

**ALICIA M.L. COSETENG AND DILIMAN PREPARATORY SCHOOL,
PETITIONERS, VS. LETICIA P. PEREZ, RESPONDENT.***G.R. No. 185938. September 06, 2017*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-185938/>

REYES, JR., J:

In the present petition for review on certiorari, Diliman Preparatory School (the School) and its former President, Alicia M.L. Coseteng (Coseteng)[1] (petitioners, for brevity), challenge the Decision[2] dated July 29, 2008 and Resolution[3] dated December 17, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 72706, which held that Leticia P. Perez (Perez) was constructively dismissed from employment.

The Antecedent Facts

In 1972,[4] Perez was hired by the School as a teacher for elementary students. For several years, she was a regular teacher handling Grade III Level students with a class advisory of the same level.[5] In 1994, she was assigned to teach Grade V Level students with working hours from 7:30 a.m. to 12:30 noon.[6]

Sometime in August 1994, several students reported that Perez collected payment from them for subscription to Saranggola magazine, an educational publication endorsed by the School. However, they did not receive their copies of the magazine, while students from other sections had already received theirs. Based on the School's standard procedure, the teachers would collect the subscription payment from their students, after which the collection should be remitted to the School's head librarian.[7]

Thereafter, the School created a committee to conduct an investigation. Perez admitted she failed to remit the subscription payment supposedly due to her busy schedule, but agreed to return the payment of the students instead.[8] Months later, or in February 1995, the School found out that only five of the 20 students were able to receive a refund of their subscription payments. Upon the School's orders, Perez returned the remaining amount on a piecemeal basis to the rest of the students.[9]

Based on the findings of the School's investigating committee, a case for misappropriation amounting to estafa could allegedly be built against Perez. However, in view of her extensive service to the school, as well as to give her the benefit of the doubt, the investigating committee reduced its findings to negligence and recommended that Perez be suspended without pay for ten working days.[10] Accordingly, Perez was suspended from work from April 10 to 25, 1995.[11]

Meanwhile, Perez was embroiled in another incident at the School. A co-teacher suspected that cheating occurred on January 26, 1995, during the Math quarterly examinations of Grade V students proctored by Perez. The teacher noticed that a particular student, who got low grades in the preceding quarter, received a high grade in the quarterly examinations. Upon the teacher's inquiry, the student admitted she cheated by copying the answers of another student with the consent and instruction of Perez.[12]

When the teacher reported the matter to the School, a second committee was tasked to investigate and conduct hearings relative to the controversy.[13] Even so, Perez wrote letters[14] to Coseteng and to the assistant

principal, admitting her involvement in the incident. After due deliberation, the investigating committee adjudged Perez's behavior as highly irregular for a teacher and found her liable for negligence in the performance of her duties. Based on the investigating committee's recommendation,[15] Perez was suspended from work effective May 26, 1995 to June 11, 1995 with one week commutation. She was then directed to report to work on June 13, 1995 for her assignment.[16] Perez correspondingly served out her suspension.

On June 14, 1995, without reporting back to work, Perez tendered her resignation to Coseteng via facsimile. Her handwritten letter[17] reads:

June 14, 1995

Prof. Alicia M.L. Coseteng
Principal
Diliman Preparatory School
Commonwealth Avenue, Q.C.

Madam:

Warm Greetings!

This is to inform you that I am resigning from my present post as a permanent teacher in your prestigious institution starting today June 14, 1995.

I have to assist and accompany my veteran father who is going to the States to enjoy his benefits as a U[.]S[.] - World War Veteran.

Hoping for more success of Diliman Prep. School in the years to come.

Thank you very much.

Sincerely yours,

(Signed)
Leticia P. Perez

Upon her resignation, Perez received all amounts due her under the Private Education Retirement Annuity, a program wherein teachers and employers contribute to a fund for the availment of the teachers on their retirement.[18]

Thereafter, nothing more was heard from Perez, until she filed a Complaint[19] for payment of separation benefits with the Labor Arbiter (LA) on June 15, 1998. In her Position Paper,[20] Perez argued that she was constructively dismissed from employment[21] and prayed that she be granted separation pay in light of her twenty-three (23) years of service to the School.[22] Perez also submitted an Affidavit[23] executed by one Teresita Limochin (Limochin), who attested that she received separation pay from the School following her voluntary resignation.

On January 7, 1999, Perez filed an Amended Complaint[24] to include claims for constructive dismissal and damages against the School. She stated in her Supplemental Position Paper[25] that she opted to resign from work because she was being demoted to a floating status. From her previous working hours of 7:30 a.m. to 12:30 p.m., she would be required to stay in school from 7:30 a.m. to 5:30 p.m. as a "floating teacher". Additionally, she would have to perform non-teaching tasks as may be assigned by the School.[26] She averred that she really had no intention of going to the United States and, in fact, had never left the Philippines, but only gave that excuse in her resignation letter so as not to antagonize the petitioners.[27]

For their part, the petitioners argued that Perez's cause of action has already prescribed under Article 291[28] of

the Labor Code, considering that three years had lapsed from the time of her resignation.[29] They denied that Perez was constructively dismissed from employment as her resignation was a free and voluntary act on her part.[30] They likewise refuted that Perez was demoted because her reassignment was due to a legitimate concern - the school year would have begun by the time Perez has served out her suspension; she wouldn't be able to handle any class immediately at the beginning of a school year. But she would have to fill in for other teachers as may be necessary. Further, her salary and benefits would remain the same.[31] Moreover, the petitioners contend that they did not grant separation pay to Limochin but merely gave her financial assistance.[32]

The petitioners prayed for the dismissal of Perez's complaint and by way of counterclaim, prayed for the issuance of an order mandating Perez to pay them moral damages, exemplary damages, and attorney's fees.[33]

The Decision of the Labor Arbiter

On April 24, 2000, the LA rendered a Decision[34] granting Perez's claim for separation pay due to its conclusion that the petitioners have, as a practice, given separation pay to its employees who resigned.[35] However, the LA decreed that Perez resigned voluntarily from work and was not constructively dismissed.[36] The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered ordering respondents to pay complainant separation pay and attorney's fees in the amount of [P]168,000[.00] and [P]16,800.00[,] respectively.

The complaint for constructive dismissal, damages and respondents' counterclaims are hereby dismissed for lack of merit.

SO ORDERED.[37]

Feeling aggrieved, the petitioners made a partial appeal on the LA Decision with the National Labor Relations Commission (NLRC).

The Decision of the NLRC

On May 10, 2002, the NLRC promulgated its Decision[38] modifying the LA ruling. While the NLRC affirmed the grant of separation pay to Perez, it deemed Perez as constructively dismissed from employment because she was placed on floating status.[39] The NLRC also ruled that it was erroneous to hold Coseteng liable for Perez's money claims as the former was neither a proper party to the case nor did she act with malice or bad faith.[40] The NLRC modified the LA judgment as follows:

WHEREFORE, the decision dated 24 April 2000 is MODIFIED. The complaint against Alicia Coseteng is dismissed and the award of attorney's fees is deleted.

All other findings are AFFIRMED.

SO ORDERED.[41]

The NLRC also denied the petitioners' motion for partial reconsideration in its Resolution[42] dated June 21, 2002, leading the petitioners to file a petition for certiorari before the CA.

The Decision of the CA

In its Decision[43] dated July 29, 2008, the CA dismissed the petition. It held that Perez's cause of action had not prescribed since "an employee has four years within which to institute an action for illegal dismissal." [44] As with the NLRC, the CA ruled that Perez was constructively dismissed from employment, necessitating an award for separation pay. The CA considered Perez's reassignment as a demotion amounting to additional penalty for her

infractions.[45] Further, the CA reinstated the LA's award of attorney's fees to Perez. The fallo of the CA decision states:

WHEREFORE, premises considered, the petition under consideration is DISMISSED. The decision of the public respondent Commission dated May 10, 2002 and its resolution dated June 21, 2002 are hereby REVERSED AND SET ASIDE. The temporary restraining order and/or writ of preliminary injunction prayed for by the petitioners, being a mere adjunct in this petition, is perforce DENIED. No pronouncement as to costs.

SO ORDERED.[46]

The petitioners' motion for reconsideration was likewise denied by the CA in its Resolution[47] dated December 17, 2008.

Hence, this petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure.

The Issues

The petitioners maintain that, first, Perez's cause of action has already prescribed. Second, Perez failed to discharge her burden of proving that her resignation was involuntary. Third, Perez was neither demoted nor was she placed on floating status. Fourth, there is no basis for the CA's inference that the School has a practice or policy of granting separation pay to resigned employees, nor can Perez claim separation pay under the principle of social justice in view of her dishonest acts unbecoming of a teacher.[48] Finally, the petitioners prayed for the award of moral damages, exemplary damages, and attorney's fees inasmuch as Perez resorted to coercive judicial processes not for purposes of advancing a meritorious claim but merely to extort money from them.[49]

The Ruling of the Court

At the outset, the Court reiterates that only questions of law, not questions of fact, may be raised in a petition for review on certiorari under Rule 45.[50] Also, factual findings of the labor tribunals when affirmed by the CA are generally accorded not only respect, but even finality, and are binding on this Court.[51] This rule notwithstanding, it admits of exceptions such as when, as in this case, there is misapprehension of facts, thus:

While it is true that factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts, this general rule admits of exceptions. When there is a showing that a palpable and demonstrable mistake that needs rectification has been committed or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record, these findings may be examined by the courts.[52]

The Court also clarifies that while the term "floating status" was used extensively in the pleadings, as well as in the decisions of the labor tribunals and the CA, the petitioners aptly argued that Perez was not placed under floating status in its legal sense. Under case law,[53] with reference to Article 286[54] of the Labor Code, floating status refers to a temporary lay-off or off-detail of an employee by reason of a bonafide suspension of the operation of a business or undertaking which shall not exceed six months. When the suspension exceeds six months, the employment is deemed terminated. What is more, an employee who is placed under floating status does not receive any salary or financial benefit provided by law.[55] In Perez's case, her lack of a regular teaching load and advisory class did not place her under floating status; there is no suspension of business operations and she would continue to work at the School. Her salary would remain the same, as well as her benefits.[56]

Perez was not constructively dismissed from employment

The CA affirmed the NLRC ruling that Perez was constructively dismissed from employment for the following

reasons:

1. When Perez reported back for work after serving her second penalty of suspension, she was not given an assignment. She was stripped of her regular teaching load and advisory class; and
2. She was required a longer working period with the same salary rate prior to her demotion in position.[57]

But, it appears that contrary to the supposition of the CA, Perez never reported back to work after serving out her suspension. She admitted that without seeking advice first, she tendered her resignation since she could not accept the loss of her regular teaching load.[58]

In *Gan v. Galderma Philippines, Inc.*,[59] the Court held that "resignation, being voluntary, contradicts a claim of illegal dismissal. Thus, when an employee tenders resignation, he or she has the burden of proving that the resignation was not voluntary but was actually a case of constructive dismissal; that it is a product of coercion or intimidation."

As opposed to the pronouncements of the NLRC and the CA, the circumstances narrated by Perez do not constitute a case of constructive dismissal. There is constructive dismissal "when there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits." [60] "It exists when there is clear act of discrimination, insensibility or disdain by an employer which becomes unbearable for the employee to continue his employment." [61]

The School was able to satisfactorily explain that Perez was merely reassigned and not demoted, since at the time she was supposed to return from her suspension on June 11, 1995, the school year had already started a week before June 5, 1995.[62] The School was duty-bound to fill up all classes with the proper number of teachers even before classes began.[63] As an academic institution, it is only but logical that the School's paramount consideration would be its students, whose learning should not be disrupted or impeded merely because of concerns regarding the teaching assignments of the School's employees. This fact was undisputed by Perez, who was concerned only of her regular teaching load and advisory class.

"This Court has always upheld the employer's prerogative to regulate all aspects of employment relating to the employees' work assignment, the working methods and the place and manner of work." [64] "Indeed, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them." [65] Notably, the School manifested that had Perez not resigned from work, she would have been included in its line-up of teachers with regular load at the next semester.[66] It is also significant that her salary and benefits would remain the same despite her reassignment. As it is, Perez opted to resign.

On the alleged inconvenience due to the longer hours of work required of a substitute teacher, the School has sufficiently rebutted the same. The School explained that a teacher handling regular load stays in the school premises for shorter hours since his/her responsibilities are not limited to actual teaching; he/she needs time to perform other tasks as adjunct of actual instruction, such as preparation of syllabus, planning for the conduct of each class, conducting tests, checking of test papers, and evaluation of students.[67] Simply put, shorter working hours in the classroom or school is not equivalent to shorter hours worked.[68]

On the other hand, the role of a substitute requires that he/she be available at all school hours to fill in for any unexpected absences.[69] He/she is not expected to prepare a lesson plan, create test questionnaires, or compute grades at home. Thus, a substitute teacher's longer working hours in the school premises as well the assignment of other non-teaching duties is only but a necessary consequence of holding such position.[70] Again, it cannot be

said that a teacher with regular load indeed enjoys shorter hours of work as he/she has other tasks to do outside the school premises in connection with his/her classroom duties.

While Perez has enjoyed her position of having a regular teaching load and advisory class for years, and may have to adjust to her temporary assignment, it is a recognized rule that "not every inconvenience, disruption, difficulty, or disadvantage that an employee must endure results in a finding of constructive dismissal." [71] Having failed to prove that her transfer was a result of discrimination, bad faith or disdain by the petitioners, Perez's claim of constructive dismissal must necessarily fail.

No separation pay may be granted to Perez

As a general rule, an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or CBA, or it is sanctioned by established employer practice or policy. [72] To be considered as a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. [73]

In an effort to show that the School has a policy of granting separation pay to its employees who resigned, Perez submitted an Affidavit [74] executed by Limochin, a co-teacher who received separation pay from the School despite having resigned from work.

A scrutiny of Limochin's affidavit reveals that the School's grant of separation benefits or financial assistance to her was an isolated act, not borne out by any established employer practice or policy. In fact, Limochin stated that she was made to choose either to voluntarily resign from work with payment of separation benefits or to face administrative proceedings, which may lead to termination, in view of her habitual absenteeism. Rather than face an investigation, Limochin chose the first option. Still, there is nothing in her affidavit that would disclose that the School granted her monetary benefits by virtue of an established practice or policy.

Besides, Limochin's situation was different from Perez's; aside from resigning three years after Perez did, the School gave Limochin a choice only because she faced the possibility of an eventual termination of employment, whereas Perez did not. In *Chiang Kai Shek College v. Torres*, [75] the Court acknowledged that, a compromise agreement, which allows an employee facing an imminent dismissal to opt for honorable severance from employment, may be validly entered into between an employer and employee.

On this note, it is well to emphasize that not every employee who stands to lose his job for valid cause is entitled to receive separation pay or financial assistance from his/her employer. The Court distinguishes between an employee who deserves the same and one who does not; to merit the application of social justice and equity, such employee must not be dismissed by reason of serious misconduct or causes reflective of his lack of moral character. Otherwise, it will have the effect of rewarding rather than punishing the erring employee for his offense. [76]

All in all, the Court disagrees with the view of the labor tribunals and the CA relative to the award of separation benefits to Perez. They clearly overlooked the lack of substantial evidence proving that the School grants separation pay to all its employees who resigned; its one-time act of giving separation benefits or financial assistance to an employee could hardly be considered as a practice done consistently and deliberately over a long period of time. Having voluntarily resigned from work, Perez is not entitled to separation pay or financial assistance. To reiterate, there is no evidence that payment of separation pay is stipulated in her employment contract or is sanctioned by an established practice or policy of the School.

Petitioners are not entitled to damages and attorney's fees

Anent the petitioners' prayer for moral damages on account of the complaint filed by Perez, the Court denies the same for the reason that moral damages are not automatically granted; "there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendants' acts." [77]

With respect to exemplary damages, Article 2229 of the Civil Code states that, "[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Since the Court has adjudged the petitioners as not entitled to moral damages, their plea for award of exemplary damages cannot be granted pursuant to the aforestated provision.

On the subject of attorney's fees, the Court holds that while the petitioners were compelled to engage the services of a counsel and incurred litigation expenses to defend their interests, it appears that Perez was not impelled by malice and bad faith in filing her complaint. She truly, albeit erroneously, believed that she can avail of separation benefits even if she resigned from her work. Article 2208 [78] of the Civil Code states that attorney's fees may be recovered "when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest." However, in *Delos Santos v. Papa*, [79] the Court decreed:

Award of attorney's fees is the exception rather than the general rule, and counsel's fees are not to be awarded every time a party wins a suit. The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. [80]

In view of the Court's findings that Perez was not constructively dismissed from employment and therefore, not entitled to separation pay, the issue raised by the petitioners with regard to prescription need not be belabored.

WHEREFORE, the petition is GRANTED. Accordingly, the Decision dated July 29, 2008 and Resolution dated December 17, 2008 of the Court of Appeals in CA-G.R. SP No. 72706 are hereby REVERSED and SET ASIDE. The complaint filed by respondent Leticia P. Perez for constructive dismissal, separation pay and damages is DISMISSED.

However, petitioners Alicia M.L. Coseteng and Diliman Preparatory School's prayer for the award of moral damages, exemplary and attorney's fees must be DENIED for lack of merit.

SO ORDERED.

Peralta, [*] Bersamin, [**] Perlas-Bernabe, and Caguioa, JJ., concur.

[*] Designated Acting Chairperson per Special Order No. 2487 dated September 19, 2017.

[**] Designated additional member per Raffle dated June 28, 2010 vice Justice Antonio T. Carpio.

[1] Deceased, rollo, p. 67.

[2] Id. at 83-105, penned by Associate Justice Amelita G. Tolentino, concurred in by Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr.

[3] Id. at 108-109.

[4] In Perez's Position Paper, the year 1971 was indicated, id. at 280.

[5] Id. at 189.

[6] Id. at 281, 325.

[7] Id. at 190.

[8] Id. at 192-193.

[9] Id. at 194-195.

[10] Id. at 195-196.

[11] Id. at 196-197.

[12] Id. at 236-237.

[13] Id. at 239.

[14] Id. at 270-271.

[15] Id. at 272.

[16] Id. at 273.

[17] Id. at 274.

[18] Id. at 202.

[19] Id at 278.

[20] Id. at 280-284.

[21] Id. at 282.

[22] Id. at 283.

[23] Id. at 285.

[24] Id. at 324.

[25] Id. at 325-334.

[26] Id. at 326.

[27] Id at 329.

[28] Article 291. Money claims. All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

[29] Rollo, p. 339.

[30] Id. at 342.

[31] Id. at 346.

[32] Id. at 352.

[33] Id. at 364.

[34] Id. at 401-412, penned by Labor Arbiter Pablo C. Espiritu.

[35] Id. at 410.

[36] Id. at 409.

[37] Id. at 412.

[38] Id. at 177-182, penned by Presiding Commissioner Lourdes C. Javier, concurred in by Commissioners Ireneo B. Bernardo and Tito F. Genilo.

[39] Id. at 180.

[40] Id. at 181.

[41] Ibid.

[42] Id. at 185-186.

[43] Id. at 83-105.

[44] Id. at 95.

[45] Id. at 98.

[46] Id. at 104-105.

[47] Id. at 108-109.

[48] Id. at 25-27.

[49] Id. at 66-68.

[50] *One Shipping Corp., et al. v. Peñafiel*, 751 Phil. 204, 209 (2015).

[51] *Nahas v. Olarte*, 734 Phil. 569, 580 (2014).

[52] *Culili v. Eastern Telecommunications Philippines, Inc.*, 657 Phil. 342, 361 (2011).

[53] *Nippon Housing Phil. Inc., et al. v. Leynes*, 670 Phil. 495 (2011); *Nationwide Security and Allied Services, Inc., v. Valderama*, 659 Phil. 362 (2011); *Pido v. National Labor Relations Commission*, 545 Phil. 507 (2007); *Valdez vs. National Labor Relations Commission*, 349 Phil. 760, 765-766 (1998).

[54] Article 286. When employment not deemed terminated. The bona-fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[55] *Exocet Security and Allied Services Corporation v. Serrano*, 744 Phil. 403, 413 (2014).

[56] Id. at 346.

[57] Id. at 97-98.

[58] Id. at 329.

[59] *Gan v. Galderma Philippines, Inc.*, 701 Phil. 612, 640 (2013).

[60] *Divine Word College v. Mina*, G.R. No. 195155, April 13, 2016.

[61] *Barroga v. Data Center College and Bactad*, 667 Phil. 808, 818 (2011).

[62] Rollo, p. 48.

[63] Id. at 49.

[64] *Peckson v. Robinsons Supermarket Corporation, et al.*, 713 Phil. 471, 480 (2013).

[65] *Nippon Housing Phil. Inc., et al. v. Leynes*, 670 Phil. 495, 507 (2011).

[66] Rollo, p. 59.

[67] Id. at 348.

[68] Omnibus Rules to Implement the Labor Code, Book III, Rule I

SECTION 3. Hours worked. — The following shall be considered as compensable hours worked:

(a) All time during which an employee is required to be on duty or to be at the employer's premises or to be at a prescribed work place; and

(b) All time during which an employee is suffered or permitted to work.

[69] Rollo, p. 348.

[70] Id. at 347.

[71] *Manalo v. Ateneo de Naga University*, 772 Phil. 366, 382 (2015).

[72] *Villaruel v. Yeo Han Guan*, 665 Phil. 212, 220 (2011).

[73] *Vergara v. Coca-Cola Bottlers Philippines, Inc.*, 707 Phil. 255, 262 (2013).

[74] Rollo, p. 285.

[75] 731 Phil. 177 (2014).

[76] *PLDT vs. NLRC and Abucay*, 247 Phil. 641, 649 (1988); *China Banking Corporation v. NLRC and Cruz*, 329 Phil. 608, 612 (1996).

[77] *Crystal et al. v. BPI*, 593 Phil. 344, 355 (2008).

[78] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;

(6) In actions for legal support;

[79] 605 Phil. 460 (2009).

[80] Id. at 463.

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