

**COLEGIO DEL STO. NIÑO AND/OR FR. AMBROCIO GALINDEZ, OSA
RECTOR, FR. NICOLAS ECHEVARIA, OSA DIRECTOR, FR. ROGELIO
POSITAR, OSA, MRS. JOSEFINA BACALSO, PETITIONERS, VS.
NATIONAL L...**

G.R. No. 96301. May 28, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioner challenges the decision of the public respondent finding that the private respondents have been illegally dismissed and requiring their reinstatement, with damages. It prays that the said decision be reversed for being tainted with grave abuse of discretion and asks that the questioned dismissal be sustained instead.

The private respondents were employed by petitioner Colegio del Sto. Niño de Cebu, Andrea B. Osorio in 1978 as a kindergarten teacher and Paz L. Jaranilla in 1981 as Grade I class teacher. In a letter dated May 6, 1988, they were advised by the School Rector of the termination of their services on account of incompetence, misconduct and insubordination. The teachers did not accept their dismissal. On June 2, 1988, they filed with the Regional Arbitration Branch of the NLRC in Cebu City a joint complaint against the petitioner and its officials and demanded reinstatement plus refund of illegal deductions and payment of moral and exemplary damages as well as attorney's fees.[1]

After hearing, Labor Arbiter Reynoso A. Belarmino found in favor of the complainants and ordered their reinstatement without loss of seniority rights and payment to them of 5 months back salaries and 10% attorney's fees.[2] Both parties appealed to the NLRC. The petitioner insisted that the dismissals were justified. The private respondents questioned the computation of their back salaries, besides reiterating their claim for moral and exemplary damages. On June 14, 1990, the NLRC rendered its own decision dismissing the petitioner's appeal for tardiness and sustaining the private respondent.[3] The dispositive portion read as follows:

WHEREFORE, in view of all the foregoing, the appeal of respondents is hereby DISMISSED.

The appeal of complainants is given due course and the decision appealed from is hereby MODIFIED to read as follows:

- Judgment is hereby rendered finding respondents guilty of illegal dismissal. Respondents are ordered to reinstate complainants to their former positions or substantially equivalent positions without loss of seniority rights and to pay, jointly and severally, the complainants their full backwages computed from the time they were illegally dismissed until actually reinstated;
- Respondents are further ordered to pay jointly and severally, moral damages in the total sum of Fifty Thousand (P50,000.00) Pesos, or Twenty Five Thousand (P25,000.00) Pesos for each complainant;
- Respondents are also ordered to pay, jointly and severally, exemplary damages in the total sum of Thirty Thousand (P30,000.00) Pesos, or Fifteen Thousand (P15,000.00) Pesos for each complainant;

- Respondents are further ordered to refund the amounts illegally deducted from the salaries of the complainants;
- Respondents are also ordered to pay the salary adjustment due to the complainants as mandated by RA 6640; and
- Respondents are finally ordered to pay jointly and severally, attorney's fees in the amount equivalent to ten (10%) percent of the monetary awards herein.

In the execution of this judgment, the Labor Arbiter is directed to proceed in accordance with the provisions of Section 3, Rule XI of the NLRC Rules.

SO ORDERED.

The petitioner then came to this Court on certiorari under Rule 65 of the Rules of Court. Upon its motion and posting of the required bond, we issued a temporary restraining order on December 20, 1990, against the execution of the questioned decision.

The petitioner contends that its appeal should not have been dismissed although concededly filed beyond the 10-day reglementary period. Its excuse is that it had changed counsel and its new lawyers had not yet received the records of the case. That is a shallow excuse. The decision of the Labor Arbiter was rendered on January 19, 1989.[4] It was received on February 3, 1989, by Atty. Emigdio B. Tancinco, the petitioner's counsel of record as of that date.[5] The petitioner claims it had dismissed him as early as December 1988. However, there is no evidence of his withdrawal from the case as counsel for the petitioner. Notice to him was notice to the petitioner. The circumstance that the petitioner's new counsel received the records of the case only on February 6, 1989, did not have the effect of extending the reglementary period for the filing of the appeal.

It is settled that perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional.[6] Failure to conform to the rules will render the judgment sought to be reviewed final and unappealable. Thus, in *Narag v. NLRC*,[7] the Court, disposing of a situation similar to the case at bar, dismissed the appeal for having been filed on the eleventh day after receipt of the challenged decision. There is no reason why the appeal in this case should not be similarly treated.

The petitioner submits that technicalities should be waived in the interest of substantial justice and invokes *Insular Life Assurance Co. v. NLRC*,[8] where the Court considered the merits of the case even if the motion for reconsideration had admittedly been filed late. We find, however, that even on the merits, the petition before us must also fall.

The basic issue is the legality of the private respondents' dismissal. On this matter, the findings of the Labor Arbiter and the NLRC are binding on this Court in the absence of those exceptional circumstances that will justify their review and reversal. There are no such exceptions in the case at bar.

It is clear that the private respondents were not accorded proper notice and hearing before they were notified of the termination of their services. They were simply summarily dismissed, without being previously informed of the charges against them or being accorded an opportunity to refute them. On this score alone, their dismissal must be struck down as an inexcusable and disdainful rejection of due process.

The petitioner stresses the supposed report of an evaluation committee which found the private respondents guilty of incompetence, misconduct and insubordination. This became the basis of their notice of separation. The Court sees no evidence that the private respondents were called by the committee to inform them of the charges against them and to hear their side. The proceedings of the committee were presumably *ex parte*, if indeed there were any

such proceedings at all.

The report of the evaluation committee took into account the petition supposedly filed by the parents of some students against the two teachers but, as the complainants contended, none of such parents was presented to affirm or verify the said petition. The petitioner says this argument is silly. It is not silly. As it was the one that submitted the petition, it had the responsibility to authenticate the document. He who alleges has the obligation to prove his allegations. In fact, even affidavits presented in court are rejected as hearsay unless they are confirmed by the affiants at the trial. In the case at bar, the petitioner made no effort at all to validate the unverified petition of the students' parents. Instead, the petitioner suggests that it is the private respondents who should have presented the signatories to disown their petition. Now, that is unacceptable.

Significantly, the evaluation committee surfaced only shortly before the dismissal of the private respondents, as if it had been created for that purpose. There is no record of any such committee or of any report it had previously rendered on any of the petitioner's employees for that year or any other year before that. In fact, the only report apparently made by the committee was on the private respondents, and this was shortly before they were dismissed.

Remarkably, it occurred to the petitioner to evaluate the private respondents only after they had served for some time in its employ, evidently to its satisfaction. Osorio had been working for ten years and Jaranilla for seven years before the petitioner decided that their services were, after all, not satisfactory. Suddenly, they had become incompetent and insubordinate and guilty of improper behavior.

One may suppose that the petitioner was merely remiss in the supervision of its employees, which is itself not a minor shortcoming, considering the nature of its responsibilities as an educational institution. But the more plausible explanation is that the private respondents were dismissed because they had aroused the enmity of the acting principal by complaining about her to the students' parents. It has been demonstrated that her derogatory report was readily accepted by the evaluation committee and became the basis of the private respondents' dismissal.

Given the above circumstances, the Court believes that the award of moral and exemplary damages to the private respondents is not unjustified. We agree with Labor Arbiter Belarmino that -

. . . By and large, respondents' action was a systematic and deliberate attempt to get rid of complainants not because of inefficiency or insubordination but because of their militant attitude on the wrongdoings of respondent Bacalso.

We hold that the complainants' dismissal was carried out swiftly and surreptitiously to the detriment and prejudice of complainants' tenurial rights. Such act smacks of high-handedness and deserves no place in a school that teaches respect and instills moral values and human rights to the future citizens of this country.

We also reject the petitioner's contention that the complainants had not asked for the refund of the illegal deductions and the implementation of the wage adjustment under R.A. 6640, as the record shows that they did complain about these matters. It is incredible that the petitioner could make such a bare-faced submission when it is easily belied by the complaint itself. A copy of this complaint was submitted by the private respondents as Annex "1" of their Comment.[9]

The Court does not deny petitioner its academic freedom, which includes the power to choose its own faculty and the education of its students according to its own standards and objectives and pursuant to the purposes of the Constitution. But that freedom does not give it absolute authority over its employees or exempt it from the requirements of due process in its dealings with them. The institution of learning has a special duty to provide a

fitting example to its pupils in the proper observance of the law and the rudiments of fair play. There is no question it must refrain from any conduct that will detract from the ideal and model of the enlightened student as a just and law-abiding citizen.

WHEREFORE, the petition is DISMISSED, with costs against the petitioner. The temporary restraining order dated December 20, 1990, is LIFTED. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Annex “1,” Rollo, p. 104.

[2] Annex “D,” Rollo, pp. 49-56.

[3] Annex “A,” Rollo, pp. 30-45.

[4] Rollo, p. 56.

[5] Rollo, p. 39.

[6] Makabingkat vs. People’s Homesite & Housing Corp., 72 SCRA 326; FJR Garments Industries vs. CA, 130 SCRA 216.

[7] 155 SCRA 199.

[8] 156 SCRA 740.

[9] Rollo, p. 104.

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