

GREGORIO ARANETA UNIVERSITY FOUNDATION AND OBED JOSE MENESES, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, PEDRO L. REYES, ROSARIO D. REYES, BILLY T. VICARIO, CORAZON D...

G.R. Nos. 75925-26. October 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners seek to annul the decision of the National Labor Relations Commission (NLRC) ordering the Gregorio Araneta University Foundation to reinstate the private respondents to their former positions, with full backwages under the new terms and conditions of employment in the university as reorganized, and to pay them separation pay or retirement pay and other accrued benefits under the existing laws or the university's policy whichever is higher. The petitioners also question the resolution of the NLRC denying the petitioners' motion for reconsideration of the decision for having been filed out of time.

The antecedent facts are summarized as follows:

On March 15, 1983, the president of Gregorio Araneta University Foundation, (hereinafter called University) Mr. Cesar A. Mijares wrote the then Minister of Labor Bias Ople soliciting his opinion on a proposed retrenchment and reorganization program made necessary by the University's financial difficulties.

In a letter reply to Mijares, dated March 29, 1984, Minister Ople found "no serious objection to the program" but advised him that "it should be implemented without prejudice to whatever benefits that might have accrued to the employees concerned at the effective date of reorganization."

The University started the implementation of its retrenchment program with the issuance of a memorandum-circular dated October 14, 1983 from the Executive Committee of the Board of Trustees wherein the following guidelines were stated for the information of all faculty members and employees of the University:

"1. All ad hoc, ad interim and temporary appointments will be considered terminated as of the date indicated in their respective appointments, or as of October 31, 1983, whichever is earlier;

"2. GAUF faculty members and associates are invited to submit courtesy letters of resignation to the Executive Vice President on or before October 31, 1983. Those who submit may be re-appointed while those who would fail to submit may be retrenched;

"3. In order not to prejudice the operations of the Foundation, temporary appointments shall be made by the Acting President. This should not be considered as preferential or priority right of the temporary appointees. The normal procedure of appointment by the Board of Trustees shall be observed;

"4. As required by law, the appropriate notice to the Ministry of Labor and Employment will be filed immediately by the GAUF Administration;

"5. The re-appointment of faculty members and personnel shall be subject to such terms and conditions as may be proposed by the Administration to the Board of Trustees and approved by the latter." (p.45, Rollo)

The private respondents are: 1) Victor Reyes, institute dean and concurrently department head and a farm administrator who has served the university for 23 years; 2) Rosario Reyes, wife of Victor Reyes, head of the department of food technology and concurrently manager for food processing who has served the university as full-time faculty member for 22 years; 3) Billy T. Vicario, head of the department of soil science, and assistant dean of the institute of agriculture who has served the university for 19 years; 4) Corazon Vicario, wife of Billy Vicario, dean of the institute of arts and sciences who has served the university for 25 years; 5) Luis Almazan, head of the department of biology who has served the university for 28 years and 6) Remigio Perez, full-time associate professor and department head of Spanish who has served the university for 18 years. The private respondents did not submit their courtesy resignations.

Mr. Obed Meneses acting president of the university served on the six above-named faculty members notices of termination, all dated November 10, 1983, and effective November 11, 1983.

The private respondents responded to Meneses' action by filing cases for illegal dismissal, non-payment of separation pay, and other benefits and unfair labor practice with damages against the university and Meneses before the National Labor Relations Commission. The cases were consolidated and assigned to Labor Arbiter Porfirio Villanueva.

In their position paper, the complainants alleged that they were dismissed without prior notice in violation of BP 130; that the implementation of the retrenchment program was without any established criteria for selecting the faculty members to be dismissed, as, in fact, they were replaced by faculty members with qualifications inferior to the complainants; and that their discharge from employment was a retaliatory move against them by Obed Meneses for their having been instrumental in charging him with having committed various anomalies in the university administration.

The university denied the respondents' allegations and stated in its answer that sufficient notice was given to them prior to their dismissal because as early as May 1983, the then president Mijares had publicly announced the proposals for a new working structure as a result of which several meetings were held with the faculty members and other personnel with their respective unions; that the 30-day notice envisioned in BP. 130 was substantially complied with because in their letters of termination it is stated that "It is understood that your name shall still be included in the payroll for one month after said date" and that actually the complainants received the terminal 30-day pay whose operative effect is to put them in estoppel to question their dismissal; that the complainants' dismissal was due to the non-submission of their resignation letters as directed and their failure to conform to the new terms and conditions of the reorganized set-up and not as a retaliation move against the complainants; and that the complainants' appointments as institute deans and department heads were merely ad hoc or temporary and had expired on October 15, 1983 as indicated in their appointment papers which they signed resulting in their termination even without the retrenchment program.

On the basis of the parties' position papers and documentary evidence, Labor Arbiter Porfirio Villanueva rendered a decision upholding the dismissal of the complainants. The university was ordered to pay the complainants' termination benefit in accordance with law including those already earned at the time of their termination.

The complainants appealed the decision to the National Labor Relations Commission. In a decision dated April 10, 1986, the NLRC en banc modified the Labor Arbiter's decision.

The dispositive portion of the decision reads:

"WHEREFORE, the respondents are hereby ordered to reinstate all the complainants except Samuel G. Ramos in their former positions, with full back wages under the new terms and conditions of employment in the respondent University as reorganized, and to pay them (again, with the exception of Ramos) separation pay or retirement pay and other accrued benefits under the existing laws or GAUF's policy, whichever is higher.

"The Decision appealed from is modified accordingly." (pp. 200-201, Rollo).

The petitioners' motion for reconsideration was denied for having been filed out of time. Hence, this petition.

In a resolution dated July 29, 1987, we gave due course to the petition.

The petitioners contend:

"First:

In ruling that all the employees should first be retrenched and paid separation/retirement benefits which would amount to millions of pesos, and thereafter, all of them be rehired under new terms of employment, the NLRC negated the essence and imperatives of retrenchment and gave Minister Ople's advisory opinion the binding force of an administrative order or decision in an adversarial proceeding. Instead of helping save a noble institution, it would bring about its (GAUF) collapse with consequent lay off of all its remaining personnel and the displacement of students.

"Second:

In refusing to submit their courtesy resignations and to accept the reduced terms and conditions of employment as required by GAUF's memorandum-circular (Annex "B" hereof) and in accepting their 30-day terminal pay, the complainants forfeited/ waived their right to be re-appointed or re-instated, There was no illegal dismissal.

"Third: In peremptorily denying petitioner's motion for reconsideration for having been filed 'beyond the 10 calendar days' based on alleged 'prescribed rules' not specified and possibly non-existing, and in thereby refusing to pass upon the merits of the pleading, the NLRC acted capriciously and in disregard of due process." (pp. 33, 36 and 39, Rollo).

There is no dispute that the petitioner university was in financial distress. Both parties agree on the necessity and indispensability of a retrenchment program which could remedy the imminent danger of the university's total closure, The main issue is whether or not the private respondents were dismissed within the context and spirit of the retrenchment program adopted by the university.

The letter of the petitioner university through its then President Cesar A. Mijares to the Minister of Labor Bias Opie informing the latter of its financial predicament reads as follows:

"This University can no longer afford to continue operation under the present salary rates of its personnel. The reduction of personnel is not an adequate solution to this problem, because to do so would not enable the University to accommodate its present enrolment, x x x.

x x x

x x x

X X X

X X X

X X X

X X X

"Reducing the salaries of personnel even to an amount which is not below the statutory minimum is not legally allowable. Therefore, the only effective solution is for the University to have all its personnel resign and pay them their separation pays, or retirement pays, whichever is higher, so that it could effect a top-to-bottom reorganization and restructure its salary rates and other benefits not mandated by law but were only granted unilaterally by the University to its employees long before the present hard times of inflation.

"After we have paid our employees their separation/retirement pays, we will immediately rehire them in accordance with new and restructured salary rates which are not, of course below the statutory minimum and without the benefits not mandated by law and/or paying our faculty members on the hourly basis, subject to the University's actual needs under its reorganized set-up.

"In this connection, we would like to seek in advance the opinion of the Ministry of Labor and Employment if this University could effect the retrenchment and restructuring of salary rates above explained in accordance with P.D. No. 442, otherwise known as the Labor Code of the Philippines, as amended by B.P. Blg. 130.

"We would appreciate it very much if your good office could give our inquiry your most preferential consideration. (Annex "N", herein Private Respondents' Position Paper)." (pp. 253-255, Rollo; italics supplied).

In reply, the then Minister of Labor Bias Ople sent a letter to the university the pertinent portion of which reads:

"We understand that under the proposed retrenchment and reorganization plan, the following measures are envisaged:

" 1. a top-to-bottom, University-wide reorganization, functional and structural scope, as well as restructuring of salary rates and other personnel benefits not mandated by existing labor standard laws;

"2. separation or retirement of ALL personnel with corresponding grants of termination pay or retirement benefits, whichever is higher;

"3. re-hiring of ALL personnel so separated or retired under terms and conditions of employment to be established for the reorganized University Foundation, with the possible exception of those whose present positions will be affected by the proposed reorganizational changes.

"As explained in your letter, the plan to restructure and reorganize the University is premised on one over-riding consideration: to continue the operation of the University Foundation as an educational institution WITHOUT imposing additional burden on the student body by way of tuition fee increases.

"We note that, on the one hand, most of your students came from low-income families which can hardly absorb any increase under existing schedule of tuition fees. On the other hand, your operating costs, particularly personnel overhead, had so greatly outpaced revenues from tuition and other student fees that the University has been in the red since 1980 with an average deficit of about P866,000.00.

"On the basis of the foregoing considerations, we find no serious objections that may be interposed to the proposed reorganization and retrenchment program of the University Foundation. Implementation of this program

shall of course be instituted without prejudice to whatever benefits that might have accrued to the employees concerned at the effective date of reorganization." (Annex "A", Petition)." (At pp. 255-256, Rollo; Italics supplied).

These two documents outline the approved scheme for the retrenchment program of the university. The letter of Minister Ople shows that he merely confirmed the guidelines set up by the petitioner university to implement its retrenchment program. It is to be noted that the petitioner university did not question the interpretation made by Minister Ople regarding its proposals for the retrenchment program.

Taking into consideration these two documents, it can be seen that the NLRC was correct in stating that:

x x x

x x x

x x x

"x x x [T]he basic and salient features of the reorganization plan are couched in clear terms which leave no room for interpretation. Specifically, the plan calls for the 'separation or retirement of all personnel with corresponding grant of termination pay or retirement benefits, whichever is higher.' This phrase connotes authority to effect dismissal of personnel in the implementation of a 'top-to-bottom, University-wide reorganization,' subject, however, to the condition of rehiring of ALL personnel so separated or retired.'" (pp. 197-198,

The rehiring of "ALL personnel so separated or retired" was, however, subject to the exception "of those whose present positions will be affected by the proposed reorganizational changes." The NLRC took this into consideration when it ruled that the private respondents were illegally dismissed by the petitioners. Thus, the NLRC said:

x x x

x x x

x x x

"x x x [T]he complainants' discharge from the service was evidently the result of the implementation of the reorganizational program. Considering, however, that all of them were not rehired to their former positions as Institute Deans and Department Heads, positions, incidentally, that were not affected by the reorganizational changes, the respondents' act in this respect contradicted their own program which the Labor Minister himself had in effect approved of. xxx.

x x x

x x x

x x x

"It is clear, therefore, that the respondents' failure to rehire the complainants in their former positions, which, to repeat, were not abolished as a result of the reorganization, pursuant to their own reorganization plan, amounted to dismissal which was illegal because it was effected for no valid reason, x x x." (pp. 398-199,

Rollo).

The failure of the private respondents to file their courtesy resignations cannot automatically result in dismissal or inclusion in the retrenchment. We agree with the NLRC that such courtesy letters of resignations were merely administrative requirements that could be dispensed with in the implementation of the retrenchment program.

The guidelines of the retrenchment program as approved by the Minister of Labor specifically states that under the reorganizational set up, all the employees of the university would be considered separated or retired "with corresponding grants of termination pay or retirement benefits, whichever is higher " and all would be rehired except those whose present positions will be affected by the proposed reorganizational changes. All the employees were, therefore, considered resigned under the reorganizational set up without any need for the courtesy resignations demanded by the petitioner university in its memorandum-circular. The resignations or "retirement" of the employees are, of course, subject to the proviso that their positions have been abolished by the reorganizational set up envisioned in the retrenchment program. In the case of the private respondents, their positions were not abolished. Hence, there is no basis for their being considered "retired" or "separated" from the university.

The contention of the university that the private respondents' positions are temporary in nature as indicated in their appointments is not well taken. The fact that the petitioners voluntarily signed the appointments extended to them does not make them temporary employees. Article 281 of the Labor Code provides:

"Regular and Casual Employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

"An employment shall be deemed to be casual if it is not covered by the preceding paragraph; Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists."

Undoubtedly, the private respondents' positions as deans and department heads of the petitioner university are necessary in its usual business. Moreover, all the private respondents have been serving the university from eighteen (18) to twenty-eight (28) years. All of them rose from the ranks starting as instructors until they became deans and department heads of the university. A person who has served the University for 28 years and who occupies a high administrative position in addition to teaching duties could not possibly be a temporary employee or a casual.

Hence, there is no merit in the university's argument that the private respondents' employment with it expired on October 15, 1983 as indicated in their appointments.

On the proposition that the private respondents are estopped from questioning their dismissal because they accepted their 30-day termination pay, suffice it to state that the private respondents cannot waive their rights protected by no less than the Constitution. Section 18, Article 11 of the 1987 Constitution provides that "The state affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare." This constitutional protection to labor has been carried through all our three (3) constitutions since 1935.

The appeal to the Court about saving a noble institution from collapse has no basis. Retrenchments are allowed

for all unnecessary positions based on the petitioner's own reorganization program. However, the reorganization cannot be used as a convenient device to get rid of existing personnel in order to replace them with new ones. For this purpose, the regular rules and procedures on dismissal of employees will have to be followed.

WHEREFORE, the instant petition is hereby DISMISSED. The questioned decision of the National Labor Relations Commission is AFFIRMED, but payment of backwages shall be limited to THREE (3) YEARS without qualification and deduction.[*] No costs.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, concur.

[*](Flexo Manufacturing Corporation v. National Labor Relations Commission, 135 SCRA 145; Hope Christian High School v. National Labor Relations Commission, 135 SCRA 251; and Union of Supervisors (R.B.J-MATU . Secretary of Labor, 109 SCRA 139).

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