

EVANGELINE C. COBARRUBIAS, PETITIONER, VS. SAINT LOUIS UNIVERSITY, INC., RESPONDENT.

G.R. No. 176717. March 17, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In 1982, Evangeline C. Cobarrubias (petitioner) was hired as a faculty member at St. Louis University, Inc. (respondent) in Baguio City.[1]

By letter of May 23, 2003,[2] respondent's President Rev. Fr. Paul Van Parijs informed petitioner that she had failed to meet the required minimum evaluation rating for faculty members during the 5-year period beginning school year 1998 until 2003 to thus place her on forced leave during the first semester of school year 2003-2004; and that while on forced leave, all benefits due her would be suspended following Section 7.7 of the existing Collective Bargaining Agreement (CBA) between respondent and the Union of Faculty and Employees of Saint Louis University.

In the same letter of May 23, 2003, petitioner was advised that "before the lapse of thirty (30) days prior to the end of the First Semester . . . or on or before 12 September 2003," she should "inform in writing . . . [her] readiness and availability to teach during the Second Semester . . ."

The above-cited CBA provision reads:

Section 7.7. For teaching employees in college who fail the yearly evaluation, the following provisions shall apply:

- (a) Teaching employees who are retained for three (3) cumulative years in five (5) years, shall be on forced leave for one (1) regular semester during which period all benefits due them shall be suspended;
- (b) Teaching employees who obtain evaluation ratings below 80 for three (3) cumulative years in five (5) years shall be terminated.[3] (*italics and underscoring supplied*)

Under the guidelines for Faculty Promotion of respondent's Handbook,[4] a faculty member is "retained in rank if he does not obtain the required rating for that particular rank." And under respondent's Evaluation Manual,[5] a faculty member is evaluated on the basis of his rank.

Petitioner had the following performance record for the 5-year period preceding the notice for her to go on forced leave:

School Year

Over-all Rating

Required Minimum Evaluation

Remarks

Faculty Rank

1998-99

85.50

86

Retained

Asst. Professor III+

1999-2000

85

86

Retained

Asst. Professor III+

2000-2001

87

86

Passed but maximum rank obtained

Asst. Professor III+

2001-2002

90.50

86

Passed but maximum rank obtained

Asst. Professor III+ and was later adjusted to Associate Professor I-1* owing to the passing of the BAR exam

2002-2003

85

87

Retained

Associate Professor I-2**

* Faculty rank effective 1 April 2002 until 31 May 2002

** Faculty rank for SY 2002-2003 due [for] having passed the evaluation of SY 2002-2002.[6] (underscoring supplied)

Before the first semester of the 2003-2004 school year began or in June 2003, petitioner attempted to report for work, but as she was placed on forced leave, she was not given any teaching load.[7]

Petitioner thereupon filed on June 5, 2003 a complaint for illegal dismissal with prayer for reinstatement,

backwages, moral and exemplary damages, attorney's fees and payment of service incentive leave before the Regional Arbitration Branch, Cordillera Administrative Region of the National Labor Relations Commission.[8] The Executive Labor Arbiter, for lack of jurisdiction, was later to refer the case to the National Conciliation and Mediation Board by Order of January 19, 2005.

By letter of October 13, 2003,[9] respondent's Personnel Officer advised petitioner that a 24-unit load had been prepared for her for the second semester of the school year 2003-2004 "which starts on November 3, 2003," but that despite its letter of May 23, 2003, it had not received any communication from her. She was thus required to signify in writing her intention to resume teaching duties "on or before the end of October 2003" failing which her teaching load would be assigned to "other qualified and available faculty." [10]

As no word was received from petitioner, respondent sent her another letter of November 8, 2003[11] the pertinent portions of which read:

x x x x

Despite all these efforts, you failed to report for work. We urge you to come. We shall give you up till Nov. 10, 2003. Otherwise we will be constrained to assign your load to other teachers.

Since your forced leave is finished, we ask you to come and continue your teaching function this Second Semester.

x x x x[12] (underscoring supplied)

Still later, respondent sent petitioner another letter of November 12, 2003[13] asking her to explain in writing within 48 hours why she should not be deemed to have abandoned her work, and a final letter dated November 28, 2003[14] giving her an opportunity to report for work within five days from receipt and to explain in writing within the same period why she should not be terminated due to abandonment.

Petitioner never ever responded to respondent's letters, hence, she was, by letter of December 6, 2003,[15] dismissed for abandonment.

Before the Voluntary Arbitrator designated to handle the case, the following issues were raised:

1. The legality of dismissal of complainant due to abandonment;
2. The validity of forced leave imposed upon complainant for one semester; and
3. . . . [Whether] due process [was] observed by Respondent.[16]

The Arbiter, by Decision of July 11, 2005,[17] declared the earlier-quoted Article 7, Section 7 of the CBA to be void, viz:

It is elementary that a contract that contravenes a policy, which confers a juridical relation to which it refers shall be void. The CBA may not interpret or expand the provisions of the Evaluation Manual that will make it prejudicial to the interests of the persons referred to in the evaluation manual...[18] (underscoring supplied)

x x x x

The Evaluation Manual manifests the will of the University in its educational policy in the ranking and promoting members of its faculty. The CBA as a labor contract may not contravene the policy of the University where it does not impose a penalty other than what the University manifests in that the failure of a faculty member in his performance within a five year period of which he has failed to meet the minimum rating for three (3) cumulative years will not be promoted but retained in rank only. The CBA states otherwise as it adds a penal provision that said faculty member shall be on forced leave, for one regular semester and all

his benefits suspended. Such penalty constitutes undue and unreasonable restraint in the occupation of the faculty member and works hardship in his economic life as he will be deprived of his only livelihood for one regular semester including any benefit owing to him during that period.[19] (emphasis and underscoring supplied)

And he noted that petitioner was not afforded due process, there being no showing that the twin requirements of notice and hearing were complied with.[20]

Respecting the issue of abandonment, the Arbiter ruled that petitioner's failure to report for work, despite repeated notices from respondent, did not constitute abandonment, citing *Samarca v. Arc-men Industries, Inc.*[21] which held that to constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship[22] which, to the Arbiter, was wanting in the case at bar. Hence, the Arbiter ordered the reinstatement of petitioner.

Thus the Arbiter disposed:

WHEREFORE, in the light of the foregoing, the clause in the CBA, Article 7, Section 7, Par. (a), imposing forced leave for one regular semester during which period all benefits due the, will be suspended is declared void, and Respondent is ordered to reinstate Complainant to her former position without loss of seniority rights and other privileges; to pay her backwages from the time it was withheld from her to the time of her actual reinstatement; to pay moral damages of P50,000.00; exemplary damages ay P25,000.00 and attorney's fees pf 10% of the total sum awarded to Complainant.[23] (emphasis and underscoring supplied)

On respondent's Petition for Review,[24] the Court of Appeals, by Decision of May 23, 2006,[25] reversed the Arbiter's decision, holding that the Arbiter breached the bounds of his authority by nullifying Sec. 7.7 of the CBA.[26] To the appellate court, the Arbiter's authority to settle labor disputes is confined only to the proper interpretation and implementation of the CBA provisions,[27] citing Art. 261 of the Labor Code which provides:

ART. 261. Jurisdiction of Voluntary Arbitrator or panel of Voluntary Arbitrators. - The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies...

The appellate court went on to hold that, assuming arguendo that the Arbiter has authority to nullify the provisions of the CBA, the questioned provision is not contrary to law.

Citing *Peña v. National Labor Relations Commission*,[28] the Court of Appeals upheld the prerogative of a school to maintain high standards of efficiency for its teachers, quality education being a mandate of the Constitution, and to dismiss teachers who fail to attain reasonable work goals set by it.[29]

Respecting the issue of abandonment, the appellate court found that petitioner had indeed abandoned her job, she having failed to report back for work despite several notices for her to do so, the pendency of her complaint for illegal dismissal not being a valid excuse therefor.

Contrary to the Arbiter's finding, the Court of Appeals declared that petitioner was afforded ample opportunity to contest the ratings she had been given, citing *Peña* which held that a university's act of informing faculty members of their ratings after every evaluation period and inviting them to examine their grades and discuss them with their evaluators amounts to sufficient compliance with the due process requirement.[30]

Nonetheless, the appellate court, passing on the above-quoted provision of Section 7 of Article 7 of the CBA, held that there was doubt on its proper interpretation, particularly when the five-year period in the phrase "three (3) cumulative years in five (5) years" should be reckoned.

Resolving the doubt in petitioner's favor, the appellate court held:

. . . We are of the impression that the matter of forced leave for teachers who failed thrice in the evaluation within a five year span should be co-terminous with, and anchored on the particular CBA from which it draws its breathing force. Emphasis should be placed on the fact that the provision for the six month forced leave is exclusively of contractual origin as the same is found nowhere else but in the parties' Collective Bargaining Agreement, having been introduced for the first time in the 1996-2001 CBA and reiterated in the 2001-2006 CBA. Indeed, although some provisions may have been reproduced from the old bargaining agreement, still, every bargaining agreement remains a separate pact between the employer and its employees. Hence, one should be construed independently of the other.

Again, it is because there are doubts engendered by the CBA as regards the reckoning period of five years mentioned under Sec. 7.7 thereof that we are inclined to declare the suspension of the respondent as illegal.

. . . [J]udicial partiality to workers on occasions of doubt in labor agreements is not a dictate of whim, but of a need to safeguard the interest of an underprivileged sector. The legal tie that binds labor and capital are not merely contractual in character. It is because the morally disadvantaged employee very seldom has the upper hand in the bargaining table that gray areas in labor contracts are customarily interpreted to his benefit.[31] (citation omitted; italics in the original; emphasis and underscoring supplied)

On the matter of damages, the appellate court set aside the Arbiter's award to petitioner of moral damages, her dismissal by respondent on account of an "erroneous interpretation" of the CBA provision having been attended with good faith.[32] The appellate court accordingly deleted the award of exemplary damages.

Noting that that was the first offense of petitioner who had devoted 20 years of service during which she was cited for her contributions to respondent,[33] the appellate court awarded petitioner separation pay following Philippine Long Distance Telephone Co. v. NLRC[34] which held:

There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee maybe both just and compassionate, particularly if he has worked for some time with the company.[35]

Thus the appellate court disposed:

WHEREFORE, in the light of the foregoing premises, the instant petition is GRANTED. The decision rendered by the Voluntary Arbitrator dated July 11, 205 is hereby declared null and void, and a new one is entered declaring the respondent to have been illegally suspended, but nonetheless validly dismissed. Accordingly, the petitioner is ordered to pay the respondent all salaries and benefits that are due her for the duration of her six month forced leave. Solely to satisfy the demands of equity, the petitioner is likewise ordered to pay the respondent an amount equivalent to one (1) month salary for every year of service as separation pay.

SO ORDERED.[36] (emphasis and italics in the original)

Her Motion for Reconsideration[37] having been denied by Resolution of January 26, 2007,[38] petitioner filed the present Petition for Review on Certiorari, faulting the appellate court

A. . . . IN HOLDING PETITIONER TO HAVE ABANDONED HER WORK EVEN AND DESPITE THE PENDENCY OF THE ILLEGAL DISMISSAL CASE PETITIONER FILED AGAINST THE RESPONDENT.

B. . . . [IN HOLDING] THAT [PETITIONER] IS NOT ENTITLED TO THE DAMAGES AWARDED BY THE VOLUNTARY ARBITRATOR[.][39]

The petition fails.

Petitioner was, for five times, notified in writing by respondent to resume teaching for the second semester of school year 2003-2004 following the service of her suspension during the first semester. She was advised that a teaching load had already been prepared for her. Respondent never ever replied to those notices.

Petitioner's justification for her failure to respond to the notices - that her acceptance of the offer could be constituted as a waiver of her claims - is not indeed a valid excuse.

At all events, petitioner contends that her filing of a complaint for illegal dismissal was a manifestation of her desire to return to her job and negated any intention to sever the employer-employee relationship, citing *Del Monte Philippines, Inc. v. National Labor Relations Commission*[40] which held:

. . . Thus we cannot conceive how private respondent could abandon her job and give up the benefits she has earned from years of hard work. Finally, her filing of an illegal dismissal case contradicts petitioner's allegations that she abandoned her job.[41]

Petitioner forgets that her complaint for "illegal dismissal" which she filed on June 5, 2003 sprang, not from her dismissal on December 6, 2003 due to abandonment but, from her suspension during the first semester of school year 2003-2004. While the filing of a complaint with a prayer for reinstatement negates an intention to sever the employer-employee relationship,[42] the same contemplates an action made subsequent to dismissal.

WHEREFORE, the petition is, in light of the foregoing discussions, DENIED.

Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] NLRC records, p. 427. The records are paginated from 472-1.

[2] *Id.* at 52-51.

[3] *Id.* at 75.

[4] *Id.* at 59-57.

[5] *Id.* at 63-60.

[6] *Id.* at 69.

[7] *Id.* at 363-362.

[8] CA rollo, pp. 167-171.

[9] Records, p. 27.

[10] CA rollo, p. 132.

[11] Records, pp. 22-21.

[12] *Id.* at 22-21.

[13] *Id.* at 19.

[14] Id. at 17.

[15] Id. at 16-15.

[16] Id. at 1.

[17] Id. at 182-174.

[18] Id. at 178.

[19] Id. at 177.

[20] Vide ibid.

[21] 459 Phil. 506 (2003).

[22] Records, p. 176.

[23] Id. at 174.

[24] CA rollo, pp. 2-43.

[25] Id. at 265-277. Penned by Justice Bienvenido L. Reyes with the concurrence of Justices Amelita G. Tolentino and Mariflor Punzalan Castillo.

[26] Id. at 270.

[27] Ibid.

[28] 327 Phil. 673 (1996).

[29] Id. at 676.

[30] CA rollo, p. 271.

[31] Id. at 274-275.

[32] Citing Zamboanga City Electric Cooperative v. Buat, G.R. No. 100514, March 29, 1995, 243 SCRA 47, 52.

[33] CA rollo, p. 270.

[34] G.R. No. L-80609, August 23, 1988, 164 SCRA 671.

[35] Id. at 681.

[36] CA rollo, p. 276.

[37] Id. at 278-289.

[38] CA rollo, pp. 324-329.

[39] Rollo, pp. 17-18.

[40] G.R. No. 126688, March 5, 1998, 287 SCRA 71.

[41] Id. at 77-78.

[42] Vide Pentagon Steel Corporation v. Court of Appeals, et al., G.R. No. 174141, June 26, 2009 citing Big AA Manufacturer v. Antonio, et al., G.R. No. 160854, March 3, 2006, 484 SCRA 33.

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