

**FELISA D. CARANDANG, PETITIONER, VS. HONORABLE CEFERINO E. DULAY, MIRASOL V. CORLETO AND ROBERTO P. TOLENTINO, AS COMMISSIONERS OF THE NATIONAL LABOR RELATIONS COMMISSION, DIOCE...**

*G.R. No. 90492. August 20, 1990*

Ponente: CORTES, J.

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**CORTES, J.:**

Petitioner Felisa D. Carandang challenges the resolution of public respondent NLRC, dismissing her complaint for illegal dismissal thus reversing in toto the decision of the labor arbiter, for being made in grave abuse of discretion.

In 1974, petitioner was hired as high school teacher by the Diocesan Schools of La Union (respondent school) where she taught until 1979. She resigned to take graduate studies, but her plans were delayed by two (2) consecutive childbirths in 1979 and 1980. She finally took masteral subjects in 1984 and except for the thesis requirement, would have completed the two-year course in Human Resources Development and Planning in 1985. In February 7, 1985, she applied for re-employment in respondent school. Her application was acted upon favorably, and she resumed teaching in March 1985. She was appointed as officer-in-charge of the Notre Dame Institute, a diocesan school, with the rank of principal, in addition to her position as teacher, for the schoolyear 1986-87, and again for 1987-88. In 1987, she was issued an "Appointment" by the respondent school. Petitioner continued to hold the post of OIC until she was informed in a letter dated March 25, 1988 signed by the school's director that her "contract" as teacher and OIC will not be renewed after the end of the schoolyear because she failed to pass the evaluation conducted on probationary employees. Aggrieved, petitioner contemplated on taking legal action against respondent school. She deferred such action when she was told by respondents that the matter of her separation will be discussed in a meeting. In the meantime, she resumed work when she was asked to assist in the enrolment of students for the next schoolyear. Respondent school however later informed her that they were willing to employ her only up to July 1988. Petitioner then wrote a letter on May 28, 1988 informing respondent school that she considered the March 25, 1988 letter as their final decision to terminate her.

A complaint for illegal dismissal [NLRC Case No. RAB-I-06-1040-88] was filed before the labor arbiter. Finding the dismissal to be without just cause, the labor arbiter ordered the payment of backwages, separation pay (including in the computation petitioner's service from 1974-79) in lieu of reinstatement, moral and exemplary damages, and attorney's fees. Both parties appealed. Petitioner's partial appeal sought an increase in the award of moral and exemplary damages. Private respondents appealed on the merits. The NLRC reversed the labor arbiter's decision on the ground that petitioner, as a probationary employee, was separated from service well within the three-year evaluation period prescribed under paragraph 75 of the Manual of Regulations for Private Schools for failure to pass the performance evaluation. Hence, this petition.

Private respondents filed their comment on January 6, 1990. On the other hand, the Solicitor General, by motion,

manifested that he could not sustain public respondent's position and had so informed the latter through a letter, and prayed that the Court excuse him from filing a comment and instead allow public respondent through their legal department to do so. The Court granted the motion and ordered public respondent to file its comment. Public respondent submitted its comment on July 10, 1990.

The issue in this case is whether or not there was grave abuse of discretion on the part of public respondent in finding that petitioner was validly separated from service. Ultimately, the resolution of the issue hinges on the nature of petitioner's employment.

After careful consideration of the petition and the annexes thereto and the comments, this Court rules in the affirmative.

Petitioner claimed that, taking together all her years of service in respondent school (including therein her stint from 1974-1979,) she has rendered more than eight (8) years of service and therefore, she is a permanent employee who may be terminated only for the just causes enumerated in the Labor Code. On the other hand, public respondent pointed out that when petitioner agreed to "undergo the usual operational procedure", she bound herself to start from "zero", i.e., as a probationary employee, whose contract respondent school may choose not to renew upon the lapse of the probationary period. Of the same view, private respondents argued that they did not "dismiss" petitioner but merely did not renew her contract as she was hired on probationary basis.

At the outset, it must be stated that, indeed as held by public respondent, at the time petitioner was rehired as teacher by respondent school in 1985, she "had to start from 'zero' experience" and her previous service from 1974-1979 cannot be credited to her. A cursory reading of her application letter sent in February 1985 to Rev. Moises B. Palaroan, Jr. (then officer-in-charge of respondent school) belies the claim that she merely took a leave of absence in 1979. Part of the letter read:

\* \* \*

Please consider me an applicant for any position commensurate to my educational qualifications should a vacancy exist in any of the Diocesan Schools preferably in Notre Dame Institute, Aringay, La Union.

I was once employed in Notre Dame Institute teaching Math I, Math II and CAR from 1974-1979 but I had to resign because my husband's job required me to stay permanently in the city . . .

. . . Should I qualify to your standards (sic), I'm willing to undergo the usual operational procedure.  
[Underscoring supplied].

\* \* \*

It is thus apparent from the foregoing that petitioner in 1985 started out as a probationary employee because she herself admitted that she resigned from respondent school and did not merely take a lengthy six-year leave of absence.

In this light, we proceed to determine whether petitioner was indeed still a probationary employee at the time of separation from service.

Paragraph 75 of the Manual of Regulations of Private Schools provides that "[f]ull-time teachers who have rendered three consecutive years of satisfactory service shall be considered permanent." The three-year period contemplated under this provision is the maximum period that a private school teacher may remain under probationary employment. In other words, under certain conditions, permanent status may be attained in less than three (3) years. Whether or not permanent or regular status had in fact been reached even before the lapse of the three-year period is a matter of proof [Labajo v. Alejandro, G.R. No. 80383, September 26, 1988, 165 SCRA 747:

Escudero v. Office of the President of the Philippines, G.R. No. 57822, April 26, 1989, 172 SCRA 783.] In this case, the terms of the “Appointment” given to petitioner proved that she had already attained permanent status before she was dismissed. A portion of the “Appointment” given to petitioner reads as follows:

\* \* \*

This appointment shall be deemed in full force and subsisting unless expressly terminated by either party for a valid cause or causes and after due process, and approved by the Regional director, DECS, Region I.

(signed)

MSGR. SALVADOR L. LAZO, D.D.

\* \* \*

CONFORME:

(signed)

MRS. FELISA D. CARANDANG

“For permanent employment only

School year 1987-1988” [Underscoring supplied.]

\* \* \*

By the terms expressed in said “appointment”, respondent school unequivocally acknowledged that it considered petitioner part of its regular work force. Private respondents are estopped from claiming otherwise. Furthermore, petitioner was suffered to work beyond the maximum three-year probationary period when she was asked to assist in the enrolment of students for the next semester. All claims to the contrary notwithstanding therefore, the fact remains that petitioner’s status as a permanent employee had clearly been established.

Moreover, as correctly held by the labor arbiter, the grounds given by private respondents for the non-renewal of petitioner’s contract, even if considered as grounds for dismissal, still fail to constitute just cause as contemplated by law. The claims that petitioner failed in the evaluation conducted upon her, that she disregarded the advice on the grading system, that she violated school policies, that she conducted the graduation ceremonies improperly, and even that she took part in the local elections, among others, were found to be totally unsupported by evidence. On the other hand, as observed by the labor arbiter, petitioner was able to substantiate her claim that these charges were at best fabrications to justify a wrongful dismissal.

With respect to petitioner’s prayer for an increase in the labor arbiter’s award of moral and exemplary damages [Ten Thousand Pesos (P10,000.00) and Five Thousand Pesos (P5,000.00) respectively], the Court finds that the award fixed by the labor arbiter is fair and reasonable under the circumstances.

As an employee who was dismissed in violation of the Labor Code [Arts. 277 (b), 279, 282], petitioner is entitled (1) to reinstatement to her former position without loss of seniority rights and (2) to payment of backwages from the time of her illegal dismissal up to actual reinstatement [Santos v. NLRC, G.R. No. 76721, September 21, 1987, 154 SCRA 166.] But in view of the strained relations between the parties however, the Court finds that reinstatement is no longer feasible and separation pay shall be awarded in lieu thereof, to be computed at one month’s pay per year of service. The years of service to be considered in this award of separation pay shall begin only from March 1985 up to her illegal dismissal in March 1988. The previous tenure of petitioner from 1974 - 1979, erroneously considered by labor arbiter in his computation, must not be credited because petitioner resigned

in 1979, and is therefore not entitled to separation pay for that period. The award of moral and exemplary damages, previously granted by labor arbiter, is reinstated, and the attorney's fees is fixed at ten percentum (10%) of the total award petitioner is entitled to.

WHEREFORE, finding grave abuse of discretion amounting to lack or excess of jurisdiction, the Court Resolved to SET ASIDE the resolution of the public respondent. Private respondents are hereby ORDERED to pay petitioner the following: (1) backwages computed from the time of her illegal dismissal on March 25, 1988 up to the finality of this resolution; (2) separation pay equivalent to three (3) months salary; (3) moral and exemplary damages in the amount of Ten Thousand Pesos (P10,000.00) and Five Thousand Pesos (P5,000.00), respectively; and (4) attorney's fees equivalent to ten percent (10%) of the total award.

**SO ORDERED.**

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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