

**CAGAYAN CAPITOL COLLEGE AND LAUREANA S. ROSALES,
PETITIONERS, VS. THE HON. NATIONAL LABOR RELATIONS
COMMISSION, VIRGILIO P. VILLEGAS AND LEONOR PAGAPONG,
RESPONDENTS.**

G.R. Nos. 90010-11. September 14, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The propriety of the reinstatement of private respondents as faculty members of petitioner college is the issue submitted in this petition.

Private respondents Virgilio Villegas and Leonor Pagapong were teachers on a probational basis of the petitioner college.

Villegas was initially hired as an instructor in the Nautical Science Department of said petitioner and was extended an appointment on a ten-month contractual basis which ended on March 31, 1982.

Upon expiration of said contract he re-applied and was given a new contract commencing on June 1, 1982 and ending on March 31, 1983. Thereafter he re-applied for employment and was given a contract for a fixed period starting June 1, 1983 up to March 31, 1984. Upon mutual agreement the contract was extended to include the summer of 1984 up to May 31, 1984 which is still part of the school-year 1983-1984.

Upon expiration of said period he sent a letter re-applying for employment with the petitioner.

His application, however, was turned down because of various complaints from his students borne out by the report of his superiors who investigated the matter.[1]

Thus, he filed a complaint in the Regional Arbitration Office of the National Labor Relations Commission (NLRC) in Cagayan City for illegal dismissal with reinstatement, payment of backwages, moral damages and attorney's fees. Included in the complaint were claims for underpayment of salary, allowances, wage orders and his share in tuition fee increases per Presidential Decree No. 451. It was docketed as NLRC Case no. RAB-C-0513-84.

On the other hand, respondent Pagapong was initially hired as a probationary instructor in the High School Department of petitioner college on June 15, 1981 on a contractual basis to end on March 31, 1982. Upon re-application her contract was renewed for another fixed period covering June 1, 1982 up to March 31, 1983. Her employment was on a probationary basis. Similarly, a third contract was executed by the petitioner college covering the period starting June 15, 1983 and ending on March 31, 1984. Upon the termination of the said third contract respondent Pagapong wrote to petitioner seeking re-employment. Her application was accompanied by a clearance. However, her application was denied upon the recommendation of her immediate superiors who considered her inefficient.

Thus, she filed with the Regional Arbitration Branch of the NLRC a complaint for illegal dismissal with reinstatement, with backwages, moral damages and attorney's fees. She also included claims for underpayment of wages, allowances, wage orders and non-payment of shares in tuition fee increases per Presidential Decree no. 451. It was docketed as NLRC Case no. RAB-C-0560-84.

The cases of respondents Villegas and Pagapong were jointly heard upon agreement of the parties, the issues and facts being identical.

In their position paper, private respondents Villegas and Pagapong alleged that they were dismissed by petitioners without valid grounds and that they were deprived of their constitutional right to due process and security of tenure. They also raised the issue of non-compliance with presidential decrees and wage orders pertaining to the payment of emergency cost of living allowance (ECOLA) and their basic salary, including non-payment of their shares in tuition fee increases under Presidential Decree no. 451.

Petitioners, on the other hand, filed their position paper and supplemental manifestations wherein they denied that private respondents were illegally dismissed. They maintained that the private respondents alleged employment contracts on a probation basis expired and that the same were not renewed because their performances were considered unsatisfactory while they were on probation. Petitioners further contended that private respondents, as probationary employees, did not qualify for tenureship as their services on probation, upon evaluation, did not reach the standard prescribed for probationary employees. Petitioners also denied that private respondents are entitled to backwages, since they were not illegally dismissed and asserted that they have been paid their wages, allowances and their shares in tuition fee increases and that they were not entitled to moral damages and attorney's fees.

On August 8, 1985, a decision was rendered by Executive Labor Arbiter Ildefonso G. Agbuya dismissing the complaint for illegal dismissal based on the following disquisition:

"From the above-quoted portion of the parties' position paper it is undisputed that Complainants were hired on a ten (10) months contractual basis as faculty members for a period of three (3) consecutive contracts of employment (school year). Based on these facts alone, the complaint for illegal dismissal should be dismissed because it is judicial knowledge that probationary period of instructors or faculty members of any particular school pursuant to the rules of the Ministry of Education, Culture and Sports is for three (3) years. Since the employment of Complainants fall (sic) within the probationary period of three (3) years, it is therefore management's prerogative whether to renew the same for permanency or stop the relationship as what happened in this particular cases (sic). We are limiting the basis of our opinion on the probationary period provided for by the Ministry of Education, Culture and Sports and need not discuss the merits as argued by both parties in their respective position paper (sic)." (pp.211 - 212, Records)."[2]

Private respondents appealed said decision to the NLRC which rendered a decision on May 30, 1989 modifying the appealed decision in this manner:

"After a careful review of the records and based on the foregoing facts, we find and so hold that the Labor Arbiter committed reversible error.

It is an undisputed fact that complainant Virgilio Villegas worked with respondent Cagayan Capitol College for six (6) consecutive regular semesters, as college instructor, while complainant Leonor Pagapong worked with the same respondent for three (3) consecutive years as classroom teacher.

In this regard, the Manual of Regulations for Private Schools expressly provides that 'xxx probationary period for academic personnel shall not be more than xxx six (6) consecutive regular semesters for those in the tertiary level'. (Section 102 of the Manual, 7th Edition, 1984). The same Manual also provides that 'full-time

teachers who have rendered three (3) consecutive years of satisfactory service shall be considered permanent' (Section 75, *ibid.*).

Based on this Manual of Regulations of Private Schools both complainants obtained permanent status in their appointment with the respondent Cagayan Capitol College and cannot be dismissed except for cause. The non-renewal of their employment contract with the respondent is therefore tantamount to illegal dismissal. Hence, complainants are entitled to reinstatement with backwages and other benefits.

As regards the claim for moral and exemplary damages, we concur with the findings of the Labor Arbiter that the same is without basis. We likewise adopt the award of attorney's fees of 10% out of the total monetary award that complainants may receive.

WHEREFORE, the appealed Decision is hereby MODIFIED, declaring respondents guilty of illegal dismissal and ordering respondents to reinstate complainants to their former position or any equivalent position with three (3) years backwages without qualification or deduction.

Respondents are likewise ordered to pay 10% of the total award as attorney's fee.

The claims for moral and exemplary damages are dismissed for lack of merit."^[3]

A motion for reconsideration was filed by petitioners but this was denied by the public respondent in a resolution dated July 28, 1989.^[4] Hence this petition wherein petitioners assail the said decision of public respondent based on the following grounds:

"I

THAT THE HON. NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUSLY ERRED IN INTERPRETING THE PERTINENT PROVISIONS OF THE MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS, 7th EDITION, 1970, THE LABOR CODE OF THE PHILIPPINES AND OTHER APPLICABLE LAWS AND JURISPRUDENCE BY RULING THAT PRIVATE RESPONDENTS HAVE ACQUIRED PERMANENT EMPLOYMENT STATUS AND CANNOT BE DISMISSED EXCEPT FOR CAUSE.

II

THAT PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUSLY ERRED IN THE INTERPRETATION OF EXISTING LAWS AND JURISPRUDENCE BY RULING THAT THE ACT OF PETITIONERS IN NOT RENEWING THE TEACHING CONTRACTS OF PRIVATE RESPONDENTS IS TANTAMOUNT TO ILLEGAL DISMISSAL AND IN CONSEQUENTLY ORDERING THEIR REINSTATEMENT WITH BACK WAGES."^[5]

In the same petition is a prayer for the issuance of a writ of preliminary injunction to restrain the public respondent from enforcing the questioned decision dated May 30, 1989 pending resolution of the petition. In sum, the petitioner prays for the annulment of said decision dated May 30, 1989 and the resolution dated July 28, 1989 promulgated by the NLRC.

Acting on the petition, the Court, on October 4, 1989, without giving due course to the petition, required the respondents to comment thereon within ten (10) days from notice and issued a temporary restraining order enjoining the public respondent from enforcing the questioned decision and resolution and further required petitioner to file a bond in the amount of P20,000.00 within forty-eight (48) hours from notice.

After careful deliberation on the petition, the comment thereto of respondents and the memoranda of the parties,

the Court finds that the petition is impressed with merit.

There is no question that private respondents were probationary teachers. Thus, they are covered by the policy instructions issued by the Department of Labor and Employment that the probationary employment of professional instructors and teachers shall be subject to the standards established by the Department of Education and Culture. Said standards are embodied in paragraph 75 of the Manual of Regulations for Private Schools, as follows:

"75. Full time teachers who have rendered three (3) consecutive years of satisfactory services shall be considered permanent."

In *University of Sto. Tomas vs. National Labor Relations Commission*,^[6] this Court in interpreting the foregoing rule, held that the legal requisites for a teacher to acquire permanent employment and security of tenure are as follows:

- "(1) The teacher is a full time teacher;
- (2) The teacher must have rendered three (3) consecutive years of service; and
- (3) Such service must have been satisfactory."

There is no question that private respondents have been employed for three (3) consecutive years as teachers at petitioners's college and on a full time basis. However, they do not automatically become permanent unless it is shown that their services during the probationary period were satisfactory.

The contention of respondents that upon termination of the three-year probationary period the teacher automatically becomes permanent is not quite correct. It must be conditioned on the compliance with the third requisite that the services of said teacher during the probationary period was satisfactory.

The employer is the one who is to set the standards and determine whether or not the services of an employee are satisfactory. It is the prerogative of an employer to determine whether or not the said standards have been complied with. In fact, it is the right of the employer to shorten the probationary period if he is impressed with the services of the employee.

This prerogative of a school to provide standards for its teachers and to determine whether or not these standards have been met is in accordance with academic freedom and constitutional autonomy which give educational institution the right to choose who should teach.^[7]

At the start of their employment, private respondents were duly furnished the Faculty Manual expressly stating among others, the duties of teachers and the grounds for termination of employment or non-appointment to permanent status of a probationary employee.

In the case of respondent Villegas, it appears that there were complaints of students during his last year of service and that these complaints were duly investigated by the Acting Dean of the Nautical Department who came up with the report of the acts complained of.^[8]

Thus, his performance was considered unsatisfactory and was not renewed by petitioner college after the third year. That he was made to teach in the summer of 1984 appears to be prompted by the fact that the summer sessions were still part of the third probationary period which started in July of the first semester of school year 1981-82.

Similarly, respondent Pagapong was found to be inefficient due to her absences.

The Court thus finds and so holds that private respondents were not illegally dismissed by petitioner.

WHEREFORE, the petition is hereby GRANTED and the questioned decision and resolution of the National Labor Relations Commission dated May 30, 1989 and July 28, 1989, respectively, are hereby SET ASIDE and another decision is hereby rendered DISMISSING the complaints filed by private respondents. The restraining order issued by the Court on October 4, 1989 is hereby made permanent.

SO ORDERED.

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

[1] Annexes D, D-1, and D-3 to petitioner's position paper; page 76, records.

[2] Page 129, Rollo.

[3] Pages 21 to 22, Rollo.

[4] Annex B, pages 25 to 27, Rollo.

[5] Page 7, Rollo.

[6] G.R. No. 85519, promulgated February 15, 1990.

[7] Dizon, Law on Schools and Students, pages 289 to 292, citing Wilsons Institutional Academy.

[8] Annexes D, D-1, D-2, and D-3 to the Petitioner's Position Paper; page 76, records.

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