

**ESTERIA F. GARCIANO, PETITIONER, VS. THE HON. COURT OF APPEALS, EMERITO LABAJO, LUNISITA MARODA, LALIANA DIONES, CANONISA PANINSORO, DIONISIO ROSAL, REMEDIOS GALUSO, FLORDELUNA ...***G.R. No. 96126. August 10, 1992*

Ponente: GRIÑO-AQUINO, J.

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This is a petition for review of the decision of the Court of Appeals dismissing the complaint for damages filed by the petitioner against the private respondents.

The petitioner was hired to teach during the 1981-82 school year in the Immaculate Concepcion Institute in the Island of Camotes. On January 13, 1982, or before the school year ended, she applied for an indefinite leave of absence because her daughter was taking her to Austria where her daughter was employed (Exh. B). The application was recommended for approval by the school principal, Emerito O. Labajo, and approved by the President of the school's Board of Directors (Exh. B-1).

On June 1, 1982, Emerito Labajo addressed a letter to the petitioner through her husband, Sotero Garciano (for she was still abroad), informing her of the decision of Fr. Joseph Wiertz, the school's founder, concurred in by the president of the Parent-Teachers Association and the school faculty, to terminate her services as a member of the teaching staff because of: (1) the absence of any written contract of employment between her and the school due to her refusal to sign one; and (2) the difficulty of getting a substitute for her on a temporary basis as no one would accept the position without a written contract (Exhs. C and 1). Upon her return from Austria in the later part of June, 1982, she received the letter informing her that her services at the Immaculate Concepcion Institute had been terminated. She made inquiries from the school about the matter and, on July 7, 1982, the members of the Board of Directors of the school, with the exception of Fr. Joseph Wiertz, signed a letter notifying her that she was "reinstated to report and do your usual duties as Classroom Teacher . . . effective July 5, 1982," and that "any letter or notice of termination received by you before this date has no sanction or authority by the Board of Directors of this Institution, therefore it is declared null and void x x x" (Exhs. D and 2).

On July 9, 1982, the president, vice president, secretary, and three members of the Board of Directors, out of a membership of nine (9), resigned their positions from the Board "for the reason that the ICI Faculty, has reacted acidly to the Board's deliberations for the reinstatement of Mrs. Esteria F. Garciano, thereby questioning the integrity of the Board's decision" (Exh. E).

On September 3, 1982, petitioner filed a complaint for damages in the Regional Trial Court, Cebu, Branch XI, against Fr. Wiertz, Emerito Labajo, and some members of the faculty of the school for discrimination and unjust and illegal dismissal.

After trial, the lower court rendered a decision on August 30, 1985, ordering the defendants jointly and severally

to pay her P200,000 as moral damages, P50,000 as exemplary damages, P32,400 as lost earnings for nine years, and P10,000 as litigation expenses and attorney's fees.

The defendants (now private respondents) appealed to the Court of Appeals (CA-G.R. CV No. 10692), which on August 30, 1990 reversed the trial court's decision thus:

"WHEREFORE, the decision appealed from is reversed, the complaint is dismissed, and defendants-appellants are absolved from any liability to plaintiff-appellee. With costs against plaintiff-appellee." (p. 13, Rollo.)

The plaintiff-appellee (now petitioner) filed a motion for reconsideration which the Court of Appeals denied on October 26, 1990. Hence, this petition for review wherein the lone error assigned by petitioner reads:

"Respondent Court of Appeals gravely erred in absolving the private respondents from liability by faulting the petitioner for her failure to report back to her work." (p. 6, Rollo.)

After a careful perusal of the petition and the respondents' comments, the Court resolved to deny the petition for lack of merit.

The board of directors of the Immaculate Concepcion Institute, which alone possesses the authority to hire and fire teachers and other employees of the school, did not dismiss the petitioner. It in fact directed her to report for work. While the private respondents sent her a letter of termination through her husband, they admittedly had no authority to do so. As the Court of Appeals aptly observed:

"We agree with defendants-appellants, however, that they should not have been held liable to plaintiff-appellee for damages. Defendants-appellants had no authority to dismiss plaintiff-appellee and the latter was aware of this. Hence, the letter of termination sent to her through her husband (Exhs. C and 1) by defendants-appellants had no legal effect whatsoever. It did not effectively prevent her from reporting for work. What is more, it was subsequently repudiated by the Board of Directors which directed her to report for work. (Exhs. D and 2) There was, therefore, no reason why she did not continue with her teaching in the school. No evidence had been presented to show that defendants-appellants prevented her from reporting for work. The fact that defendants-appellants had 'acidly' received the action of the Board of Directors repudiating their decision to terminate plaintiff-appellee is not proof that defendants-appellants had effectively and physically prevented plaintiff-appellee from resuming her post. It was nothing more than a reaction to what defendants-appellants perceived as an affront to their collective prestige. It would appear, therefore, that plaintiff-appellee had voluntarily desisted from her teaching job in the school and has no right to recover damages from defendants-appellants." (p. 13, Rollo.)

Liability for damages under Articles 19, 20 and 21 of the Civil Code arises only from unlawful, willful or negligent acts that are contrary to law, or morals, good customs or public policy.

"Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

"Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

"Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

The Court of Appeals was correct in finding that petitioner's discontinuance from teaching was her own choice. While the respondents admittedly wanted her service terminated, they actually did nothing to physically prevent her from reassuming her post, as ordered by the school's Board of Directors. That the school principal and Fr.

Wiertz disagreed with the Board's decision to retain her, and some teachers allegedly threatened to resign en masse, even if true, did not make them liable to her for damages. They were simply exercising their right of free speech or their right to dissent from the Board's decision. Their acts were not contrary to law, morals, good customs or public policy. They did not "illegally dismiss" her for the Board's decision to retain her prevailed. She was ordered to report for work on July 5, 1982, but she did not comply with that order. Consequently, whatever loss she may have incurred in the form of lost earnings was self-inflicted. *Volenti non fit injuria*.

With respect to petitioner's claim for moral damages, the right to recover them under Article 21 is based on equity, and he who comes to court to demand equity, must come with clean hands. Article 21 should be construed as granting the right to recover damages to injured persons who are not themselves at fault (*Mabutas vs. Calapan Electric Co.* [CA] 50 OG 5828, cited in *Padilla*, Civil Code Annotated, Vol. 1, 1975 Ed., p. 87). Moral damages are recoverable only if the case falls under Article 2219 in relation to Article 21 (*Flordelis vs. Mar*, 114 SCRA 41). In the case at bar, petitioner is not without fault. Firstly, she went on an indefinite leave of absence and failed to report back in time for the regular opening of classes. Secondly, for reasons known to herself alone, she refused to sign a written contract of employment. Lastly, she ignored the Board of Directors' order for her to report for duty on July 5, 1982.

The trial court's award of exemplary damages to her was not justified for she is not entitled to moral, temperate or compensatory damages (Art. 2234, Civil Code).

In sum, the Court of Appeals correctly set aside the damages awarded by the trial court to the petitioner for they did not have any legal or factual basis.

WHEREFORE, the petition is DISMISSED for lack of merit and the decision of the Court of Appeals is AFFIRMED.

**SO ORDERED.**

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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