

**SPOUSES ALWYN ONG LIM AND EVELYN LUKANG LIM,  
PETITIONERS, VS. LEGAZPI HOPE CHRISTIAN SCHOOL/ RAMON SIA/  
OMEGA SIA/ HELEN SIA/ CECILIO K. PEDRO, RESPONDENTS.**

*G.R. No. 172818. March 31, 2009*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

This instant petition for review assails the Decision[1] dated November 30, 2005 of the Court of Appeals in CA-G.R. SP No. 88728 and its Resolution[2] dated May 24, 2006 denying the motion for reconsideration. The appellate court had affirmed the Decision[3] dated May 18, 2004 of the National Labor Relations Commission (NLRC) which found that petitioners were not illegally dismissed.

The antecedent facts are as follows:

Petitioner-spouses Alwyn Ong Lim and Evelyn Lukang Lim were hired in June 1999. Alwyn was assigned to teach Mathematics, Geometry, Algebra and Trigonometry subjects in the high school department of Legazpi Hope Christian School. Evelyn, on the other hand, was assigned to teach Chinese Language 1 and 2 and Chinese Math subjects in the elementary department of the same school.[4]

On April 4, 2002, respondent Helen Sia, head teacher of the school's Chinese department, verbally informed petitioners that their employment with the school were to be terminated, without giving the reasons therefor.[5] Thus, petitioners filed their complaints for illegal dismissal and monetary claims against the school and its officials on April 5, 2002.[6] On May 31, 2002, respondent Ramon Sia, Vice Chairman of the school's Board of Directors, sent a letter to the petitioners stating that their three-year probation had expired and that the school management had decided to discontinue their employment.[7]

Before the Labor Arbiter, respondents claimed that petitioners were merely part-time teachers and thus they can be dismissed even without waiting for the three-year probation period to lapse, as they never acquired permanent status.[8]

The Labor Arbiter ruled in favor of petitioners. The dispositive portion of the Consolidated Decision[9] dated November 7, 2003 reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainants, spouses ALWYN LIM and EVELYN LIM and LIGAYA DEBLOIS, and against the respondents LEGAZPI HOPE CHRISTIAN SCHOOL, CECILIO PEDRO, RAMON SIA, HELEN SIA and OMEGA SIA, ordering the latter to:

- Reinstatement of the three (3) complainants herein to their former position in the respondent school without loss of seniority rights; and
- Payment jointly and severally to the complainants herein of their back wages, 13<sup>th</sup> month pay, moral and exemplary damages and attorney's fees as computed above.

SO ORDERED.[10]

Respondents appealed the decision of the Labor Arbiter to the NLRC. The NLRC found that petitioners were only part-time teachers who did not acquire permanent status; hence, their dismissal was legal. The dispositive portion of its decision reads:

WHEREFORE, all the above facts considered, the judgments in favor of Alwyn Ong Lim and Evelyn Lukang Lim in the consolidated decision dated November 7, 2003 are hereby MODIFIED insofar as the award of 13[th] month and service incentive leave pays are concerned. Accordingly, the respondent Lega[z]pi Hope Christian School is hereby ordered to pay the said complainants their proportionate 13[th] month and service incentive leave pays for the year 2002, computed up to May 31, 2002, and based on their monthly salaries of PHP7,000.00 and PHP4,925.00, respectively. Their claims for illegal dismissal, and consequently for attorney's fees and damages, are hereby DISMISSED, for lack of merit.

SO ORDERED.[11]

Petitioners filed a motion for reconsideration,[12] but it was denied in the Resolution[13] dated November 30, 2004. They then filed a petition for certiorari with the Court of Appeals. The Court of Appeals affirmed the NLRC decision and disposed as follows:

WHEREFORE, in view of the foregoing, the instant petition for certiorari is PARTLY GRANTED. The assailed decision dated May 18, 2004 of public respondent NLRC insofar as NLRC RAB V Cases Nos. 04-00239-02 and 04-00240-02 involving Alwyn Ong Lim and Evelyn Lukang Lim are concerned is hereby AFFIRMED....

SO ORDERED.[14]

The Court of Appeals denied petitioners' motion for reconsideration. Hence, petitioners now raise the following issues:

I.

WHETHER OR NOT [PETITIONER-SPOUSES LIM] WERE HIRED AS PERMANENT TEACHING PERSONNEL ON THE BASIS OF ESTABLISHED FACTS.

II.

WHETHER OR NOT [PETITIONER-SPOUSES LIM] WERE TERMINATED WITHOUT LAWFUL AND JUST CAUSE OR CAUSES AND IN VIOLATION OF [PETITIONER-SPOUSES LIM'S] RIGHTS TO DUE PROCESS OF LAW.

III.

WHETHER OR NOT [PETITIONER-SPOUSES LIM] ARE ENTITLED TO THE RELIEF OF REINSTATEMENT PLUS BACK WAGES, FROM THE TIME THEY WERE UNLAWFULLY TERMINATED UNTIL ACTUAL REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES INCLUDING WITHOUT LIMITATION TO MORAL/EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.[15]

Petitioners contend that they were not issued any formal written probationary contract. They also contend that they were never informed of reasonable standards under which they would be evaluated or rated in connection with their supposed probationary period of employment. Thus, in the absence of a written contract of employment, upon their satisfactory completion of their three-year probationary period they contend that they are considered as, and became, regular and permanent teaching personnel of the respondent school.[16]

Petitioners further claim that they are full-time, not part-time, teaching personnel. They claim to have no other outside remunerative occupation requiring regular hours of work that will conflict with the working hours of the respondent school,[17] and in addition to their teaching jobs, they were performing non-teaching functions like preparing lesson plans, checking of notebooks and test papers, assisting during enrolment period, attending to school programs and other tasks. They were required to report as early as 7 a.m. until their respective classes ended.[18]

On the other hand, respondents argue that under the Manual of Regulations for Private Schools,[19] a full-time instructor is one who has a teaching load of at least 15 hours a week or is paid on a full salary basis, while a part-time instructor is one who has a teaching load of less than 15 hours a week. Thus, according to respondents, since petitioners have a teaching load that is less than 15 hours a week then they are only part-time instructors and do not enjoy security of tenure.[20]

In resolving the issue of whether or not petitioners were hired as permanent teaching personnel, it is relevant to first determine whether petitioners are part-time or full-time teachers. As found by both the NLRC and the Court of Appeals, petitioners stated in their complaints that their work schedules are "7:30 a.m. to 9:30 a.m." [21] for Evelyn and "7:00 a.m. to 12:00 noon" [22] for Alwyn.

Relevantly, the Manual of Regulations for Private Schools provides:

Section 45. Full-time and Part-time Faculty....

Full-time academic personnel are those meeting all the following requirements:

- Who possess at least the minimum academic qualifications prescribed by the Department under this Manual for all academic personnel;
- Who are paid monthly or hourly, based on the regular teaching loads as provided for in the policies, rules and standards of the Department and the school;
- Whose total working day of not more than eight hours a day is devoted to the school;
- Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and
- Who are not teaching full-time in any other educational institution.

All teaching personnel who do not meet the foregoing qualifications are considered part-time. (Emphasis supplied.)

x x x x

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,...

Section 93. Regular or Permanent Status. Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent. (Emphasis supplied.)

In *University of Sto. Tomas v. NLRC*, [23] we ruled that for a private school teacher to acquire permanent status in employment, the following requisites must concur: (1) the teacher is a full-time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory. [24]

The burden is on petitioners to prove their affirmative allegation that they are permanent teaching personnel.

However, there is not enough evidence on record to show that their total working day is devoted to the school. There is no showing of what the regular work schedule of a regular teacher in respondent school is. What is clear in the records is that Evelyn and Alwyn spent two hours and four hours, respectively, but not the entire working day, at the respondent school. They do not meet requirement "c" of Section 45 of the Manual. Hence, we sustain the findings of the Court of Appeals that the petitioners are part-time teachers. Being part-time teachers, in accordance with *University of Sto. Tomas v. NLRC*, they cannot acquire permanent status.

In this case, the contracts of employment of the petitioners were not presented. It is in fact claimed that they have no written contracts, and such contracts are not disclosed by the records in the instant case. However on record, attached as part of a pleading of petitioners, is a copy of the "TEACHERS' GUIDELINES"[25] of respondent school which, in part, state:

#### STATUS & PRIVILEGES OF TEACHERS

##### - New Teachers

- New Teachers are on probation for three (3) years, within the duration, they must submit a letter of re-application for each school year. After the expiration date of the contract, a new one must be signed if it is sent to you.

- A full time new teacher is under 10-month contract only. If his/her performance is satisfactory, he/she will be rehired and will be entitled to receive the salaries for the 2-month summer vacation. (Emphasis supplied.)

x x x x

Considering that petitioners were new teachers, then in accordance with the above-quoted guidelines their unwritten contracts were considered to be for one school year at a time, they being required to submit a letter of re-application for each school year. After the end of each school year, the school did not have any obligation to give them any teaching loads, they being part-time teachers.[26] That respondents did not give any teaching assignment to the petitioners after the school year 2001-2002 did not amount to an actionable violation of petitioners' right. It did not amount to illegal dismissal.[27]

In view of the foregoing finding that petitioners were not illegally dismissed, there is also no basis to order their reinstatement and the payment of damages and attorney's fees to them.[28]

WHEREFORE, the petition is DENIED. The Decision dated November 30, 2005 of the Court of Appeals in CA-G.R. SP No. 88728 is hereby AFFIRMED. No pronouncement as to costs.

### **SO ORDERED.**

Carpio Morales, Tinga, Velasco, Jr., and Peralta,[\*] JJ., concur.

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[\*] Designated member of Second Division per Special Order No. 587 in place of Associate Justice Arturo D. Brion who is on leave.

[1] Rollo, pp. 97-105. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Regalado E. Maambong and Lucenito N. Tagle concurring.

[2] Id. at 118-119.

[3] Id. at 48-59.

- [4] Id. at 55.
- [5] Id. at 38.
- [6] CA rollo, pp. 53-54.
- [7] Id. at 58.
- [8] Rollo, pp. 39-40.
- [9] Id. at 36-46.
- [10] Id. at 45.
- [11] Id. at 58.
- [12] Id. at 61-69.
- [13] Id. at 71-74.
- [14] Id. at 104.
- [15] Id. at 167.
- [16] Id.
- [17] Id. at 172.
- [18] Id. at 168.
- [19] U. Sarmiento III, Manual of Regulations for Private Schools Annotated, (1<sup>st</sup> ed., 1995).
- [20] Id. at 184.
- [21] CA rollo, p. 40.
- [22] Id. at 39.
- [23] G.R. No. 85519, February 15, 1990, 182 SCRA 371.
- [24] La Consolacion College v. National Labor Relations Commission, G.R. No. 127241, September 28, 2001, 366 SCRA 226, 230.
- [25] CA rollo, pp. 41-44.
- [26] Saint Mary's University v. Court of Appeals, G.R. No. 157788, March 8, 2005, 453 SCRA 61, 68.
- [27] Id.
- [28] University of Sto . Tomas v. NLRC, supra note 23 at 379.

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