

CLARET SCHOOL OF QUEZON CITY, PETITIONER, VS. MADELYN I. SINDAY, RESPONDENT.

G.R. No. 226358. October 09, 2019

Ponente: LEONEN, J.

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LEONEN, J.:

Brent School, Inc. v. Zamora[1] recognized that the Civil Code and the Labor Code allow the execution of fixed-term employment contracts. However, in cases where periods are imposed to prevent an employee from acquiring security of tenure, such contracts must be disregarded for being contrary to public policy and morals. Brent's application is limited to cases where the employer and the employee are more or less on an equal footing when they enter into the contract.[2]

This Court resolves a Petition for Review on Certiorari[3] assailing the Decision[4] and Resolution[5] of the Court of Appeals, which ruled that respondent Madelyn I. Sinday (Sinday) was a regular employee and was illegally dismissed.

Claret School of Quezon City (Claret) is an educational institution located on Mahinhin Street, UP Village, Quezon City.[6] Sinday is the wife of Wencil Sinday, one (1) of Claret's longtime drivers. Their children are scholars of Claret.[7]

On February 18, 2014, Sinday filed her Complaint for illegal dismissal against the school.[8]

Sinday narrated that in April 2010, Claret engaged her as a releasing clerk in its book sale, tasking her with the inventory and release of books to Claret's students.[9]

Afterwards, in July 2010, Sinday worked as a filing clerk at Claret's Human Resources Department, where she updated employees' files, delivered memoranda to different departments, and assisted in school programs.[10] In April 2011, she was posted back as a releasing clerk. She held this position until July 14, 2011.[11]

Before her job as releasing clerk expired, Sinday applied for work at one (1) of Claret's departments, Claret Technical-Vocational Training Center (Claretech), which taught vocational and technical skills to underprivileged students. On July 15, 2011, she started her new work as secretary, preparing materials, assisting in the delivery of correspondence to other departments, and encoding and filing documents, among other tasks.[12]

Sinday claimed that Fr. Renato B. Manubag (Fr. Manubag), the institution director of Claretech, signed a January 10, 2013 letter, approving the request of Head of Operations Timmy Bernaldez and Program Coordinator Rosario Butaran[13] to classify her as a regular employee.[14] She was classified under the non-teaching or non-academic school employees.[15]

On February 20, 2013, Claret paid Sinday P19,458.00 representing the salary differential from June 1, 2012 to February 1, 2013.[16]

However, in May 2013, Claret asked Sinday to sign a Probationary Employment Contract covering the period of

January 16, 2013 to July 15, 2013. When the contract expired, Sinday asked Leticia Perez, the Human Resources head of Claret, regarding her employment status, but she was told that her tenure would expire on July 31, 2013 because of the change in school administration. Sinday also spoke to her supervisor, Rosario Butaran, and the latter told her that her dismissal was due to cost-cutting, particularly the need to reduce the employees from three (3) to two (2).[17]

Desperate for work, Sinday continued to work for Claret and was employed on August 1, 2013 as a substitute teacher aide at Claret's Child Study Center.[18] When the permanent teacher aide returned on October 25, 2013, Sinday stopped working for Claret.[19]

Sinday repeatedly pleaded to be reinstated at least as a checker at the school's water station, but Claret denied her request.[20]

Thus, Sinday filed her Complaint, claiming that she had been a regular employee as she performed various jobs that were usually necessary and desirable in the usual business of Claret.[21]

On the other hand, Claret denied Sinday's claims averring that she was merely a part-time fixed-term contractual employee whom the school accommodated because her husband was its longtime driver.[22] It also argued that Sinday was well aware of her fixed-term employment as confirmed by her application letters and biodata, which showed her employment's duration.[23]

Moreover, Claret claimed that Sinday's position at Claretech was not a plantilla position because the department was only at its experimental stage, merely relying on donations and the school's marketing research fund. When Claretech began incurring deficits, the clerical functions were allegedly absorbed by the administrator's functions, dissolving Sinday's position.[24]

Claret also pointed out that Sinday did not regularly work for eight (8) hours a day, five (5) days a week, her services being required only as needed. It further maintained that while Fr. Manubag indeed decided to classify her as regular employee, the decision was nonetheless revoked later due to Claretech's financial difficulties.[25]

Claret also claimed that Sinday reportedly stole the school's relief goods intended for typhoon victims. The school supposedly let the incident slide, citing the security agency's failure to immediately investigate the incident and the impending expiration of Sinday's employment.[26]

In a September 11, 2014 Decision,[27] the Labor Arbiter found that Sinday was illegally dismissed:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant Madelyn I. Sinday to have been illegally dismissed.

Accordingly, respondent Claret School of Quezon City is directed to reinstate complainant to her former position or a substantially equivalent designation and to pay complainant backwages which is provisionally computed in the sum of One Hundred Sixteen Thousand Two Hundred Sixty-Eight Pesos and 8/100 (P116,268.08) as well as attorney's fees equivalent to 10% of the total judgment award.

The reinstatement aspect is immediately executory and respondent school is directed to submit a report of compliance within ten (10) calendar days from receipt of the decision.

SO ORDERED.[28] (Emphasis in the original)

The Labor Arbiter ruled that the repeated hiring of Sinday for around three (3) years conferred her with regular employment status.[29] Citing Brent, the Labor Arbiter explained that for a fixed-term employment to be valid, it must have been: (1) "knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent";[30]

or (2) "[i]t satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter." [31]

The Labor Arbiter found that the conditions for a valid fixed-term employment were absent because Sinday did "not appear to have knowingly and voluntarily agreed to the arrangement." [32] She found that Sinday badly needed a job, leaving her no choice but to apply from one (1) position to the other. This showed that Sinday and Claret were not on an equal footing in dealing with the terms of her employment. [33]

Moreover, the Labor Arbiter held that Claret failed to prove that Sinday consented to the fixed-term employment. She found that Claret only presented a Memorandum of Agreement for Sinday's work as a substitute teacher aide, and by then, Sinday was already a regular employee, having been employed for more than two (2) years. Hence, the agreement could no longer alter Sinday's status as a regular employee. [34]

Lastly, the Labor Arbiter found that Sinday's alleged infraction—the taking of relief goods—was a mere afterthought, considering that Claret had failed to act on it before. [35]

Upon appeal, the National Labor Relations Commission, in its January 14, 2015 Decision, [36] reversed the Labor Arbiter's Decision and found that Sinday was not illegally dismissed:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The appealed Decision dated September 11, 2014 is REVERSED. The complaint is DISMISSED for lack of merit.

SO ORDERED. [37] (Emphasis in the original)

The National Labor Relations Commission ruled that it was clear to Sinday that her employment with Claret was merely part-time contractual, not regular, as shown in her biodata. [38]

Additionally, the National Labor Relations Commission found that the lack of a document showing Sinday's contractual employment did not in itself grant Sinday regular employee status, since there are other contrary evidence such as Sinday's application letters and biodata. [39]

For the National Labor Relations Commission, the fixed-term employment did not appear to be intended to circumvent security of tenure. Sinday was not pressured to accept the various positions, which were clearly needed only for certain periods. There was also no showing that Sinday was coerced or forced into applying for these positions; hence, if she disagreed with this arrangement, she should not have repeatedly applied with Claret. [40]

Furthermore, the National Labor Relations Commission found that Claret did not exercise moral dominance over Sinday since both of them benefitted from the fixed-term employment. [41] It likewise found that Sinday did not dispute that she was not required to regularly report to work, which was favorable to her because she could attend to the needs of her children, who were scholars at Claret. [42]

Sinday moved for reconsideration, but in its May 4, 2015 Resolution, [43] the National Labor Relations Commission denied her Motion. Aggrieved, Sinday filed a Petition for Certiorari before the Court of Appeals. [44]

In a March 30, 2016 Decision, [45] the Court of Appeals reversed the Decision of the National Labor Relations Commission and found that Sinday was illegally dismissed:

WHEREFORE, premises considered, the petition is GRANTED. The National Labor Relations Commission's Decision dated 14 January 2015 and its Resolution dated 04 May 2015 are REVERSED AND SET ASIDE. The Labor Arbiter's decision dated 11 September 2014 is hereby AFFIRMED WITH MODIFICATION. This Court finds petitioner as (sic) illegally dismissed and hereby orders respondent school to pay petitioner the following:

1)

Backwages;

2)

Separation pay in lieu of reinstatement in the amount of one month pay for every year of service;

3)

Emergency Cost of Living Allowance (ECOLA);

4)

13[th] month pay;

5)

Legal interest of 12% per annum on the total monetary awards computed from date of illegal dismissal until finality of judgment and 6% per annum from finality of judgment until their full satisfaction; and

6)

Costs of the suit.

SO ORDERED.[46] (Emphasis in the original)

The Court of Appeals, citing *Brent*, explained that for a fixed-term employment to be valid, there must be a "day certain agreed upon by the parties for the commencement and termination of [the] employment." [47] Here, since there was no "day certain" agreed upon, the Court of Appeals said that Sinday's employment cannot be deemed to be for a fixed period. [48]

Moreover, the Court of Appeals found that neither of the two (2) criteria laid down in *Brent* was present in this case. It held that Claret failed to prove that it dealt with Sinday in more or less equal terms, with no moral dominance on its part. [49]

For the Court of Appeals, the absence of the written contract defeated Claret's claim because it raised doubts as to whether Sinday was properly informed of the terms of her employment, such as its duration and scope, as well as her employment status. [50] Further, it found no evidence that Sinday signed an employment contract explicitly stating that she was hired as a fixed-term employee and that she was duly informed of the nature of her employment. [51] Hence, Sinday was presumed to be a regular employee under Article 295 of the Labor Code absent any showing that she knowingly and voluntarily agreed to her employment status. [52]

Claret moved for reconsideration, but its Motion was denied by the Court of Appeals in its July 26, 2016 Resolution. [53]

On September 2, 2016, Claret filed before his Court a Petition for Review on Certiorari. [54]

On November 9, 2016, this Court required respondent to comment on the Petition. [55] On December 19, 2016, respondent filed her Comment. [56] Subsequently, this Court required the petitioner to reply, [57] which petitioner did on March 20, 2017. [58]

In its Petition, petitioner mainly argues that respondent is not a regular employee but only a fixed-term employee, as shown by her repeated application for another position every time her temporary employment expired. [59]

Petitioner points out that the positions held by respondent are not permanent and regularly needed in the school.

Particularly, the book sale was only needed during summer as an ancillary service to assist the students in placing book orders.[60] Petitioner contends that since summer for educational institutions commonly runs from April to May each year, respondent clearly knew that her employment as clerk at the book sale was only for a fixed and definite period.[61] Likewise, petitioner says that respondent clearly understood that her engagement as filing clerk at the Human Resources Department was temporary because she merely filled in for a permanent staff member.[62]

Similarly, petitioner contends, respondent knew that her work at Claretech was not a plantilla position because the department was only at its experimental stage.[63] Moreover, she was not required to regularly go to work and was paid based on the actual number of days she rendered work.[64] Lastly, her work as a substitute teacher aide was undoubtedly understood as only contractual as she was hired to fill in for a staff member who was on a temporary leave of absence.[65]

Petitioner points out that respondent's biodata itself indicated that her employment was only for a fixed-term.[66] In her biodata, she explicitly stated that she worked as a book sale personnel in "Summer 2009"[67] and 2011, and as an office clerk from "June 2010 – March 2011[.]"[68]

Petitioner further argues that the Court of Appeals erred in not finding that respondent's employment had fixed-term, there being "no day certain agreed upon[.]"[69] It points to the Memorandum of Agreement signed by respondent, which clearly indicates the period of her employment. For petitioner, it is apparent that the employment was for a day certain.[70]

Petitioner says that it only accommodated respondent, despite being a mere high school graduate, because she was the wife of their driver and the parent of their scholars.[71]

In any case, petitioner maintains that respondent is validly dismissed for just cause considering she was found stealing relief goods. It claims that this was a serious breach of trust and confidence it had given respondent, and a serious misconduct which reflects on her moral character.[72]

In her Comment, respondent argues that the Petition is procedurally infirm because it presents questions of facts, which may not be resolved under Rule 45 of the Rules of Court.[73]

As to the substantive issue, respondent claims that she is a regular employee of the school, having been employed for more than three (3) years without any written contract. She claims that even the Memorandum of Agreement presented by petitioner is irrelevant, since she had signed it when she was already a regular employee having rendered over three (3) years of regular and continuous service.[74]

Moreover, respondent claims that petitioner failed to show evidence showing that she was made to sign an employment contract stating that she was hired on a fixed-term basis, or that she was apprised that her employment was for a fixed term.[75] She maintains that since she engaged in activities "usually necessary or desirable in the usual business"[76] of petitioner's business, she is presumed to have been a regular employee.[77]

Lastly, respondent dismisses the allegation of theft as a vain attempt to malign her reputation. She claims that if there was a cause of action, petitioner should have filed the appropriate charges against her.[78]

In its Reply, petitioner asserts that the Petition must be allowed because the Court of Appeals erred in reversing the National Labor Relations Commission's findings, which are supported by substantial documentary evidence.[79]

Further, petitioner argues that even if respondent's services are deemed necessary and desirable in its usual business, the parties may still agree on a specific period for the performance of these services.[80]

The issues for this Court's resolution are the following:

First, whether or not questions of fact may be resolved in this Petition;

Second, whether or not respondent Madelyn I. Sinday is a regular employee; and

Finally, whether or not respondent is illegally dismissed.

I

In *Fuji Television Network, Inc. v. Espiritu*,^[81] this Court extensively explained the procedural parameters in a petition for review for labor cases.

As a general rule, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. Specifically, in a petition for review of a Court of Appeals' certiorari decision in a labor case, this Court only resolves whether the Court of Appeals "correctly determined the presence or absence of grave abuse of discretion in the [National Labor Relations Commission] decision before it, not on the basis of whether the [National Labor Relations Commission] decision on the merits of the case was correct";^[82]

When a decision of the Court of Appeals under a Rule 65 petition is brought to this court by way of a petition for review under Rule 45, only questions of law may be decided upon. As held in *Meralco Industrial v. National Labor Relations Commission*:

This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.^[83]

Nevertheless, in *Convoy Marketing Corporation v. Albia*,^[84] this Court recognized that this is not a hard and fast rule. Judicial review in labor cases may also resolve questions of facts "when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the [Court of Appeals]."^[85]

When there is variance in the findings of the labor tribunals, as in this case, it becomes imperative that we reexamine the facts to arrive at the correct conclusions.^[86]

II

Article 295 of the Labor Code categorizes employees into regular, project, seasonal, and casual.^[87] It further classifies regular employees into two (2) kinds: (1) those "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer"; and (2) casual employees who have "rendered at least one year of service, whether such service is continuous or broken." The Provision states:

ARTICLE 295. [280] Regular and casual employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken,

shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

In 1990, Brent recognized another classification of employment: fixed-term employment. There, this Court ruled that fixed-term employments are valid under both the Civil Code and the Labor Code:

On the one hand, there is the gradual and progressive elimination of references to term or fixed-period employment in the Labor Code, ...

....

There is, on the other hand, the Civil Code, which has always recognized, and continues to recognize, the validity and propriety of contracts and obligations with a fixed or definite period, and imposes no restraints on the freedom of the parties to fix the duration of a contract, whatever its object, be it specie, goods or services, except the general admonition against stipulations contrary to law, morals, good customs, public order or public policy. Under the Civil Code, therefore, and as a general proposition, fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by nature seasonal or for specific projects with pre-determined dates of completion; they also include those to which the parties by free choice have assigned a specific date of termination.

....

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 [now Article 295] of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreement conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd unintended consequences.[88] (Citations omitted)

Brent recognized that the Civil Code and the Labor Code allow the execution of fixed-term employment contracts. But when periods have been imposed to prevent an employee from acquiring his or her security of tenure, the contract effectively runs counter to public policy and morals, and must, therefore, be disregarded.

In drawing the line, Brent laid down the criteria under which a fixed-term employment cannot be deemed in circumvention of the security of tenure:

(1) When the parties have knowingly and 'voluntarily agreed upon a fixed period of employment "without any force, duress[,] or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent";[89] or

(2) When "it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms"[90] with the employer not having exercised any moral dominance over the employee.[91]

GMA Network, Inc. v. Pabriga[92] further explained the rationale behind this safeguard:

The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection

than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee....

....

To recall, it is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid. It is therefore the employer which must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee.[93] (Citation omitted)

In *Paguio v. National Labor Relations Commission*:[94]

A stipulation in an agreement can be ignored as and when it is utilized to deprive the employee of his security of tenure. The sheer inequality that characterizes employer-employee relations, where the scales generally tip against the employee, often scarcely provides him real and better options.[95] (Citation omitted)

Thus, the existence of a contract indicating a fixed term does not preclude regular employment.

This Court has held that our ruling in *Brent* is the exception rather than the general rule, and a fixed-term employment is recognized as valid only under certain circumstances, particularly when a fixed-term is an essential and natural appurtenance.[96] As explained in *Brent*:

Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance: overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied, Article 280 of the Labor Code notwithstanding; also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible. Similarly, despite the provisions of Article 280, Policy Instructions No. 8 of the Minister of Labor implicitly recognize that certain company officials may be elected for what would amount to fixed periods, at the expiration of which they would have to stand down, in providing that these officials, " . . . may lose their jobs as president, executive vice-president or vice-president, etc. because the stockholders or the board of directors for one reason or another did not reelect them." [97] (Citation omitted)

Moreover, this Court held that in determining the validity of a fixed-term employment, the level of protection accorded to labor is ascertained based on the "nature of the work, qualifications of the employee, and other relevant circumstances." [98]

Hence, the criteria limit the application of *Brent* to particular cases where the employer and the employee are on a more or less equal footing in entering into the contract.[99] If none of the aforementioned criteria are present, this Court will strike down a fixed-term employment contract.

In *Pure Foods Corporation v. National Labor Relations Commission*, [100] this Court struck down a fixed-term employment contract after having found that the employees and the employer did not deal with each other in more or less equal terms. In that case, the employees were compelled to accept five (5)-month employment contracts given the difficulty of finding work as cannery workers.

Similarly, in *Lynvil Fishing Enterprises, Inc. v. Ariola*, [101] this Court held that the fixed-term employment was invalid because the employees were doing tasks necessary to the employer's business and they were repeatedly rehired for more than 10 years. It stressed that the employees' need for a continued source of income forced them to accept the fixed-term employment.

Here, the Court of Appeals correctly reversed the findings of the National Labor Relations Commission.

Foremost, neither of the two (2) criteria in *Brent* is present in this case. Petitioner did not deal with respondent in more or less equal terms with no moral dominance on its part.

As the facts bare, respondent's whole family depended on petitioner. Her husband was the school's longtime driver; their children, its scholars. Respondent is a high school graduate whose ordinary qualifications compelled her to accept the various positions offered by petitioner. Given these circumstances, respondent was not in a position to bargain on the terms of her employment. It was a grave error for the National Labor Relations Commission to find no moral dominance merely because both parties benefitted from the fixed-term employment.

There is no genuine freedom to contract when a fixed-term employment is used as a vehicle to exploit the economic disadvantage of workers like respondent. Plain wage earners should not be faulted for tolerating jobs they desperately need. *Brent* recognized the validity of fixed-term employments only within the context that employers and employees are on an equal footing.[102] That employees agree to be repeatedly hired on a fixed-term basis only reveals the deeper problem of poverty and growing economic inequality between labor and capital.[103] The conclusion of the National Labor Relations Commission that respondent dealt with petitioner in more or less equal terms is nothing short of callousness to respondent's predicament.

Moreover, the freedom to contract under the Civil Code should be narrowly interpreted when applied to labor contracts, since these contracts are imbued with public interest. The Civil Code itself recognized that labor contracts should not be treated as ordinary civil contracts. Articles 1700 and 1702 of the Civil Code provide:

ARTICLE 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strike and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

ARTICLE 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

Our labor laws are deemed incorporated into these contracts; "the "parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other." [104] Hence, this Court and labor tribunals should be circumspect in determining the validity of fixed-term employment contracts. *Brent* should be cautiously applied to the factual context of each case. Here, the Court of Appeals correctly ruled that the fixed-term employment should be disregarded considering that petitioner and respondent did not deal with each other in more or less equal terms.

Moreover, the absence of a contract evidencing the fixed-term employment militates against petitioner's claims. As this Court held in *Brent*, the decisive determinant in fixed-term employments is "the day certain agreed upon by the parties for the commencement and termination of their employment relationship[.]" [105] Here, there was no "day certain" agreed upon by the parties.

Petitioner persistently asserts that respondent should have known that her employment was only for a fixed term given the circumstances and nature of her job. However, it failed to present the contracts for the positions held by respondent. Absent any contract, it cannot be said that respondent was informed of the nature of her employment, as well as the duration and scope of her work. A fixed-term employment cannot be held valid based on mere allegations and speculations.

While petitioner argues that the Memorandum of Agreement[106] sufficiently provides the terms of employment, this contract only surfaced on the third year of respondent's employment and after petitioner had already

acknowledged that respondent was their regular employee. Besides, this contract only refers to respondent's employment as a substitute teacher aide. As for the rest of the positions she held, petitioner failed to provide any contract.

Furthermore, the Court of Appeals correctly found that respondent is a regular employee.

The acid test in determining regular employment is "whether there is a reasonable connection between the employee's activities and the usual business of the employer." [107] This is corollary to Article 295 of the Labor Code, which provides that the nature of work must be "necessary or desirable in the usual business or trade of the employer" to consider the employee as regular. [108]

Indeed, the "repeated engagement under contract of hire is indicative of the necessity and desirability" [109] of the employee's work in the employer's business. [110]

In *Magsalin v. National Organization of Working Men*: [111]

The repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of petitioner company. The Court of Appeals has found each of respondents to have worked for at least one year with petitioner company. While this Court, in *Brent School, Inc. vs. Zamora*, has upheld the legality of a fixed-term employment, it has done so, however, with a stern admonition that where from the circumstances it is apparent that the period has been imposed to preclude the acquisition of tenurial security by the employee, then it should be struck down as being contrary to law, morals, good customs, public order and public policy. The pernicious practice of having employees, workers and laborers, engaged for a fixed period of few months, short of the normal six-month probationary period of employment, and, thereafter, to be hired on a day-to-day basis, mocks the law. Any obvious circumvention of the law cannot be countenanced. [112] (Citation omitted)

In this case, the Court of Appeals found that respondent has been engaged to perform activities that, are usually necessary or desirable in petitioner's usual business. Her services as a clerk at the book sale, as a secretary at Claretech, and as a substitute teacher aide are necessary and desirable to petitioner's business as an educational institution. Petitioner's repeated hiring of respondent for over three (3) years only strengthens the conclusion that her services are, indeed, necessary and desirable to its business.

To reiterate, fixed term employment is not illegal per se or against public policy. [113] Nevertheless, before this Court recognizes its validity, the criteria in *Brent* must first be sufficiently established. Aware that this form of employment was repeatedly used to circumvent security of tenure, this Court has been consistently circumspect in resolving issues on fixed-term employment. The validity of a fixed-term employment is an exception, not the general rule. Here, petitioner failed to show that either of the two (2) criteria is present and, quite the contrary, the case records reveal that petitioner and respondent did not deal with each other in more or less equal terms. Thus, this Court holds that respondent is a regular employee who is entitled to security of tenure.

III

Petitioner further argues that even if respondent is deemed a regular employee, she was validly dismissed for just cause because she was found stealing relief goods from the school premises.

A review of the records shows that this allegation was never substantiated by petitioner. Petitioner itself admits that it failed to act on the alleged infraction, and no investigations were ever conducted regarding the security agency's report.

Even if this Court gives credence to petitioner's allegations, respondent's dismissal is still illegal for petitioner's

failure to comply with due process requirements.

In *King of Kings Transport, Inc. v. Mamac*,^[114] this Court clarified the standard of due process in terminating employees. There, it was explained that to validly terminate an employee, an employer is required to comply with the two-notice rule. First, an initial notice must be given to the employee, stating the specific grounds or causes for the dismissal. It must direct the submission of a written explanation answering the charges. Second, after considering the employee's answer, an employer must give another notice providing the findings and reason for termination.^[115]

The employer has the burden of proof to show that an employee's dismissal was for a just or authorized cause, and that the dismissal was not illegal.^[116] Unfortunately for petitioner, it failed to discharge this burden.

No notice was served on respondent informing her of the grounds of her termination. She was not given the opportunity to be heard. Without complying with procedural due process requirements, petitioner could not have validly terminated respondent's services.

Theft is a serious accusation which must be sufficiently supported by evidence. Here, petitioner failed to act on the allegation by conducting an investigation and immediately acting on the report. Without any proof, this Court cannot give credence to petitioner's claims.

Since the termination of respondent's employment was rendered without regard to due process, this Court finds respondent to have been illegally dismissed.

The award of reinstatement, including backwages, is given to an illegally dismissed employee under Article 294 of the Labor Code:

ARTICLE 294. [279] Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis supplied)

If actual reinstatement is no longer possible, the employee becomes entitled to separation pay in lieu of reinstatement.^[117]

The doctrine of strained relations provides that the payment of separation pay is an alternative when reinstatement is no longer viable for the parties.^[118] Strained relations must be demonstrated as a fact supported by evidence. It must be shown that the "relationship between the employer and the employee is indeed strained"^[119] as a consequence of the controversy.

Here, the Court of Appeals failed to state why reinstatement has been rendered impossible. On the other hand, the Labor Arbiter found that respondent's reinstatement may be ordered. Thus, this Court deletes the award of separation pay and instead orders that respondent be reinstated to her former position.

WHEREFORE, the Petition for Review on Certiorari is DENIED. The March 30, 2016 Decision and July 26, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 141183 are AFFIRMED WITH MODIFICATIONS.

Petitioner Claret School of Quezon City is ordered to reinstate respondent Madelyn I. Sinday to her former position or a substantially equivalent designation, and to pay her the following: (1) backwages; (2) Emergency Cost of Living Allowance; (3) 13th month pay; (4) legal interest of six percent (6%) per annum on the total monetary awards computed from the finality of this Decision until fully satisfied; and (5) costs of suit.

SO ORDERED.

Peralta (Chairperson), Caguioa,[*] A. Reyes, Jr., and Hernando, JJ., concur.

[*] Additional member per raffle dated September 18, 2019.

[1] 260 Phil. 747 (1990) [Per J. Narvasa, En Banc].

[2] GMA Network, Inc. v. Pabriga, 722 Phil. 161 (2013) [Per J. Leonardo-De Castro, Third Division].

[3] Rollo, pp. 3-47.

[4] Id. at 49-61. The Decision dated March 30, 2016 in CA-G.R. SP No. 141183 was penned by Associate Justice Socorro B. Inting, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla of the Second Division, Court of Appeals, Manila.

[5] Id. at 63-64. The Resolution dated July 26, 2016 in CA-G.R. SP No. 141183 was penned by Associate Justice Socorro B. Inting, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla of the Second Division, Court of Appeals, Manila.

[6] Id. at 5.

[7] Id. at 7 and 9.

[8] Id. at 89.

[9] Id. at 84.

[10] Id. at 84-85.

[11] Id. at 85.

[12] Id. at 85 and 189.

[13] Id. at 405. Timmy was at times spelled Timme in the rollo.

[14] Id. at 85.

[15] Id. at 69.

[16] Id. at 85.

[17] Id. at 90.

[18] Id.

[19] Id. at 89.

[20] Id. at 69.

[21] Id.

[22] Id. at 89.

[23] Id. at 70.

[24] Id.

[25] Id. at 70.

[26] Id. at 88.

[27] Id. at 84-96. The Decision was penned by Labor Arbiter Joanne G. Hernandez-Lazo.

[28] Id. at 95-96.

[29] Id. at 91.

[30] Id. at 86.

[31] Id. at 91.

[32] Id. at 92.

[33] Id. at 92-93.

[34] Id. at 92.

[35] Id. at 94.

[36] Id. at 67-76. The Decision was penned by Presiding Commissioner Gerardo C. Nograles, and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go of the First Division of the National Labor Relations Commission, Quezon City.

[37] Id. at 75.

[38] Id. at 73.

[39] Id.

[40] Id. at 74.

[41] Id.

[42] Id. at 75.

[43] Id. at 78-79. The Resolution was penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioner Romeo L. Go of the First Division, National Labor Relations Commission, Quezon City.

[44] Id. at 54.

[45] Id. at 49-61.

[46] Id. at 60-61.

[47] Id. at 56.

[48] Id. at 57.

[49] Id.

[50] Id. at 57-58.

[51] Id. at 58.

[52] Id.

[53] Id. at 63-64.

[54] Id. at 3-47.

[55] Id. at 545.

[56] Id. at 546-554.

[57] Id. at 555.

[58] Id. at 556-576.

[59] Id. at 37.

[60] Id. at 7 and 25.

[61] Id. at 25.

[62] Id. at 25-26.

[63] Id. at 27-28.

[64] Id. at 28-29.

[65] Id. at 29.

[66] Id. at 24.

[67] Id. at 161. It is stated in the other parts of the rollo that Sinday started working in 2010.

[68] Id.

[69] Id. at 21.

[70] Id. at 20-21 and 168-169.

[71] Id. at 11.

[72] Id. at 30-34.

[73] Id. at 548.

[74] Id. at 549.

[75] Id. at 550.

[76] Id.

[77] Id.

[78] Id. at 550-551.

[79] Id. at 556-557.

[80] Id. at 272.

[81] 749 Phil. 388 (2014) [Per J. Leonen, Second Division].

[82] Id. at 415.

[83] Id. at 415-416 citing *Meralco v. National Labor Relations Commission*, 572 Phil. 94, 117 (2008) [Per J. Chico-Nazario, Third Division].

- [84] 770 Phil. 654 (2015) [Per J. Peralta, Third Division].
- [85] Id. at 664.
- [86] Id.
- [87] LABOR CODE, art 295.
- [88] 260 Phil. 747, 760-763 (1990) [Per J. Narvasa, En Banc].
- [89] Id. at 763.
- [90] Id.
- [91] Id.
- [92] 722 Phil. 161 (2013) [Per J. Leonardo-De Castro, First Division].
- [93] Id. at 178-179.
- [94] 451 Phil. 243 (2003) [Per J. Vitug, First Division].
- [95] Id. at 253.
- [96] Price v. Innodata Philippines. Inc., 588 Phil. 568 (2008) [Per J. Chico-Nazario, Third Division].
- [97] Brent School, Inc. v. Zamora, 260 Phil. 747, 761 (1990) [Per J. Narvasa, En Banc],
- [98] Fuji-Television Network, Inc. v. Espiritu, 749 Phil. 388, 429 (2014) [Per J. Leonen, Second Division].
- [99] GMA Network, Inc. v. Pabriga. 722 Phil. 161 (2013) [Per J. Leonardo-De Castro, Third Division].
- [100] 347 Phil. 434 (1997) [Per J. Davide, Jr., First Division]
- [101] 680 Phil. 696 (2012) [Per J. Perez, Second Division].
- [102] GMA Network, Inc. v. Pabriga, 722 Phil. 161, 178 (2013) [Per J. Leonardo-De-Castro, Third Division].
- [103] Magsalin v. National Organization of Working Men, 451 Phil. 254, 262 (2003) [Per J. Vitug, First Division].
- [104] Id. at 262.
- [105] Brent School, Inc. v. Zamora, 260 Phil. 747, 757 (1990) [Per J. Narvasa, En Banc].
- [106] Rollo, pp. 168-169.
- [107] Fuji Television Network, Inc. v. Espiritu, 749 Phil. 388, 435 (2014) [Per J. Leonen, Second Division].
- [108] Id.
- [109] Id. at 438. See also Samonte v. La Salle Greenhills, Inc., 780 Phil. 778 (2016) [Per J. Perez, Third Division] and Magsalin v. National Organization of Working Men, 451 Phil. 254 (2003) [Per J. Vitug, First Division].
- [110] Id.
- [111] 451 Phil. 254 (2003) [Per J. Vitug, First Division].
- [112] Id. at 262.

[113] E. Ganzon, Inc. v. Ando, Jr., 806 Phil. 58 (2017) [Per J. Peralta, Second Division].

[114] 553 Phil. 108 (2007) [Per J. Velasco, Jr., Second Division].

[115] Id.

[116] Stanley Fine Furniture v. Gallano, 748 Phil. 624 (2014) [Per J. Leonen, Second Division].

[117] Golden Ace Builders v. Talde, 634 Phil. 364, 371 (2010) [Per J. Carpio Morales, First Division].

[118] Id.

[119] Id.

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