

COLEGIO SAN AGUSTIN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, CEFERINA J. DIOSANA AND LORELIE H. BELINO, RESPONDENTS.

G.R. No. 87333. September 06, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari seeking to annul the decision of the National Labor Relations Commission (NLRC) dated December 12, 1988, which affirmed with modification the decision of Labor Arbiter Ceferina J. Diosana dated December 29, 1987 and granted the complainant an award of six (6) months backwages.

The antecedent facts are as follows:

Petitioner Colegio San Agustin (CSA) hired the complainant as a grade school classroom teacher on a probationary basis for schoolyear June, 1984 to March, 1985. Her contract was renewed for schoolyears 1985-86 and 1986-87. On March 24, 1987, the petitioner wrote the complainant that "it would be in the best interest of the students and their families that (she) seek(s) employment in another school or business concern for next schoolyear" (Rollo, p. 46). Notwithstanding the said notice, the petitioner still paid the complainant her salary for April 15 to May 15, 1987. On April 6, 1987, complainant wrote the petitioner and sought reconsideration but she received no reply. Thereafter, she filed a complaint for illegal dismissal.

After the parties submitted their position papers, the Labor Arbiter, on December 29, 1987, rendered a decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering respondent Colegio San Agustin to reinstate complainant to her previous position as permanent teacher without loss of seniority rights and with backwages which she would have enjoyed had she been extended a regular employment for the school year 1987-1988.

"SO ORDERED." (Rollo, p. 43)

Petitioner appealed to the NLRC. On December 12, 1988, the Commission affirmed with modification the assailed decision, as follows:

"x x x Thus, complainant-appellee is entitled to regular permanent appointment and be reinstated as such. However, we are not in consonance with the award of full backwages considering the length of pendency of the instant case. Complainant-appellee is entitled to a limited award of six (6) months backwages. (Panay Railway, Inc. vs. NLRC, 137 SCRA 480).

"WHEREFORE, in view of the foregoing, the Decision of December 29, 1987, is hereby MODIFIED as above-indicated.

SO ORDERED." (Rollo, pp. 57-58)

Hence, this recourse.

Petitioner raises the sole issue of whether or not "a school (could) be lawfully force(d) to enter into a contract of teaching employment with a teacher who, after undergoing the usual probation, did not qualify for teaching work." (Rollo, p. 4). It then submits the following assignment of errors for the reversal of questioned decision:

"I

PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION OR ACTED IN EXCESS OF OR WITHOUT JURISDICTION IN RULING AGAINST THE PETITIONER.

"II

PUBLIC RESPONDENTS' QUESTIONED DECISIONS (ANNEXES 'A' AND 'B' HEREOF) ARE FACTUALLY UNFOUNDED, AND CONTRARY TO LAW AND JURISPRUDENCE LAID DOWN BY THIS HONORABLE TRIBUNAL, AND VIOLATIVE OF PETITIONER'S CONSTITUTIONAL RIGHT." (Rollo, p. 12)

The petition has merit.

Article 280 (now Article 281) of the Labor Code provides:

"ART. 280. Probationary employment. — Probationary employment shall not exceed six 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 in 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 Manual of Regulation for Private Schools, on the other hand, reads:

"Full time teachers who have rendered three consecutive years of satisfactory service shall be considered permanent." (Rollo, p. 6)

The Faculty Manual of the petitioner states:

"A Faculty Member is on probation during the first three years of continuous service at the CSA."

* * * * *

"All teachers acquire tenure after three years of continuous service at CSA. A permanent appointment is issued and a contract is signed to this effect by the Office of the Rector."

* * * * *

"Appointments of faculty members on probationary basis expire at the end of every school year unless renewed for another school year." (Rollo, p. 6)

It is undisputed that the complainant was extended a contract of employment as teacher on a probationary basis for schoolyear June 1984 - March 1985. Such contract was renewed for schoolyears 1985-1986 and 1986-1987. Undoubtedly, both parties were fully aware of the expiration of the said contracts. On March 24, 1987, petitioner, through its Rector, wrote the complainant a letter, the full text of which reads:

"Dear Miss Belino:

"After careful consideration of a number of factors already known to you, and after a thorough study of your evaluation for this school year, the administration has decided that it would be in the best interest of the students and their families that you seek employment in another school or business concern for next school

year.

"Much to my regret, I have to communicate to you this decision of the Board, but rest assured that all the possible angles have been looked into.

"Allow me to thank you for the services rendered and to let you know that your efforts are appreciated.

"I hope that your experience in San Agustin has been profitable to you and that spirit of the Agustinian family will remain with you in the future.

"With my regards and best wishes.

(Sgd.) FR. EDUARDO PEREZ, O.S.A.
Rector" (Rollo, pp. 10-11)

Both the Labor Arbiter and the NLRC maintain that the complainant was illegally dismissed because she had already attained the maximum probationary period of three years and therefore, entitled to a regular or permanent appointment as such (NLRC Decision, Rollo, p. 57).

We disagree. The provisions of Article 280 of the Labor Code are clear. It categorically bestows upon a probationary employee a permanent status only when he is allowed to work after the probationary period. As applied to private school teachers, the probationary period is three years as provided in the Manual of Regulations for Private Schools. It must be stressed that the law speaks of three years not three schoolyears. Thus, in *Espiritu Santo Parochial School v. NLRC* (G.R. No. 82325, September 26, 1989, 177 SCRA 802, 807), We declared that:

"x x x (t)he petitioners can not talk of a 'three-year probationary employment expiring each schoolyear.' If it expires per schoolyear, it is not a three-year period." (Italics supplied)

Further, the Faculty Manual of petitioner underscores the completion of three years of continuous service at CSA before a probationary teacher acquires tenure. Hence, the complainant cannot claim any vested right to a permanent appointment since she had not yet achieved the prerequisite three-year period under the Manual of Regulation for Private Schools and the Faculty Manual of petitioner.

While probationary employees do not enjoy permanent status, they are afforded the security of tenure protection of the Constitution. Consequently, they cannot be removed from their positions unless for cause. Such constitutional protection, however, ends upon the expiration of the period stated in their probationary contract of employment (see *Biboso v. Victorias Milling Company*, L-44360, March 31, 1977, 76 SCRA 250). Thereafter, the parties are free to renew the contract or not. In the instant case where the petitioner did not wish to renew the contract of employment for the next schoolyear, the complainant has no ground to protest. She was not illegally dismissed. Her contract merely expired. On this point, the following Court rulings are relevant:

"x x x As probationary and contractual employees, private respondents enjoyed security of tenure, but only to a limited extent — i.e., they remained secure in their employment during the period of time their respective contracts of employment remained in effect. That temporary security of tenure, however, ended the moment their employment contracts expired on 31 March 1985 and petitioners declined to renew the same for the next succeeding school year. Consequently, as petitioners were not under obligation to renew those contracts of employment, the separation of private respondents in this case cannot be said to have been without justifiable cause, much less illegal." (*Labajo v. Alejandro*, G.R. No. 80383, September 26, 1988, 165 SCRA 747, 756)

"In the instant case, the probation period provided is three years covered by three separate written annual contracts. Reyes as a probationary and contractual employee was entitled to security of tenure only during the three year period of her probation and such protection ended the moment her last employment contract expired at the close of schoolyear 1974-75 and she was not extended a renewal of her appointment." (*Escudero v.*

Office of the President of the Philippines, G.R. No. 57822, April 26, 1989, 172 SCRA 794)

Moreover, petitioner's letter dated March 24, 1987 (*supra*, p. 4), could hardly be construed as a letter of dismissal. Conformably with the nature of the contract between them, petitioner simply informed the complainant of the non-renewal of her appointment as teacher at CSA. In the Escudero case (*supra*, p. 6), a similar case which also involves the separation of a probationary employee, We held:

"Reyes' argument is not persuasive. It loses sight of the fact that her employment was probationary, contractual in nature, and one with a definite period. At the expiration of the period stipulated in the contract, her appointment was deemed terminated and the letter informing her of the non-renewal of her contract is not a condition sine qua non before Reyes may be deemed to have ceased in the employ of petitioner UST. The notice is a mere reminder that Reyes' contract of employment was due to expire and that the contract would no longer be renewed. It is not a letter of termination. x x x"

In fine, We hold that the NLRC gravely abused its discretion in finding that the complainant was illegally dismissed, in ordering her reinstatement and in awarding her backwages for six months.

ACCORDINGLY, the petition is hereby GRANTED. The questioned decision of the National Labor Relations Commission is REVERSED and SET ASIDE.

SO ORDERED.

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

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