

AMA COMPUTER COLLEGE, PARAÑAQUE, AND/OR AMABLE C. AGUILUZ IX, PRESIDENT, MRS. CELESTE BANSAL, SCHOOL DIRECTOR, MS. SOCORRO, MR. PATRICK AZANZA, GRACE BERANIA AND MAJAL JACOB, P...

G.R. No. 164078. November 23, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated March 29, 2004 which affirmed with modification the Decision[3] of the National Labor Relations Commission (NLRC), dated March 31, 2003.

The Facts

Petitioner AMA Computer College, Parañaque (AMA) is an educational institution duly organized under the laws of the Philippines. The rest of the petitioners are principal officers of AMA. Respondent Rolando A. Austria[4] (respondent) was hired by AMA on probationary employment as a college dean on April 24, 2000.[5] On August 22, 2000, respondent's appointment as dean was confirmed by AMA's Officer-in-Charge (OIC), Academic Affairs, in his Memorandum,[6] which reads:

After a thorough evaluation of the performance of Mr. Rolando Austria as Dean, we are happy to inform you that he is hereby officially confirmed as Dean of AMA College Parañaque effective April 17, 2000 to September 17, 2000.

In view of this, he will be entitled to a transportation allowance of One Thousand Five Hundred Sixty Pesos (P1,560.00).

In the event that Mr. Austria gives up the Dean position or fails to meet the standards of the (sic) based on the evaluation of his immediate superior, he shall be considered for a faculty position and the appointee agrees that he shall lose the transportation allowance he enjoys as Dean and be entitled to his faculty rate.

Sometime in August 2000, respondent was charged with violating AMA's Employees' Conduct and Discipline provided in its Orientation Handbook (Handbook),[7] as follows:

- 1) leaking of test questions;
- 2)
- failure to monitor general requirements vital to the operations of the company; and
- 3) gross inefficiency.

In a Memorandum[8] dated August 29, 2000, respondent refuted the charges against him. Thereafter, respondent was placed on preventive suspension from September 8, 2000 to October 10, 2000. Notices[9] of Investigation

were sent to respondent. Eventually, on September 29, 2000, respondent was informed of his dismissal, to wit:

Dear Mr. Austria[,]

Please be informed that after a careful deliberation on the case filed against you and upon serious consideration of the evidences (sic) presented, the Management has found you guilty of violating the following policies:

- Loss of trust and confidence by management due to gross inefficiency.
(5.21 Very Serious/Grave Offense)
- Failure to monitor general requirements vital to the operations of the company.
(5.10 Medium Offense)
- Leaking of test questions.
(4.17 Very Serious/Grave Offense)

This resulted to the loss of trust and confidence in your credibility as a company officer holding a highly sensitive position. In view of this, your services as Dean of AMA Parañaque is hereby terminated effective immediately.

You are hereby instructed to report to the branch HR Personnel for further instructions. Please bear in mind that as a company policy you are required to accomplish your clearance and turn over all documents and responsibilities to the appropriate officers.

You are barred from entering the company premises unless with clearance from the HRD.[10]

On October 27, 2000, respondent filed a Complaint[11] for Illegal Dismissal, Illegal Suspension, Non-Payment of Salary and 13th Month Pay with prayer for Damages and Attorney's Fees against AMA and the rest of the petitioners. Trial on the merits ensued.

The Labor Arbiter's Ruling

In his Decision[12] dated December 6, 2000, the Labor Arbiter held that petitioners accorded respondent due process. The Labor Arbiter however, also held that respondent substantially refuted the charges of gross inefficiency, incompetence, and leaking of test questions filed against him. But since respondent can no longer be reinstated beyond September 17, 2000 as his designation as college dean was only until such date, respondent should instead be paid his compensation and transportation allowance for the period from September 8, 2000 to September 17, 2000, or the salary and benefits withheld prior thereto. Thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent AMA Computer College, Parañaque to pay complainant's proportionate salary for the period beginning 8 September 2000 to 17 September 2000.

$P30,000 \times 10/30 \text{ days} = P10,000.00$ and his proportionate transportation allowance.

$P1,560.00 \times 10/30 \text{ days} = P520.00$ and the salary/benefits withheld prior to 8 September 2000, if any.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.

Aggrieved, respondent appealed the said Decision to the NLRC.[13]

The NLRC's Ruling

On March 31, 2003, the NLRC, in its Decision,[14] found merit in respondent's appeal. The NLRC opined that the petitioners did not contravene respondent's allegation that he had attained regular status after

serving the three (3)-month probationary period required under the Handbook.[15] Thus, while the NLRC sustained the Labor Arbiter's finding that petitioners failed to establish the grounds for respondent's dismissal, it held that the Labor Arbiter erred in declaring that respondent's appointment was only from April 24 to September 17, 2000. Accordingly, the NLRC declared that respondent was a regular employee and that he was illegally dismissed. Nevertheless, the NLRC held that reinstatement would not promote industrial harmony; hence, the NLRC disposed of the case in this wise:

PREMISES CONSIDERED the Decision of December 6, 2000 is VACATED and a new one entered declaring complainant illegally dismissed. Respondents are directed to pay complainant separation pay computed at one (1) month per year of service in addition to full backwages from September 29, 2000 until December 6, 2000, or in the amount of one hundred thousand three hundred seventy eight-pesos & 80/100 (P100,378.80).

SO ORDERED.[16]

Petitioners filed a Motion for Reconsideration[17] assailing respondent's regular status, which the NLRC in a Resolution,[18] denied for having been filed out of time and for lack of merit. Respondent also filed a Motion for Partial Reconsideration,[19] which the NLRC, in another Resolution,[20] denied for lack of merit.

Thus, petitioners went to the CA via Petition for Certiorari[21] under Rule 65 of the 1997 Rules of Civil Procedure.

The CA's Ruling

On March 29, 2004, the CA held that based on the Handbook and on respondent's appointment, it can be inferred that respondent was a regular employee, and as such, his employment can only be terminated for any of the causes provided under Article 282[22] of the Labor Code and after observance of the requirements of due process. Furthermore, the CA upheld the Labor Arbiter's and the NLRC's similar findings that respondent sufficiently rebutted the charges against him and that petitioners failed to prove the grounds for respondent's dismissal. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, the petition is hereby DENIED DUE COURSE and DISMISSED for lack of merit. The decision of the NLRC is AFFIRMED with MODIFICATION as above stated, with regard to the computation of backwages.

SO ORDERED.

Petitioners filed a Motion for Reconsideration[23] of the said Decision, which the CA denied, in its Resolution[24] dated June 11, 2004, for lack of merit.

Hence, this Petition based on the sole ground that the CA committed serious error of law in affirming and then further modifying the erroneous decision of the NLRC declaring that herein respondent was illegally dismissed by AMA.[25]

Petitioners argue that respondent, as college dean, was an academic personnel of AMA under Section 4(m) (4)(c) of the Manual of Regulations for Private Schools[26] (Manual) and, as such, his probationary employment is governed by Section 92[27] thereof and not by the Labor Code or AMA's Handbook; that under the circumstances, respondent has not yet attained the status of a regular employee; that respondent's employment was for a fixed term as found by the Labor Arbiter but the same was terminated earlier due to just causes; that the respondent, whether he may be considered as a probationary or a regular employee, was dismissed for just causes; and that the award of backwages in favor of the respondent, up to the finality of the decision, is oppressive to the petitioners, considering the absence of an order of reinstatement and the respondent's fixed period of employment.[28]

On the other hand, respondent counters that both the NLRC and the CA found that respondent was a regular employee and that he was illegally dismissed; that the instant Petition raises questions of fact - such as whether or not respondent is a regular employee and whether or not circumstances existed warranting his dismissal - which can no longer be inquired into by

this Court;[29] that petitioners assailed the regular status of the respondent for the first time only before the CA; that they never raised as issue respondent's regular status before the Labor Arbiter and the NLRC because they merely concentrated on their stand that respondent was lawfully dismissed; that petitioners failed to discharge the burden of proving the existence of a valid ground in dismissing respondent as found by the Labor Arbiter, the NLRC, and the CA; and that the CA's award of backwages from the date of actual dismissal up to the date of the finality of the decision in favor of the respondent is consonant with Article 279[30] of the Labor Code, and hence, valid.[31]

From this exchange of arguments, we glean two ultimate questions that require resolution, viz.:

- What is the nature of respondent's employment?
- Was he lawfully dismissed?

The first question, i.e., whether respondent is a regular, probationary, or fixed term employee is essentially factual in nature.[32] However, the Court opts to resolve this question due to the far-reaching effects it could bring to the sector of the academe.

As an exception to the general rule, we held in *Molina v. Pacific Plans, Inc.*: [33]

A disharmony between the factual findings of the Labor Arbiter and the National Labor Relations Commission opens the door to a review thereof by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the National Labor Relations Commission contradict those of the Labor Arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.

The instant case falls squarely within the aforesaid exception. The Labor Arbiter held that, while petitioners did not prove the existence of just causes in order to warrant respondent's dismissal, the latter's employment as dean ceased to exist upon expiration of respondent's term of employment on September 17, 2000. In sum, the Labor Arbiter held that the nature of respondent's employment is one for a fixed term. On the other hand, the NLRC and the CA both held that respondent is a regular employee because respondent had fully served the three (3)-month probationary period required in the Handbook, which the petitioners failed to deny or contravene in the proceedings before the Labor Arbiter.

Prior to his dismissal, respondent held the position of college dean. The letter of appointment states that he was officially confirmed as Dean of AMA College, Parañaque, effective from April 17, 2000 to September 17, 2000. Petitioners submit that the nature of respondent's employment as dean is one with a fixed term.

We agree.

We held that Article 280 of the Labor Code does not proscribe or prohibit an employment contract with a fixed period. Even if the duties of the employee consist of activities necessary or desirable in the usual business of the employer, the parties are free to agree on a fixed period

of time for the performance of such activities. There is nothing essentially

contradictory between a definite period of employment and the nature of the employee's duties.[34]

Thus, this Court's ruling in *Brent School, Inc. v. Zamora*[35] is instructive:

The question immediately provoked. . . is whether or not a voluntary agreement on a fixed term or period would be valid where the employee "has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer." The definition seems non sequitur. From the premise — that the duties of an employee entail "activities which are usually necessary or desirable in the usual business or trade of the employer" — the conclusion does not necessarily follow that the employer and employee should be forbidden to stipulate any period of time for the performance of those activities. There is nothing essentially contradictory between a definite period of an employment contract and the nature of the employee's duties set down in that contract as being "usually necessary or desirable in the usual business or trade of the employer." The concept of the employee's duties as being "usually necessary or desirable in the usual business or trade of the employer" is not synonymous with or identical to employment with a fixed term. Logically, the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be "that which must necessarily come, although it may not be known when." Seasonal employment, and employment for a particular project are merely instances of employment in which a period, where not expressly set down, is necessarily implied.

x x x x x x x x

Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance: overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied, Article 280 of the Labor Code notwithstanding; also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible . . .

x x x

The instant case involves respondent's position as dean, and comes within the purview of the *Brent School* doctrine.

First. The letter of appointment was clear. Respondent was confirmed as Dean of AMA College, Parañaque, effective from April 17, 2000 to September 17, 2000. In numerous cases decided by this Court, we had taken notice, that by way of practice and tradition, the position of dean is normally an employment for a fixed term.[36] Although it does not appear on record³⁷ and neither was it alleged by any of the parties³⁸ that respondent, other than holding the position of dean, concurrently occupied a teaching position, it can be deduced from the last paragraph of said letter that the respondent shall be considered for a faculty position in the event he gives up his deanship or fails to meet AMA's standards. Such provision reasonably serves the intention set forth in *Brent School* that the deanship may be rotated among the other members of the faculty.

Second. The fact that respondent did not sign the letter of appointment is of no moment. We held in *Brent School*, to wit:

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or

where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless, thus, limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.[37]

The fact that respondent voluntarily accepted the employment, assumed the position, and performed the functions of dean is clear indication that he knowingly and voluntarily consented to the terms and conditions of the appointment, including the fixed period of his deanship. Other than the handwritten notes made in the letter of appointment, no evidence was ever presented to show that respondent's consent was vitiated, or that respondent objected to the said appointment or to any of its conditions. Furthermore, in his status as dean, there can be no valid inference that he was shackled by any form of moral dominance exercised by AMA and the rest of the petitioners.

Alternatively, petitioners also claim that respondent did not attain regular status, relying on Section 92 of the Manual in connection with Section 4(m) 4(c) thereof which provides for a three (3)-year probationary period for Academic Personnel. Petitioners submit that the position of dean is included in the provision "school officials responsible for academic matters, and may include other school officials." As such, petitioners aver that the three (3)-month probationary period for officers set forth in the Handbook is not applicable to the case of respondent.

The Handbook merely provides for two classes of employees for purposes of permanency, i.e., Faculty and Non-Academic. However, the same does not specifically classify the position of dean as part of the Faculty or of the Non-Academic personnel. At this juncture, we find solace in the Manual of Regulations for Private Schools Annotated,[38] which provides that the college dean is the senior officer responsible for the operation of an academic program, the enforcement of rules and regulations, and the supervision of faculty and student services. We already had occasion to state that the position of dean is primarily academic[39] and, as such, he is considered a managerial employee.[40] Yet, a perusal of the Handbook yields the interpretation that the provision on the permanency of Faculty members applies to teachers only. But the Handbook or school manual must yield to the decree of the Manual, the latter having the character of law.[41] The specified probationary periods in Section 92 of the Manual are the maximum periods; under certain conditions, regular status may be achieved by the employee in less time.[42] However, under the given circumstances and the fact that the position of dean in this case is for a fixed term, the issue whether the respondent attained a regular status is not in point. By the same token, the application of the provision in the Manual as to the required probationary period is misplaced. It can be well said that a tenured status of employment co-exists and is co-terminous only with the definite term fixed in the contract of employment.

In light of the foregoing disquisition, the resolution of the second question requires full cognizance of respondent's fixed term of employment and all the effects thereof. It is axiomatic that a contract of employment for a definite period terminates on its own force at the end of such period.[43] The lack of notice of termination is of no consequence because when the contract specifies the length of its duration, it comes to an end upon the expiration of such period.[44]

Thus, the unanimous finding of the Labor Arbiter, the NLRC and the CA that respondent adequately refuted all the charges against him assumes relevance only insofar as respondent's dismissal from the service was effected by petitioners before expiration of the fixed period of employment. True, petitioners erred in dismissing the respondent, acting on the mistaken belief that respondent was liable for the charges leveled against him. But respondent also cannot claim entitlement to any benefit flowing from such employment after September 17, 2000, because the employment, which is the source of the benefits, had, by then, already ceased to exist.

Finally, while this Court adheres to the principle of social justice and protection to labor, the constitutional policy to provide such protection to labor is not meant to be an instrument to oppress employers. The commitment under the fundamental law is that the cause of labor does not prevent us from sustaining the employer when the law is clearly on its side.[45]

WHEREFORE, the instant Petition is GRANTED and the CA Decision in CA-G.R. SP No. 78455 is REVERSED and SET ASIDE. The Decision of the Labor Arbiter, dated December 6, 2000, is hereby REINSTATED. No costs.

SO ORDERED.

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

[1] Dated July 8, 2004, rollo, pp. 3-25.

[2] Particularly docketed as CA-G.R. SP No. 78455, penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Roberto A. Barrios (deceased) and Fernanda Lampas-Peralta, concurring; id. at 27-33.

[3] Particularly docketed as NLRC NCR CA No. 030561-02; id. at 57-63.

[4] Also referred to as Rolando S. Austria in a Memorandum dated August 22, 2000; id. at 78.

[5] Memorandum dated April 15, 2000; id. at 79.

[6] Supra note 4.

[7] Rollo, pp. 105-106.

[8] CA rollo, p. 84.

[9] Rollo, pp. 108-109.

[10] Letter addressed to respondent by one Edwin Santos, Senior Manager for Human Resources of AMA; id. at 110.

[11] Particularly docketed as NLRC NCR Case No. 30-10-04319-00; records, p. 1.

[12] Rollo, pp. 68-73.

[13] Dated January 7, 2002; id. at 74-77.

[14] Supra note 3.

[15] Rollo, pp. 80-82.

[16] Id. at 62.

[17] Dated May 12, 2003; id. at 83-89.

[18] Dated May 30, 2003; id. at 65-66.

[19] Dated April 29, 2003; id. at 90-91.

[20] Dated June 30, 2003, records, pp. 175-176.

[21] Dated August 7, 2003, CA rollo, pp. 2-19.

[22] ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

(a)

Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b)

Gross and habitual neglect by the employee of his duties;

(c)

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d)

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e)

Other causes analogous to the foregoing.

[23] Dated April 19, 2004; rollo, pp. 153-161.

[24] Id. at 36.

[25] Petitioners' Memorandum dated July 28, 2006, rollo, pp. 201-224.

[26] Section 4. Definition of Terms. Except as otherwise provided, the terms below shall be construed as follows:

x x x x

(m)

“Members of the school community “ refers to the general membership of every private school established in accordance with law and duly authorized by the Department to operate certain educational programs or courses. The term includes, either singly or collectively, the following:

x x x x

(4)

“School personnel” means the persons, singly or collectively, working in a private school. They are classified as follows:

x x x x

(c)

“Academic personnel” includes all school personnel who are formally engaged in actual teaching service or in research assignments, either on full-time or part-time basis, as well as those who possess certain prescribed academic functions directly supportive of teaching, such as registrars, librarians, guidance counselors, researchers, and other similar persons. They include school officials responsible for academic matters, and may include other school officials.

x x x x

[27] Section 92. Probationary Period. Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.

[28] Supra note 25.

[29] Respondent's Comment dated August 9, 2005; rollo, pp. 173-178.

[30] Article 279. Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. 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 was withheld from him up to the time of his actual reinstatement.

[31] Respondent's Memorandum dated August 28, 2006; rollo, pp. 264-272.

[32] ABS-CBN Broadcasting Corporation v. Nazareno, G.R. No. 164156, September 26, 2006, 503 SCRA 204, 225; Rambuyon v. Fiesta Brands, Inc., G.R. No. 157029, December 15, 2005, 478 SCRA 133, 141; and Benares v. Pancho, G.R. No. 151827, April 29, 2005, 457 SCRA 652, 662.

[33] G.R. No. 165476, March 10, 2006, 484 SCRA 498, 517, citing Diamond Motors Corporation v. Court of Appeals, 417 SCRA 46, 50 (2003).

[34] St. Theresa's School of Novaliches Foundation v. National Labor Relations Commission, 351 Phil. 1038, 1043 (1998).

[35] G.R. No. 48494, February 5, 1990, 181 SCRA 702, 710 & 714 (Emphasis supplied).

[36] Aklan College, Inc. and Msgr. Adolfo P. Depra v. Rodolfo P. Guarino, G.R. No. 152949, August 14, 2007; Blancaflor v. National Labor Relations Commission, G.R. No. 101013, February 2, 1993, 218 SCRA 366; La Salette of Santiago, Inc. v. National Labor Relations Commission, G.R. No. 82918, March 11, 1991, 372 SCRA 89; Escudero v. Office of the President of the Philippines, G.R. No. 57822, April 26, 1989, 172 SCRA 783, 793; Sta. Maria v. Lopez, G.R. No. L- 30773, February 18, 1970, 31 SCRA 637, 655.

[37] Supra note 35, at 716.

[38] Ulpiano P. Sarmiento III, Esq., First Edition, 1995, p. 164, citing Hawes and Hawes, "The Concise Dictionary of Education," 1982 ed., p. 62.

[39] General Baptist Bible College v. National Labor Relations Commission, G.R. No. 85534, March 5, 1993, 219 SCRA 549, 557; Sta. Maria v. Lopez, supra note 36 at 657.

[40] Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU), G.R. No. 151021, May 4, 2006, 489 SCRA 468, 490; Cruz v. Medina, G.R. No. 73053, September 15, 1989, 177 SCRA 565, 571.

[41] Espiritu Santo Parochial School v. National Labor Relations Commission, G.R. No. 82325, September 26, 1989, 177 SCRA 802, 807.

[42] Cagayan Capitol Catholic College v. National Labor Relations Commission, G.R. Nos. 90010-11, September 14, 1990, 189 SCRA 658, 665.

[43] Blancaflor v. National Labor Relations Commission, *supra* note 36 at 374.

[44] Pangilinan v. General Milling Corporation, G.R. No. 149329, July 12, 2004, 434 SCRA 159, 172.

[45] Salazar v. Philippine Duplicators, Inc., G.R. No. 154628, December 6, 2006, 510 SCRA 288, 308.

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