

UNIVERSIDAD DE STA. ISABEL, PETITIONER, VS. MARVIN-JULIAN L. SAMBAJON, JR., RESPONDENT.

G.R. Nos. 196280 & 196286. April 02, 2014

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 urging this Court to set aside the Decision[1] dated March 25, 2011 of the Court of Appeals (CA) in ca-g.r. SP nos. 108103 and 108168 which affirmed with modification the Decision[2] dated August 1, 2008 of the National Labor Relations Commission (NLRC). The NLRC affirmed the Decision[3] dated August 22, 2006 of the Labor Arbiter in NLRC Sub-RAB V-05-04-00053-05) declaring petitioner liable for illegal dismissal of respondent.

The Facts

Universidad de Sta. Isabel (petitioner) is a non-stock, non-profit religious educational institution in Naga City. Petitioner hired Marvin-Julian L. Sambajon, Jr. (respondent) as a full-time college faculty member with the rank of Assistant Professor on probationary status, as evidenced by an Appointment Contract[4] dated November 1, 2002, effective November 1, 2002 up to March 30, 2003.

After the aforesaid contract expired, petitioner continued to give teaching loads to respondent who remained a full-time faculty member of the Department of Religious Education for the two semesters of school-year (SY) 2003-2004 (June 1, 2003 to March 31, 2004); and two semesters of SY 2004-2005 (June 2004 to March 31, 2005).[5]

Sometime in June 2003, after respondent completed his course in Master of Arts in Education, major in Guidance and Counseling, he submitted the corresponding Special Order from the Commission on Higher Education (CHED), together with his credentials for the said master's degree, to the Human Resources Department of petitioner for the purpose of salary adjustment/increase. Subsequently, respondent's salary was increased, as reflected in his pay slips starting October 1-15, 2004.[6] He was likewise re-ranked from Assistant Professor to Associate Professor.

In a letter dated October 15, 2004 addressed to the President of petitioner, Sr. Ma. Asuncion G. Evidente, D.C., respondent vigorously argued that his salary increase should be made effective as of June 2003 and demanded the payment of his salary differential. The school administration thru Sr. Purita Gatongay, D.C., replied by explaining its policy on re-ranking of faculty members[7], viz:

x x x x

Please be informed that teachers in the Universidad are not re-ranked during their probationary period. The Faculty Manual as revised for school year 2002-2003 provides (page 38) "Re-ranking is done every two years, hence the personnel hold their present rank for two years. Those undergoing probationary period and those on part-time basis of employment are not covered by this provision." This provision is found also in the

2000-2001 Operations Manual.

Your personnel file shows that you were hired as a probationary teacher in the second semester of school year 2002-2003. By October 2004, you will be completing four (4) semesters (two school years) of service. Even permanent teachers are re-ranked only every two years, and you are not even a permanent teacher. I am informed that you have been told several times and made to read the Provision in the Faculty Manual by the personnel office that you cannot be re-ranked because you are still a probationary teacher.

x x x x[8]

Respondent insisted on his demand for retroactive pay. In a letter dated January 10, 2005, Sr. Evidente reiterated the school policy on re-ranking of teachers, viz:

x x x

Under the Faculty Manual a permanent teacher is not entitled to re-ranking oftener than once every two years. From this it should be obvious that, with all the more reason, a probationary teacher would not be entitled to "evaluation," which could result in re-ranking or "adjustment in salary" oftener than once every two years.

Since you are a probationary teacher, the University is under no obligation to re-rank you or adjust your salary after what you refer to as "evaluation." Nevertheless, considering that in October 2004 you were completing two years of service, the University adjusted your salary in the light of the CHED Special Order you submitted showing that you had obtained the degree of Master of Arts in Education. Instead of being grateful for the adjustment, you insist that the adjustment be made retroactive to June 2003. Simply stated, you want your salary adjusted after one semester of probationary service. We do not think a probationary teacher has better rights than a permanent teacher in the matter of re-ranking or "evaluation." [9]

However, respondent found the above explanation insufficient and not clear enough. In his letter dated January 12, 2005, he pointed out the case of another faculty member -- whom he did not name -- also on probationary status whose salary was supposedly adjusted by petitioner at the start of school year (June) after he/she had completed his/her master's degree in March. Respondent thus pleaded for the release of his salary differential, or at the very least, that petitioner give him categorical answers to his questions. [10]

Apparently, to resolve the issue, a dialogue was held between respondent and Sr. Evidente. As to the outcome of this conversation, the parties gave conflicting accounts. Respondent claimed that Sr. Evidente told him that the school administration had decided to shorten his probationary period to two years on the basis of his satisfactory performance. [11] This was categorically denied by Sr. Evidente though the latter admitted having informed respondent "that he was made Associate Professor on account of his incessant requests for a salary increase which the Universidad de Santa Isabel eventually accommodated...considering that [respondent] had obtained a Master's Degree in June 2003." She further informed respondent that "his appointment as Associate Professor did not affect his status as a probationary employee" and that petitioner "was not and did not exercise its prerogative to shorten his probationary period to only two years." Sr. Stella O. Real, D.C., who issued a Certificate of Employment to respondent, likewise denied that she confirmed to respondent that petitioner has shortened his probationary employment. [12]

On February 26, 2005, respondent received his letter of termination which stated:

Greetings of Peace in the Lord!

We regret to inform your good self that your full time probationary appointment will not be renewed when it expires at the end of this coming March 31, 2005.

Thank you so much for the services that you have rendered to USI and to her clientele the past several

semesters. We strongly and sincerely encourage you to pursue your desire to complete your Post Graduate studies in the University of your choice as soon as you are able.

God bless you in all your future endeavors.

Godspeed! [13]

On April 14, 2005, respondent filed a complaint for illegal dismissal against the petitioner.

In his Decision dated August 22, 2006, Labor Arbiter Jesus Orlando M. Quinones ruled that there was no just or authorized cause in the termination of respondent's probationary employment. Consequently, petitioner was found liable for illegal dismissal, thus:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding respondent school UNIVERSIDAD DE SANTA ISABEL liable for the illegal dismissal of complainant MARVIN-JULIAN L. SAMBAJON, JR.

Accordingly, and consistent with Article 279 of the Labor Code, respondent school is hereby directed to pay complainant full backwages covering the period/duration of the 1st semester of academic year 2005-2006. Reinstatement being rendered moot by the expiration of the probationary period, respondent school is directed to pay complainant separation pay in lieu of reinstatement computed at one (1) month's pay for every year of service. An award of 10% attorney's fees in favor of complainant is also held in order.

(please see attached computation of monetary award as integral part of this decision).

All other claims and charges are DISMISSED for lack of legal and factual basis.

SO ORDERED. [14]

Petitioner appealed to the NLRC raising the issue of the correct interpretation of Section 92 of the Manual of Regulations for Private Schools and DOLE-DECS-CHED-TESDA Order No. 01, series of 1996, and alleging grave abuse of discretion committed by the Labor Arbiter in ruling on a cause of action/issue not raised by the complainant (respondent) in his position paper.

On August 1, 2008, the NLRC rendered its Decision affirming the Labor Arbiter and holding that respondent had acquired a permanent status pursuant to Sections 91, 92 and 93 of the 1992 Manual of Regulations for Private Schools, in relation to Article 281 of the Labor Code, as amended. Thus:

In the instant case, the first contract (records, pp. 36; 92) executed by the parties provides that he was hired on a probationary status effective November 1, 2002 to March 30, 2003. While his employment continued beyond the above-mentioned period and lasted for a total of five (5) consecutive semesters, it appears that the only other contract he signed is the one (records, p. 103) for the second semester of SY 2003-2004. A portion of this contract reads:

"I am pleased to inform you that you are designated and commissioned to be an Apostle of Love and Service, Unity and Peace as you dedicate and commit yourself in the exercise of your duties and responsibilities as a:

FULL-TIME FACULTY MEMBER

of the Religious Education Department from November 1, 2003 to March 31, 2004.

Unless otherwise renewed in writing this designation automatically terminates as of the date expiration above stated without further notice."

There is no showing that the complainant signed a contract for the first and second semesters of SY 2004-2005.

Under the circumstances, it must be concluded that the complainant has acquired permanent status. The last

paragraph of Article 281 of the Labor Code provides that “an employee who is allowed to work after a probationary period shall be considered a regular employee.” Based thereon, the complainant required [sic] permanent status on the first day of the first semester of SY 2003-2004.

As presently worded, Section 92 of the revised Manual of Regulations for Private Schools merely provides for the maximum lengths of the probationary periods of academic personnel of private schools in the three (3) levels of education (elementary, secondary, tertiary). The periods provided therein are not requirements for the acquisition, by them, of permanent status.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.[15]

Petitioner and respondent sought reconsideration of the above decision, with the former contending that the NLRC resolved an issue not raised in the appeal memorandum, while the latter asserted that the NLRC erred in not awarding him full back wages so as to conform to the finding that he had acquired a permanent status. Both motions were denied by the NLRC which ruled that regardless of whether or not the parties were aware of the rules for the acquisition of permanent status by private school teachers, these rules applied to them and overrode their mistaken beliefs. As to respondent’s plea for back wages, the NLRC said the award of back wages was not done in this case because respondent did not appeal the Labor Arbiter’s decision.

Both parties filed separate appeals before the CA. On motion by respondent, the two cases were consolidated (CA-G.R. SP Nos. 108103 and 108168).[16]

By Decision dated March 25, 2011, the CA sustained the conclusion of the NLRC that respondent had already acquired permanent status when he was allowed to continue teaching after the expiration of his first appointment-contract on March 30, 2003. However, the CA found it necessary to modify the decision of the NLRC to include the award of back wages to respondent. The dispositive portion of the said decision reads:

WHEREFORE, premises considered, the petition docketed as CA-G.R. SP No. 108103 is GRANTED. The challenged Decision of the NLRC dated August 1, 2008 in NLRC NCR CA No. 050481-06 (NLRC Sub-RAB V-05-04-00053-05) is AFFIRMED with MODIFICATION in that Universidad de Sta. Isabel is directed to reinstate Marvin-Julian L. Sambajon, Jr. to his former position without loss of seniority rights and to pay him full backwages computed from the time his compensation was withheld from him up to the time of his actual reinstatement. All other aspects are AFFIRMED.

As regards CA-G.R. SP No. 108168, the petition is DENIED for lack of merit.

SO ORDERED.[17]

The Petition/Issues

Before this Court, petitioner ascribes grave error on the part of the CA in sustaining the NLRC which ruled that respondent was dismissed without just or authorized cause at the time he had already acquired permanent or regular status since petitioner allowed him to continue teaching despite the expiration of the first contract of probationary employment for the second semester of SY 2002-2003. Petitioner at the outset underscores the fact that the NLRC decided an issue which was not raised on appeal, i.e., whether respondent had attained regular status. It points out that the Labor Arbiter’s finding that respondent was dismissed while still a probationary employee was not appealed by him, and hence such finding had already become final.

In fine, petitioner asks this Court to rule on the following issues: (1) whether the NLRC correctly resolved an issue not raised in petitioner’s appeal memorandum; and (2) whether respondent’s probationary employment was

validly terminated by petitioner.

Our Ruling

The petition is partly meritorious.

Issues on Appeal before the NLRC

Section 4(d), Rule VI of the 2005 Revised Rules of Procedure of the NLRC, which was in force at the time petitioner appealed the Labor Arbiter's decision, expressly provided that, on appeal, the NLRC shall limit itself only to the specific issues that were elevated for review, to wit:

Section 4. Requisites for perfection of appeal. x x x.

x x x x

(d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

We have clarified that the clear import of the aforementioned procedural rule is that the NLRC shall, in cases of perfected appeals, limit itself to reviewing those issues which are raised on appeal. As a consequence thereof, any other issues which were not included in the appeal shall become final and executory.[18]

In this case, petitioner sets forth the following issues in its appeal memorandum:

5.01

WHETHER THE MARVIN JULIAN L. SAMBAJON, JR. WAS ILLEGALLY DISMISSED FROM THE UNIVERSIDAD DE STA. ISABEL.

5.02

WHETHER THE UNIVERSIDAD DE STA. ISABEL SHORTENED THE PROBATIONARY PERIOD OF MARVIN JULIAN L. SAMBAJON.

5.03

WHETHER RESPONDENTS-APPELLANTS ARE ENTITLED TO DAMAGES.[19]

Specifically, petitioner sought the correct interpretation of the Manual of Regulations for Private School Teachers and DOLE-DECS-CHED-TESDA Order No. 01, series of 1996, insofar as the probationary period for teachers.

In reviewing the Labor Arbiter's finding of illegal dismissal, the NLRC concluded that respondent had already attained regular status after the expiration of his first appointment contract as probationary employee. Such conclusion was but a logical result of the NLRC's own interpretation of the law. Since petitioner elevated the questions of the validity of respondent's dismissal and the applicable probationary period under the aforesaid regulations, the NLRC did not gravely abuse its discretion in fully resolving the said issues.

As the Court held in *Roche (Phils.) v. NLRC*[20]:

Petitioners then suggest that the respondent Commission abused its discretion in awarding reliefs in excess of those stated in the decision of the labor arbiter despite the absence of an appeal by Villareal. To stress this point, they cited Section 5(c) of the Rules of Procedure of the National Labor Relations Commission which provides that the Commission shall, in cases of perfected appeals, limit itself to reviewing those issues which were raised on appeal. Consequently, those which were not raised on appeal shall be final and executory.

There is no merit to this contention. The records show that the petitioners elevated the issues regarding the correctness of the award of damages, reinstatement with backpay, retirement benefits and the cost-saving

bonus to the respondent Commission in their appeal. This opened the said issues for review and any action taken thereon by the Commission was well within the parameters of its jurisdiction. (Emphasis supplied.)

Probationary Employment Period

A probationary employee is one who is on trial by the employer during which the employer determines whether or not said employee is qualified for permanent employment. A probationary appointment is made to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become a proper and efficient employee. The word probationary as used to describe the period of employment implies the purpose of the term or period, but not its length.[21]

It is well settled that the employer has the right or is at liberty to choose who will be hired and who will be denied employment. In that sense, it is within the exercise of the right to select his employees that the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently.[22] The law, however, regulates the exercise of this prerogative to fix the period of probationary employment. While there is no statutory cap on the minimum term of probation, the law sets a maximum “trial period” during which the employer may test the fitness and efficiency of the employee.[23]

Article 281 of the Labor Code provides:

ART. 281. Probationary Employment.—Probationary employment shall not exceed six (6) 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 on 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 probationary employment of teachers in private schools is not governed purely by the Labor Code. The Labor Code is supplemented with respect to the period of probation by special rules found in the Manual of Regulations for Private Schools.[24] On the matter of probationary period, Section 92 of the 1992 Manual of Regulations for Private Schools regulations states:

Section 92. Probationary Period. – Subject in all instances to compliance with the Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis. (Emphasis supplied.)

Thus, it is the Manual of Regulations for Private Schools, and not the Labor Code, that determines whether or not a faculty member in an educational institution has attained regular or permanent status.[25] Section 93[26] of the 1992 Manual of Regulations for Private Schools provides that full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

In this case, the CA sustained the NLRC’s ruling that respondent was illegally dismissed considering that he had become a regular employee when petitioner allowed him to work beyond the date specified in his first probationary appointment contract which expired on March 30, 2003. According to the CA:

... As can be gleaned from Section 92 of the 1992 Manual of Regulations for Private Schools, the probationary period applicable in this case is not more than six (6) consecutive regular semesters of satisfactory service. In other words, the probationary period for academic personnel in the tertiary level runs from one (1) semester to six (6) consecutive regular semesters of satisfactory service. In the instant case, records reveal that Sambajon,

Jr. only signed two appointment contracts. The first appointment-contract which he signed was dated November 2002 for the period November 1, 2002 to March 30, 2003, as Assistant Professor 10 on probationary status. x x x The second appointment-contract which Sambajon, Jr. executed was dated February 26, 2004, for the period November 1, 2003 to March 31, 2004. x x x Compared with the first appointment-contract, it was not indicated in the February 26, 2004 appointment-contract that Sambajon, Jr. was hired on probationary status, which explains the NLRC's conclusion that Sambajon, Jr. already attained permanent status. At this juncture, it is worthy to emphasize that other than the period provided under Article 281 of the Labor Code, the following quoted portion of Article 281 of the Labor Code still applies: "ART. 281. PROBATIONARY EMPLOYMENT. – x x x x An employee who is allowed to work after a probationary period shall be considered a regular employee."

Thus, We sustain the NLRC's conclusion that Sambajon, Jr. acquired permanent status on the first day of the first semester of SY 2003-2004 when he was allowed to continue with his teaching stint after the expiration of his first appointment-contract on March 30, 2003.[27]

On record are five appointment contracts[28] of respondent:

Date

Contract Period

November 1, 2002

November 1, 2002-March 30, 2003

September 28, 2003

June 1, 2003-October 31, 2003

February 26, 2004

November 1, 2003-March 31, 2004

September 30, 2004

June 1, 2004-October 31, 2004

October 28, 2004

November 3, 2004-March 31, 2005

Only the first and third contracts were signed by the respondent. However, such lack of signature in the second contract appears not to be the crucial element considered by the CA but the fact that the third contract dated February 26, 2004, unlike the previous contracts, does not indicate the nature of the appointment as probationary employment. According to the CA, this implies, as concluded by the NLRC, that respondent was already a regular employee.

We disagree.

The third appointment contract dated February 26, 2004 reads:

February 26, 2004

MR. MARVIN JULIAN SAMBAJON
Religious Education Department

Dear Mr. Sambajon,

I am pleased to inform you that you are designated and commissioned to be an Apostle of Love and Service, Unity and Peace as you dedicate and commit yourself in the exercise of your duties and responsibilities as a:

FULL TIME FACULTY MEMBER

of the Religious Education Department from November 1, 2003 to March 31, 2004.

Unless otherwise renewed in writing, this designation automatically terminates as of the date expiration above states without further notice.

As a member of the academic/clinical community, you are expected to live by and give your full support to the promotion and attainment of the Vision-Mission, goals and objectives, the rules and regulations, the Core Values which the University professes to believe and live by.

Congratulations and keep your work full in the spirit of the Lord for the Charity of Christ urges us to live life to the fullest.

God bless

In Christ,

Sr. Ma. Asuncion G. Evidente, D.C.

USI President

Witness:

Sr. Stella O. Real, D.C.

HR Officer

I, _____ understand that unless renewed in writing, my services as _____ expires automatically on the specific date above stated.

Furthermore, I fully accept this appointment to help build the Kingdom of God here and now and to facilitate the living of the Core Values and the attainment of the Vision-Mission and the goals and objectives of the University.

Received and Conforme:

(SGD.) MARVIN-JULIAN L. SAMBAJON, JR.[29]

Since it was explicitly provided in the above contract that unless renewed in writing respondent's appointment automatically expires at the end of the stipulated period of employment, the CA erred in concluding that simply because the word "probationary" no longer appears below the designation (Full-Time Faculty Member), respondent had already become a permanent employee. Noteworthy is respondent's admission of being still under probationary period in his January 12, 2005 letter to Sr. Evidente reiterating his demand for salary differential, which letter was sent almost one year after he signed the February 26, 2004 appointment contract, to wit:

The problem is that your good office has never categorically resolved whether or not probationary teachers can also be evaluated for salary adjustment. Nevertheless, inferring from your statement that evaluation precedes re-ranking and in fact is the basis for re-ranking, may I categorically ask: does it really mean that since, it precedes re-ranking, evaluation should not take place among probationary teachers for they can not yet be re-ranked? If so, then how pitiful are we, probationary teachers for our credentials are never evaluated since we cannot yet be re-ranked. Oh my goodness! Can your good office not give me a clearer and more convincing argument shedding light on this matter?[30]

Respondent nonetheless claims that subsequently, the probationary period of three years under the regulations was shortened by petitioner as relayed to him by Sr. Evidente herself. However, the latter, together with Sr. Real, categorically denied having informed respondent that his probationary period was abbreviated, allegedly the reason his salary adjustment was not made retroactive. Apart from his bare assertion, respondent has not adduced proof of any decision of the school administration to shorten his probationary period.

In *Rev. Fr. Labajo v. Alejandro*,^[31] we held that:

The three (3)-year period of service mentioned in paragraph 75 [of the Manual of Regulations for Private Schools] is of course the maximum period or upper limit, so to speak, of probationary employment allowed in the case of private school teachers. This necessarily implies that a regular or permanent employment status may, under certain conditions, be attained in less than three (3) years. By and large, however, whether or not one has indeed attained permanent status in one's employment, before the passage of three (3) years, is a matter of proof. (Emphasis supplied.)

There can be no dispute that the period of probation may be reduced if the employer, convinced of the fitness and efficiency of a probationary employee, voluntarily extends a permanent appointment even before the three-year period ends. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground; or, a shorter probationary period may be incorporated in a collective bargaining agreement. But absent any circumstances which unmistakably show that an abbreviated probationary period has been agreed upon, the three-year probationary term governs.^[32]

As to the Certificate of Employment^[33] issued by Sr. Real on January 31, 2005, it simply stated that respondent "was a full time faculty member in the Religious Education Department of this same institution" and that he holds the rank of Associate Professor. There was no description or qualification of respondent's employment as regular or permanent. Neither did the similar Certification^[34] also issued by Sr. Real on March 18, 2005 prove respondent's status as a permanent faculty member of petitioner.

It bears stressing that full-time teaching primarily refers to the extent of services rendered by the teacher to the employer school and not to the nature of his appointment. Its significance lies in the rule that only full-time teaching personnel can acquire regular or permanent status. The provisions of DOLE-DECS-CHED-TESDA Order No. 01, series of 1996, "Guidelines on Status of Employment of Teachers and of Academic Personnel in Private Educational Institutions" are herein reproduced:

2. Subject in all instances to compliance with the concerned agency and school requirements, the probationary period for teaching or academic personnel shall not be more than three (3) consecutive school years of satisfactory service for those in the elementary and secondary levels; six (6) consecutive regular semesters of satisfactory service for those in the tertiary and graduate levels, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis.

Unless otherwise provided by contract, school academic personnel who are under probationary employment cannot be dismissed during the applicable probationary period, unless dismissal is compelled by a just cause or causes.

3. Teachers or academic personnel who have served the probationary period as provided for in the immediately preceding paragraph shall be made regular or permanent if allowed to work after such probationary period. The educational institution, however, may shorten the probationary period after taking into account the qualifications and performance of the probationary teachers and academic personnel.

Full-time teaching or academic personnel are those meeting all the following requirements:

x

3.1.

Who possess at least the minimum academic qualifications prescribed by the Department of Education, Culture and Sports for Basic Education, the Commission on Higher Education for Tertiary Education, and the Technical Education and Skills Development Authority for Technical and Vocational Education under their respective Manual of Regulations governing said personnel;

3.2

Who are paid monthly or hourly, based on the normal or regular teaching loads as provided for in the policies, rules and standards of the agency concerned;

3.3

Whose regular working day of not more than eight (8) hours a day is devoted to the school;

3.4

Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and

3.5

Who are not teaching full-time in any other educational institution

All teaching or academic personnel who do not meet the foregoing qualifications are considered part time.

4. Part-time teaching or academic personnel cannot acquire regular or permanent employment status.

5. Teaching or academic personnel who do not meet the minimum academic qualifications shall not acquire tenure or regular status. The school may terminate their services when a qualified teacher becomes available.[35]

In this case, petitioner applied the maximum three-year probationary period – equivalent to six consecutive semesters – provided in the Manual of Regulations. This can be gleaned from the letter dated March 24, 2004 of Sr. Grace Namocancat, D.C. addressed to respondent, informing the latter of the result of evaluation of his performance for SY 2003-2004 and stating that November 2004 marks his second year of full-time teaching, which means he had one more year to become a permanent employee.[36]

The circumstance that respondent's services were hired on semester basis did not negate the applicable probationary period, which is three school years or six consecutive semesters. In *Magis Young Achievers' Learning Center*[37] the Court explained the three years probationary period rule in this wise:

The common practice is for the employer and the teacher to enter into a contract, effective for one school year. At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year – since it would be the third school year – of probationary employment. At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation. Upon the expiration of his contract of employment, being simply on

probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract. It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status.[38] (Emphasis supplied.)

Petitioner argues that respondent's probationary period expires after each semester he was contracted to teach and hence it was not obligated to renew his services at the end of the fifth semester (March 2005) of his probationary employment. It asserts that the practice of issuing appointment contracts for every semester was legal and therefore respondent was not terminated when petitioner did not renew his contract for another semester as his probationary contract merely expired. Plainly, petitioner considered the subject appointment contracts as fixed-term contracts such that it can validly dismiss respondent at the end of each semester for the reason that his contract had expired.

The Court finds no merit in petitioner's interpretation of the Manual of Regulations, supplemented by DOLE-DECS-CHED-TESDA Order No. 01, series of 1996. As we made clear in the afore-cited case of *Magis Young Achievers' Learning Center*, the teacher remains under probation for the entire duration of the three-year period. Subsequently, in the case of *Mercado v. AMA Computer College-Parañaque City, Inc.*[39] the Court, speaking through Justice Arturo D. Brion, recognized the right of respondent school to determine for itself that it shall use fixed-term employment contracts as its medium for hiring its teachers. Nevertheless, the Court held that the teachers' probationary status should not be disregarded simply because their contracts were fixed-term. Thus:

*The Conflict: Probationary Status
and Fixed-term Employment*

The existence of the term-to-term contracts covering the petitioners' employment is not disputed, nor is it disputed that they were on probationary status – not permanent or regular status – from the time they were employed on May 25, 1998 and until the expiration of their Teaching Contracts on September 7, 2000. As the CA correctly found, their teaching stints only covered a period of at least seven (7) consecutive trimesters or two (2) years and three (3) months of service. This case, however, brings to the fore the essential question of which, between the two factors affecting employment, should prevail given AMACC's position that the teachers contracts expired and it had the right not to renew them. In other words, should the teachers' probationary status be disregarded simply because the contracts were fixed-term?

The provision on employment on probationary status under the Labor Code is a primary example of the fine balancing of interests between labor and management that the Code has institutionalized pursuant to the underlying intent of the Constitution.

On the one hand, employment on probationary status affords management the chance to fully scrutinize the true worth of hired personnel before the full force of the security of tenure guarantee of the Constitution comes into play. Based on the standards set at the start of the probationary period, management is given the widest opportunity during the probationary period to reject hirees who fail to meet its own adopted but reasonable standards. These standards, together with the just and authorized causes for termination of employment the Labor Code expressly provides, are the grounds available to terminate the employment of a teacher on probationary status. For example, the school may impose reasonably stricter attendance or report compliance records on teachers on probation, and reject a probationary teacher for failing in this regard, although the same attendance or compliance record may not be required for a teacher already on permanent status. At the same time, the same just and authorize[d] causes for dismissal under the Labor Code apply to probationary teachers, so that they may be the first to be laid-off if the school does not have enough students for a given semester or trimester. Termination of employment on this basis is an authorized cause under the Labor Code.

Labor, for its part, is given the protection during the probationary period of knowing the company standards the new hires have to meet during the probationary period, and to be judged on the basis of these standards,

aside from the usual standards applicable to employees after they achieve permanent status. Under the terms of the Labor Code, these standards should be made known to the teachers on probationary status at the start of their probationary period, or at the very least under the circumstances of the present case, at the start of the semester or the trimester during which the probationary standards are to be applied. Of critical importance in invoking a failure to meet the probationary standards, is that the school should show – as a matter of due process – how these standards have been applied. This is effectively the second notice in a dismissal situation that the law requires as a due process guarantee supporting the security of tenure provision, and is in furtherance, too, of the basic rule in employee dismissal that the employer carries the burden of justifying a dismissal. These rules ensure compliance with the limited security of tenure guarantee the law extends to probationary employees.

When fixed-term employment is brought into play under the above probationary period rules, the situation – as in the present case – may at first blush look muddled as fixed-term employment is in itself a valid employment mode under Philippine law and jurisprudence. The conflict, however, is more apparent than real when the respective nature of fixed-term employment and of employment on probationary status are closely examined.

The fixed-term character of employment essentially refers to the period agreed upon between the employer and the employee; employment exists only for the duration of the term and ends on its own when the term expires. In a sense, employment on probationary status also refers to a period because of the technical meaning “probation” carries in Philippine labor law – a maximum period of six months, or in the academe, a period of three years for those engaged in teaching jobs. Their similarity ends there, however, because of the overriding meaning that being “on probation” connotes, i.e., a process of testing and observing the character or abilities of a person who is new to a role or job.

Understood in the above sense, the essentially protective character of probationary status for management can readily be appreciated. But this same protective character gives rise to the countervailing but equally protective rule that the probationary period can only last for a specific maximum period and under reasonable, well-laid and properly communicated standards. Otherwise stated, within the period of the probation, any employer move based on the probationary standards and affecting the continuity of the employment must strictly conform to the probationary rules.

Under the given facts where the school year is divided into trimesters, the school apparently utilizes its fixed-term contracts as a convenient arrangement dictated by the trimestral system and not because the workplace parties really intended to limit the period of their relationship to any fixed term and to finish this relationship at the end of that term. If we pierce the veil, so to speak, of the parties’ so-called fixed-term employment contracts, what undeniably comes out at the core is a fixed-term contract conveniently used by the school to define and regulate its relations with its teachers during their probationary period.

To be sure, nothing is illegitimate in defining the school-teacher relationship in this manner. The school, however, cannot forget that its system of fixed-term contract is a system that operates during the probationary period and for this reason is subject to the terms of Article 281 of the Labor Code. Unless this reconciliation is made, the requirements of this Article on probationary status would be fully negated as the school may freely choose not to renew contracts simply because their terms have expired. The inevitable effect of course is to wreck the scheme that the Constitution and the Labor Code established to balance relationships between labor and management.

Given the clear constitutional and statutory intents, we cannot but conclude that in a situation where the probationary status overlaps with a fixed-term contract not specifically used for the fixed term it offers, Article 281 should assume primacy and the fixed-period character of the contract must give way. This conclusion is immeasurably strengthened by the petitioners’ and the AMACC’s hardly concealed expectation that the employment on probation could lead to permanent status, and that the contracts are renewable unless the petitioners fail to pass the school’s standards.[40] (Additional emphasis supplied.)

Illegal Dismissal

Notwithstanding the limited engagement of probationary employees, they are entitled to constitutional protection of security of tenure during and before the end of the probationary period.[41] The services of an employee who has been engaged on probationary basis may be terminated for any of the following: (a) a just or (b) an authorized cause; and (c) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.[42]

Thus, while no vested right to a permanent appointment had as yet accrued in favor of respondent since he had not completed the prerequisite three-year period (six consecutive semesters) necessary for the acquisition of permanent status as required by the Manual of Regulations for Private Schools[43] -- which has the force of law[44] -- he enjoys a limited tenure. During the said probationary period, he cannot be terminated except for just or authorized causes, or if he fails to qualify in accordance with reasonable standards prescribed by petitioner for the acquisition of permanent status of its teaching personnel.

In a letter dated February 26, 2005, petitioner terminated the services of respondent stating that his probationary employment as teacher will no longer be renewed upon its expiry on March 31, 2005, respondent's fifth semester of teaching. No just or authorized cause was given by petitioner. Prior to this, respondent had consistently achieved above average rating based on evaluation by petitioner's officials and students. He had also been promoted to the rank of Associate Professor after finishing his master's degree course on his third semester of teaching. Clearly, respondent's termination after five semesters of satisfactory service was illegal.

Respondent therefore is entitled to continue his three-year probationary period, such that from March 31, 2005, his probationary employment is deemed renewed for the following semester (1st semester of SY 2005-2006). However, given the discordant relations that had arisen from the parties' dispute, it can be inferred with certainty that petitioner had opted not to retain respondent in its employ beyond the three-year period.

On the appropriate relief and damages, we adhere to our disposition in *Magis Young Achievers' Learning Center*[45]:

Finally, we rule on the propriety of the monetary awards. Petitioner, as employer, is entitled to decide whether to extend respondent a permanent status by renewing her contract beyond the three-year period. Given the acrimony between the parties which must have been generated by this controversy, it can be said unequivocally that petitioner had opted not to extend respondent's employment beyond this period. Therefore, the award of backwages as a consequence of the finding of illegal dismissal in favor of respondent should be confined to the three-year probationary period. Computing her monthly salary of P15,000.00 for the next two school years ($P15,000.00 \times 10 \text{ months} \times 2$), respondent already having received her full salaries for the year 2002-2003, she is entitled to a total amount of P300,000.00. Moreover, respondent is also entitled to receive her 13th month pay correspondent to the said two school years, computed as yearly salary, divided by 12 months in a year, multiplied by 2, corresponding to the school years 2003-2004 and 2004-2005, or $P150,000.00 / 12 \text{ months} \times 2 = P25,000.00$. Thus, the NLRC was correct in awarding respondent the amount of P325,000.00 as backwages, inclusive of 13th month pay for the school years 2003-2004 and 2004-2005, and the amount of P3,750.00 as pro-rated 13th month pay.

WHEREFORE, the petition for review on certiorari is PARTLY GRANTED. The Decision dated March 25, 2011 of the Court of Appeals in ca-g.r. SP nos. 108103 & 108168 is hereby MODIFIED. Petitioner Universidad de Sta. Isabel is hereby DIRECTED to PAY respondent Marvin-Julian L. Sambajon, Jr. back wages corresponding to his full monthly salaries for one semester (1st semester of SY 2005-2006) and pro-rated 13th month pay.

The case is REMANDED to the Labor Arbiter for a recomputation of the amounts due to respondent in conformity with this Decision.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Reyes, JJ., concur.

[1] Rollo, pp. 61-75. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Antonio L. Villamor and Ramon A. Cruz concurring.

[2] Id. at 77-89. Penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[3] Id. at 95-102. Penned by Labor Arbiter Jesus Orlando M. Quiñones.

[4] Records, p. 36.

[5] Id. at 43.

[6] Id. at 38-39.

[7] Id. at 40-42.

[8] Id. at 42.

[9] Id. at 96.

[10] Id. at 97-101.

[11] Id. at 59, 45-46.

[12] Id. at 43, 111-112.

[13] Id. at 57.

[14] Rollo, pp. 101-103.

[15] Id. at 86-88.

[16] Id. at 516-517.

[17] Id. at 74.

[18] Luna v. Allado Construction Co., Inc., G.R. No. 175251, May 30, 2011, 649 SCRA 262, 268.

[19] Records, p. 154.

[20] 258-A Phil. 160, 171-172 (1989).

[21] International Catholic Migration Commission v. National Labor Relations Commission, 251 Phil. 560, 567 (1989).

[22] Id. at 567-568.

[23] Magis Young Achievers' Learning Center v. Manalo, G.R. No. 178835, February 13, 2009, 579 SCRA 421, 432.

[24] The 1992 Manual of Regulations is the applicable Manual as it embodied the pertinent rules at the time of the

parties' dispute, but a new Manual has been in place since July 2008; see *Magis Young Achievers' Learning Center v. Manalo*, id. at 431-438.

[25] *Lacuesta v. Ateneo de Manila University*, 513 Phil. 329, 335 (2005).

[26] Section 93. Regular or Permanent Status. Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

[27] *Rollo*, pp. 71-72.

[28] *Records*, pp. 36, 103-105, 112.

[29] *Id.* at 103.

[30] *Id.* at 97-98.

[31] 248 Phil. 194, 200 (1988).

[32] *Magis Young Achievers' Learning Center v. Manalo*, supra note 23, at 436-437, citing *Lacuesta v. Ateneo de Manila University*, supra note 25, and *Escorpizo v. University of Baguio*, 366 Phil. 166, 180 (1999).

[33] *Records*, p. 43.

[34] *Id.* at 44.

[35] *Rollo*, pp. 418-419.

[36] *Id.* at 82; *records*, p. 94.

[37] *Supra* note 23.

[38] *Id.* at 435-436.

[39] G.R. No. 183572, April 13, 2010, 618 SCRA 218.

[40] *Id.* at 237-243.

[41] See *Manila Hotel Corporation v. NLRC*, 225 Phil. 127, 133-134 (1986), citing *Biboso v. Victorias Milling Co., Inc.*, 166 Phil. 717, 722-723 (1977).

[42] *Abbott Laboratories Philippines v. Alcaraz*, G.R. No. 192571, July 23, 2013, pp. 11-12, citing *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, January 19, 2011, 640 SCRA 135, 142.

[43] See *Fr. Escudero, O.P. v. Office of the President of the Phils.*, 254 Phil. 789, 797 (1989); *Colegio San Agustin v. NLRC*, 278 Phil. 414, 419 (1991).

[44] See *Espiritu Santo Parochial School v. National Labor Relations Commission*, 258 Phil. 600, 606 (1989).

[45] *Supra* note 23, at 443-444.

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