

COLLEGE OF THE IMMACULATE CONCEPTION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ATTY. MARIUS F. CARLOS, PH.D., RESPONDENTS.

G.R. No. 167563. March 22, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83321, which affirmed the Resolution rendered by the National Labor Relations Commission (NLRC), Third Division in NLRC NCR CA No. 028096-01.

Petitioner College of the Immaculate Conception, through its former President Rev. Fr. Antonio A. Mangahas, Jr., appointed respondent Atty. Marius F. Carlos on June 1, 1995 as Acting Dean of the Department of Business Administration and Accountancy. Thereafter, in a letter dated May 23, 1996, petitioner informed respondent of his appointment as Dean of the Department of Business, Economics and Accountancy effective June 1, 1996 until May 31, 2000. Respondent served as Dean of said department for the designated term.

In a letter dated May 15, 2000, petitioner reminded respondent that upon the expiration of his term as Dean, he will be appointed as full-time professor of Law and Accounting without diminution of his teaching salary as Dean. As promised, on June 1, 2000, respondent was given eight (8) teaching loads as full-time professor. Respondent then requested for the payment of overload pay, arguing that the regular full time load of a faculty member is only six. Petitioner, in a letter dated July 3, 2000, denied respondent's claim for overload pay and explained that pursuant to the Faculty Manual, a full time faculty member, such as the respondent, is one who teaches at least twenty-four units or eight (8) teaching loads per semester in the College Department. In the same letter, petitioner requested the respondent to vacate the Dean's office. Petitioner also directed respondent to explain why no disciplinary action should be taken against him for engaging in the practice of law and teaching law in another law school without prior permission from the petitioner.

In his written reply, respondent admitted that he was teaching at Araullo University without written permission because it was unnecessary. As to his law practice, he explained that the only case he was handling was a petition for Declaration of Nullity of Marriage, which was referred to him by petitioner's Vice-President for Academic Affairs. Respondent said that his demotion from Dean of the Department to a Faculty member was without legal basis and that the non-renewal of his appointment as Dean was arbitrary, capricious, unlawful, tainted with abuse of discretion, and injurious to his integrity and reputation. Further, the subsequent appointment of other personnel as acting Dean was violative of the law.

Petitioner replied that there was no demotion in position from Dean to Faculty member, because respondent's appointment as Dean was for a fixed period of four (4) years, from June 1, 1996 to May 31, 2000, as stated in petitioner's letter dated May 23, 1996.

Petitioner refused to accept respondent's explanation that securing petitioner's prior written permission to teach elsewhere, or to engage in any other remunerative occupation, is unnecessary. Thus, in its letter[3] dated July 17, 2000, petitioner gave respondent two options, to wit:

1. Remain as a full-time professor, but without teaching loads outside; you may also continue to practice your profession as a lawyer, provided that any additional cases you wish to handle should be subject to the prior written approval of the College; or
2. Become a part-time professor with an initial teaching load of fifteen (15) units, and with complete freedom to teach elsewhere and to practice your profession. This means that you will lose your tenure as a full-time faculty member; moreover, your teaching loads in subsequent semesters will depend upon the College's evaluation of your performance and the teaching loads you will be carrying for that particular semester in other schools.

Since respondent failed to respond to the aforementioned letter, petitioner again sent a letter to respondent on September 20, 2000 to give him another chance to choose between the two foregoing options and to call his attention to Section 16.8, CHED Memorandum No. 19, S. 1998, of which provides:

x x x faculty members teaching in more than one school must give formal notice in their teaching assignment to all schools concerned; failure to give notices mean automatic withdrawal or cancellation of his teaching assignment and non-assignment of teaching load for the succeeding semester.[4]

Respondent requested for more time to reply, but failed to do so. Thus, petitioner informed respondent that he will not be assigned any teaching load for the succeeding semester pursuant to Section 16.8,[5] CHED Memorandum No. 19, series of 1998.

In a letter[6] dated October 15, 2000, respondent protested the imposition of sanction against him arising from his part-time teaching of law in another university. He maintained that teaching in another university is a benefit he enjoyed since July 1, 1999 as an administrator and Dean. He further said that his part-time teaching benefit cannot be withheld despite his alleged demotion as a faculty member. Even assuming that he violated Section 16.8, CHED Memorandum No. 19, series of 1998, respondent pointed out that under the College Faculty Manual, teaching in another school without permission from the Department Head and the President is punishable at the first instance by mere censure or oral reprimand.

On October 19, 2000, respondent filed a complaint[7] against petitioner before Regional Arbitration Branch No. III of San Fernando, Pampanga, for unfair labor practice, illegal dismissal, with payment of backwages and damages. Respondent argued that the non-renewal of his appointment as Dean and his alleged demotion to a faculty member already constituted constructive dismissal and was but a prelude to his actual dismissal. Thereafter, his dismissal materialized when he was deprived of his teaching load.

Petitioner denied dismissing respondent and said it was only constrained to deprive respondent of his teaching load because he refused to abide by the mandate of Section 16.8, CHED Memorandum No. 19, series of 1998.

The Labor Arbiter (LA), in his Decision[8] dated February 14, 2001, ruled that respondent was illegally dismissed. The dispositive portion of the decision reads:

WHEREFORE, in light of the foregoing, decision is hereby rendered declaring the employment termination as illegal. Respondents are hereby ordered to reinstate the complainant to his former position without loss of seniority rights and other privileges appurtenant thereto immediately upon receipt of this decision. Further, respondents are hereby ordered to pay complainant's backwages which as of the date of this decision has been computed in the amount of P54,567.00; representation allowance in the amount of P7,092.00; 13[th] month pay in the amount of P5,138.25, plus moral and exemplary damages in the amount of P50,000.00 and

P30,000.00, respectively.

SO ORDERED.

On March 19, 2001, the LA then issued a Writ of Execution,[9] directing the Sheriff of the NLRC to implement his Decision dated February 14, 2001. The Petitioner opted to reinstate respondent in its payroll only.[10]

Dissatisfied with the Labor Arbiter's finding, petitioner appealed to the NLRC, which rendered a Decision[11] dated August 13, 2003, the dispositive portion of which reads:

WHEREFORE, premises considered, the Decision dated February 14, 2001 is hereby SET ASIDE and a new one entered DISMISSING the complaint. However, respondents are hereby ordered to reinstate complainant as full-time professor of Law and Accountancy without backwages.

SO ORDERED.

The NLRC ruled that petitioner's non-assignment of teaching load for the respondent was merely resorted to as a sanction pursuant to Section 16.8 of CHED Memorandum No. 19, series of 1998. It was clear that respondent's contract as Dean was only for a period of four years, from June 1, 1996 to May 31, 2000, after which, he would be appointed as a full-time professor without diminution of salary as a dean. Thus, the LA was incorrect when it directed the reinstatement of the respondent to his former position as a Dean. The NLRC, likewise, deleted the award of moral and exemplary damages for lack of factual and legal basis.

Petitioner filed a Motion for Clarification and/or Partial Reconsideration,[12] praying that since the respondent was not illegally dismissed, then he should be directed to refund the petitioner all the amounts he received by way of payroll reinstatement. The NLRC, in its Resolution[13] dated January 30, 2004, denied petitioner's motion for lack of merit.

Undaunted, petitioner filed a petition for certiorari[14] with the CA alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it refused to order the respondent to return all the monetary benefits he had received on account of his payroll reinstatement as Dean. The CA, in its Decision dated August 31, 2004, dismissed the petition and sustained the ruling of the NLRC. Petitioner filed a motion for reconsideration, which the CA denied. Hence, the instant petition, which mainly poses the following issue:

Does the subsequent reversal of the LA's findings mean that respondent should reimburse petitioner all the salaries and benefits he received pursuant to the immediate execution of the LA's erroneous decision ordering his reinstatement as Department Dean?

We rule in the negative. In *Air Philippines Corporation v. Zamora*,^[15] citing *Roquero v. Philippine Airlines, Inc.*,^[16] we held that:

x x x Hence, even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period.

Petitioner, however, insists that *Roquero* finds no application to the case at bar, because here, respondent was ordered reinstated to a position different from that which he previously held, i.e., the LA wrongfully ordered his reinstatement as Dean, when he should have been reinstated only as a full-time faculty member, because this was the position he held when he filed the complaint for illegal dismissal. Further, petitioner takes a firm stand that the

case of *International Container Terminal Services, Inc v. NLRC*[17] refers only to a case of a dismissed employee and is inapplicable here, where it was correctly found on appeal that the employee was not dismissed at all, but was only sanctioned for teaching in another university without petitioner's permission.

It is not disputed at this point that the LA erred in ordering respondent's reinstatement as Dean. The NLRC ruled that respondent should have been merely reinstated as a full-time law professor, because the term of his appointment as Dean had long expired. However, such mistake on the part of the LA cannot, in any way, alter the fact that during the pendency of the appeal of his decision, his order for respondent's reinstatement as Dean was immediately executory. Article 223 of the Labor Code explicitly provides that:

Art. 223. - Appeal. - x x x

x x x x

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided therein. (Emphasis supplied)

Therefore, petitioner could not validly insist that it is entitled to reimbursement for the payment of the salaries of respondent pursuant to the execution of the LA's decision by simply arguing that the LA's order for reinstatement is incorrect. The pertinent law on the matter is not concerned with the wisdom or propriety of the LA's order of reinstatement, for if it was, then it should have provided that the pendency of an appeal should stay its execution. After all, a decision cannot be deemed irrefragable unless it attains finality.

In *Garcia v. Philippine Airlines, Inc.*,[18] the Court made a very enlightening discussion on the aspect of reinstatement pending appeal:

On this score, the Court's attention is drawn to seemingly divergent decisions concerning reinstatement pending appeal or, particularly, the option of payroll reinstatement. On the one hand is the jurisprudential trend as expounded in a line of cases including *Air Philippines Corp. v. Zamora*, while on the other is the recent case of *Genuino v. National Labor Relations Commission*. At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code x x x

The view as maintained in a number of cases is that:

x x x [E]ven if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period. (Emphasis in the original; italics and underscoring supplied)

In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.

The opposite view is articulated in *Genuino* which states:

If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the

salaries [he] received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from [his] employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.

Considering that Genuino was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the fallo of the September 3, 1994 NLRC Decision. (Emphasis, italics and underscoring supplied)

It has thus been advanced that there is no point in releasing the wages to petitioners since their dismissal was found to be valid, and to do so would constitute unjust enrichment.

Prior to Genuino, there had been no known similar case containing a dispositive portion where the employee was required to refund the salaries received on payroll reinstatement. In fact, in a catena of cases, the Court did not order the refund of salaries garnished or received by payroll-reinstated employees despite a subsequent reversal of the reinstatement order.

The dearth of authority supporting Genuino is not difficult to fathom for it would otherwise render inutile the rationale of reinstatement pending appeal.

x x x x

x x x Then, by and pursuant to the same power (police power), the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act is designed to stop, although temporarily since the appeal may be decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and his family.

In the same case, the Court went on to discuss the illogical and unjust effects of the "refund doctrine" erroneously espoused in Genuino:

Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.

Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to Genuino, it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon.

Further, the Genuino ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed pendente lite merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement."

In playing down the stray posture in Genuino requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper

course of the prevailing doctrine on reinstatement pending appeal vis-à-vis the effect of a reversal on appeal.

x x x x

The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. x x x

Thus, the Court resolved the impasse by reaffirming the principle earlier enunciated in *Air Philippines Corporation*, that an employee cannot be compelled to reimburse the salaries and wages he received during the pendency of his appeal, notwithstanding the reversal by the NLRC of the LA's order of reinstatement. In this case, there is even more reason to hold the employee entitled to the salaries he received pending appeal, because the NLRC did not reverse the LA's order of reinstatement, but merely declared the correct position to which respondent is to be reinstated, i.e., that of full-time professor, and not as Dean.

Petitioner alleged that due to the unreasonable demand of the respondent that he be reinstated as a Dean, instead of a faculty member, petitioner was constrained to reinstate him in the payroll only. Thus, petitioner argued that when the respondent imposed uncalled conditions for his reinstatement, his claim for reinstatement pending appeal was effectively nullified. We rule that respondent did not impose any unreasonable condition on his reinstatement as a Dean, because he was merely demanding that he be reinstated in the manner set forth by the LA in the writ of execution. Moreover, it bears stressing that the manner of immediate reinstatement, pending appeal, or the promptness thereof is immaterial, as illustrated in the following two scenarios:

Situation No. 1. (As in the cases of *Air Philippines Corporation* and *International Container Terminal Services, Inc.*) The LA ruled in favor of the dismissed employee and ordered his reinstatement. However, the employer did not immediately comply with the LA's directive. On appeal, the NLRC reversed the LA and found that there was no illegal dismissal. In this scenario, We ruled that the employee is entitled to payment of his salaries and allowances pending appeal.

Situation No. 2. (As in the present case) The LA ruled in favor of the dismissed employee and ordered the latter's reinstatement. This time, the employer complied by reinstating the employee in the payroll. On appeal, the LA's ruling was reversed, finding that there was no case of illegal dismissal but merely a temporary sanction, akin to a suspension. Here, We also must rule that the employee cannot be required to reimburse the salaries he received because if he was not reinstated in the payroll in the first place, the ruling in situation no. 1 will apply, i.e., the employee is entitled to payment of his salaries and allowances pending appeal.

Thus, either way we look at it, at the end of the day, the employee gets his salaries and allowances pending appeal. The only difference lies as to the time when the employee gets it.

Lastly, petitioner alleged that the LA's decision was tainted with fraud and graft and corruption, as the dispositive portion of the decision cites facts not found in the pleadings and documents submitted by the parties. Allegedly, the LA's computation of respondent's basic salary, representation allowance and 13[th]-month pay are not supported by the records of the case. Petitioner even opined that the LA and the respondent connived in drafting the decision.

Aside from the fact that this Court is not the proper forum to consider the merits of petitioner's charge of fraud and graft and corruption against the LA and the respondent, petitioner failed to overcome the presumption of regularity in the performance of the LA's official duties^[19] in rendering his decision. Petitioner was not able to show clear and convincing proof to establish partiality, fraud and acts constituting graft and corruption. Well-entrenched in jurisprudence is the time-honored principle that the law bestows upon a public official the

presumption of regularity in the discharge of one's official duties and functions.[20]The Court held that:

x x x public respondents have in their favor the presumption of regularity in the performance of official duties which petitioners failed to rebut when they did not present evidence to prove partiality, malice and bad faith. Bad faith can never be presumed; it must be proved by clear and convincing evidence. x x x[21]

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 83321, dated August 31, 2004 and March 11, 2005, respectively, are AFFIRMED.

SO ORDERED..

Corona, (Chairperson), Velasco, Jr., Nachura, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Portia Aliño-Hormachuelos and Rebecca De Guia-Salvador, concurring; rollo, pp. 29-40.

[2] Id. at 42-43.

[3] Records, pp. 26-27.

[4] Id. at 28.

[5] Id. at 31-32.

[6] Id. at 33-38.

[7] Id. at 1-2.

[8] Rollo, pp. 44-67.

[9] Records, pp. 208-209.

[10] Id. at 212.

[11] Rollo, pp. 68-84.

[12] Records, pp. 480-488.

[13] Id. at 494-499.

[14] CA rollo, pp. 2-37.

[15] G.R. No. 148247, August 7, 2006, 498 SCRA 59, 72-73. (Emphasis ours.)

[16] 449 Phil. 437, 446 (2003). In this case, the LA found the employees' dismissal to be valid. The NLRC ordered reinstatement to their former positions with backwages. The CA reinstated the LA's decision insofar as it upheld the dismissal order. The Court ruled that reinstatement is immediately executory. It is mandatory on the employer to actually reinstate the employee or reinstate him in the payroll. If the employer failed to reinstate the employee, the employer must pay the employee the salary he is entitled to, as if he was reinstated, from the time the reinstatement was ordered until its reversal by a higher court.

[17] 360 Phil. 527 (1998). In this case, the LA found the employee's dismissal unjustified and ordered his reinstatement with full backwages. The NLRC found the termination legal, but ordered the employer to pay employee wages from the filing of the appeal with the NLRC until its promulgation of the decision. The Court held that under Art. 223, the reinstatement aspect of the LA's decision, albeit under appeal, was immediately

enforceable as a consequence of which, the employer was duty-bound to choose forthwith whether to re-admit the employee or to reinstate him in the payroll and to inform the employee of his choice to enable the latter to act accordingly. Failing to exercise the options in the alternative, the employer must pay the employee's salary which automatically accrued from notice of the LA's order of reinstatement until its ultimate reversal by the NLRC.

[18] G.R. No. 164856, January 20, 2009, 576 SCRA 479.

[19] Revised Rules on Evidence, Rule 131, Sec. 3 (m).

[20] *Gatmaitan v. Gonzales*, G.R. No. 149226, June 26, 2006, 492 SCRA 591, 604.

[21] *Id.*, citing *Fernando v. Sto. Tomas*, 234 SCRA 546, 552 (1994).

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