

**MANILA DOCTORS COLLEGE AND TERESITA O. TURLA,
PETITIONERS, VS. EMMANUEL M. OLORES, RESPONDENT.***G.R. No. 225044. October 03, 2016*

Ponente: PERLAS-BERNABE, J.

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Assailed in this petition for review on certiorari[1] are the Decision[2] dated July 27, 2015 and the Resolution[3] dated June 7, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 129400, which reversed the Decision[4] dated December 26, 2012 and the Resolution[5] dated February 5, 2013 of the National Labor Relations Commission (NLRC) in NLRC LER No. 11-244-12 deleting the award of reinstatement backwages in favor of respondent Emmanuel M. Olores (respondent) in the amount of P201,538.46 contained in the Order[6] dated October 23, 2012 of Labor Arbiter (LA) Romelita N. Rioflorido (LA Rioflorido) in NLRC-NCR Case No. 06-08402-10.

The Facts

Respondent was a faculty member of petitioner Manila Doctors College (MDC) assigned at the Humanities Department of the College of Arts and Sciences.[7] On June 7, 2010, he was dismissed for Grave Misconduct, Gross Inefficiency, and Incompetence,[8] after due investigation finding him guilty of employing a grading system that was not in accordance with the guidelines set by MDC.[9] Respondent lost no time in filing a case for illegal dismissal, money claims, regularization, damages, and attorney's fees against petitioners MDC and Teresita O. Turla [10] (petitioners), President of MDC,[11] before the NLRC, docketed as NLRC-NCR Case No. 06-08402-10, claiming that there was no just cause for his dismissal, and that he should be accorded a permanent appointment after having served as an instructor on a full-time basis for five (5) consecutive years.[12]

On December 8, 2010, LA Arthur L. Amansec (LA Amansec) rendered a Decision[13] declaring respondent to have been illegally dismissed[14] after finding that his act of liberally implementing the guidelines in arriving at his students' final grades did not constitute serious misconduct, as he was not inspired by malice, bad faith, personal gain or outright malevolence;[15] and that his five (5)-year continuous service as faculty member without any derogatory record belies the charge of inefficiency and competence against him.[16]

However, with respect to the claim for regularization, LA Amansec found that respondent failed to meet the requisites for the acquisition of permanent status, as he became a full-time faculty member, with at least 18 units of teaching load, only on the second semester of School Year 2008-2009, even if he was employed since June of 2005,[17] thereby falling short of the necessary three (3) consecutive years of service as full-time teacher.[18] The Manual of Regulations for Private Higher Education (MORPHE) provides that a full academic teaching personnel who has satisfactorily completed his probationary employment for a period of six (6) consecutive semesters, or nine (9) consecutive trimesters, shall acquire a regular or permanent status if he is re-hired immediately after the end of probation.[19]

Accordingly, LA Amansec ordered petitioners to reinstate respondent as faculty member under the same terms

and conditions of his employment, without loss of seniority rights, but denied payment of backwages on the grounds that (1) no malice or bad faith attended respondent's dismissal, (2) respondent had showed disrespect to his superior by writing a letter containing disrespectful remarks, and (3) respondent failed to inform or discuss with said superior his decision to depart from the guidelines in giving grades.[20] LA Amansec specifically stated in his December 8, 2010 Decision that, "[MDC] is hereby ordered to reinstate [respondent] as faculty member under the same terms and conditions of his employment, without loss of seniority rights but without backwages. However, instead of being reinstated, [respondent] is hereby given the option to receive a separation pay equivalent to his full month's pay for every year of service, a fraction of at least six months to be considered a full year or the amount of P100,000.00 (his monthly salary of P20,000.00 multiplied by the equivalent of five years' service)."[21]

Petitioners filed an appeal[22] before the NLRC, docketed as NLRC LAC No. 01-000197-11, which was initially dismissed for non-perfection in a Resolution[23] dated February 10, 2011. However, upon motion for reconsideration,[24] the NLRC, in a Decision[25] dated September 30, 2011, reinstated and granted the appeal and, accordingly, reversed the December 8, 2010 Decision of LA Amansec and dismissed the complaint a quo for lack of merit. He found respondent guilty of serious misconduct when he defied the prescribed grading system and arbitrarily adjusted the grades of his students.[26] Separately, the NLRC ordered the payment to respondent of service incentive leave pay for a period of 3 years, considering petitioners' failure to prove payment thereof.[27]

On January 11, 2012, while the case was pending appeal,[28] respondent filed a Motion for Issuance of Writ of Execution[29] seeking to collect (a) the service incentive leave pay ordered in the September 30, 2011 Decision of the NLRC, and (b) the equivalent wages from the issuance of the December 8, 2010 Decision of LA Amansec ordering reinstatement until the finality of the September 30, 2011 Decision of the NLRC reversing the LA, or on November 5, 2011, as per Entry of Judgment[30] dated December 5, 2011.[31]

The LA Ruling

In an Order[32] dated October 23, 2012, LA Romelita N. Rioflorido (LA Rioflorido) granted respondent's motion and ordered the issuance of a writ of execution for the total amount of P213,076.92 computed as follows:

a. Reinstatement Backwages

(Dec. 8, 2010- Oct. 8, 2011) 10 mos. x P20,000.00 =

P 180,000.00

(Oct. 9, 2011- Nov. 5, 2011) 28 days x P20,000.00/26 =

21,538.46

P 201,538.46

b. Service Incentive Leave Pay

P20,000.00/26 x 5 days x 3 years =

P 11,538.46

P 213,076.92

LA Rioflorido emphasized that an order of reinstatement entitles an employee to receive his accrued backwages from the moment the reinstatement order was issued up to the date when the same was reversed by a higher court without fear of refunding what he had received.[33]

Aggrieved, petitioners sought an injunction and/or temporary restraining order (TRO) in a petition[34] before the NLRC, docketed as NLRC LER Case No. 11-244-12. In an Order[35] dated November 20, 2012, the NLRC issued a TRO commanding LA Rioflorido to desist from execution proceedings.

The NLRC Ruling

Subsequently, in a Decision[36] dated December 26, 2012, the NLRC granted the petition and modified the Order dated October 23, 2012 of LA Rioflorido by deleting the award of the supposed reinstatement backwages in the amount of P201,538.46. It retained, however, the grant of service incentive leave pay of P11,538.46.[37]

Anent the deletion of the award of reinstatement backwages, the NLRC observed that since respondent's dismissal was eventually determined to be legal, there is no more basis for either payroll reinstatement backwages or separation pay.[38]

Respondent filed a Motion for Partial Reconsideration,[39] which was, however, denied in a Resolution[40] dated February 5, 2013, prompting him to elevate the matter via a petition for certiorari[41] before the CA, docketed as CA-G.R. SP No. 129400.

The CA Ruling

In a Decision[42] dated July 27, 2015, the CA reversed the December 26, 2012 Decision and February 5, 2013 Resolution of the NLRC, citing jurisprudence to the effect that the LA's order of reinstatement is immediately executory; thus, the employer has to either re-admit the employee to work under the same terms and conditions prevailing prior to his dismissal, or to reinstate him in the payroll; and that even if such order of reinstatement is reversed on appeal, the employer is still obliged to reinstate and pay the wages of the employee during the period of appeal until reversal by a higher court or tribunal.[43]

Petitioners moved for a reconsideration[44] of the foregoing Decision, arguing that the December 8, 2010 Decision of LA Amansec explicitly granted respondent, not petitioners, the option of being reinstated or being paid separation pay, and that respondent had not exercised said option.[45] The motion was denied, however, in a Resolution[46] dated June 7, 2016; hence, the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly reversed the NLRC ruling deleting the award of reinstatement backwages in favor of respondent in the amount of P201,538.46.

The Court's Ruling

The petition is denied.

Under Article 223 (now Article 229[47]) of the Labor Code, "the decision of the [LA] reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement x x x."[48] Verily, the

employer is duty-bound to reinstate the employee, failing which, the employer is liable instead to pay the dismissed employee's salary.[49]

However, in the event that the LA's decision is reversed by a higher tribunal, the employer's duty to reinstate the dismissed employee is effectively terminated. This means that an employer is no longer obliged to keep the employee in the actual service or in the payroll. The employee, in turn, is not required to return the wages that he had received prior to the reversal of the LA's decision. Notwithstanding the reversal of the finding of illegal dismissal, an employer, who, despite the LA's order of reinstatement, did not reinstate the employee during the pendency of the appeal up to the reversal by a higher tribunal may still be held liable for the accrued wages of the employee, i.e., the unpaid salary accruing up to the time of the reversal. By way of exception, an employee may be barred from collecting the accrued wages if shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer.[50]

In this case, petitioners contend that they should not be faulted for failing to enforce the December 8, 2010 Decision of LA Amansec which had given respondent the option to receive separation pay in lieu of reinstatement for the reason that it was respondent who failed to choose either relief.[51] However, as above-discussed, the reinstatement aspect of the LA's Decision is immediately executory and, hence, the active duty to reinstate the employee - either actually or in payroll - devolves upon no other than the employer, even pending appeal. In *Pfizer, Inc. v. Velasco*[52] (*Pfizer, Inc.*), the Court chastised the employer therein as it "did not immediately admit [the employee] back to work which, according to the law, should have been done as soon as an order or award of reinstatement is handed down by the Labor Arbiter x x x." [53] Meanwhile, the Court, in *Bergonio, Jr., v. South East Asian Airlines*, [54] remarked that "an order of reinstatement issued by the LA is self-executory, i.e., the dismissed employee need not even apply for and the LA need not even issue a writ of execution to trigger the employer's duty to reinstate the dismissed employee." [55] Thus, while herein respondent may have been given an alternative option to instead receive separation pay in lieu of reinstatement, there is no denying that, based on the provisions of the Labor Code and as attributed in jurisprudence, it is his employer who should have first discharged its duty to reinstate him.

In any event, petitioners have no one else to blame but themselves for misconstruing LA Amansec's December 8, 2010 Decision, despite its straightforward language of primarily directing MDC, as employer, to reinstate respondent:

WHEREFORE, judgment is hereby made finding the complainant to have been illegally dismissed from employment. Concomitantly, the respondent school is hereby ordered to reinstate him as faculty member under the same terms and conditions of his employment, without loss of seniority rights but without backwages. However, instead of being reinstated, the complainant is hereby given the option to receive a separation pay equivalent to his full month's pay for every year of service, a fraction of at least six months to be considered a full year or the amount of P100,000.00 (his monthly salary of P20,000.00 multiplied by the equivalent of five years' service[)].

Other claims are dismissed for lack of merit.

SO ORDERED.[56]

Clearly, the statement of such directive is only secondarily followed by the alternative option given to respondent. This is consistent with the above-stated conclusion that the duty to reinstate is initiated by, as it only devolves upon, the employer from the time the LA renders its Decision directing reinstatement.

Therefore, the Court cannot subscribe to the theory postulated by petitioners that the aforementioned LA Decision took out from their hands the duty to reinstate respondent, for to do so would be to frustrate the immediate and

self-executory nature of the reinstatement aspect of the LA's Decision as provided by law. To emphasize, to the point of repetition, petitioners were duty-bound to reinstate respondent either by admitting him back to work under the same terms and conditions prevailing prior to his dismissal, or by merely reinstating him in the payroll, which alternative options must be exercised in good faith;^[57] otherwise, they are bound to pay his accrued salaries.

The Court is not unaware of the peculiarity attending educational institutions where the engagement of faculty members and the assignment of teaching loads are done at the commencement of each semester.^[58] In the early case of the *University of Santo Tomas v. NLRC (UST)*,^[59] the Court, while pronouncing that the dismissed faculty members must be actually reinstated during the pendency of the labor dispute between the faculty union and the University, took into account the fact that the return-to-work order was given in the middle of the first semester of the academic year, and that any change of faculty members at such time would adversely affect and prejudice the students. Consequently, the Court ordered that actual reinstatement take effect at the start of the second semester, and adjudged the faculty members as entitled to full wages, backwages and other benefits prior to reinstatement to their actual teaching loads.^[60]

In this case, while petitioners could not actually reinstate respondent at the time of the issuance of LA Amansec's December 8, 2010 Decision, following the ruling in the aforementioned case of UST, as it would be impracticable and detrimental to the students to change teachers in the middle of the semester, petitioners should nonetheless have given respondent his new teaching load assignments and schedules at the beginning of the succeeding semester, whether or not respondent was present during such assignment. After all, it can be gleaned from the arguments presented by petitioners that the presence of respondent during the assignment of teaching loads and schedules is merely for conferment regarding availability and preference,^[61] and petitioners could always require respondent to report for work on the pre-assigned schedules. Had petitioners done so despite the absence of respondent, it would have indicated their sincere willingness to comply with the reinstatement order. But they did not. There was even no proof that petitioners required respondent to report for assignment of teaching load and schedules. Besides, respondent's alleged failure to secure teaching load assignments did not prevent petitioners from simply reinstating him in the payroll as an alternative. Sadly, petitioners also failed to employ the same.

Finally, the Court deems inconsequential petitioners' submissions that respondent had claimed separation pay during the execution proceedings at the NLRC level and had also alleged strained relations (and therefore, intimated separation pay) in his pleadings.^[62] The Court had previously ruled in *Pfizer, Inc.* that the circumstance that the employee opted for separation pay in lieu of reinstatement as manifested in her counsel's letter had no legal effect, not only because there was no genuine compliance by the employer of the reinstatement order but also because the employer chose not to act on said claim.^[63] The same observations are made in this case. As aptly pointed out by the CA, there was "apparent apathy"^[64] on the part of petitioners towards the reinstatement order issued by LA Amansec during the pendency of their appeal therefrom. Hence, for failure of the petitioners to comply with said order, the CA correctly declared respondent to be entitled to the payment of his accrued salaries during the period of the appeal until the reversal of the December 8, 2010 Decision of LA Amansec. The NLRC's Decision dated December 26, 2012, which deleted the said award on the notion that the same had no more basis in view of the eventual ruling declaring respondent's dismissal to be legal, failed to take into account the provisions of the Labor Code and existing jurisprudence on the immediately executory nature of reinstatement, as well as the consequences of non-compliance. Palpably, this smacks of grave abuse of discretion as properly found by the CA. As jurisprudence conveys, there is "grave abuse of discretion x x x when a lower court or tribunal patently violates x x x the law or existing jurisprudence."^[65]

WHEREFORE, the petition is DENIED. The Decision dated July 27, 2015 and the Resolution dated June 7, 2016

of the Court of Appeals in CA-G.R. SP No. 129400 are hereby AFFIRMED.

SO ORDERED.

Sereno, C. J., on official business.

Leonardo-De Castro,[**] (Acting Chairperson), Bersamin, and Caguioa, JJ., concur.

[**] Per Special Order No. 2383 dated September 27, 2016.

[1] Rollo, pp. 3-18.

[2] Id. at 25-35. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Noel G. Tijam and Francisco P. Acosta concurring.

[3] Id. at 37-39.

[4] Id. at 143-151. Penned by Commissioner Erlinda T. Agus with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora concurring.

[5] Id. at 160-162.

[6] Id. at 85-87.

[7] See id. at 25-26 and 53.

[8] Id. at 26.

[9] See id. at 55-56.

[10] "Theresita" in some parts of the records.

[11] Id. at 164.

[12] See id. at 26, 42, and 57.

[13] Id. at 41-51.

[14] See id. at 50.

[15] Id. at 44.

[16] Id. at 45.

[17] Id. at 41.

[18] See id. at 47-49.

[19] See id. at 48-49.

[20] Id. at 50.

[21] Id. at 50-51.

[22] Not attached to the rollo.

[23] Id. at 217-219.

[24] Not attached to the rollo.

- [25] Id at 52-74. Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Commissioner Nieves Vivar-De Castro concurring.
- [26] See id. at 69-71.
- [27] See id. at 72-73.
- [28] Id. at 28.
- [29] Dated January 10,2012. Id. at 75-79.
- [30] Id. at 307. Signed by Deputy Executive Clerk of Court Atty. Cherry P. Sarmiento.
- [32] Id. at 85-87.
- [33] See id. at 86-87.
- [34] Dated November 9, 2012. Id. at 88-97.
- [35] Id. at 126-133. Penned by Commissioner Erlinda T. Agus, with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora concurring.
- [36] Id. at 143-151.
- [37] Id. at 149-150.
- [38] See id. at 148.
- [39] Dated January 12, 2013. Id. at 152-158.
- [40] Id. at 160-162.
- [41] Dated April 8, 2011. Id. at 163-180.
- [42] Id. at 25-35.
- [43] Id. at 32-34.
- [44] Dated September 1, 2015. Id. at 412-420.
- [45] See id. at 417-418.
- [46] Id. at 37-39.
- [47] See Department Advisory No. 01, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," dated July 21, 2015.
- [48] Wenphil Corporation v. Abing, G.R. No. 207983, April 7, 2014, 721 SCRA 126, 136-137.
- [49] Bergonio, Jr. v. South East Asian Airlines, 733 Phil. 347, 359 (2014).
- [50] See id. at 360.
- [51] See rollo, pp. 11-12.
- [52] 660 Phil. 434 (2011).
- [53] Id. at 445; emphasis supplied.
- [54] Supra note 49.

[55] Id. at 358-359; emphasis supplied.

[56] Rollo, pp. 50-51.

[57] See Pfizer, Inc. v. Velasco, supra note 52, at 449.

[58] See rollo, pp. 12-13.

[59] 268 Phil. 826 (1990).

[60] See id. at 833-842.

[61] See rollo, p. 12.

[62] See id. at 13-14.

[63] See Pfizer, Inc. v. Velasco, supra note 52, at 450.

[64] Rollo, p. 32.

[65] Tagolino v. House of Representatives Electoral Tribunal, 706 Phil. 534, 558 (2013).

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