

**LA CONSOLACION COLLEGE OF MANILA, SR. IMELDA A. MORA, OSA,
ALBERT D. MANALILI, AND ALICIA MANABAT, PETITIONERS, VS.
VIRGINIA PASCUA, M.D., RESPONDENT.**

G.R. No. 214744. March 14, 2018

Ponente: LEONEN, J.

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LEONEN, J.:

When termination of employment is occasioned by retrenchment to prevent losses, an employer must declare a reasonable cause or criterion for retrenching an employee. Retrenchment that disregards an employee's record and length of service is an illegal termination of employment.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the assailed June 2, 2014 Decision[2] and October 8, 2014 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 130793 be reversed and set aside.

The assailed Court of Appeals June 2, 2014 Decision reversed the ruling of the National Labor Relations Commission which, in turn, reversed Labor Arbiter Luvina P. Roque's (Labor Arbiter Roque) January 8, 2013 Decision,[4] holding that Virginia Pascua's (Pascua) employment was illegally terminated. The assailed Court of Appeals October 8, 2014 Resolution denied the Motion for Reconsideration file by herein petitioners La Consolacion College of Manila (La Consolacion), Sr. Imelda A. Mora (Sr. Mora), Albert Manalili (Manalili), and Alicia Manabat (Manabat).

On January 10, 2000, Pascua's services as school physician were engaged by La Consolacion.[5] She started working part-time before serving full-time from 2008.[6]

On September 29, 2011, Pascua was handed an Inter-Office Memo from Manalili, La Consolacion's Human Resources Division Director, inviting her to a meeting concerning her "working condition." [7] The meeting was set the following day, September 30, 2011, at the office of La Consolacion's President, Sr. Mora.[8]

In that meeting, Pascua was handed a termination of employment letter, explaining the reasons for and the terms of her dismissal, including payment of separation pay as follows:

Due to the current financial situation of La Consolacion College Manila caused by the decrease in enrollment in our institution, the Board of Trustees in its last meeting of September 24, 2011 has advised the [La Consolacion College] to downsize the health services staff at the end of this 1st Semester of School Year 2011-2012.

Accordingly, we were forced to eliminate your position as school physician who is rendering thirty-five (35) hours in a week.

It is really with regret that management has to take this decision, as a last resort, to prevent serious business losses.

Your last day of service with La Consolacion College Manila shall be one month after your receipt of this letter.

The payments that you shall be receiving are the computation of your one (1) month pay of the thirty (30) days notice, one-half (1/2) month of basic salary for every year of service as a regular employee (as of August 19, 2008), 13th month pay and tax refund.[9]

Not satisfied, Pascua wrote to Sr. Mora, pointing out that the part-time school physician, Dr. Venus Dimagmaliw (Dr. Dimagmaliw),[10] should have been considered for dismissal first. She also noted that rather than dismissing her outright, La Consolacion could have asked her to revert to part-time status instead. Pascua sought clarification specifically on the following points:

1. What were your criteria for retrenchment selection?
2. Why was I selected to be terminated (with the status of regular, full-time School Physician) over my counterpart who is merely a part-time School Physician without even giving me the option to revert back to my part-time status?
3. How come I was the only one terminated among the health services staff?
4. Were there other cost-cutting measures done by the school to abate its alleged losses other than implementation of that drastic measure of termination of one (1) employee as in my case?[11]

In the meantime, Pascua underwent La Consolacion's clearance procedures and completed them on November 3, 2011. However, Pascua made a handwritten note on her Exit Clearance, stating that she was reserving the right "to question the validity/legality of [her] termination . . . before any agency/court with appropriate jurisdiction over the case." [12] Following this, Pascua proceeded to file a complaint for illegal dismissal against La Consolacion, Sr. Mora, Manalili, and Manabat.[13]

On November 28, 2011, Sr. Mora replied to Pascua's letter. She indicated the futility of her response considering that Pascua had opted to file a complaint in the interim. She nevertheless answered Pascua's queries "as a matter of courtesy." [14] She explained that Pascua in particular was retrenched because her position, the highest paid in the health services division, was dispensable:

One obvious measure to prevent serious business losses was to downsize the health services division, by eliminating your position as a full-time physician. As you may know, the monthly payroll of the health services division, which consists of five (5) personnel, came to P90,462.34 in basic salary and P5,550.00 in rice subsidy and transportation allowance. Your item in this payroll was P24,687.10 in basic salary and P850.00 in rice subsidy and transportation allowance, or about 26% of total payroll.

Since the purpose of the downsizing was to reduce payroll costs, the employees with the highest rates of pay would be the first to be retrenched, if their services could be dispensed with. For this reason, you were the employee terminated. This same objective criterion was used in downsizing the nursing faculty which resulted in the retrenchment of the six highest paid faculty members out of a faculty of eleven.[15]

On January 8, 2013, Labor Arbiter Roque[16] rendered a Decision holding that Pascua's employment was illegally terminated and noting that "[La Consolacion, Sr. Mora, Manalili, and Manabat] failed to justify the criteria used in terminating the employment of [Pascua]." [17] The dispositive portion of this Decision read:

WHEREFORE, premise[s] considered, judgment is hereby rendered finding the dismissal of complainant Virginia R. Pascua as illegal. Respondent La Consolacion College, through its responsible officers, is directed to immediately reinstate said complainant to her former position as School Physician within ten (10) days from receipt of this Decision, and submit compliance to (sic) this Office.

Moreover, respondent college is directed to pay complainant the following sums: (a) backwages from the time of illegal dismissal until actual reinstatement, which as of this date is computed at P387,225.56 pesos; (b) proportionate 13th month pay in the amount of P20,739.25 pesos; and attorney's fees in the amount of P40,796.48.

SO ORDERED.[18]

On appeal, the National Labor Relations Commission reversed Labor Arbiter Roque's Decision. It explained the validity of the basis for dismissing Pascua, as follows:

The primary criterion used in selecting complainant-appellee for termination was valid considering that they faced a substantial drop in income, and sought to directly address the problem by reducing the larger of the college expenses, such as salaries and allowances of its more expensive staff members including but not limited to complainant-appel[1]ee.[19]

In its assailed June 2, 2014 Decision,[20] the Court of Appeals reinstated Labor Arbiter Roque's January 8, 2013 Decision.

Following the denial[21] of their Motion for Reconsideration,[22] La Consolacion, Sr. Mora, Manalili, and Manabat filed the present Petition on January 12, 2015.[23]

For resolution is the sole issue of whether or not respondent Virginia Pascua's retrenchment was valid. More specifically, this concerns the issue of whether or not the reason cited for her retrenchment—that she had the highest rate of pay—justified her dismissal.

I

The Labor Code recognizes retrenchment as an authorized cause for terminating employment.[24] It is an option validly available to an employer to address "losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business":[25]

Retrenchment is normally resorted to by management during periods of business reverses and economic difficulties occasioned by such events as recession, industrial depression, or seasonal fluctuations. It is an act of the employer of reducing the work force because of losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business. Retrenchment is, in many ways, a measure of last resort when other less drastic means have been tried and found to be inadequate.[26] (Citations omitted)

While a legitimate business option, retrenchment may only be exercised in compliance with substantive and procedural requisites.

As to the substantive requisites, an employer must first show "that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer." [27] Second, an employer must also show "that [it] exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure." [28] Third, an employer must demonstrate "that [it] used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (i.e., whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers." [29]

Procedurally, employers must serve a "written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment." [30] Likewise, they must pay "the

retrenched employees separation pay equivalent to one month pay or at least 1/2 month pay for every year of service, whichever is higher." [31]

II

Jurisprudence requires that the necessity of retrenchment to stave off genuine and significant business losses or reverses be demonstrated by an employer's independently audited financial statements. Documents that have not been the subject of an independent audit may very well be self-serving. Moreover, it is not enough that it presents its audited financial statement for the year that retrenchment was undertaken for even as it may be incurring losses for that year, its overall financial status may already be improving. Thus, it must "also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future." [32]

The records indicate that La Consolacion suffered serious business reverses or an aberrant drop in its revenue and income, thus, compelling it to retrench employees. In its Petition, it explained the backdrop of a "sharp spike in enrollment of students in its College of Nursing" [33] in 2008, only for "[t]he nursing bubble [to] burst." [34] It further explained how its comprehensive income nosedived by 96%:

In this case, petitioners acted in response to an actual drop in enrollment as shown by their documentary attachments. The drop in enrollment and corresponding drop in income to cover basic operating expenses was not a mere figment of the imagination of the administration. Attached as Annex "C" of the Appeal at the NLRC which is Annex "I" of the Petition was a summary of the audited financial statements from 2006 to 2011 that show very clearly the deterioration of income due to decline in enrollment in a long period of time. Also attached were copies of the audited financial statements of the school from 2008-2012 Annexes "D", "E" and "F" . . . The 2010 audited financial report of SGV (2010 vs. 2009) clearly showed the decline in total tuition fee revenue from Php 210,355,192 million to Php 155,823,959 million or by a drop of Php 54,531,233 million or twenty-six [percent] (26%). Moreover the decline in comprehensive income from Php 19,133,158 to [Php] 738,671 or Php 18,394,487 or ninety-six percent (96%) was very alarming indeed. [35]

As acknowledged by Labor Arbiter Roque, [36] this financial backdrop demonstrates the starkly difficult financial situation besetting La Consolacion. This also shows that La Consolacion proceeded with a modicum of good faith and not with a stratagem specifically intended to undermine certain employees' security of tenure.

III

La Consolacion's failure was non-compliance with the third substantive requisite of using fair and reasonable criteria that considered the status and seniority of the retrenched employee.

As early as 1987, this Court in *Asia World Publishing House, Inc. v. Ople* [37] considered seniority, along with efficiency rating and less-preferred status, as a crucial facet of a fair and reasonable criterion for effecting retrenchment. [38] *Emcor, Inc. v. Sienes* [39] was categorical, a "[r]etrenchment scheme without taking seniority into account rendered the retrenchment invalid": [40]

Records do not show any criterion adopted or used by petitioner in dismissing respondent. Respondent was terminated without considering her seniority. Retrenchment scheme without taking seniority into account rendered the retrenchment invalid. While respondent was the third most senior employee among the 7 employees in petitioner's personnel department, she was retrenched while her other co-employees junior than her were either retained in the Personnel Department or were transferred to other positions in the company. There was no showing that respondent was offered to be transferred to other positions. [41] (Citations omitted)

In *Philippine Tuberculosis Society, Inc. v. National Labor Union*, [42] this Court quoted with approval the

following discussion by the National Labor Relations Commission:

We noted with concern that the criteria used by the Society failed to consider the seniority factor in choosing those to be retrenched, a failure which, to our mind, should invalidate the retrenchment, as the omission immediately makes the selection process unfair and unreasonable. Things being equal, retaining a newly hired employee and dismissing one who had occupied the position for years, even if the scheme should result in savings for the employer, since he would be paying the newcomer a relatively smaller wage, is simply unconscionable and violative of the senior employee's tenurial rights. In *Villena vs. NLRC*, 193 SCRA 686. February 7, 1991, the Supreme Court considered the seniority factor an important ingredient for the validity of a retrenchment program. According to the Court, the following legal procedure should be observed for a retrenchment to be valid: (a) one-month prior notice to the employee as prescribed by Article 282 of the Labor Code; and b) use of a fair and reasonable criteria in carrying out the retrenchment program, such as 1) less preferred status (as in the case of temporary employees) 2) efficiency rating, 3) seniority, and 4) proof of claimed financial losses.[43]

There is no dispute here about respondent's seniority and preferred status. Petitioners acknowledge that she had been employed by La Consolacion since January 2000, initially as a part-time physician then serving full-time beginning 2008. It is also not disputed that while respondent was a full-time physician, La Consolacion had another physician, Dr. Dimagmaliw, who served part-time. Precisely, respondent's preeminence is a necessary implication of the very criteria used by La Consolacion in retrenching her, i.e., that she was the highest paid employee in health services division.

La Consolacion's disregard of respondent's seniority and preferred status relative to a part-time employee indicates its resort to an unfair and unreasonable criterion for retrenchment.

Indeed, it may have made mathematical sense to dismiss the highest paid employee first. However, appraising the propriety of retrenchment is not merely a matter of enabling an employer to augment financial prospects. It is as much a matter of giving employees their just due. Employees who have earned their keep by demonstrating exemplary performance and securing roles in their respective organizations cannot be summarily disregarded by nakedly pecuniary considerations. The Labor Code's permissiveness towards retrenchments aims to strike a balance between legitimate management prerogatives and the demands of social justice. Concern for the employer cannot mean a disregard for employees who have shown not only their capacity, but even loyalty. La Consolacion's pressing financial condition may invite commiseration, but its flawed standard for retrenchment constrains this Court to maintain that respondent was illegally dismissed.

Besides, La Consolacion could have also modified respondent's status from full-time to part-time. When retrenchment becomes necessary, the employer may, in the exercise of its business judgment, implement cost-saving measures, but at the same time, should respect labor rights.

IV

While the impropriety of the termination of respondent's employment is settled, it is equally manifest that she "was not a victim of arbitrary and high handed action." [44] Her dismissal was a result, not so much of purposeful malevolence, but of a flawed appreciation of circumstances. La Consolacion was contending with dire financial straits and wound up resorting to a monetarily logical, though legally faulty, course of action.

In prior cases, this Court mitigated an employer's liability for backwages "where good faith is evident." [45] In *Pepsi-Cola Products Philippines, Inc. v. Molon*: [46]

An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages. In certain cases, however, the Court has ordered the reinstatement of the

employee without backwages considering the fact that (1) the dismissal of the employee would be too harsh a penalty; and (2) the employer was in good faith in terminating the employee. For instance, in the case of *Cruz v. Minister of Labor and Employment*[,] the Court ruled as follows:

The Court is convinced that petitioner's guilt was substantially established. Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of dismissal which may be too drastic. Denial of backwages would sufficiently penalize her for her infractions. The bank officials acted in good faith. They should be exempt from the burden of paying backwages. The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages. Only employees discriminately dismissed are entitled to backpay ...

Likewise, in the case of *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*, the Court pronounced that "[t]he ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's good faith." [47] (Citations omitted)

La Consolacion's prohibitive financial condition and demonstrated, though imperfect, attempt at devising a reasonable mechanism for retrenching employees impel this Court to temper its liability for backwages. Accordingly, this Court upholds Labor Arbiter Roque's order for respondent to be reinstated, but modifies the amount of backwages. Respondent is deemed to be employed on a part-time basis from the effective date of her wrongful termination and is entitled to backwages corresponding to such status and period.

WHEREFORE, the Petition for Review on Certiorari is **PARTIALLY GRANTED** with respect to the award of backwages and proportionate thirteenth (13[th]) month pay. Labor Arbiter Luvina P. Roque's January 8, 2013 Decision is **MODIFIED** by awarding to respondent Virginia Pascua backwages corresponding to a part-time physician, reckoned from October 30, 2011.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Martires, and Gesmundo, JJ., concur.

[1] Rollo, pp. 14-32.

[2] *Id.* at 34-46. The Decision was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla of the Seventh Division, Court of Appeals, Manila.

[3] *Id.* at 57-58. The Resolution was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla of the Former Seventh Division, Court of Appeals, Manila.

[4] No copy annexed to the Petition. See rollo, p. 46.

[5] Rollo, p. 35.

[6] *Id.* at 37.

[7] *Id.* at 35.

[8] *Id.*

[9] *Id.* at 35-36.

[10] *Id.* at 45.

[11] Id. at 37.

[12] Id. at 38.

[13] Mrs. Alicia Manabat was the Finance Officer/Vice-President for Finance and Administrative Services of La Consolacion College Manila. See rollo, pp. 15 and 55.

[14] Rollo, p. 38.

[15] Id. at 38-39.

[16] Id. at 46.

[17] Id. at 39.

[18] Id. at 76.

[19] Id. at 40.

[20] Id. at 34-46.

[21] Id. at 57-58.

[22] Id. at 47-A-52.

[23] Id. at 14.

[24] LABOR CODE, art. 298 provides:

Article 298. [283] Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[25] *Edge Apparel, Inc. v. National Labor Relations Commission*, 349 Phil. 972, 982 (1998). [Per J. Vitug, First Division].

[26] Id. at 982-983.

[27] *Asian Alcohol Corp. v. National Labor Relations Commission*, 364 Phil. 912, 926 (1999). [Per J. Puno, Second Division]. (Citation omitted)

[28] Id. at 927. (Citation omitted)

[29] Id.

[30] Id. at 926-927.

[31] Id. at 927. (Citation omitted)

[32] Id. (Citation omitted)

[33] Rollo, p. 16.

[34] Id. at 17.

[35] Id. at 21-22.

[36] Id. at 39.

[37] 236 Phil. 236 (1987) [Per J. Gutierrez, Jr., Third Division].

[38] See also Villena v. National Labor Relations Commission, 271 Phil. 718 (1991) [Per J. Grino-Aquino, First Division].

[39] 615 Phil. 33 (2009) [Per J. Peralta, Third Division].

[40] Id. at 52, citing Philippine Tuberculosis Society Inc. v. NLRC, 356 Phil. 63, 72 (1998) [Per J. Mendoza, Second Division].

[41] Id. at 52.

[42] 356 Phil. 63 (1998) [Per J. Mendoza, Second Division].

[43] Id. at 72. See also Oriental Petroleum and Minerals Corp. v. Fuentes, 509 Phil. 684 (2005) [Per J. Tinga, Second Division].

[44] Pantranco North Express v. National Labor Relations Commission, 211 Phil. 657 (1983) [Per J. Gutierrez, Jr., First Division].

[45] Solicitor General's Comment, quoted with approval in Durabuilt Recapping Plant & Co. v. National Labor Relations Commission, 236 Phil. 351 (1987) [Per J. Gutierrez, Jr., Third Division]. See Findlay Millar Timber Co. v. Philippine Land-Air-Sea Labor Union, 116 Phil. 534 (1962) [Per J. Bautista Angelo, En Banc]; and Pantranco North Express v. National Labor Relations Commission, 211 Phil. 657 (1983) [Per J. Gutierrez, Jr., First Division].

[46] 704 Phil. 120 (2013) [Per J. Perlas-Bernabe, Second Division].

[47] Id. at 144-145.

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