MELVIN P. MALLO, PETITIONER, VS. SOUTHEAST ASIAN COLLEGE, INC. AND EDITA ENATSU, RESPONDENTS.

G.R. No. 212861. October 14, 2015

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition for review on certiorari[1] are the Decision[2] dated February 25, 2014 and the Resolution[3] dated June 6, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 129669, which modified the Resolutions dated December 28, 2012[4] and February 6, 2013[5] of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 07-10686-11 and, accordingly, declared petitioner Melvin P. Mallo (Mallo) to have abandoned his job, hence, not entitled to backwages, separation pay, and attorney's fees.

The Facts

The instant case arose from a complaint[6] for, inter alia, unfair labor practice, illegal dismissal, underpayment of salary/wages, damages, and attorney's fees filed by Mallo against respondents Southeast Asian College, Inc. (SACI) and its Executive President/Chief Executive Officer, Edita F. Enatsu (Enatsu; collectively, respondents) before the NLRC.[7] Mallo alleged that SACI first hired him as a Probationary Full-Time Faculty Member of its College of Nursing and Midwifery with the rank of Assistant Professor C for the Second Semester of School Year (SY) 2007-2008[8] and, thereafter, his employment was renewed[9] for the succeeding semesters until the Summer Semester of SY 2010-2011.[10] On June 3 and 8, 2011, Mallo inquired about his teaching load for the First Semester of SY 2011-2012, but SACI only responded that teaching assignments for the semester were yet to be given to faculty members.[11] Thereafter, on June 15, 2011, he learned from a co-professor that faculty meetings were conducted on June 9 and 10, 2011 whereby teaching loads were distributed to the professors.[12] Upon learning of this development, Mallo went again to SACI to confront the Dean of the College of Nursing, Dr. Clarita D. Curato (Dr. Curato). Claiming that he was already a permanent employee of SACI, having been a professor of SACI for almost four (4) years since his first teaching assignment in November 2007, Mallo demanded that he be given his corresponding teaching load. However, Dr. Curato simply retorted that the school was under no obligation to give him any teaching loads for the semester because he was merely a contractual employee.[13] As such, Mallo was constrained to file the instant complaint against respondents.

In their defense, respondents denied dismissing Mallo, maintaining that as early as April 2011 and as evidenced by Dr. Curato's letter[14] to the Medical Center Chief II of the National Center for Mental Health (NCMH), SACI already gave Mallo his teaching load for the First Semester of SY 2011-2012 - as Clinical Instructor for the College of Nursing's Preceptorship Program, an on-the-job mentoring and ongoing clinical experience of students under the Nursing Related Learning Experience (NLRE) curriculum, to be conducted at NCMH.[15] Unfortunately, Mallo twice failed the qualifying test required for the job. This notwithstanding, SACI endeavored to give Mallo a teaching load by appointing him as a Clinical Instructor for Preceptorship Program to be conducted at the United Doctors Medical Center (UDMC) instead, beginning June 23, 2011, which he accepted.[16] However, a day before he was set to start as a Clinical Instructor at UDMC, Mallo asked for a

change in schedule, which was denied as it would entail a reshuffle of the entire NLRE schedule of the school.[17] On June 23 to 25, 2011, Mallo did not attend his classes at UDMC. This prompted a S ACI official to contact Mallo if he would report for work the following day, to which the latter allegedly replied in the negative as his schedule with SACI conflicted with his new employment. Thereafter, SACI never heard from Mallo again until he filed the instant case.[18]

The Labor Arbiter's Ruling

In a Decision[19] dated July 30, 2012, the LA found Mallo to have been illegally dismissed and, accordingly, ordered SACI to pay him backwages, separation pay in lieu of reinstatement, service incentive leave pay, 13 month pay, and attorney's fees.[20]

It held that, contrary to respondents' assertion, Mallo's employment was originally probationary in nature, which eventually lapsed into a permanent one after having completed three (3) consecutive years of satisfactory service and having possessed the required masteral degrees pursuant to the Manual of Regulations for Private Schools (Manual).[21] In this regard, the LA found no evidence to support respondents' claim that Mallo refused his appointment as Clinical Instructor at UDMC or that he failed the qualifying tests at NCMH.[22] In this light, the LA concluded that respondents' failure to give Mallo any teaching load for the First Semester of SY 2011-2012 is tantamount to the latter's illegal dismissal. On the other hand, the LA saw no basis to support Mallo's monetary claims except for his service incentive leave pay, which he was legally entitled to, having completed more than one (1) year of service, his 13[th] month pay, and attorney's fees for having been compelled to litigate.[23]

Aggrieved, respondents appealed[24] to the NLRC, docketed as NLRC NCR Case No. 07-10686-11/NLRC LAC No. 11-003164-12.

The NLRC Ruling

In a Resolution[25] dated December 28, 2012, the NLRC affirmed the LA ruling. It did not give credence to respondents' claim that Mallo did not teach in the First Semester of SY 2008-2009 and, thus, did not complete the required six (6) regular semesters of satisfactory service for him to attain the status of being a regular employee. In this regard, the NLRC noted the Social Security System (SSS) Inquiry Report showing that SACI contributed SSS premiums for Mallo beginning January to December of 2008, hence, could not have been employed only on the 2[nd] Semester of SY 2008-2009.[26] It likewise rejected respondents' assertion that Mallo's performance had not been satisfactory, considering that he was repeatedly hired for seven (7) straight regular semesters and despite having failed NCMH's qualifying tests, he was nonetheless given another assignment at UDMC.[27] In the same vein, it found no abandonment on the part of Mallo, holding that no evidence was presented to show that the latter had clearly intended to sever his employment with respondents and, considering further that he had instituted the instant complaint.[28] The NLRC, however, reduced the award for the 13[th] month pay to P39,863.94 based on the evidence that SACI already paid Mallo a total of P75,356.03 as 13[th] month pay.[29]

Respondents moved for reconsideration,[30] but the same was denied in a Resolution[31] dated February 6, 2013. Dissatisfied, they elevated the matter to the CA via a petition for certiorari.[32]

The CA Ruling

In a Decision[33] dated February 25, 2014, the CA modified the NLRC ruling and, thereby, declared Mallo to have abandoned his job and, thus, not entitled to backwages, separation pay in lieu of reinstatement, and attorney's fees.[34] It held that while Mallo had indeed attained the status of a regular employee, there was no illegal dismissal to speak of as the evidence on record failed to show any overt or positive act on respondents' part to terminate his employment.[35] In this relation, the CA pointed out that SACI gave Mallo a teaching load for the

First Semester of SY 2011-2012 as a Clinical Instructor, which he even accepted. It was only when Mallo's request for a change in schedule at UDMC was denied that he failed to attend his classes and refused to accept his new work assignment in view of the conflict in his new employment.[36] The CA ruled that the totality of Mallo's acts, i.e., not attending his classes, his refusal to work, and obtaining new employment, clearly constituted abandonment on his part, resulting in the deletion of the awards of backwages, separation pay, and attorney's fees in his favor.[37] The CA, however, retained the awards of service incentive leave pay and 13[th] month pay as rendered by the NLRC.

Dissatisfied, Mallo filed a motion for reconsideration[38] on March 17, 2014, which was, however, denied in a Resolution[39] dated June 6, 2014; hence, this petition.

The Issue Before the Court
The essential issue for the Court's resolution is whether or not the CA correctly ruled there was no illegal dismissal and that Mallo abandoned his job.

The Court's Ruling
The petition is partly meritorious.

At the outset, the Court notes that the LA, the NLRC, and the CA were one in declaring that Mallo's employment with SACI had already attained the status of a regular employee. However, a scrutiny of the records reveals that their factual findings differ as to whether or not Mallo was illegally dismissed or had abandoned his job. In this regard, it bears stressing that in petitions for review on certiorari under Rule 45 of the Rules of Court, the scope of the Court's judicial review is generally confined to errors of law and does not extend to a re-evaluation of the sufficiency of the evidence upon which the lower courts and/or quasi-judicial agencies had based their determination.[40] Indeed, it is axiomatic that the factual findings of the LA and the NLRC, especially when affirmed by the CA, are accorded not only great respect, but also finality, and are deemed binding upon the Court so long as they are supported by substantial evidence.[41] However, in instances where there is a divergence in the findings of facts of the NLRC and that of the CA, there is a need for the Court to review the records to determine which of them should be preferred as more conformable to evidentiary facts,[42] as in this case.

Here, Mallo insists that respondents illegally dismissed him because the latter failed to give him any teaching load for the First Semester of SY 2011-2012. On the other hand, respondents vehemently deny Mallo's claims, maintaining that they promptly gave him his teaching assignment and that the latter even initially accepted the same, but such assignment was eventually turned down due to a conflict in schedule with his new employment in another school.

In termination cases, the onus of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal fully rests on the employer; the failure to discharge such onus would mean that the dismissal was not justified and, therefore, illegal.[43]

The records readily show that as early as April 2011, respondents already assigned Mallo a teaching load for the First Semester of SY 2011-2012 as a Clinical Instructor for SACI students to be assigned at NCMH, which the latter accepted. Unfortunately, Mallo failed the qualifying tests at NCMH twice, thus, virtually disqualifying him from performing his work as SACFs Clinical Instructor thereat. Despite these developments, respondents were able to remedy the situation, albeit belatedly, by assigning Mallo as a Clinical Instructor at UDMC instead, as shown in the Tentative Faculty Loading dated June 24, 2011.[44] In view of the foregoing, the Court is inclined to hold that respondents never dismissed Mallo from his job.

While the Court concurs with the CA that Mallo was not illegally dismissed, the Court does not agree that he had

abandoned his work. The concept of abandonment in labor law had been thoroughly discussed in Tan Brothers Corporation of Basilan City v. Escudero:[45]

> As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 296[46]] of the Labor Code. To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[47] (Emphasis and underscoring supplied)

In this case, records are bereft of any indication that Mallo's absence from work was deliberate, unjustified, and with a clear intent to sever his employment relationship with SACI. While respondents claim to have assigned Mallo as Clinical Instructor at UDMC after failing the qualifying tests at NCMH, which assignment the latter initially accepted, but eventually declined, there is no proof that Mallo was informed of such assignment. It bears stressing that a party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process.[48]

More importantly, Mallo's filing of a complaint for illegal dismissal, coupled with his prior acts of actively inquiring about his teaching load, negate any intention on his part to sever his employment.[49] Indeed, it is simply absurd for Mallo to provide continuous service to SACI for more than three (3) years in order to attain a regular status, only to leave his job without any justifiable reason and, thereafter, file a case in an attempt to recover the same. To reiterate, abandonment of position is a matter of intention and cannot be lightly inferred, much less legally presumed, from certain equivocal acts.[50]

In sum, since Mallo's was not dismissed and that he never abandoned his job, it is only proper for him to report back to work and for respondents to reinstate him to his former position or a substantially-equivalent one in its stead. In this regard, jurisprudence provides that in instances where there was neither dismissal by the employer nor abandonment by the employee, the proper remedy is to reinstate the employee to his former position but without the award of backwages.[51]

WHEREFORE, the petition is PARTLY GRANTED. The Decision dated February 25, 2014 and the Resolution dated June 6, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 129669 are hereby MODIFIED finding petitioner Melvin P. Mallo (Mallo) not to have abandoned his job. Respondents Southeast Asian College, Inc. and Edita F. Enatsu are ordered to REINSTATE Mallo to his former position or a substantially-equivalent one in its stead, but without backwages.

The rest of the C A Decision STANDS.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perez, JJ., concur.

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[*] "Editha F. Enatsu" in some parts of the rollos.

[1] Rollo, Vol. I, pp. 9-43.

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[2] Id. at 48-63. Penned by Associate Justice Mariflor P. Punzalan Castillo with Justices Amy C. Lazaro-Javier and Pedro B. Corales concurring.

[3] Id. at 109-112.

[4] Id. at 126-135. Penned by Commissioner Pablo C. Espiritu, Jr. with Commissioners Alex A. Lopez and Gregorio O. Bilog III concurring.

[5] Id. at 138-139.

[6] See complaint filed on July 12, 2011; rollo, Vol. II, p. 703-704.

[7] Rollo, Vol. I, p. 115.

[8] See Teacher's Contract dated January 17, 2008; id. at 188-189. See various contracts; id. at 190-203.

[10] See Teaching Assignment dated April 13, 2011; id. at 204-205.

[11] Id. at 127.

[12] Id. at 49.

[13] See id.

[14] Dated April 25, 2011. Id. at 209.

[15] See id. at 49-50. See also rollo, Vol. II, pp. 652-653.

[16] See rollo, Vol. I, p. 250. See also rollo, Vol. II, pp. 661-662.

[17] Rollo, Vol. I, p. 50.

[18] Id. at 50-51.

[19] Id. at 115-123. Penned by Labor Arbiter Adolfo C. Babiano. The monetary awards are as follows:

a) backwages at P537,600.00 (P38,400.00 x 14 mos.);
b) separation pay in lieu of reinstatement at P153,600.00 (P38,400.00 x 4);
c) service incentive leave pay P26,181.75 (P1,745.45 x 5 x 3); and
d) 13[th] month pay P115,220.00 (P28,400.00 x 3). (See Id. at 122-123)

[21] Id. at 120.

[22] Id. at 121.

[23] Id. at 122.

[24] See Memorandum of Partial Appeal dated September 28, 2012; id. at 363-393.

[25] Id. at 126-135.

[26] See id. at 130-131.

[27] See id. at 131-132.

[28] Id. at 134.

[29] See id. at 134-135.

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[30] See motion for reconsideration dated January 31, 2013; id. at 611-625

[31] Id. at 138-139.

[32] Id. at 141-172.

[33] Id. at 48-63.

[34] Id. at 62-63.

[35] Id. at 59.

[36] Id. at 58.

[37] Id. at 60.

[38] Dated March 17, 2014. Id. at 65-91.

[39] Id. at 109-112.

[40] See Tan Brothers Corporation of Basil an City v. Escudero, G.R. No. 188711, July 3, 2013, 700 SCRA 583, 590; citations omitted.

[41] Id. at 591, citing Calipay v. NLRC, 640 Phil. 458, 471 (2010).

[42] Dimagan v. Dacworks United, Incorporated, 677 Phil. 472, 480 (2011); citations omitted.

[43] Samar-Med Distribution v. NLRC, G.R. No. 162385, July 15, 2013, 701 SCRA 148, 160, citing Great Southern Maritime Services Corporation v. Acuha, 492 Phil. 518, 530-531 (2005).

[44] See rollo, Vol. II, pp. 830-833.

[45] Supra note 40.

[46] See Republic Act No. 10151 which renumbered the Labor Code.

[47]Id. at 591-592; citations omitted.

[48] General Milling Corporation v. Casio, 629 Phil. 12, 33 (2010), citing Great Southern Maritime Services Corporation v. Acuña, supra note 42, at 531.

[49] See Fianza v. NLRC, G.R. No. 163061, June 26, 2013, 699 SCRA 602, 609.

[50] Macahilig v. NLRC, 563 Phil. 683, 693 (2007)

[51] See MZR Industries v. Colambot, G.R. No. 179001, August 28, 2013, 704 SCRA 150, 162.

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