

**LILIA P. LABADAN PETITIONER, VS. FOREST HILLS
ACADEMY/NAOMI CABALUNA AND PRESIDING COMMISSIONER SALIC
B. DUMARPA, COMMISSIONER PROCULO T. SARMEN,
COMMISSIONER NOVITO C. CAGAYAN, ...**

G.R. No. 172295. December 23, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Lilian L. Labadan (petitioner) was hired by private respondent Forest Hills Mission Academy (Forest Hills) in July 1989 as an elementary school teacher. From 1990 up to 2002, petitioner was registrar and secondary school teacher.

On August 18, 2003, petitioner filed a complaint^[1] against respondent Forest Hills and its administrator respondent Naomi Cabaluna for illegal dismissal, non-payment of overtime pay, holiday pay, allowances, 13th month pay, service incentive leave, illegal deductions, and damages.

In her Position Paper,^[2] petitioner alleged that she was allowed to go on leave from Forest Hills, and albeit she had exceeded her approved leave period, its extension was impliedly approved by the school principal because she received no warning or reprimand and was in fact retained in the payroll up to 2002.^[3]

Petitioner further alleged that since 1990, tithes to the Seventh Day Adventist church have been illegally deducted from her salary; and she was not paid overtime pay for overtime service, 13th month pay, five days service incentive leave pay, and holiday pay; and that her SSS contributions have not been remitted.

Claiming that strained relations between her and Forest Hill have rendered reinstatement not feasible, petitioner prayed for separation pay in lieu of reinstatement.

In its Position Paper,^[4] Forest Hills claimed as follows: In July 2001, petitioner was permitted to go on leave for two weeks but did not return for work after the expiration of the period. Despite petitioner's undertaking to report "soon," she never did even until the end of School Year 2001-2002. It thus hired a temporary employee to accomplish the needed reports. When she finally returned for work, classes for the School Year 2002-2003 were already on-going.

To belie petitioner's claim that she was dismissed, Forest Hills submitted a list of faculty members and staff from School Year 1998-1999 up to School Year 2001 to 2002 which included her name.^[5]

With regard to the charge for illegal deduction, Forest Hills claimed that the Seventh Day Adventist Church requires its members to pay tithes equivalent to 10% of their salaries, and petitioner was hired on account of her being a member thereof, and petitioner never questioned the deduction of the tithe from her salary.

With regard to the charge for non-payment of overtime pay, holiday pay, and allowances, Forest Hills noted that petitioner proffered no evidence to support the same.

The Labor Arbiter decided in favor of petitioner, disposing as follows:

WHEREFORE, judgment is hereby rendered:

- Finding respondents Forest Hills Academy and/or Naomi Cabaluna guilty of illegally dismissing the complainant;
- Directing respondent to pay complainant Lilia P. Labadan the total amount of P152,501.02 representing her monetary award x x x.

Complainant's other claim[s] are hereby dismissed for lack of merit and/or failure to substantiate.

SO ORDERED.[6]

The National Labor Relations Commission (NLRC), finding the Labor Arbiter to have misappreciated the facts of the case, reversed and set aside his decision and dismissed petitioner's complaint by Resolution of June 30, 2005.[7]

On petitioner's Petition for Certiorari,[8] the Court of Appeals, by Resolution[9] of December 15, 2005, dismissed the petition for deficient amount of appellate docket fee, non-attachment of Affidavit of Service, absence of written explanation why the petition was filed through registered mail instead of through personal service, and non-attachment of copies of the Complaint and the Answer filed before the Labor Arbiter. Petitioner's Motion for Reconsideration having been denied,[10] she filed the present Petition for Review on Certiorari,[11] faulting the Court of Appeals

x x x IN DISMISSING THE PETITION ON THE GROUND OF TECHNICALITIES[;]

x x x IN NOT DECIDING ON THE MERITS WHETHER OR NOT HONORABLE COMMISSIONERS OF THE 5[TH] DIVISION HAVE COMMITTED AN ACT OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION:

- IN REVERSING THE FINDINGS OF THE EXECUTIVE LABOR ARBITER THAT HEREIN PETITIONER-COMPLAINANT WAS NOT DISMISSED FROM HER WORK AS A TEACHER and AT THE SAME TIME THE REGISTRAR;
- IN FINDING THAT BY A PROLONGED ABSENCE OF ONE YEAR MORE OR LESS, PETITIONER WAIVED HER 13[TH] MONTH PAY AND SERVICE INCENTIVE LEAVES AS SHE FAILED TO STATE SUCH CLAIMS IN HER AFFIDAVIT THAT WAS ATTACHED [TO] HER POSITION PAPER, and;
- THAT THE DECISION/RESOLUTION RENDERED BY THE HONORABLE COMMISSIONERS OF THE 5[TH] DIVISION WAS TAINTED WITH GRAVE ABUSE OF DISCRETION AS IT WAS INCOMPLETE AND UNLAWFUL[.][12] (Italics and emphasis in the original)

Non-payment of docket fee at the time of the filing of a petition does not automatically call for its dismissal as long as the fee is paid within the applicable prescriptive or reglementary period.[13] While petitioner paid the P30 deficient amount of the docket fee on February 7, 2006,[14] it was beyond the 60-day period for filing the petition for certiorari. Nevertheless, the Court, in the interest of substantial justice, brushes aside this and the other technicalities cited by the Court of Appeals in its Resolution of December 15, 2005[15] and, instead of remanding the case to the appellate court, now hereby decides the case on the merits.

While in cases of illegal dismissal, the employer bears the burden of proving that the dismissal is for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal.[16]

The records do not show that petitioner was dismissed from the service. They in fact show that despite petitioner's absence from July 2001 to March 2002 which, by her own admission, exceeded her approved leave,[17] she was still considered a member of the Forest Hills faculty[18] which retained her in its payroll.[19]

Petitioner argues, however, that she was constructively dismissed when Forest Hills merged her class with another "so much that when she reported back to work, she has no more claims to hold and no more work to do." [20]

Petitioner, however, failed to refute Forest Hills' claim that when she expressed her intention to resume teaching, classes were already ongoing for School Year 2002-2003. It bears noting that petitioner simultaneously held the positions of secondary school teacher and registrar and, as the NLRC noted, she could have resumed her work as registrar had she really wanted to continue working with Forest Hills.[21]

Petitioner's affidavit and those of her former colleagues,[22] which she attached to her Position Paper, merely attested that she was dismissed from her job without valid cause, but gave no particulars on when and how she was dismissed.

There being no substantial proof that petitioner was dismissed, she is not entitled to separation pay or backwages.

Respecting petitioner's claim for holiday pay, Forest Hills contends that petitioner failed to prove that she actually worked during specific holidays. Article 94 of the Labor Code provides, however, that

(a)

Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

(b)

The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate[.]

The provision that a worker is entitled to twice his regular rate if he is required to work on a holiday implies that the provision entitling a worker to his regular rate on holidays applies even if he does not work.

The petitioner is likewise entitled to service incentive leave under Article 95 of the Labor Code which provides that

(a)

Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b)

This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishment exempted from granting this benefit by the Secretary of Labor after considering the viability or financial condition of such establishment.

x x x x,

and to 13[th] month pay under Presidential Decree No. 851.[23]

As for petitioner's claims for overtime pay, it must be denied, for other than the uncorroborated affidavits of her colleagues, there is no concrete proof that she is entitled thereto.[24] And so must her claim for allowances, no

proof to her entitlement thereto having been presented.

On the deduction of 10% tithe, Article 113 of the Labor Code instructs:

ART. 113. No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

(a)

In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b)

For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

(c)

In cases where the employer is authorized by law or regulations issued by the Secretary of Labor,

as does Rule VIII, Section 10 of the Rules Implementing Book III of the Labor Code reading:

SEC. 10. Deductions from the wages of the employees may be made by the employer in any of the following cases:

(a)

When the deductions are authorized by law, including deductions for the insurance premiums advanced by the employer in behalf of the employee as well as union dues where the right to check-off has been recognized by the employer or authorized in writing by the individual employee himself;

(b)

When the deductions are with the written authorization of the employees for payment to a third person and the employer agrees to do so, provided that the latter does not receive any pecuniary benefit, directly or indirectly, from the transaction. (Emphasis and underscoring supplied)

In the absence then of petitioner's written conformity to the deduction of the 10% tithe from her salary, the deduction made by Forest Hills was illegal.

Finally, on petitioner's claim that Forest Hills did not remit her SSS contributions, *Villar v. National Labor Relations Commission*[25] enlightens:

x x x [T]he burden of proving payment of monetary claims rests on the employer. x x x

x x x x

The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents - which will show that overtime, differentials, service incentive leave and other claims of workers have been paid - are not in the possession of the worker but in the custody and absolute control of the employer.[26] (Underscoring supplied)

Forest Hills having glossed over this claim, the same must be granted.

Finally, insofar as petitioner was compelled to litigate her money claims, an award of attorney's fees equivalent to 10% of the final judgment award is in order.[27]

WHEREFORE, the Court of Appeals Resolution of December 15, 2005 is SET ASIDE. The petition is GRANTED insofar as petitioner's claims for illegal deductions, holiday pay, service incentive leave pay, 13[th] month pay, and non-remittance of SSS contributions are concerned. Respondents are accordingly ORDERED to refund to petitioner the amount of the illegal deductions from her salary; to pay her holiday pay, service incentive leave pay, and 13[th] month pay; to remit her contributions to the SSS; and to pay her attorney's fees equivalent to 10% of the final judgment award. The case is accordingly REMANDED to the Labor Arbiter for computation of the amount of such money claims.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] NLRC records vol. I, p. 1.

[2] Id. at 11-20.

[3] Id. at 15.

[4] Id. at 50, 58.

[5] Id. at 59.

[6] Id. at 95.

[7] NLRC records, vol. II, pp. 355-359.

[8] CA rollo, pp. 2-19.

[9] Penned by Court of Appeals Associate Justice Romulo V. Borja, with the concurrences of Associate Justices Myrna Dimaraan Vidal and Ricardo R. Rosario, id. at 58-59.

[10] Id. at 60-68, 114-115.

[11] Rollo, pp. 12-37.

[12] Id. at 18-19.

[13] Vide Philippine Amusement and Gaming Corporation (PAGCOR) v. Lopez, Adm. Matter No. RTJ-04-1848, October 25, 2005, 474 SCRA 76, 92.

[14] Receipt attached to CA rollo, p. 1.

[15] Vide Reyes v. Fil-Estate Properties, Inc., G.R. No. 148967, February 9, 2007, 515 SCRA 269, 287.

[16] Vide Ledesma, Jr. v. National Labor Relations Commission, G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370.

[17] NLRC records vol. I, p. 14.

[18] Id. at 59.

[19] Id. at 14, 27.

[20] Rollo, p. 26. Vide pp. 26-27.

[21] NLRC records vol. II, p. 358.

[22] NLC records vol. I, pp. 24-25, 28.

[23] Requiring All Employers to Pay their Employees a 13[th-] Month Pay.

[24] NLRC records vol. I, p. 28.

[25] 387 Phil. 706 (2000)

[26] Id., at 716.

[27] Vide Civil Code, Article 2208:

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

x x x x

(7) In actions for the recovery of wages of household helpers, laborers, and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

x x x x

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