

LUNINGNING Z. BRAZIL, SALVACION L. GARCERA, AND RITA S. DE MESA, PETITIONERS, VS. STI EDUCATION SER. GROUP, INC. AND MONICO V. JACOB, RESPONDENTS,

G.R. No. 233314. November 21, 2018

Ponente: TIJAM, J.

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TIJAM, J.:

Enshrined in our Constitution is the State's policy to afford full protection to labor and its right to security of tenure. This, however, must be balanced against the State's policy to protect and promote the right to quality education at all levels as embodied in our laws and regulations prescribing qualifications for the teaching profession. Although this Court is mindful of the plight of teachers whose security of tenure is necessarily affected by the said laws, We can only afford relief that is within the confines of the law. Neither estoppel nor equity can contravene a clear provision of law.

This is an appeal from the Decision[1] dated November 9, 2016 and the Resolution[2] dated June 30, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 134584.

Facts of the Case

Petitioners were faculty members of respondent STI Education Services Group, Inc. (STI), a proprietary higher educational institution duly organized under the Philippine laws.

Petitioner Luningning Z. Brazil (Brazil) was first employed by STI College-Legazpi (STI-Legazpi) on June 3, 1997 as a part-time faculty member. Petitioner Salvacion L. Garcera (Garcera) and petitioner Rita S. De Mesa (De Mesa) were next hired in June 2000 and June 2001, respectively, also as part-time faculty members by STI-Legazpi.[3]

The services of Brazil, Garcera and De Mesa (collectively referred to as petitioners) continued until June 2011, for which they filed a Complaint for illegal constructive dismissal and non-payment of salaries/wages, separation pay and 13th month pay, with claims for moral and exemplary damages and attorney's fees before the National Labor Relations Commission (NLRC) Regional Arbitration Branch (RAB) No. V in Legazpi City. The complaint, docketed as NLRC RAB V Case No. 07-00153-11, was against STI and its President, respondent Monico V. Jacob (Jacob).[4]

Brazil claimed that she was hired as a "full-load faculty member" of STI-Legazpi in June 2002, when she started receiving a fixed monthly salary. On February 1, 2004, she was regularized as evidenced by STI-Legazpi's Personnel Action Form. Likewise, Garcera claimed that in a written evaluation of her teaching performance, acknowledged by her on October 12, 2004, STI-Legazpi categorized her employment status as regular. Moreover, in an electronic mail correspondence dated April 24, 2008 with Joseluis Geronimo of the STI Headquarters (HQ), the latter confirmed the status of Brazil and Garcera as regular employees.[5]

For her part, De Mesa claimed that she was employed as a "full-load faculty member" in 2003, as indicated in her

faculty employment contract dated November 2, 2003. She further advanced that as of June 2009, she was already considered a regular employee as she started to receive a fixed monthly salary for twelve (12) months.[6]

Petitioners alleged that they were required to submit letters of intent and to sign contracts with STI for each semester. However, upon their alleged regularization, STI no longer required them to do so. In addition, they enjoyed the same benefits granted to regular employees such as full payment of salary and statutory benefits during summer, semestral and Christmas breaks.[7]

On June 3, 2011, Rusty O. Lagatic (Lagatic), the school administrator of STI-Legazpi, handed to the petitioners separate job offers for the first semester of academic year (A.Y.) 2011-2012. The job offers for Brazil and De Mesa were for part-time faculty members, whereas the job offer for Garcera was for a probationary faculty member. Petitioners refused to sign the said job offers because although the same stipulated a higher monthly salary, their security of tenure as regular employees would be taken away from them.[8]

Upon inquiry, petitioners were informed by Lagatic that their 201 files did not contain their appointment papers, and that they failed to conform with the standards set out in the 2008 Manual of Regulations for Private Higher Education (2008 MORPHE). Petitioners countered that Garcera already completed her Master of Arts in Education – English on March 30, 2011, and that Brazil and De Mesa were already writing their thesis in their chosen fields, Master of Arts in Public Administration and Master of Arts in Physics Education, respectively.[9]

Petitioners alleged that despite their repeated requests for the amendment of their respective job offers on the basis of their belief that they are regular employees, Lagatic still handed to them the same job offers on June 8, 2011. As they still refused to sign the said contracts, they were replaced with six (6) newly-hired faculty members on the following day. They also did not receive any teaching load at the start of the school year on June 13, 2011, although they still received their respective salaries for the period of June 1 to 15, 2011.[10]

In separate letters[11] dated June 24, 2011, Lagatic informed the petitioners that their respective employment contracts were based on the 2008 MORPHE being implemented by the Commission on Higher Education (CHED) and the General Academic Policies for Faculty Members of HQ-Owned Schools. Pertinent portion of the identical separate letters reads:

xxx. The employment contract outlined your updated employment classification based on your existing qualifications as provided for by the MORPHE and STI's General Academic Policies. Indicated therein is an employment offer for you as a part-time full load faculty member [as for Brazil and De Mesa]/probationary faculty member [as for Garcera] and an addendum that gives you an additional of two more years to comply with the minimum qualification standards of CHED.

xxxx

I am referring you to the attached memorandum dated June 16, 2011 coming from the Vice-President for Channel Management Division on the Compliance Consideration Program for Faculty Members Without the Minimum Qualification of a Regular/Permanent Faculty Member for further information.[12] (Emphasis supplied)

The attached memorandum mentioned in the said letters were from Resty O. Bundoc (Bundoc), Vice-President of Channel Management Division of STI HQ, the body of which is reproduced in its entirety as follows:

The Manual of Regulations for Private Higher Education (MORPHE), which took effect in 2008 provides for the guidelines which an Institution of Higher Learning like STI Education Services Group, Inc. (STI) must follow. Based on the MORPHE, particularly Section 36 thereof, a full time faculty or academic personnel is one who possesses at least the minimum academic qualifications prescribed in the MORPHE, which means that the faculty member must be a holder of a Master's Degree relevant to the field he/she is teaching. The

"Manual of Regulations for Private Schools (MRPS)" which took effect in 1992, Article IX, Section 44, Paragraph C, Sub-paragraph 1-a also requires the same (same with MRPS 1995 Annotated, Article IX, Section 44, Paragraph C, Sub-Paragraph 1a).

Faculty members who have yet to fulfill the minimum requirements (earn a relevant master's degree in his/her field of specialization) shall thus be considered as Part Time/Full-Load Faculty member, and will undertake a contract appropriate to his/her qualification. This adjustment is necessary in compliance with the mandate as set forth in the MORPHE.

STI recognizes the services and the years rendered by the faculty members that will be affected by this compliance, and as such, continuance of the benefits they are currently enjoying shall be allowed, and the two-year compliance consideration program shall be strictly observed to comply with the minimum requirements.

Non-signature to the Semestral Part Time (Full Load) Faculty Contract effective this School Year 2011 – 2012 waives the faculty member's right to this compliance consideration program offered by the school which may result to severing employment with STI. Further, non-completion of the relevant master's degree on May 31, 2013 will automatically revert the faculty member's status to being a Part time faculty member losing the benefits currently enjoyed and will enjoy under the compliance consideration program. However, the faculty member's compliance to the minimum requirement within the given period may qualify him/her to regular/permanent status.[13] (Emphasis and underscoring supplied)

Petitioners averred that the addendum regarding the additional two years to comply with the CHED requirement was absent in the job offers handed to them. The memorandum also came late as classes have already started on June 13, 2011.

Since they were placed in a floating status and no longer received their salary for the period of June 16 to 30, 2011, petitioners stopped reporting for work and filed complaints for illegal constructive dismissal with monetary claims.[14]

For their part, while respondents STI and Jacob (collectively referred to as respondents) admitted that for years, Brazil and Garcera have been teaching in STI-Legazpi's General Education Programs, and De Mesa had been teaching Physics, their employment as such was considered part-time only. Respondents emphasized that since petitioners are not holders of a master's degree, they are considered part-time academic personnel under Section 36 of the 2008 MORPHE. Under Section 117 of the 2008 MORPHE, a part-time employee, such as the petitioners, cannot acquire regular or permanent status. This explains why Brazil and De Mesa were offered part-time full-load faculty employment; while Garcera was offered probationary faculty employment, as she obtained her master's degree only in March 2011.[15]

In addition, respondents argued that their act of extending the part-time and probationary employment contracts to the petitioners were validated by the CHED through an Advisory Opinion dated July 17, 2011, wherein Atty. Julito Vitriolo, Executive Director IV of the CHED, clarified that any act of giving permanent or regular status to academic teaching personnel who do not possess the required academic qualifications is not valid since it is contrary to the provisions of Sections 117 and 118 of the 2008 MORPHE.[16]

Consequently, since petitioners refused to sign their respective contracts, respondents posited that there can be no illegal dismissal to speak of. Their previous employment contracts merely expired.

Ruling of the Labor Arbiter

In a Decision[17] dated December 16, 2011, the Labor Arbiter (LA) declared petitioners as regular employees. Thus, respondents were found guilty of illegal dismissal and were ordered to pay the petitioners their respective

separation pay in lieu of reinstatement as well as other monetary claims.

The LA ratiocinated that although the 2008 MORPHE applies in the determination of whether a faculty is a regular employee or not, it does not apply in a case where regular employment status has already been achieved or had already been granted to faculty members.

Aggrieved, respondents appealed to the NLRC.

Ruling of the NLRC

Initially, the NLRC partly granted the appeal of the respondents in a Decision[18] dated December 28, 2012, the dispositive portion of which reads:

WHEREFORE, the appeal is PARTLY GRANTED. The Decision appealed from is AFFIRMED with MODIFICATION: the complaint of Rita De Mesa is DISMISSED for lack of merit; accordingly the awards for payment of her backwages and separation pay are vacated and the damages awarded to all appellees are also DISMISSED for lack of merit. The attorney's fees shall be limited to 10% of the amended judgment award.

SO ORDERED.[19]

In essence, the NLRC affirmed the LA's finding of illegal dismissal except for De Mesa. Thus, it explained:

Appellees Brazil and Gargacera (sic) were regular faculty members. They were granted regular status in February 1, 2004 and April 2004, respectively. When the MORPHE took effect in 2008, they were already regular employees. Thus, they enjoyed security of tenure.

When Brazil and Gargacera (sic) were offered employment contracts as part-time employees, they were considered constructively dismissed.

As regards De Mesa, she cannot be considered as a regular teacher of the school. She was employed in 2001 as a part-time faculty member, and continued as such until March 2003. In June 2003, she signed a contract as a full-load faculty member, and signed a separate semestral contract for each semester for the next 4 years. While she claims that in 2009, she was considered a regular teacher because she started to receive a fixed salary for 12 months, there is no evidence that before the effectivity of the MORPHE in 2008, she had already attained regular status similar to appellees Brazil and Gargacera (sic). The provisions of the MORPHE applied to her.[20] (Emphasis ours)

Both parties moved for the partial reconsideration of the NLRC Decision.

Petitioners reiterated their assertion that De Mesa was already considered a regular employee in June 2009 as she was enjoying the same benefits granted to regular employees. They insisted that the fact she was granted a regular status after the effectivity of the 2008 MORPHE is immaterial.

On the other hand, respondents contended that pursuant to the 2008 MORPHE, Brazil and Gargacera could not have become regular employees because they did not even qualified for probationary status. They argued that under the 2008 MORPHE, an academic teaching personnel cannot acquire the status of a probationary employee without first possessing a master's degree to teach in his or her major field.

In a Resolution[21] dated December 27, 2013, the NLRC resolved the parties' respective motions for reconsideration in favor of the respondents. It dismissed the petitioners' complaints for illegal dismissal and other claims for lack of merit.

In the said Resolution, the NLRC declared that Brazil and De Mesa were ineligible for regularization since they were not yet holders of a master's degree as required under the MORPHE. Thus, they are considered part-time

faculty members in June 2011.

As for Garcera, the NLRC held that she could be considered a full-time faculty member qualified for probationary status beginning A.Y. 2011-2012, as she earned her master's degree only in March 2011.

In addition, the NLRC opined that even if the petitioners were earlier recognized as regular employees, it cannot estop respondents from denying them such status. It cited the case of *University of the East, et al. v. Pepanio, et al.*,^[22] wherein this Court held that "the operation of educational institutions involves public interest, and such grant of regular status is against the public policy embodied in the 2008 MORPHE." The NLRC thus concluded that petitioners were not dismissed but merely separated from service by their own refusal to sign their respective job offers.

Petitioners assailed the NLRC Resolution dated December 27, 2013 before the CA by filing a petition for certiorari under Rule 65.

Ruling of the CA

On November 9, 2016, the CA promulgated its Decision^[23] denying the petition and affirming the assailed NLRC Resolution.

In sum, the CA ruled that the NLRC did not commit grave abuse of discretion in dismissing the petitioners' complaints for illegal dismissal with money claims. Petitioners were merely separated from service as a result of their stubborn refusal to sign their respective job offers which were made in accordance with the 2008 MORPHE.

Undaunted, petitioners moved for reconsideration of the CA Decision but the same was denied in a Resolution dated June 30, 2017.

Hence, this petition.

Issue

Simply put, petitioners come to this Court to seek reliefs akin to those awarded in illegal dismissal cases, on the sole ground that they were already granted regular status, albeit illegally, by respondents.

The issue, therefore, revolves around the nature of employment and corollary rights of faculty members who failed to attain permanent status under the applicable law, i.e. 1992 Revised Manual of Regulations for Private Schools (1992 MORPS) and/or 2008 MORPHE, but who were voluntarily treated as regular employees by their employers.

Our Ruling

We deny the petition.

Prefatorily, the Court stresses that it is not a trier of facts. As a rule, only questions of law are examined by this Court in a Rule 45 Petition.

Further, in labor cases, this Court reviews the Decision of the CA in a Rule 65 Petition presented to the latter. Thus, "the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."^[24]

The NLRC commits an act of grave abuse of discretion when its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Stated differently, no grave abuse of discretion may be ascribed to the NLRC when its ruling has sufficient basis in evidence, and is not contrary to law and jurisprudence. In such cases, the CA is constrained

to dismiss the petition for certiorari assailing the NLRC ruling.[25]

After applying the foregoing guidelines in Our careful review of the instant case, We find no reversible error on the part of the CA in ruling that the NLRC did not commit any grave abuse of discretion when it dismissed the petitioners' complaints for illegal dismissal with money claims.

We do not intend to disturb the factual antecedents of this case as found by the courts a quo. As aptly observed by the CA, "the parties do not contest that, either expressly or impliedly, STI granted petitioners the status of a regular faculty member." [26] As such, an examination of the evidence pertaining to how the petitioners were granted a regular status by the STI is unnecessary.

Petitioners also do not question the applicability of the 1992 MORPS and/or the 2008 MORPHE to them and their failure to qualify thereunder for lack of a master's degree. They merely insist that despite the application of the 2008 MORPHE, an employer educational institution that has granted or treated its employees as regular or permanent employees can be held liable for illegal constructive dismissal, and consequently liable to pay separation pay, back wages, etc. Subsequent compliance with the MORPHE is not an available defense for employers in such cases.

On the surface, petitioners' plea is anchored on serving the broader interests of justice and equity. Unfortunately, it has no legal leg to stand on.

Courts may resort to application of equity only when there is insufficiency or absence of law.[27] The principle of equity cannot prevail over the positive mandate of the law, such as the 2008 MORPHE in this case. Application of equity "would be tantamount to overruling or supplanting the express provisions of the law." [28]

This is not a case of first impression. During the pendency of the instant petition, the Court promulgated its decision in *Raymond A. Son, et al. v. University of Santo Tomas (UST), et al.*, [29] the factual circumstances of which are similar to this case.

In *Son*, petitioners were also faculty members of undergraduate programs who failed to obtain the required Master's Degree under the 1992 MORPS and 2008 MORPHE. As such, their appointments were not renewed by the UST, their employer. Petitioners therein were members of a union with which UST, at the time, had a Collective Bargaining Agreement (CBA) that provides:

xxx Although a master's degree is an entry requirement, a faculty member admitted to serve the University without a master's degree shall finish his master's degree in five (5) semesters. If he does not finish his degree in five (5) semesters, he shall be separated from service at the end of the fifth semester; however, if he is made to serve the University further, in spite of the lack of a master's degree, he shall be deemed to have attained tenure.[30] (Emphasis ours)

Petitioners in *Son* were enrolled in a master's program but were unable to finish the same. However, since they continued to teach in the UST beyond the period provided in the aforequoted CBA provision, they claimed that they had already attained regular status. Thus, they filed for illegal dismissal upon UST's non-renewal of their appointments.

In denying the petition, the Court ruled that the CBA provision is null and void for being violative of the 1992 MORPS that was in effect during its execution. Thus, the provision did not produce any effect as to the parties therein. The Court, through Justice Del Castillo, succinctly explained:

From a strict legal viewpoint, the parties are both in violation of the law: respondents, for maintaining professors without the mandated masteral degrees, and for petitioners, agreeing to be employed despite knowledge of their lack of the necessary qualifications. Petitioners cannot therefore insist to be employed by

UST since they still do not possess the required master's degrees; the fact that UST continues to hire and maintain professors without the necessary master's degrees is not a ground for claiming illegal dismissal, or even reinstatement. As far as the law is concerned, respondents are in violation of the CHED regulations for continuing the practice of hiring unqualified teaching personnel; but the law cannot come to the aid of petitioners on this sole ground. As between the parties herein, they are in *pari delicto*.

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It cannot be said either that by agreeing to the tenure by default provision in the CBA, respondents are deemed to be in estoppel or have waived the application of the requirement under CHED Memorandum Order No. 40-08. Such a waiver is precisely contrary to law. Moreover, a waiver would prejudice the rights of the students and the public, who have a right to expect that UST is acting within the bounds of the law, and provides quality education by hiring only qualified teaching personnel. Under Article 6 of the Civil Code, "[r]ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law." On the other hand, there could be no acquiescence – amounting to estoppel – with respect to acts which constitute a violation of law. "The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*." "[N]o estoppel can be predicated on an illegal act.[31] (Emphasis ours; citations omitted)

The ruling in *Son* is on all fours with the instant case. Petitioners herein essentially claim estoppel on the part of the respondents in granting them a regular status despite the clear import of the 2008 MORPHE.

In their Reply to Respondents' Comment[32] required by this Court, petitioners specifically alleged that the ruling in *Son* does not apply to their petition. They argued that unlike in the case of *Son*, the treatment or grant of regular employment status in their case was not pursuant to a CBA, wherein both parties agreed to the regularization of the employees. In their case, the grant of regular status was "unilateral and not a shared endeavor." [33] Thus, the fault or violation rests on STI alone.

We failed to see any material distinction between a CBA and an employment contract that would justify a different ruling in this case. There is no dearth of evidence showing that petitioners voluntarily accepted the benefits from the respondents' act of granting them a regular status. In fact, their enjoyment of such benefits are among their allegations before the Court.

Otherwise stated, petitioners proffer that if they did not explicitly agree to the illegal terms (i.e., being treated as a regular employee) of their employment contract, they should not bear the consequences of its illegality. In effect, petitioners want to have their cake and eat it too.

Although petitioners failed to present their appointment papers showing that they were expressly granted regular status by the STI, the courts *a quo* were unanimous in finding that STI indeed granted them such regular status, whether expressly or impliedly.

We note, however, that even if petitioners were able to present employment contracts expressly stating their status as regular employees, Our conclusion would still be the same.

"Basic is the rule that the nature of employment is determined by the factors set by law, regardless of any contract expressing otherwise." [34] Ergo, a provision in an employment contract prescribing a nature of employment that is violative of law, is deemed unwritten and has no effect as to the parties thereto.

At this juncture, it is imperative upon this Court to explain the nature of employment of a faculty who does not meet the minimum qualifications under the 1992 MORPS and/or the 2008 MORPHE.

For purposes of clarity, there are two ways to categorize the nature of employment of a faculty in a higher

education institution.

First, a faculty may either be full-time or part-time. This manner of classification is unique to the teaching profession. The criteria or basis for the said classification, as can be gleaned from the provisions of the 1992 MORPS and 2008 MORPHE, primarily relates to the academic qualifications and teaching load of the faculty.

Second, a faculty's nature of employment may also be classified under the general provisions of the Labor Code and the applicable jurisprudence. Thus, a faculty may be considered a permanent, probationary, or fixed-term employee. In this manner of classification, the emphasis is on the rights of the faculty member as an employee, specifically his or her right to security of tenure or the lack of it. The touchstone therefor is found not only in the 1992 MORPS and 2008 MORPHE, but in the Labor Code and other applicable laws and jurisprudence.

These two groups of categories or classifications are interrelated and does not operate to the exclusion of one another. To Our mind, the interplay between the two may have caused confusion in determining the nature of employment of a faculty in a higher education institution. To illustrate using the present case, the LA, in ruling for the petitioners, opined that 2008 MORPHE is only applicable in determining whether a faculty is a regular employee or not under the standards of CHED. Thus, it erroneously applied the general principles under the Labor Code in finding, for instance, that petitioners, "being teachers, perform activities which are necessary and desirable in the usual business or trade" of respondents.[35]

In this light, the Court finds it apt to discuss the interplay between the provisions under the 1992 MORPS and/or 2008 MORPHE specifically applied to faculty or academic personnel, and the Labor Code as the general law applicable to all employees. The following discussion will be limited, however, to faculties who are teaching in undergraduate programs.

The provisions of the 1992 MORPS[36] and the 2008 MORPHE are practically identical in terms of distinguishing between a full-time and a part-time faculty. Thus, the 1992 MORPS provides:

Section 45. Full-time and Part-time Faculty. As a general rule, all private schools shall employ full-time academic personnel consistent with the levels of instruction.

Full-time academic personnel are those meeting all the following requirements:

- a. Who possess at least the minimum academic qualifications prescribed by the Department under this Manual for all academic personnel;
- b. Who are paid monthly or hourly, based on the regular teaching loads as provided for in the policies, rules and standards of the Department and the school;
- c. Whose total working day of not more than eight hours a day is devoted to the school;
- d. Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and
- e. Who are not teaching full-time in any other educational institution.

All teaching personnel who do not meet the foregoing qualifications are considered part-time. (Emphasis ours)

The minimum academic qualifications vary according to the grades and levels of instruction taught by the faculty. Thus, Section 44 of the same Manual provides:

Section 44. Minimum Faculty Qualifications. The minimum qualifications for faculty for the different grades and levels of instruction duly supported by appropriate credentials on file in the school shall be as follows:

xxxx

c. Tertiary

(1) For undergraduate courses, other than vocational:

(a) Holder of a master's degree, to teach largely in his major field; or, for professional courses, holder of the appropriate professional license required for at least a bachelor's degree. Any deviation from this requirement will be subject to regulation by the Department.[37]

On the other hand, similar provisions under 2008 MORPHE provide:

Section 35. Minimum Faculty Qualifications. – The minimum qualifications of a faculty in a higher education institution shall be as follows:

1) For undergraduate programs:

1. Holder of a master's degree, to teach mainly in his major field and where applicable, a holder of appropriate professional license requiring at least a bachelor's degree for the professional courses. However, in specific fields where there is dearth of holders of Master's degree, a holder of a professional license requiring at least a bachelor's degree may be qualified to teach. Any deviation from this requirement will be subject to regulation by the Commission.

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Section 36. Full-time and Part-time Faculty. – As a general rule, all private higher education institutions shall employ full-time faculty or academic personnel consistent with the levels of instruction.

A full-time faculty or academic personnel is one who meets all the following requirements:

1) Who possesses at least the minimum academic qualifications prescribed under this Manual for all academic personnel;

2) Who is paid monthly or hourly, based on the regular teaching loads as provided for in the policies, rules and standards of the Commission and the institution;

3) Who devotes not less than eight (8) hours of work a day to the school;

4) Who have no other remunerative occupation elsewhere requiring regular hours of work, except when permitted by the higher education institution; and

5) Who is not teaching full-time in any other higher education institution.

All faculty or academic personnel who do not meet the foregoing qualifications are considered part-time.

Except when permitted by the higher education institution, all faculty or academic personnel who are at the same time holding positions in the government, whether appointive or elective, shall also be considered part-time. (Emphasis ours)

As can be gleaned from the foregoing provisions, the rule is simple – a faculty who does not meet ALL the minimum academic qualifications is automatically a part-time faculty.

Moreover, a faculty who is deemed a full-time faculty after meeting all the minimum academic qualifications does not perpetually become one. He or she may be reverted to being a part-time faculty for failure to comply with the requirements on the teaching load. Thus, Section 118 of the 2008 MORPHE provides:

Section 118. Regular or Permanent Status. xxx a regular or permanent academic teaching personnel who

requests a teaching load equivalent to a part-time load, shall be considered resigned, and hence, may forfeit his/her regular or permanent status at the discretion of the management of the higher education institution and shall thereby be covered by a term-contract employment.

The next provision provides for the required teaching load for a full-time faculty to retain his regular or permanent status, viz:

Section 119. Regular Teaching Load. The regular teaching load of full-time academic teaching personnel shall be determined by the higher education institution but in no case shall exceed 24 units per semester or term.

These provisions entail that a faculty may have regular teaching load but he or she may be considered only as a part-time faculty for failure to meet all the minimum academic qualifications. In contrast, a full-time faculty who has part-time load ceases to become a full-time faculty even if he or she possesses all the minimum academic qualifications. Note, however, that the requirement on the teaching load is subject to the discretion of the employer, or the higher education institution. As such, the requirement on carrying a regular teaching load is not an absolute requirement.

We now delve into the second manner of classifying the nature of employment which is the crux of controversy in most labor suits involving faculty members.

1. Permanent

As already settled by this Court in a plethora of cases, a faculty who does not qualify as a full-time faculty under the 1992 MORPS and/or 2008 MORPHE can never attain the status of a permanent or regular employee.[38] It necessarily follows that only a full-time faculty can be considered a permanent or regular employee.

Note, however, that being a full-time faculty does not suffice to be considered a permanent employee. As ruled in the landmark case of *Lacuesta v. Ateneo de Manila University*,[39] in order for a faculty teaching in the tertiary level to acquire permanent employment or security of tenure, he or she must: (1) be a full-time faculty; (2) have rendered three consecutive years of service or six consecutive semesters (i.e., the probationary period); and (3) such service must have been satisfactory.[40]

In relation thereto, the pertinent provisions of the 1992 MORPS are as follows:

Section 92. Probationary Period. Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.

Section 93. Regular or Permanent Status. Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent. (Emphasis ours)

The same rule is reiterated in the following provisions of the 2008 MORPHE:

Section 117. Probationary Period. An academic teaching personnel, who does not possess the minimum academic qualifications prescribed under Sections 35 and 36 of this Manual shall be considered as part-time employee, and therefore cannot avail of the status and privileges of a probationary employment. A part-time employee cannot acquire regular permanent status, and hence, may be terminated when a qualified teacher becomes available.

The probationary employment of academic teaching personnel shall not be more than a period of six (6)

consecutive semesters or nine (9) consecutive trimesters of satisfactory service, as the case may be.

Section 118. Regular or Permanent Status. A full-time academic teaching personnel who has satisfactorily completed his/her probationary employment, and who possesses the minimum qualifications required by the Commission and the institution, shall acquire a regular or permanent status if he/she is re-hired or re-appointed immediately after the end of his/her probationary employment. However, a regular or permanent academic teaching personnel who requests a teaching load equivalent to a part-time load, shall be considered resigned, and hence, may forfeit his/her regular or permanent status at the discretion of the management of the higher education institution and shall thereby be covered by a term-contract employment. (Emphasis ours)

From the foregoing, a full-time faculty or one who possesses all the minimum academic qualifications may either be permanent or probationary. He or she may also be a fixed-term employee for refusal to take full teaching load, as previously discussed.

2. Probationary

In cases where a faculty failed to attain a regular or permanent status, the next question is, whether the said faculty may be considered a probationary employee. Unlike a fixed-term employee, a probationary employee is entitled to limited security of tenure.

Article 281 of the Labor Code thus provides:

ART. 281. Probationary employment. - Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

As held in *Yolanda M. Mercado v. AMA Computer College-Parañaque City, Inc.*,^[41] the Labor Code is supplemented by the 1992 MORPS with respect to the period of probation.^[42]

Also, in *Mercado*, the Court reconciled the conflict arising from the grant of a probationary status under a fixed-term employment. Thus:

The provision on employment on probationary status under the Labor Code is a primary example of the fine balancing of interests between labor and management that the Code has institutionalized pursuant to the underlying intent of the Constitution.

On the one hand, employment on probationary status affords management the chance to fully scrutinize the true worth of hired personnel before the full force of the security of tenure guarantee of the Constitution comes into play. Based on the standards set at the start of the probationary period, management is given the widest opportunity during the probationary period to reject hirees who fail to meet its own adopted but reasonable standards. These standards, together with the just and authorized causes for termination of employment the Labor Code expressly provides, are the grounds available to terminate the employment of a teacher on probationary status. For example, the school may impose reasonably stricter attendance or report compliance records on teachers on probation, and reject a probationary teacher for failing in this regard, although the same attendance or compliance record may not be required for a teacher already on permanent status. At the same time, the same just and authorized causes for dismissal under the Labor Code apply to probationary teachers, so that they may be the first to be laid-off if the school does not have enough students for a given semester or trimester. Termination of employment on this basis is an authorized cause under the Labor Code.

xxxx

When fixed-term employment is brought into play under the above probationary period rules, the situation – as in the present case – may at first blush look muddled as fixed-term employment is in itself a valid employment mode under Philippine law and jurisprudence. The conflict, however, is more apparent than real when the respective nature of fixed-term employment and of employment on probationary status are closely examined.

The fixed-term character of employment essentially refers to the period agreed upon between the employer and the employee; employment exists only for the duration of the term and ends on its own when the term expires. In a sense, employment on probationary status also refers to a period because of the technical meaning "probation" carries in Philippine labor law – a maximum period of six months, or in the academe, a period of three years for those engaged in teaching jobs. Their similarity ends there, however, because of the overriding meaning that being "on probation" connotes, i.e., a process of testing and observing the character or abilities of a person who is new to a role or job.

xxxx

Given the clear constitutional and statutory intents, we cannot but conclude that in a situation where the probationary status overlaps with a fixed-term contract not specifically used for the fixed term it offers, Article 281 should assume primacy and the fixed-period character of the contract must give way. xxx"[43] (Citations omitted; emphasis supplied)

In addition, it bears stressing that only a full-time faculty may be granted a probationary status. As expressly provided under Section 117 of the 2008 MORPHE, "an academic teaching personnel who does not possess the minimum academic qualifications prescribed under Sections 35 and 36 of this Manual shall be considered part-time employee, and therefore cannot avail of the status and privileges of a probationary employment."[44]

Although the same rule was not expressly provided under the 1992 MORPS, since employment on probation could lead to a permanent status, it ineluctably follows that only those who may attain a permanent status can be granted a probationary employment. A part-time faculty could never attain a permanent status for lack of academic qualifications. Said rule is also consistent with the nature and purpose of hiring someone on a probationary period – "to observe the fitness, propriety, and efficiency of a probationer to ascertain whether he is qualified for permanent employment."[45] Employment on a part-time basis may be inadequate for purposes of determining if one is qualified for permanent employment as a part-time faculty does not possess the qualifications in the first place.

Accordingly, in the recent case of *De La Salle Araneta University, Inc. v. Dr. Eloisa G. Magdurulang*,[46] the Court, in counting the period served as a probationary employee for purposes of regularization, did not include appointments on a part-time basis even those that commenced prior to 2008 or the effectivity of the 2008 MORPHE.

To further illustrate, a full-time faculty, by default, is given a probationary status unless: (1) the employer decides to cut short the probationary period for causes provided under the law; or (2) said faculty is hired merely as a substitute of a permanent faculty who is on leave.[47] On the other hand, a part-time faculty can never be a probationary employee.

Consequently, if a faculty is not deemed probationary, he or she is considered a fixed-term employee.

3. Fixed-term

The validity of fixed-term employment contracts for teachers was upheld by this Court as early as 1990 in the oft-cited case of *Brent School, Inc. v. RONALDA ZAMORA*[48] provided that:

(1) the 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; and (2) 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.[49]

In *Mercado*, the Court also enunciated the following on the nature of a fixed-term employment in contrast to probationary employment:

To highlight what we mean by a fixed-term contract specifically used for the fixed term it offers, a replacement teacher, for example, may be contracted for a period of one year to temporarily take the place of a permanent teacher on a one-year study leave. The expiration of the replacement teachers contracted term, under the circumstances, leads to no probationary status implications as she was never employed on probationary basis; her employment is for a specific purpose with particular focus on the term and with every intent to end her teaching relationship with the school upon expiration of this term.[50] (Emphasis supplied; underscoring ours)

In all, under a fixed-term employment, the employer-employee relationship is severed upon the expiration of the term or period stated under the contract without the necessity of any notice to the employee.[51] Non-renewal of the contract, by no means, equate to dismissal. In other words, there is no security of tenure in a fixed-term employment.

As such, the practice of hiring teachers per semester or school year by educational institutions is generally governed by the rules on fixed-term employment unless the circumstances provide for either a probationary or a regular employment status.

To recapitulate, since a part-time faculty can neither attain a probationary nor regular status due to lack of all the academic qualifications, the only conclusion therefore is that a part-time faculty will always be a fixed-term employee.

Applying the yardsticks or guidelines as thoroughly discussed above, the petitioners in this case are clearly part-time faculty with a fixed-term status. First, they were hired on a semestral basis. Second, they do not possess the required master's degrees. In fact, their failure to obtain the said degrees is the same reason why they cannot attain the status of probationary employees even for the past couple of years that they served the STI. For *Garcera*, however, she would have been considered a full-time faculty with a probationary status if she signed her respective job offer as such. Finally, there is no showing that the terms of contracts under which petitioners served as faculty in STI were illegal according to the criteria set in *Brent*.

The Court also takes note of the allegation by the petitioners that the two-year compliance program was not presented nor included in their job offers by the respondents. The said allegation, being factual in nature, requires this Court to examine evidence adduced in the case for the purpose of ascertaining the truth of the same. Again, the Court generally does not entertain question of facts in a Rule 45 Petition.

Nonetheless, even granting that the addendum was not present in the job offers, We reiterate the rule that under a fixed-term employment contract, nothing binds the parties to one another after the expiration of the term of the contract. Thus, STI was not obliged to offer the said compliance program to the petitioners. Further, to Our mind, if indeed the addendum is material to this case, the petitioners should have communicated their interest to avail the same to STI. No allegation to such effect was made by the petitioners.

Petitioners' allegation of bad faith that would justify an award of damages is also bereft of legal basis. STI has the right to hire replacement faculty in light of the petitioners' refusal to be hired. Petitioners left respondents with two options for the continuity of their institution's operations – either they give in to petitioners' demands or hire new faculty. The former is tantamount to violating the law. Thus, bad faith cannot be imputed to the parties who

merely chose to abide by the law.

On a final note, this does not mean that the Court countenance illegal acts of STI. We are constrained to rule in favor of the respondents as there is no relief for petitioners under the law. Anent the respondents being scathe-free, as aptly stated by Justice Del Castillo in Son:

xxx The fact that government has not cracked down on violators, or that it chose not to strictly implement the provision, does not erase the violations committed by erring educational institutions, including the parties herein: it simply means that government will not punish these violations for the meantime. The parties cannot escape its concomitant effects, nonetheless. And if respondents knew the overwhelming importance of the said provision and the public interest involved – as they now fiercely advocate to their favor – they should have complied with the same as soon as it was promulgated.[52]

WHEREFORE, the Petition is hereby DENIED. The November 9, 2016 Decision and the June 30, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 134584 are hereby AFFIRMED.

SO ORDERED.

Bersamin,[*] (Acting Chairperson), Del Castillo, Jardeleza, and Gesmundo,**] JJ., concur.

[*] Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

[**] Designated Additional Member per Special Order No. 2607-A dated October 24, 2018.

[1] Penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles. Rollo, pp. 39-50.

[2] Id. at 52-53.

[3] Id. at 40.

[4] Id.

[5] Id.

[6] Id. at 41.

[7] Id.

[8] Id.

[9] Id.

[10] Id. at 41-42.

[11] Id. at 287-289.

[12] Id.

[13] Id. at 42 and 290.

[14] Id. at 42.

[15] Id. at 42-43.

[16] Id. at 82.

- [17] Id. at 62-75.
- [18] Id. at 77-84.
- [19] Id. at 83-84.
- [20] Id. at 80-81.
- [21] Id. at 86-95.
- [22] 702 Phil. 191 (2013).
- [23] Rollo, pp. 39-50.
- [24] De La Salle Araneta University, Inc. v. Dr. Eloisa G. Magdurulang, G.R. No. 224319, November 20, 2017.
- [25] Id.
- [26] Rollo, p. 46.
- [27] See Reyes v. Lim, 456 Phil. 1 (2003).
- [28] PTA of St. Mathew Christian Academy, et al. v. The Metropolitan Bank and Trust Co., 627 Phil. 669, 690 (2010).
- [29] G.R. No. 211273, April 18, 2018.
- [30] Id.
- [31] Id.
- [32] Rollo, pp. 380-401.
- [33] Id. at 391.
- [34] Villa v. NLRC, 348 Phil. 116, 140 (1998).
- [35] Rollo, p. 68.
- [36] Department of Education, Culture and Sports Order No. 92, S. 1992 (10 August 1992).
- [37] Id.
- [38] See Son v. University of Santo Tomas, supra note 29.
- [39] 513 Phil. 329 (2005).
- [40] Id.
- [41] 632 Phil. 228 (2010).
- [42] Id.
- [43] Id. at 253-257.
- [44] Manual of Regulations for Private Higher Education of 2008 (MORPHE).
- [45] Cebu Marine Beach Resort v. National Labor Relations Commission, 460 Phil. 301 (2003).
- [46] G. R. No. 224319, November 20, 2017.

[47] Mercado v. AMA Computer College-Parañaque City, Inc., supra note 41.

[48] 60 Phil. 747 (1990).

[49] Id. at 763.

[50] Supra note 41 at 258.

[51] Id.

[52] Son v. University of Santo Tomas, supra note 29.

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