination of employment under the Manual.

Regarding the charge of selling test questionnaires without approval, TIP again relies on the results of the investigation undertaken by a committee created for the purpose. The committee found Salon to have violated Memorandum No. P-66 s. 1992-1993,[25] which provides among others:

> 1.0 All faculty members are reminded that
>
> x x x
>
> 1.3 Faculty members who intend to use mimeographed or photocopied test questionnaires should first refer these to their respective department officers. If approved, they should not sell these more than the cost of the prevailing price of photocopies which are between 0.25 to .035 centavos per page.
>
> x x x
>
> 2.0 Any faculty member violating the school's policies will be subject to disciplinary action, either suspension or dismissal depending on the gravity of the offense.

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TIP contends that Salon did not ask for the approval of the school on her selling and costing of the test questionnaires, an offense classified as grave under the general disciplinary sanctions of the school, or Memorandum No. P-3 s. 1999-2000, the penalty for which is dismissal. It further contends that in an attempt to justify her acts, Salon cited Memorandum No. P-22, s. 1988-1989 regulating the selling of mimeographed examinations, which it argues cannot prevail over a subsequent issuance, Memorandum No. P-66 s. 1992-1993 and Memorandum No. P-25 s. 2000-2001, which set guidelines for the use of the photocopy center, not acts of teachers. It explains that under the two memoranda, the selling of test papers without authorization from school authorities is a prohibited act.

Also, the school takes exception to Salon's reliance on Memorandum No. P-25 s. 2000-2001[26] on the use of the photocopy center, especially on her claim that the test questionnaire is not an instructional material and, therefore, can be sold to students. It faults the voluntary arbitrator for his shortsighted appreciation of the case; the recommendation of the investigating committee clearly reflected that the rule violated was Memorandum No. P-66 s. 1992-1993.[27] This notwithstanding, the TIP argues that Memorandum No. P-25 s. 2000-2001 and Memorandum No. P-22 s. 1988-1989 must be viewed in relation with the prohibition under Section 94 of the Manual of Regulations for Private Schools against any form of collections from students.[28] It thus posits that the question of whether "test questionnaires" are instructional materials becomes irrelevant since the prohibited act is the selling or collecting of contributions without the approval of the school. It is quick to add, however, that the CA is correct in classifying examination papers as "instructional materials."

On the issue of due process, the TIP claims that it duly notified Salon of the charges against her consisting of (1) her having collected money from her students for test papers without the approval of the school, and (2) the complaint of the father of the tampering of the grade of his son (Manalo). The school asked Salon to submit her written answer to the charges against her. She was also given the opportunity to explain her side at the investigation hearing. Thereafter, she was given the required notice of termination.

On Salon's third assignment of error, the TIP submits that the petition for review it filed with the CA complied with the requirement on statement of material dates under the Rules of Court.[29] It disputes Salon's argument that it is not sufficient to state the material dates in the body of the petition and that a separate verified statement must be attached. It maintains that a perusal of the specific applicable rule shows that the statement of material dates in a petition for review under Rule 43 need not be in a separate attachment under oath.[30]

The TIP then points out that the petition filed with the CA states that the school received the decision of the voluntary arbitrator dated July 14, 2001 on August 10, 2001; on August 16, 2001, it moved for reconsideration of the voluntary arbitration award, and received on September 17, 2001 the order dated September 6, 2001, denying the motion for reconsideration. It explains that with the verification/certification under oath that "all allegations in the petition for review are true and correct," the statements of material dates made on pages 1 and 4 of the petition are therefore verified or certified under oath. The CA thus held that since a review of the material dates revealed that the petition was filed within the fifteen-day period from petitioner TIPTEO's receipt of the voluntary arbitrators' denial of its motion for reconsideration, the petition could be given due course.[31]

The TIP lastly contends that under the Court's Revised Circular No. 1-88[32] that Salon cited, the dismissal of a case where there is no verified statement of material dates is at the discretion of the court. It then concludes with the statement that it has been held in a number of cases that rules on technicalities are adopted to serve justice and equity, and not to hamper them.

THE COURT'S DECISION

We resolve to DENY the petition for lack of merit.

The Procedural Issue

We first resolve the procedural question raised - the alleged failure of TIP to attach a verified statement of the material dates to its petition with the CA, as required by the Rules of Court[33] and Supreme Court Revised Circular No. 1-88.[34]

We clarify in this regard that the review the TIP filed with the appellate court was not a special civil action for certiorari under Rule 65 of the Rules of Court; it was an appeal to the CA through a petition for review under Rule 43. This is consistent with our ruling in Luzon Development Bank v. Association of Luzon Development Bank Employees[35] that decisions of voluntary arbitrators or panel of voluntary arbitrators should be appealable to the CA. The CA correctly treated the petition of TIP as an appeal filed under Rule 43 which, parenthetically, also requires a statement of material dates in the petition.[36] The rationale for the requirement is to enable the appellate court to determine whether the petition was filed within the period fixed in the rules.[37]

The CA reviewed the material dates contained in the petition and concluded that the petition "was filed within the fifteen (15)-day period from receipt of the voluntary arbitrator's denial of its motion for reconsideration x x x ." Proceeding from this premise and in the exercise of the discretion granted it by the Rules in considering technical deficiencies, the CA concluded that the petition "could be given due course."[38] We respect the CA's exercise of its discretion as it was exercised within the limits allowed by the Rules; the material data on the filing of the petition are reflected in the petition. The CA was therefore properly guided in considering whether the petition had been timely filed. Consequently, we declare that the CA committed no reversible error when it gave due course to the petition.

The Substantive Issues

a. The Sale of Papers

The first substantive issue is on the sale of test papers to students. We find it unfortunate that the tribunals below failed to recognize the appropriate TIP rule that should govern the situation. Thus, Memorandums Nos. P-22, P-25, and P-66 have all been invoked. To clear the air, Memorandum No. P-22 is an issuance on August 4, 1988 on the subject: Mimeographed Examinations whose relevant terms provide:[39]

> There have been complaints received by this office that a number of teachers have been abusing the use of printed test materials to the detriment of the students:
>
> - A certain teacher uses the same printed matter in all of his classes and charges each student P1.00. This printed test material is only one page.
>
> - Some teachers are having printed examinations for which they charge the students exhorbitantly.
>
> x x x
>
> To correct these practices we have several suggestions:
>
> x x x
>
> - Faculty members who have no other recourse but to print their examinations should ask for the permission of their Faculty Coordinator, Department Head or Dean before they sell such examination papers to students.
>
> - The cost of the stenciled examination paper should be determined by the Faculty Coordinator, Department

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> Head and Dean by presenting the official receipts or the cost of printing. More or less, the cost per page should be for Newsprint paper - P0.40 and Whitewove paper - P0.60.
>
> For your guidance and strict compliance effective this semester SY 1988-89.

We quote this Memorandum in full because it indicates the concern that the school sought to address in coming out with a regulation, which concern is exactly the cause for the students' complaints. The Memorandum stresses, too, that an approval process had been in place as early as 1989.

Memorandum No. P-25 issued in 2000-2001 is on the subject of PHOTOCOPY CENTER, "created with the major task of servicing students on their handout requirements" and "shall be limited to required handout instructional materials assigned by faculty members and will not include other photocopy needs of the students."[40] Apparently, this Memorandum addresses its own objectionable practice and is very specific on the concern it addresses - handout instructional materials.

Memorandum No. P-66 issued on April 23, 1993 is on the subject of "UNAUTHORIZED BOOKBINDING OF REPORTS AND PROJECTS, MIMEOGRAPHING OR PHOTOCOPYING OF TEST QUESTIONNAIRES, HANDOUTS, OR ANY PRINTED MATERIAL." Significantly, this Memorandum specifically provides that "Faculty members who intend to use mimeographed or photocopied test questionnaires should first refer these to their respective department officers. If approved, they should not sell these more than the cost of the prevailing price of photocopies which are between P0.25 to P0.35 centavos per page. x x x 2. Any faculty member found violating the school's policies shall be subject to disciplinary action, either suspension or dismissal, depending on the gravity of the offense."

Under these regulatory measures, it appears clearly that Memorandum No. P-22, while specifically on the subject of Mimeographed Examinations, is not the current TIP issuance on the matter. Memorandum No. P-66 is the latest issuance and the one that specifies the requirements and penalizes violations. On the other hand, Memorandum No. P-25 appears to be an issuance with little relevance on the present dispute because it deals with instructional materials and by its own terms does not cover "other photocopy needs of the students." An additional reason for its irrelevance, of course, is the existence of at least two issuances that deal specifically with examination papers.

Salon never denied that she had charged her students the cost of their examination papers without the approval of the proper school authorities pursuant to Memorandums Nos. P-22 and P-66. The rationale behind the school policy of closely regulating the cost and sale of examination papers is to free the students from avoidable financial burdens, and to prevent the abuse of the use of printed examination papers by the teachers, as expressly stated in Memorandum No. P-22. It is of no moment that Salon kept within the price range set by the school for the cost per page of the examination paper. Her transgressions spring from her failure to secure prior approval of her use of photocopied exam papers, and of the attendant cost. These transgressions link up directly with the students' allegations that they had to return and could not write on the exam papers they paid for - a possible indicator of the intent to abuse.[41]

Salon's guilt is not erased or mitigated by her excuse that she had no choice but to secure reimbursement from the students for the cost of the examination papers that the school should provide but does not. The school does not deny that the teachers have to be reimbursed, but at the same time it imposes measures to avoid abuses. Unless there is a showing of patent unreasonableness (and we find none in this case), these measures have to be complied with. In saying this, we do not thereby indicate our approval of the school practice of not providing test papers as part of services to students covered by their matriculation fees. Tests are the traditional and the accepted mode of measuring students' performance and should be part and parcel of the basic services that a school should offer.

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Charging their costs to students at the time of the examination renders the students' capacity to take the examinations dependent on their finances at examination time. However, these are policy questions outside the scope of our present inquiry, as the substantive reasonableness of the school's policies and issuances is not a question directly before us, nor are these issuances patently unreasonable. Thus, they do not enter the picture at all in the determination of Salon's guilt and penalty.

b. Grade Tampering

Salon admitted that she changed the grade of Manalo from one of "failure" (5.0) to "dropped" (6.0) at the behest of a colleague, the mother of Manalo, to save the son from being harmed by his father for his failing grade. Salon thought she was doing the family of Manalo a favor, but her act produced the opposite result because the father himself lodged a complaint against her for grade tampering;[42] as suspected all along, the father was not satisfied with a grade of 6.0 for his son.

As in the case of unauthorized selling of examination papers, Salon's guilt is not erased or mitigated by the fact that she meant well, or that she tried to rectify her indiscretion after realizing that she violated the grading system of the school.[43] Two differences exist between the examination paper selling violation and the present one. First, her examination paper violation is largely a transgression against a school regulation. The present one goes beyond a school violation; it is a violation against the Manual of Regulation for Private Schools whose Section 79 provides: [44]

> Sec. 79. Basis for Grading. The final grade or rating given to a pupil or student in a subject should be based on his scholastic record. Any addition or diminution to the grade x x x shall not be allowed.

Second, the present violation involves elements of falsification and dishonesty. Knowing fully what Manalo deserved, Salon gave him a grade of 6.0 instead of a failing grade. In the process, she changed - in short, falsified - her own records by changing the submitted record and the supporting documents. Viewed in any light, this is Serious Misconduct under Article 282(a) of the Labor Code, and a just cause for termination of employment.

Be that as it may, the mother of Manalo, being a teacher herself, should have been questioned or investigated for urging Salon to give her son a passing grade. What Mrs. Manalo did was in itself highly irregular and should have been subjected to disciplinary action, in the interest of fairness.

The Due Process Issue

Salon claims that her right to due process was violated because her investigation was a "hoax,"[45] a gripe session where the complaining students were allowed to engage in a spontaneous barrage of malicious allegations against her, and where she was not afforded an opportunity to defend herself and to be represented by a counsel of her own choice or by a union representation. She adds that she was not given any notice before her termination.

The records of the case belie these claims.

Salon was given the opportunity to show cause why she should not be dismissed. First, in a Memorandum dated October 30, 2003[46] issued by Ms. Royer, Assistant Faculty Coordinator of the HSSD, Salon was asked to explain why no disciplinary action should be taken against her for "selling photocopied examination papers." She was also furnished a copy of the complaint of the father of Manalo regarding her "tampering" the grade of Manalo.[47] Salon submitted her explanations to the two documents consisting of (a) her letter dated October 31, 2004 addressed to Ms. Royer, where she admitted photocopying the examination papers and charging her students P0.50 a page;[48] and (b) her letter dated November 14, 2000 addressed to TIP President Dr. Teresita U. Quirino, where she admitted changing the grade of Manalo.[49]

Second. An investigation was conducted by a committee created by the TIP, which submitted a report/recommendation dated November 20, 2000, confirming the unauthorized selling of examination papers and the tampering of the grade of Manalo. The committee recommended Salon's dismissal.[50]

Third. In a memorandum dated December 4, 2000,[51] Dr. Quirino advised Salon that her position as Faculty Member is terminated effective 30 days from receipt of the memorandum.[52] This was her notice of termination - the 2[nd] notice that statutory due process requires in a dismissal situation.

Thus, not only was Salon notified in writing about the charges against her, she was given a reasonable opportunity to explain her side; she was also called to an investigation where, again, she had the opportunity to explain why she should not be dismissed. She was only dismissed after the conclusion of the investigation and after she had been given a second notice in writing that she was being terminated as a faculty member of the school. In short, she has nothing to complain about in terms of the process she underwent that led to her dismissal.

The Penalty

In the same breath that she justifies her actions, Salon entreats this Court to impose on her a penalty less harsh than dismissal if she will be held accountable for her misdeeds.[53] She points out in this regard that it was the first time that she was charged of an offense, and that she had been with the school for more than ten (10) years already, and there was no bad faith or malicious intention on her part.[54]

We do not find these entreaties sufficiently compelling or convincing as Salon is no ordinary employee. She is a teacher from whom a lot is expected; she is expected to be an exemplar of uprightness, integrity and decency, not only in the school, but also in the larger community. She is a role model for her students; in fact, as she claims, she stands in loco parenti to them. She is looked up to and is accorded genuine respect by almost everyone as a person tasked with the heavy responsibility of molding and guiding the young into what they should be - productive and law-abiding citizens.

What Salon committed is a corrupt act, no less, that we cannot allow to pass without giving a wrong signal to all who look up to teachers, and to this Court, as the models who should lead the way and set the example in fostering a culture of uprightness among the young and in the larger community. From the personal perspective, Salon demonstrated, through her infractions, that she is not fit to continue undertaking the serious task and the heavy responsibility of a teacher. She failed in a teacher's most basic task - in honestly rating the performance of students. Her failings lost her the trust and confidence of her employer, and even of her students.

Under the circumstances, our conclusion can only be for Salon's dismissal for two counts of valid causes - i.e., for serious violation of TIP's Memorandum No. P-66, for unauthorized selling of examination papers, and for serious misconduct, for falsifying Manalo's grade and violating the grading rules under the Manual of Regulations for Private Schools.

The affirmation of the penalties the CA imposed brings into focus the appellate court's award of separation pay in consideration of her more than 10 years of service with TIP.[55] Given the finding of guilt and the penalty imposed, no basis exists to support and justify this award. No court, not even this Court, can make an award that is not based on law.[56] Neither can this award be justified even if viewed as a discretionary financial assistance, since this kind of award can be imposed only where the cause for dismissal is not serious misconduct or a cause reflecting on the employee's moral character.[57] The dismissal we affirm is precisely for serious misconduct. The causes cited reflect as well on Salon's moral character. Hence, we delete any award of separation pay/financial assistance that the appellate court decreed.

WHEREFORE, premises considered, we hereby DENY the petition for lack of merit. We hereby AFFIRM the

amended decision of the Court of Appeals promulgated on May 22, 2003, but DELETE the award of separation pay. Costs against the petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Ynares-Santiago, Chico-Nazario, and Leonardo-De Castro, JJ., concur.

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[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

[***] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 63 dated May 7, 2009.

[1] Filed pursuant to Rule 45 of the Rules of Court; rollo, pp. 3-48.

[2] CA G.R. SP No. 66896; penned by Associate Justice Eloy R. Bello, Jr.,with Associate Justice Cancio C. Garcia (retired member of this Court) and Associate Justice Sergio L. Pestaño, concurring; id., pp. 49-52.

[3] Id., pp. 69-75, Annex "H," Petition.

[4] Id., p. 134.

[5] Id., pp. 135-136.

[6] Id., p. 139.

[7] Id., p. 143.

[8] Id., p. 144.

[9] Id., pp. 60-68.

[10] Supra note 3.

[11] Rollo, pp. 53-57.

[12] Id., p. 58.

[13] Supra note 2.

[14] Supra note 3.

[15] Supra note 9.

[16] Supra note 11.

[17] The New International Webster Comprehensive Dictionary of the English Language, Encyclopedic Edition (1998), p. 1298

[18] Supra note 12.

[19] Rollo, pp. 76-77.

[20] Id., pp. 78-79.

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[21] Id., pp. 80-92.

[22] Id., pp. 108-131.

[23] Id., pp. 252-277.

[24] Id., p. 118; TIP's Comment, p. 11.

[25] Id., pp. 123-124, pp. 16-17, last par.

[26] Supra note 11.

[27] Supra note 25.

[28] Rollo, p. 119; TIP's Comment, p. 12, last par.

[29] Section 6, Rule 43.

[30] Id.

[31] Rollo, pp. 72-73; Decision promulgated on November 20, 2002, pp. 4-5.

[32] Implementing Section 12, Art XVIII of the 1987 Constitution and Complementing Administrative Circular No. 1 of January 28, 1988 on Expediting Disposition of Cases Pending in the Supreme Court.

[33] Supra note 29.

[34] Supra note 32.

[35] G.R. No. 120319, October 6, 1995, 249 SCRA 162.

[36] Supra note 33.

[37] Id., last sentence.

[38] Supra note 31.

[39] Supra note 12.

[40] Supra note 11.

[41] Supra note 4, p. 2.

[42] Supra note 19.

[43] Rollo, p. 78, Salon's affidavit, last paragraph.

[44] DECS Order No. 92, Series of 1992.

[45] Id., p. 78; Petition; Annex "5."

[46] Supra note 4, p. 2.

[47] Rollo, p. 143, TIP's Comment, Annex "2."

[48] Supra note 5.

[49] Supra note 19.

[50] Supra note 7.

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[51] Supra note 8.

[52] Id.

[53] Rollo, p. 26; Petition, par. 36.

[54] Id.

[55] Id., p. 51; CA Amended Decision, p.3.

[56] PHILIPPINE CONSTITUTION, Article VIII, Section 14.

[57] PLDT v. NLRC, L-80609, August 23, 1980, 164 SCRA 671; see also Cosmopolitan Funeral Homes v. NLRC, G.R. No. 86693, July 2, 1990, 187 SCRA 109; Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. NLRC, G.R. Nos. 158786 & 158789; Toyota Motor Phils. Corp. v. Toyota Motor Phils. Corp. Workers Association (TMPCWA), G.R. Nos. 158798-99, October 19, 2007, 537 SCRA 171.

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