

**MARIWASA MANUFACTURING, INC., AND ANGEL T. DAZO,
PETITIONERS, VS. HON. VICENTE LEOGARDO, JR., IN HIS CAPACITY
AS DEPUTY MINISTER OF MINISTRY OF LABOR AND EMPLOYMENT,
AND JOAQUIN...**

G.R. No. 74246. January 26, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

There is no dispute about the facts in this case, and the only question for the Court is whether or not, Article 282 of the Labor Code notwithstanding, probationary employment may validly be extended beyond the prescribed six-month period by agreement of the employer and the employee.

Private respondent Joaquin A. Dequila (or Dequilla) was hired on probation by petitioner Mariwasa Manufacturing, Inc. (hereafter, Mariwasa only) as a general utility worker on January 10, 1979. Upon the expiration of the probationary period of six months, Dequila was informed by his employer that his work had proved unsatisfactory and had failed to meet the required standards. To give him a chance to improve his performance and qualify for regular employment, instead of dispensing with his services then and there, with his written consent Mariwasa extended his probation period for another three months from July 10 to October 9, 1979. His performance, however, did not improve and on that account Mariwasa terminated his employment at the end of the extended period.[1]

Dequila thereupon filed with the Ministry of Labor against Mariwasa and its Vice-President for Administration, Angel T. Dazo, a complaint for illegal dismissal and violation of Presidential Decrees Nos. 928 and 1389.[2] His complaint was dismissed after hearing by Director Francisco L. Estrella, Director of the Ministry's National Capital Region, who ruled that the termination of Dequila's employment was in the circumstances justified and rejected his money claims for insufficiency of evidence.[3] On appeal to the Office of the Minister, however, said disposition was reversed. Respondent Deputy Minister Vicente Leogardo, Jr. held that Dequila was already a regular employee at the time of his dismissal, therefore, could not have been lawfully dismissed for failure to meet company standards as a probationary worker. He was ordered reinstated to his former position without loss of seniority and with full back wages from the date of his dismissal until actually reinstated.[4] This last order appears later to have been amended so as to direct payment of Dequila's back wages from the date of his dismissal to December 20, 1982 only.[5]

Mariwasa and Dazo, now petitioners, thereafter besought this Court to review Hon. Leogardo's decision on certiorari and prohibition, urging its reversal for having been rendered with grave abuse of discretion and/or without or in excess of jurisdiction.[6]

The petition, as well as the parties' comments subsequently submitted all underscore the fact that the threshold issue here is, as first above stated, the legal one of whether employer and employee may by agreement extend the probationary period of employment beyond the six months prescribed in Art. 282 of the Labor Code, which

provides that:

"Art. 282. – 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."

The Court agrees with the Solicitor General, who takes the same position as the petitioners, that such an extension may lawfully be covenanted, notwithstanding the seemingly restrictive language of the cited provision. *Buiser vs. Leogardo, Jr.*[7] recognized agreements stipulating longer probationary periods as constituting lawful exceptions to the statutory prescription limiting such periods to six months, when it upheld as valid an employment contract between an employer and two of its employees that provided for an eighteen-month probation period. This Court there held:

"It is petitioners' submission that probationary employment cannot exceed six (6) months, the only exception being apprenticeship and learnership agreements as provided in the Labor Code; that the Policy Instruction of the Minister of Labor and Employment nor any agreement of the parties could prevail over this mandatory requirement of the law; that this six months prescription of the Labor Code was mandated to give further efficacy to the constitutionally-guaranteed security of tenure of workers; and that the law does not allow any discretion on the part of the Minister of Labor and Employment to extend the probationary period for a longer period except in the aforecited instances. Finally, petitioners maintain that since they are regular employees, they can only be removed or dismissed for any of the just and valid causes enumerated under Article 283 of the Labor Code.

"We reject petitioners' contentions. They have no basis in law.

"Generally, the probationary period of employment is limited to six (6) months. The exception to this general rule is when the parties to an employment contract may agree otherwise, such as when the same is established by company policy or when the same is required by the nature of work to be performed by the employee. In the latter case, there is recognition of the exercise of managerial prerogatives in requiring a longer period of probationary employment, such as in the present case where the probationary period was set for eighteen (18) months, i.e. from May, 1980 to October, 1981 inclusive, especially where the employee must learn a particular kind of work such as selling, or when the job requires certain qualifications, skills, experience or training.

"xxx xxx xxx.

"We, therefore, hold and rule that the probationary employment of petitioners set to eighteen (18) months is legal and valid and that the Regional Director and the Deputy Minister of Labor and Employment committed no abuse of discretion in ruling accordingly."

The single difference between *Buiser* and the present case: that in the former involved an eighteen-month probationary period stipulated in the original contract of employment, whereas the latter refers to an extension agreed upon at or prior to the expiration of the statutory six-month period, is hardly such as to warrant or even suggest a different ruling here. In both cases the parties' agreements in fact resulted in extensions of the period prescribed by law. That in this case the inability of the probationer to make the grade became apparent only at or about the end of the six-month period, hence an extension could not have been pre-arranged as was done in *Buiser* assumes no adverse significance, given the lack, as pointed out by the Solicitor General, of any indication that the extension to which *Dequila* gave his agreement was a mere stratagem of petitioners to avoid the legal consequences of a probationary period satisfactorily completed.

For aught that appears of record, the extension of *Dequila's* probation was *ex gratia*, an act of liberality on the part

of his employer affording him a second chance to make good after having initially failed to prove his worth as an employee. Such an act cannot now unjustly be turned against said employer's account to compel it to keep on its payroll one who could not perform according to its work standards. The law, surely, was never meant to produce such an inequitable result.

By voluntarily agreeing to an extension of the probationary period, Dequila in effect waived any benefit attaching to the completion of said period if he still failed to make the grade during the period of extension. The Court finds nothing in the law which by any fair interpretation prohibits such a waiver. And no public policy protecting the employee and the security of his tenure is served by proscribing voluntary agreements which, by reasonably extending the period of probation, actually improve and further a probationary employee's prospects of demonstrating his fitness for regular employment.

Having reached the foregoing conclusions, the Court finds it unnecessary to consider and pass upon the additional issue raised in the Supplemental Petition[8] that the back wages adjudged in favor of private respondent Dequila were erroneously computed.

WHEREFORE, the petition is granted. The orders of the public respondent complained of are reversed and set aside. Private respondent's complaint against petitioners for illegal dismissal and violation of Presidential Decrees 928 and 1389 is dismissed for lack of merit, without pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 5, 11, 23

[2] Case No. NCR-STF-10-6282-79

[3] Rollo, pp. 14-15

[4] Id., pp. 11-12

[5] Id., p. 13

[6] Id., pp. 2-10

[7] 131 SCRA, 151, 156 (July 31 1984)

[8] Rollo, pp. 46-53

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