

SOPHIA ALCUAZ, MA. CECILIA ALIN-DAYU, BERNADETTE ANG, IRNA ANONAS, MA. REMEDIOS BALTAZAR, CORAZON BUNDOC, JOHN CARMONA, ANNA SHEILA DINOSO, RAFAEL ENCARNACION, ANNALIZA EVIDENTE...

G.R. No. 76353. September 29, 1989

Ponente: PARAS, J.

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PARAS, J.:

On May 2, 1988, this Court through its Second Division rendered a Decision in the instant case which prodded the Intervenor Union (hereinafter referred to as the Union) to file a motion for reconsideration. Its argument hinges on the pronouncement that -

"x x x. Likewise, it is provided in the Manual, that the "written con-tracts" required for college teachers are for one semester. It is thus evi-dent that after the close of the first semester, the PSBA-QC no longer ha any existing contract either with the students or with intervening teachers. Such being the case, the charge of denial of due process is untenable. It is time-honored principle that con-tracts are respected as the law between the contracting parties. x x x" (p. 12, Decision, underscoring supplied). (p. 874-875, Rollo)

with the allegedly inevitable consequence of extenuating the pernicious practice of management to arbitrarily and wantonly terminate teachers simply because their contracts of employment have already lapsed.

The motion likewise points out the fact that two of the faculty members, namely Mr. Asser (Bong) Tamayo, and Mr. Rene Encarnacion, supposedly found guilty by the Investigating Committee headed by Mr. Antonio M. Magtalas (p. 342, Rolo), had been issued permanent appointments (not mere temporary contracts) by no less than the President of the School himself. The appointment of Mr. Asser (Bong) Tamayo dated August 9, 1986 (p. 887, Rollo) can attest to this claim.

It is on the basis of the foregoing that We hereby amend Our previous statements on the matter.

In a recent Decision,[1] this Court had the opportunity to quite emphatically enunciate the precept that full-time teachers who have rendered three (3) years of satisfactory service shall be considered permanent (par. 75 of the Manual of Regulations for Private Schools). Thus, having attained a permanent status, they cannot be removed from office except for just cause and after due process.

Now applying the same principle in the case at bar, Mr. Asser (Bong) Tamayo having stayed in the Philippine School of Business Administration, Quezon City Branch (PSBA, for brevity) for three and one-half (3½) years (in a full-time capacity) may be deemed a permanent faculty member provided, of course, the services rendered have been satisfactory to the school. However, because the investigation showed that Mr. Tamayo had participated in the unlawful demonstration, his services cannot be deemed satisfactory.

In the case of Mr. Rene Encarnacion, and Mr. Severino Cortes, Jr. who taught in PSBA for two and one-half (2½) years and one and one-half (1½) years respectively, to them a permanent status cannot be accorded for failure to

meet the minimum requirement of three (3) years set by the aforementioned Manual of Regulations. Of equal importance, at this point, is the fact that the letter of appointment had been extended only to Mr. Tamayo and not to Mr. Encarnacion, neither to Mr. Cortes, Jr.

WHEREFORE, for the reasons adverted to hereinabove, the motion for reconsideration, except insofar as We have made the aforementioned clarificatory statements about the tenure of full-time teachers and professors, is hereby DENIED.

In conclusion, We wish to reiterate that while We value the right of students to complete their education in the school or university of their choice, and while We fully respect their right to resort to rallies and demonstrations for the redress of their grievances and as a part of their freedom of speech and their right to assemble, still such rallies, demonstrations, and assemblies must always be conducted peacefully, and without resort to intimidation, coercion, or violence. Academic freedom in all its forms, demands the full display of discipline. To hold otherwise would be to subvert freedom into degenerate license.

SO ORDERED.

Gancayco, Padilla, Bidin, Griño-Aquino, and Medialdea, JJ., concur.

Fernan, C.J., Narvasa, and Feliciano, JJ., join in Mme. Justice Cortes' concurring and dissenting opinion.

Melencio-Herrera, J., except for the general statement that students' enrollment is limited to per semester, I concur.

Gutierrez, Jr., J., in the result.

Cruz, J., see dissent.

Sarmiento, J., I dissent. Please see dissenting opinion.

Cortes, J., concurring and dissenting in a separate opinion.

Regalado, J., no part. Did not participate in deliberations.

[1] Labajo, et al. v. Alejandro, et al., G.R. NO. 80383, Sept. 26, 1988

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CONCURRING AND DISSENTING OPINION

CORTES, J.:

I concur with the majority insofar as it disposes of the motion for reconsideration filed by the teachers, in view of the decision of the Court in *Escudero v. Office of the President*, G.R. No. 57822, April 26, 1989, which recognized and applied the three-year probationary period for teachers as provided in the Manual of Regulations for Private Schools.

However, I find that the majority has failed to fully appreciate the nature of the relation between the student and his school and to rectify the doctrinal error in the decision. The public interest attached to education, owing to the Constitution's express mandate for the State to protect and promote the right of all citizens to quality education and to exercise reasonable supervision and regulation over all educational institutions [Art. XIV, Secs. 1 and 4(1)], prevents one from viewing the relation between the student and the school as a simple contract with a term of one semester. By its nature, the "contract" cannot be terminated by the school on the ground of expiration of

the term, i.e., the end of the semester for which the student is enrolled.

The majority acknowledges by way of obiter dictum, after the damage to the students has been done, that "We value the right of students to complete their education in the school or university of their choice . . ." However, this expression of sentiment does not effect the necessary reversal of the law of the case as far as the students are concerned. As stated earlier, neither does it reverse the erroneous doctrine enunciated in the decision.

I also find it necessary to bring to mind, as Mr. Justice Sarmiento has done, that we had already recognized, in the landmark case of *Malabanan v. Ramento*, G.R. No. 62270, May 21, 1984, 129 SCRA 359, the right of students to peaceably assemble within the premises of their school and to air their grievances on matters that affect their education, subject to reasonable limitations as to time and place. And even the recognition of the right to assembly is nothing new, having been in our casebooks since the turn of the century. *Malabanan* also told us that the school is not entirely without power to discipline students for misconduct in the course of the exercise of these rights. If there be any infractions of reasonable rules established by the school or agreed upon by the school and the students, the school may discipline the erring students, but the penalty must be commensurate to the violation. Hence, in *Malabanan*, the penalty of suspension of one year imposed on those who led the rally that resulted in the disruption of classes because of the noise was reduced to suspension for one week. I am of the view that the majority's disposition of the present case, as to the students, which sanctioned the school's stand of refusing to allow re-enrolment of some of the students under the guise of expiration of contract and, subsequently "academic deficiency," goes against the very grain of the rule that the Court, sitting en banc, had established in *Malabanan* that while the authority of the schools over the conduct of their students is recognized, it cannot go so far as to be violative of constitutional safeguards.

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DISSENTING OPINION

CRUZ, J.:

Like Mr. Justice Sarmiento, I am also disturbed by the ruling of the majority sustaining the disciplinary action taken against the students for what I consider a valid exercise of their freedom of expression. The circumstance that the demonstrations were attended by some disorder is not in my view sufficient justification for the curtailment of their right, much less for their punishment. And I do not agree either that the sanctions may be sustained because some of the students were academically deficient, for the truth is that they were denied re-enrollment not because of such deficiency but because of the demonstrations. Surely, freedom of expression is not only for the intelligent.

I also have my misgivings about the ruling of the Court that a student's enrollment is from semester to semester and may be terminated at will by the school after each period. I submit that when a student is enrolled for a particular course, the implicit understanding is that he is entitled to remain in the school until he graduates, subject only to the usual academic, financial and other reasonable requirements.

For these reasons, I must also dissent.

Alcuaz vs PSBA : 76353 : September 29, 1989 : J. Sarmiento : En Banc : Dissenting Opinion 109 Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes;

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DISSENTING OPINION

SARMIENTO, J.:

I reiterate in the strongest terms possible, my dissent in the Decision of May 2, 1988. Let it also be attached and incorporated by reference hereto.

In my opinion, the majority has ignored, by inadvertence or design, the constitutional underpinnings supporting the case.

I also hold as untenable, sarcastic, and condescending what would come down, to all intents and purposes, as the disposition of the motion for reconsideration:

In conclusion, We wish to reiterate that while We value the right of students to complete their education in the school or university of their choice, and while We fully respect their right to resort to rallies and demonstrations for the redress of their grievances and as a part of their freedom of speech and their right to assemble, still such rallies, demonstrations, and assemblies must always be conducted peacefully, and without resort to intimidation, coercion, or violence. Academic freedom in all its forms, demands the full display of discipline. To hold otherwise would be to subvert freedom into degenerate license.[1]

The question, precisely, is whether or not the "rallies, demonstrations, and assemblies"[2] had been conducted with "resort to intimidation, coercion, or violence." [3] The majority would have it, so it appears from the Resolution and so I would make it out therefrom, that the fact alone that the petitioning students had held the questioned gathering en masse, they, ergo, had been guilty of "intimidation, coercion, or violence." [4] In my brethren's disposition of May 2, 1988, reference was made on alleged "noisy demonstrations" [5] -- but that was all. There was no mention, indeed, any evidence, of "intimidation, coercion, or violence" [6] that would warrant a judicial rebuke.

In my dissent (on the main Decision), I alluded to two cases, both landmark in character: *Malabanan v. Ramento* [7] and *U.S. vs. Apurado*. [8] I turn to *Ramento*:

x x x If in the course of such demonstration with an enthusiastic audience goading them on, utterances, extremely critical, at times even vitriolic, were let loose, that is quite understandable. Student leaders are hardly the timid, diffident-types. They would be ineffective if during a rally they speak in the guarded and judicious language of the academe. At any rate, even a sympathetic audience is not disposed to accord full credence to their fiery exhortations. They take into account the excitement of the occasion, the propensity of speakers to exaggerate, the exuberance of youth. They may give the speakers the benefit of their applause, but with the activity taking place in the school premises and during the daytime, no clear and present danger of public disorder is discernible. [9]

I also advert to *Apurado*:

It is rather expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers. But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as seditious and tumultuous rising against the authorities, then the right to assemble and to petition for redress of grievances would become a delusion and a snare and the attempt to exercise it on

the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest and most unmerited punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities. If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising.[10]

The foregoing are principles well-entrenched in the annals of Philippine jurisprudence. The instant Resolution, and much to my regret, undoes all that.

It also undoes what Ramento has so eloquently written:

8. It does not follow, however, that petitioners can be totally absolved for the events that transpired. Admittedly, there was a violation of the terms of the permit. The rally was held at a place other than that specified, in the second floor lobby, rather than the basketball court, of the VMAS building of the University. Moreover, it was continued longer than the period allowed. According to the decision of respondent Ramento, the "concerted activity [referring to such assembly] went on until 5:30 p.m." Private respondents could thus, take disciplinary action. On those facts, however, an admonition, even a censure -- certainly not a suspension -- could be the appropriate penalty. Private respondents could and did take umbrage at the fact that in view of such infraction -- considering the places where and the time when the demonstration took place -- there was a disruption of the classes and stoppage of work of the non-academic personnel. They would not be unjustified then if they did take a much more serious view of the matter. Even then a one-year period of suspension is much too severe. While the discretion of both respondent University and respondent Ramento is recognized, the rule of reason, the dictate of fairness calls for a much lesser penalty. If the concept of proportionality between the offense committed and the sanction imposed is not followed, an element of arbitrariness intrudes. That would give rise to a due process question. To avoid this constitutional objection, it is the holding of this Court that a one-week suspension would be punishment enough.[11]

I find disturbing, finally, the indifference, if carelessness, at how my colleagues would so gruffly dispose of the intervenors' case. It is true that under the Manual of Regulations for Private Schools instructors enjoy a three-year probation, upon completion of which, they acquire a security of tenure, for which they may not be - removed unless for just cause. In the case of the intervenor, Asser Tamayo, the majority admits that he has completed three and one-half years, and therefore, has acquired permanency in office. The catch, however, is that:

However, because the investigation showed that Mr. Tamayo had participated in the unlawful demonstration, his services cannot be deemed satisfactory.[12]

What is plain is that we are here depriving a citizen of what, in all probability, is his sole bread and butter. What is also clear is that we are depriving him-of livelihood because he "had participated in the unlawful [?] demonstration." [13] What is evident to me, finally, is that by a stroke of the pen, we would have, in all likelihood, punished him for exercising his constitutional right of free expression and peaceable assembly.

As I indicated, I agree that probation lasts three years, under the Manual of Regulations for Private Schools. I do not agree, however, that during that period, schools are free to fire probationers and hire replacements, unless for cause. It is only upon the expiration of the period that the college is at liberty to determine appointing them or looking elsewhere to fill the job.[14]

Apparently, these are the straits in which instructor-petitioner-Rene (Rafael) Encarnacion and intervenor Severino Cortes, Jr. had found themselves. I hold, accordingly, that they are entitled to reinstatement barring the existence of just causes. And I find none here.

Accordingly, I vote to grant reconsideration.

[1] Alcuaz, et al. v. PSBA Q.C., 3-4.

[2] Supra, 3.

[3] Supra, 4.

[4] Supra.

[5] Alcuaz, et al. v. PSBA Q.C., G.R. No. 76353, May 2, 1988, 14.

[6] Alcuaz, et al. v. PSBA Q.C., supra, 4.

[7] No. 62270, May 21, 1984, 129 SCRA 359.

[8] 7 Phil. 422 (1907).

[9] Malabanan v. Ramento, supra, 369.

[10] U.S. v. Apurado, supra, 426.

[11] Malabanan v. Ramento, supra, 371.

[12] Alcuaz, supra, 3.

[13] Supra.

[14] See Biboso v. Victorias Milling Company, Inc., No. L-44360, March 31, 1977, 76 SCRA 250.

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