

SAN SEBASTIAN COLLEGE, PETITIONER, VS. COURT OF APPEALS AND REYNALDO BORJA Y TORRES, RESPONDENTS.

G.R. No. 84401. May 15, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for review on certiorari seeks to set aside the decision and resolution of the Court of Appeals dated March 8, 1988 and July 6, 1988, respectively, affirming with modification the lower court's decision dated March 12, 1982, only with respect to the amount of moral damages which was reduced from P50,000.00 to P25,000.00.

The trial court found the following undisputed facts:

- "1. Reynaldo Borja y Torres, who is assisted in this complaint (for damages) by his parents, was enrolled in defendant's institution as second year high school (student) day session, in the school year 1979-80;
- "2. At the end of the school year he failed in 3 academic disciplines - Mathematics, Filipino and Practical Arts. His failure in the last subject was reconsidered, to make hi(m) pass, under such circumstances as the parties will prove in the trial;
- "3. That the said Reynaldo Borja y Torres took the 1980 summer classes at the National University in the two subjects he failed and obtained passing grades thereat;
- "4. That attempts on the part of the father-parent of the plaintiff to enroll him for the school year 1980-81 failed because the defendant refused and still refuses to admit him." (Records, p. 232)

The parties, however, differ in their version with regard to the attendant circumstances surrounding the change of Reynaldo Borja's (Reynaldo) failing grade in Practical Arts II and the ensuing refusal of petitioner to admit him as a regular third year student in petitioner's high school department.

Petitioner claims that under its Rules of Promotion (Exh. L-2, p. 16), a student who fails in subjects equivalent to three units shall be required to repeat the whole year; that cognizant of such rule, Reynaldo's parents manifested before the petitioner their intention to transfer their son to another school to avoid a repetition of the second year course and sought the reconsideration of Reynaldo's grade in Practical Arts II to enable him not only to retake the other two failed subjects during summer since a high school student could only take two subjects in summer school but also to qualify for enrollment in a regular third year level in another school; that petitioner acceded to the parent's request provided Reynaldo's father would submit to the petitioner a written request for reconsideration of the grade in said subject and at the same time, he would likewise indicate therein his intention to transfer his son to another school; that petitioner allowed Reynaldo to apply for a summer permit in order that he would not be late for his summer classes at National University on condition that such permit would only be given upon the filing of the letter of Reynaldo's father; that Reynaldo's father neither submitted the letter as previously agreed upon nor went back to the registrar to get the summer permit; that Reynaldo's failure to obtain prior permission from petitioner to enroll for summer classes violated Department Order No. 8 of the Ministry of Education and

Culture which directed inter alia that "work done by students in summer classes not duly authorized shall not be credited;" that pursuant to such directive, Reynaldo's failing grades remained unremoved; that he is not qualified to be admitted in petitioner's high school department; and that even assuming that Reynaldo failed in only two subjects, petitioner could still refuse to admit Reynaldo in the exercise of its academic freedom.

Upon the other hand, the private respondent avers that Reynaldo's grade was reconsidered to correct an injustice. Reynaldo's father testified that he complained to Mr. Manique (sometimes spelled in the other TSN as Mr. Manite), Practical Arts II teacher, about his son's grade; that Mr. Manique allegedly apologized to him for the said grade and claimed that he was pressured by another teacher, Miss Permejo, to give the grade to his son in order that Reynaldo would be kicked out of the school; that in order that Reynaldo's father would not complain to the school authorities, Mr. Manique volunteered to right the wrong he had done by accompanying the former to the Asst. Principal, Mr. Avelino, to request for a change in grade; that Mr. Manique and the Asst. Principal talked in private; that, thereafter, the grade of Reynaldo was reconsidered (TSN, August 4, 1981, pp. 27-30); that Reynaldo's father wanted Mr. Avelino to change the grades in the two other subjects but the latter instead advised him to let Reynaldo take the summer course so that he could be admitted in the next school year as a regular third year student at petitioner (TSN. July 6, 1981, p. 18).

On March 12, 1982, the trial court issued a decision, the dispositive portion of which reads:

"FOR ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiff and against the defendant as follows:

(1)

Ordering the defendant to release to the plaintiff his school credentials, such as his transcript of records, certificate of good moral character and all other papers and documents necessary for him to transfer and be admitted to another school;

(2)

Ordering the defendant to pay unto the plaintiff the sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages, another sum of TEN THOUSAND (P10,000.00) PESOS as exemplary damages and the further sum of FIFTEEN THOUSAND (P15,000.00) PESOS, plus the costs of suit.

SO ORDERED." (pp. 389-390, Records)

As earlier stated, the aforesaid judgment was affirmed with modification by the appellate Court in a decision dated March 8, 1988.

Petitioner now comes to Us with the following assignment of errors:

"I.

"THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION BY ARBITRARILY AND OPPRESSIVELY DENYING THE PETITIONER A FAIR CHANCE TO PRESENT EVIDENCE AGAINST PRIVATE RESPONDENT'S TESTIMONIAL EVIDENCE.

"II

"GRANTING ARGUENDO, THAT THE TRIAL COURT'S ACTUATIONS WERE PROPER, UPON THE FACTS OF THE CASE, PRIVATE RESPONDENT'S FAILURE IN THREE SUBJECTS IS AN ADMITTED

FACT, AND HENCE HE WAS NOT ENTITLED TO ENROLLMENT IN PETITIONER'S SCHOOL.

"III

"FURTHER GRANTING ARGUENDO THAT THE TRIAL COURT'S FINDING THAT ONLY TWO SUBJECTS WERE FAILED AND THE THIRD SUBJECT WHICH WAS FAILED BUT SUBSEQUENTLY RECONSIDERED ARE CORRECT, THE SCHOOL MAY STILL REFUSE ENROLLMENT IN THE EXERCISE OF ITS ACADEMIC FREEDOM TO CHOOSE ITS STUDENTS AS LONG AS THERE ARE STILL VALID REASONS AND THE ACT IS NOT CAPRICIOUS AND ARBITRARY.

"IV

"FINALLY GRANTING ARGUENDO THAT THE SCHOOL ERRED IN ITS JUDGMENT IN REFUSING ENROLLMENT TO PRIVATE RESPONDENT, IN THE ABSENCE OF PREPONDERANT EVIDENCE OF BAD FAITH, THE GRANT OF MORAL AND EXEMPLARY DAMAGES, ATTORNEYS FEES AND COSTS TO PRIVATE RESPONDENT IS UNFOUNDED." (pp. 9-10, Rollo)

Except for the first assignment of error, all the issues raised can be summed up in one basic question, i.e. whether or not the petitioner is liable in damages for its refusal to admit the complainant as a regular third year high school student.

In his first assignment of error, counsel for petitioner impugned the Orders of the trial judge which denied his motion to re-open the case and the latter Order which granted his motion for reconsideration of the denial Order subject to certain conditions as tainted with grave abuse of discretion.

While it was true that the trial judge's actuation appeared to be harsh, the same was not without reason. The undisputed circumstances behind the trial judge's directives negate the charge that such Orders were issued with grave abuse of discretion. We find that in the nearing of July 13, 1981, the counsel for petitioner (defendant) was present but counsel for the private respondent (plaintiff) failed to appear because he was taken ill. Although the absent counsel did not submit a medical certificate that day, he, nevertheless, sent his representative to inform the court of his absence. He also filed a verified medical certificate the following day. In the scheduled hearing of August 4, 1981, the counsel for the private respondent was present but the counsel for petitioner was not around. The latter neither submitted a motion for postponement nor sent someone from his law firm to the trial. When the case was called for the second time that day, the counsel for the private respondent moved for the reception of evidence ex-parte which the trial court granted. On August 18, 1981, the counsel for the petitioner moved to re-open the case and to allow him to cross-examine the respondent's witness. The counsel for the private respondent opposed the said motion on the grounds that (1) the motion bore no affidavit of merit; (2) the attached medical certificate was unverified; and that while the medical certificate stated that the representative counsel for petitioner was treated for "acute otitis media and acute prevalent sinusitis" on August 4, 1981 and was advised to rest that day, yet, his motion was filed 14 days later. Subsequently, the trial court denied the motion to re-open. Counsel for the petitioner then moved to reconsider the denial order and attached thereto was a verified medical certificate. In the said motion, he claimed that he was ill from the 4th to the 18th of August. However, this claim was refuted by the opposing counsel who contended that he saw the aforesaid counsel in the City Hall of Manila on August 11, 1981 at 9:00 o'clock a.m. The Counsel for petitioner did not rebut such contention. Clearly, he lied and trifled with the time of the court for which he ought to be chastised. Thus, the open court order which granted his motion for reconsideration but directed the presentation of the private respondent's witnesses that afternoon. It may be conceded that the directive was beyond human capability considering the limited time. However, he has only himself to blame for his predicament. His lack of probity coupled with his filing of pro-forma motion to re-open would have earned for him the dismissal of such motion were it not for the liberality of the judge. Besides, mere abuse of discretion is not enough. It must be grave abuse of discretion as where the power is

exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law (*Gold City Integrated Port Services, Inc. (INPORT) v. Intermediate Appellate Court*, G.R. Nos. 71771-73, March 31, 1989, 171 SCRA 579). This situation does not obtain in this case.

Coming now to the main issue, We painstakingly reviewed the records of the case and We are constrained to rule for the petitioner.

Generally, We accord utmost respect and great weight to factual findings of the trial court and the Court of Appeals. However, such findings are disregarded if there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted, that, if considered would affect the result of the case (see *Lukban-Ang v. Court of Appeals*, L-40953, April 15, 1988, 160 SCRA 138). This exception applies to the case at bar.

In ruling for the private respondent, the appellate court as well as the trial court relied mainly on the testimony of Reynaldo's father, Maximo Borja which was self-serving and pure hearsay. Consider the following statements:

"Atty. Belisario (counsel for the private respondent)

.....

"Q.

After you showed Mr. Manique the card of Joey and compared with the card of your son did he say something?

"A.

Yes, ma'am.

"Q.

What did he say?

"A.

He said in tagalog, 'pasensiya kana Mr. Borja napaginitan ni Miss Permejo ang anak ninyong si Reynaldo kaya ako ay pinressure niya para maging tatlo ang failing marks ni Reynaldo.'

"Q.

Did Mr. Manique tell you why Miss Permejo wants Reynaldo to fail in three subjects?

"A.

Mr. Manique told me that the purpose is to kick out my son Reynaldo.

"Q.

How did you react to this leverage of Mr. Manique?

"A.

I told him that this arrangement made by them was unfair to my son and that I told him I will bring the matter to the attention of the school authorities.

"Q.

What was Mr. Manique's reply?

"A.

He replied and pleaded, 'pari I can write (sic) the wrong I have done but please, huwag mo na akong idamay.'

"Q.

Is that all that he said?

"A.

Mr. Manique continued further, 'sasamahan kita sa Assistant Principal para mapalitan ang grades ni Reynaldo.'
(TSN, August 4, 1981, pp. 27-29)

and

"Q.

Do you have other reasons why you did not see or talk to Ms. Permejo regarding Mr. Manique's revelation?

"A.

The other reason is Mr. Avelino had cautioned me in this manner, 'mahirap kausapin si Ms. Permejo pag napaginitan ka wala kang laban.'

"Q.

Did you talk to the principal or the assistant principal about Mr. Manique's revelation regarding his being pressured by Ms. Permejo?

"A.

No more, ma'am.

"Q.

Why not?

"A.

For the same reason that he pleaded to me not to involve him." (ibid, pp. 40- 41)

Counsel for the private respondent did not present Mr. Manique who could have attested to the truth of his statements or Miss Permejo who could have shed light to the controversy. We cannot therefore give credit to the above testimonies since the hearsay rule excludes evidence that cannot be tested by cross-examination (People v. Gueron, L-29365, March 25, 1963, 12 SCRA 115).

The appellate court's error became even more manifest when it brushed aside petitioner's objections to Mr. Borja's testimony in this manner:

"x x x. Even if Mr. Manite and Miss Permejo were to give testimony denying plaintiff's imputation of their seemingly irregular participation in causing plaintiff to fail in Practical Arts II, there is a preponderant basis to justify the conclusion that the school officials and teachers of defendant had collaborated to cause the dismissal or dropping of plaintiff from the school but, having been alarmed by the fact that plaintiff's father had discovered the reason for his son's failing grade in said subject, these officials and teachers, on their own, took steps to remedy the predicament in which they may be held answerable for. . . ." (Decision, p. 40, Rollo)

We find that petitioner's rules on promotion explicitly disqualified a student for admission to the next level if he fails in three academic subjects unless he repeats the whole year (Exh. L-2, p. 16). This rule has been submitted to and approved by the Ministry of Education. There is no question that the private respondent failed in three academic subjects. During the trial of this case, petitioner testified that there has been no instance where it has made an exception to the rule or has admitted students who like the private respondent failed in three academic subjects and did not want to repeat the whole year but instead took remedial classes during summer (TSN, August 27, 1981, pp. 78-79). This testimony remained un rebutted by contrary evidence. Given the petitioner's strict adherence to its policy which was stated in the students' report cards for the information of the student body and parents alike (Exh. I-1, p. 12), the aforequoted conclusion of the appellate court was unwarranted. Thus, between the private respondent's uncorroborated accusations and the petitioner's version of the case, We are more inclined to give credence to the latter. In *Borquilla v. Court of Appeals* (L-47286, January 17, 1987, 147 SCRA 9), We said that "(e)vidence to be believed must not only proceed from the mouth of a credible witness, it must be credible in itself -- such as the common experience and observation of mankind can approve as probable under the circumstances."

Moreover, the dropping of the private respondent from the petitioner's roll of students was not done precipitately. Private respondent's grades were of his own making. He failed in Practical Arts because he did not submit a required project. His teacher saw fit to fail him for his non-compliance. At the end of the last grading period, the

Committee on Admission deliberated on the school standing of students who incurred failures in three academic subjects and among them was the private respondent. With regard to the latter, the Committee resolved that he be made to transfer to another school in line with the petitioner's policy. This recommendation was adopted by petitioner. We fail to see any irregularity involved herein. In the absence of substantial evidence showing arbitrariness or malice on the part of the petitioner, We will not disturb its decision. In his concurring opinion in *Garcia v. The Faculty Admission Committee, et al.*, the late Chief Justice Claudio Teehankee supplied the rationale underlying Our attitude towards academic decisions or policies, to wit:

"Only . . . when there is marked arbitrariness, will the courts interfere with the academic judgment of the school faculty and the proper authorities as to the competence and fitness of an applicant for enrollment . . . The courts simply do not have the competence nor inclination to constitute themselves as Admission Committees of the universities and institutions of higher learning and to substitute their judgment for that of the regularly constituted Admission Committees of such educational institutions. Were the courts to do so, they would conceivably be swamped with petitions for admission from the thousands refused admission every year, and next the thousands who flunked and were dropped would also be petitioning the courts for a judicial review of their grades." (G.R. No. L-40779, November 28, 1975, 68 SCRA 277, 289).

While such opinion relates to school of higher learning, by analogy the same could also apply in this case.

In the normal course of things, it would be expected that Reynaldo's parents would take appropriate measures to remedy the plight of their son. With the prospect of a transfer and three academic failures, the chances of Reynaldo to be admitted as a regular third year student in another school was nil. The possibility of being admitted to the petitioner was out of the question because of its policy. The only way to be able to qualify as a regular third year student in another school was to retake these failed subjects in summer. Conformably with human experience and observation, We believe that the verbal agreement made by the parties really took place. The circumstances which led to this agreement were testified to by Mr. Ramon Avelino, Assistant Principal, as follows:

"ATTY. HOEY (counsel for defendant (petitioner))

"Q.

How did you come across this case of the son of Mr. Borja, how was it referred to you?

"A.

It was brought to my attention by Mr. Almero and the group of teachers who gave the boy a grading and asking me if we could approve the request by the parent to have one of the grades reconsidered specifically the grade in practical arts so I have the teacher of Practical Arts called so that I may have to find out whether he is amenable if the boy could submit the project he did not submit earlier and I said that the teacher is doing that in his own free will and if such, I have no objection as long as he will transfer to another school.

"Q.

When?

"A.

In the next school year.

"Q.

Where?

"A.

Considering the request was made because the parents what (sic) him to enroll two remaining school subjects so that he could enroll in the regular third year.

"Q.

Were you in conformity to such (sic)?

"A.

I approved it.

"Q.

Did your superior approved (sic) it?

"A.

When you speak superior (sic) it would be the principal at that time there was none.

"Q.

So you were the one, you were the authority on that matter at that time?

"A.

Yes, sir.

"Q.

Are you aware as to any move by the boy to summer mark?

"A.

I was aware.

"Q.

How were you aware of such move?

"A.

Precisely for the change in grade was made because they wanted to enroll the boy in two units left so that he could enroll as a regular student.

"Q.

Did you come across that request by the boy's father as to cross enroll him?

"A.

That request was made by the parents.

". . . ." (TSN, August 27, 1981, pp.12-15, underlining ours)

As regards the reason for the change of the grade in Practical Arts and not in the other two failed subjects, Mr. Reynaldo Almero, Prefect of Discipline, explained, thus:

"Q.

Do you know why those grades in Pilipino and Mathematics were not reconsidered but the grade in Practical Arts was reconsidered?

"A.

As far as I know sir, they asked for the reconsideration of the Practical Arts because during summer students are allowed to take only two units and practical arts is to be taken the whole day during summer." (ibid, pp. 77-78, underlining ours)

Mr. Almero's statement regarding the set-up of subjects offered in summer for high school was again uncontroverted. This merely confirms Our belief that the agreement reached by the parties was more for the accommodation of Reynaldo's father rather than an alleged cover-up of petitioner's blunder in fixing Reynaldo's grades.

In the light of the foregoing, We find it difficult to sustain the appellate court's ruling. In refusing admission to Reynaldo despite his having passed his summer courses, petitioner was merely consistent in its policy not to admit students who incurred three academic failures unless they repeat the whole year. The fact that one subject was reconsidered or that the failed subjects were successfully hurdled during summer would not entitle Reynaldo to an exception there being no evidence to show that other students with similar circumstances were given that

privilege. Besides, under its rules on promotion, petitioner has made clear that only students who passed their regular load will be prompted to the next higher level (Exh. I-1, Records, p. 16, underlining ours). Reynaldo's passing grades were not achieved during the regular schoolyear. In fact, his grade in Practical Arts was reconsidered merely to accommodate the request of an anxious parent and not for any other reason. In *Magtibay v. Garcia* (L-28971, January 28, 1983, 120 SCRA 370), We held that:

"True, an institution of learning has a contractual obligation to afford its students a fair opportunity to complete the course they seek to pursue. However, when a student . . . fails to maintain the required academic standard, he forfeits his contractual right; and the court should not review the discretion of university authorities."

With this pronouncement, it becomes unnecessary for Us to delve into the validity of Reynaldo's summer schooling or his summer grades inasmuch as these are not the issues in this case.

ACCORDINGLY, the petition is hereby GRANTED and the decision dated March 8, 1988 and the resolution dated July 6, 1988 of the Court of Appeals are hereby REVERSED and SET ASIDE.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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