



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **October 13, 2021**, which reads as follows:*

“G.R. No. 226700 (University of San Carlos vs. Maria Fe P. Imbong). – This resolves a Petition for Review on *Certiorari* under Rule 45 seeking to reverse and set aside the Decision dated 28 October 2015 and the Resolution dated 13 July 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 09187. The CA affirmed with modifications the Decision dated 31 October 2014 and the Resolution dated 30 January 2015 rendered by the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-09-000470-2014.

Antecedents

On 27 January 2014, respondent Maria Fe Imbong (respondent) filed before the Regional Arbitration Branch VII of the NLRC a complaint¹ for unfair labor practice and illegal dismissal with claims for damages against petitioner University of San Carlos (petitioner).

Respondent alleged that she is a duly licensed Real Estate Broker, with Master’s and Doctoral degrees in Public Administration. Petitioner initially hired her as an instructor for one semester beginning 01 June 2012 until 31 October 2012, as evidenced by the “Contract for a Faculty Member on TERM/SEMESTRAL Employment”² dated 23 June 2012. In a letter dated 03 July 2012³ addressed to respondent and signed by the University President, it is stated that respondent was employed as “full-time faculty in the Department of Business Administration (BA Department) of the University of San Carlos for the First Semester of the Academic Year (AY) 2012-2013.” In another letter dated 08 October 2012,⁴ the University President informed respondent that she is given the rank of “Full Instructor 1 w/ Masters (RF)” as of 01 June 2012. Respondent continued teaching at the University under similar term/semestral contracts until the first semester of AY 2013-2014, including the summer term. On 04 September 2013,

¹ *Rollo*, p. 105.

² *Id.* at 124.

³ *Id.* at 91.

⁴ *Id.* at 92.

respondent was promoted to the rank of “Full Instructor 3 w/ Masters (RF)” effective 01 June 2013.⁵

On 11 November 2013, the first day of classes for the second semester of AY 2013-2014, respondent inquired about her teaching load but she was informed by Joyce Yang, the Chairperson of the BA Department, that she was not given any teaching load. Aggrieved, respondent wrote a letter⁶ to the University President, requesting an investigation on her alleged illegal termination without due process. Replying to respondent’s letter, the University Vice President for Academic Affairs sent a letter⁷ to respondent dated 10 January 2014 rejecting respondent’s claim of illegal termination, insisting that respondent’s contract expired on 31 October 2013. Consequently, respondent filed the complaint for illegal dismissal and damages.

Ruling of the Labor Arbiter

The Labor Arbiter dismissed the complaint, holding that respondent’s employment was for a fixed period, as explicitly defined in her employment contracts. According to the Labor Arbiter, respondent’s term of employment is governed by her fixed-term contract, which respondent knowingly and voluntarily entered into with petitioner. The Labor Arbiter found no indication of force, duress or improper pressure exerted on respondent when she signed the employment contracts. Further, petitioner merely exercised its right to terminate the contract of service with respondent by letting the contract expire in accordance with the provision thereof. Thus, the Labor Arbiter concluded that respondent was not illegally dismissed from employment.

Ruling of the NLRC

On appeal, the NLRC reversed the Labor Arbiter’s ruling, and held that respondent was illegally dismissed. The term/semestral contracts signed by respondent precluded her from attaining the status, tenure and privileges of a probationary employee, thus preventing her from ever becoming a regular employee, which is clearly a circumvention of respondent’s right to security of tenure. Thus, the NLRC declared that respondent is considered to have attained a permanent or regular status, and under Articles 282 and 283 of the Labor Code, a regular employee can only be terminated for just or authorized causes. The NLRC found that petitioner illegally dismissed respondent when she was not given a teaching load for the second semester of AY 2013-2014 without prior notice and for no valid or just cause.

The dispositive portion of the NLRC Decision dated 31 October 2014 reads:

⁵ Id. at 94.

⁶ Id. at 101-102.

⁷ Id. at 104.

WHEREFORE, premises considered, the Decision of the Labor Arbiter is REVERSED and SET ASIDE and a new one is hereby entered, declaring THAT:

- 1) Complainant was illegally dismissed from her employment;
- 2) Complainant shall be reinstated to her former position without loss of seniority rights and other privileges with full backwages reckoned from the date of her illegal dismissal until her actual reinstatement;
- 3) Complainant is awarded 10% of the total monetary award as attorney's fees; and
- 4) Respondent University of San Carlos is hereby ordered to pay complainant the total amount of THREE HUNDRED FIFTY-NINE THOUSAND FOUR HUNDRED THIRTY-SIX PESOS & 00/100 (359,436.00), representing backwages and attorney's fees.
- 5) Respondents are hereby ordered and directed to submit their compliance within ten (10) calendar days from receipt hereof with regards to Complainant's reinstatement.
- 6) All other claims are dismissed for lack of merit.

SO ORDERED.⁸

Petitioner moved for reconsideration, which the NLRC denied. Consequently, petitioner filed a petition for *certiorari* before the CA, assailing the NLRC Decision.

Ruling of the CA

The CA concurred with the NLRC that the term/semestral contracts executed by respondent were in circumvention of her constitutional right to security of tenure. The CA stated that respondent was a full-time faculty who was a qualified member of the University's academic personnel who can be placed on probationary status. However, despite respondent's qualifications and petitioner's repeated rehiring of respondent, petitioner never placed her under probationary status but continually considered her a fixed-term employee. The CA ruled that the term/semestral contracts signed by respondent do not comply with the standards for valid fixed-term contracts, and that the contracts were signed only after the prescribed term therein already started. Such belated signing illustrates that the parties were not on equal footing in the execution thereof since respondent was already precluded from negotiating properly the terms of the contract considering that classes have already started, leaving her with no alternative to seek employment elsewhere. Although petitioner insisted that respondent's fixed-term employment was solely for the new Real Estate Management (REM) course curriculum, the CA found that respondent was given teaching loads outside of the REM course curriculum, indicating that she was a regular faculty at the BA Department and was not hired specifically and only for the REM course.

⁸ Id. at 187-188.

However, the CA disagreed with the NLRC ruling that respondent has become a regular and permanent employee of petitioner. Under the 1992 Manual of Regulations for Private Schools (Manual), it is only after a teacher has satisfactorily completed probationary period of three school years and is rehired that the teacher acquires full tenure as a regular or permanent employee. In this case, respondent only taught at the University for three consecutive semesters, which is three semesters short of the requisite three-year period of probationary employment. The CA, nevertheless, stated that even if respondent was only a probationary employee and not yet a regular employee, she could only be terminated for valid and just cause, which is not the case here.

Applying the ruling in *Universidad de Sta. Isabel v. Sambajon, Jr.*,⁹ where the Court deemed the teacher's probationary employment as paramount over the fixed term contracts they executed, the CA concluded:

In view of the foregoing, the Court finds that the private respondent is entitled to continue her three-year probationary period such that from the expiration of her last contract on 31 October 2013 her probationary employment is deemed renewed for three subsequent semesters (second semester of AY 2013-2014 to the second semester of AY 2014-2015). However, in view of the enmity and strained relations which have understandably resulted from this controversy, it can be reasonably concluded that the petitioner had chosen not to retain the private respondent in its employ beyond the three-year period. Accordingly, the award of backwages herein as a consequence of the finding of illegal dismissal in favor of private respondent should be confined to the remainder of the three-year probationary period.

Regarding the NLRC's grant of attorney's fees, the Court sustained the same since this award is sanctioned by law and jurisprudence. It has been held that in actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney's fees is justifiable under Article III of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civis Code.¹⁰

The decretal portion of the CA Decision dated 28 October 2015 states:

WHEREFORE, in view of the foregoing premises, the present petition is hereby PARTIALLY GRANTED. The assailed Decision dated 31 October 2014 and the Resolution dated 30 January 2015 promulgated by the National Labor Relations Commission, Seventh Division in Cebu City in NLRC Case No. VAC-09-000470-2014 is AFFIRMED WITH MODIFICATIONS. Accordingly, the private respondent is declared to have been illegally dismissed from her employment and is entitled to the following awards: 1) backwages corresponding to her full monthly salaries for the remainder of her three-year probationary period from the second semester of AY 2013-2014 up to the second semester of AY 2014-2015 as

⁹ 731 Phil. 235 (2014).

¹⁰ *Rollo*, p. 64.

well as pro-rated 13th month pay; and 2) attorney's fees equivalent to 10% of the total monetary award. For this purpose and in conformity with this Decision, this case is REMANDED to the Labor Arbiter for a recomputation of the amounts due to the private respondent.

SO ORDERED.¹¹

Petitioner filed a Motion for Reconsideration, which the CA denied. Hence, this petition.

Issues

Petitioner raises the following issues:

- I. The Honorable Appellate Court gravely and seriously erred in affirming the findings of the NLRC 7th Division that the fixed term employment contracts at issue were invalid being a circumvention of the security of tenure of the respondent Imbong who it declared as probationary employee.
- II. The Honorable Appellate Court gravely and seriously erred in ruling that the respondent Imbong was illegally dismissed and entitled to backwages corresponding to her full monthly salaries for the remainder of her three-year probationary period from the second semester of AY 2013-2014 up to the second semester of AY 2014-2015 as well as pro-rated 13th month pay.
- III. The Honorable Appellate Court gravely and seriously erred in not declaring that petitioner has valid authorized cause to end respondent's teaching contract given the undisputed fact that the B.S. Real Estate Management Program for which she was hired has a dwindling population with only twenty [six] (26) enrollees left for the second semester AY 2013-2014 and will be shelved off completely when all the currently enrolled students shall have either graduated or transferred to another course with no new enrollees for the 1st year and 2nd year college enrollees for the AY 2015-2016.¹²

Ruling of the Court

The petition is without merit.

Petitioner asserts that respondent was hired as a fixed-term employee in its BA Department specifically for the new course offering REM program. Moreover, respondent freely and voluntarily accepted and signed the fixed-term teaching contracts, and is therefore estopped from claiming that the contracts were not signed on equal terms. Alleging that the dwindling number of students enrolling in the REM program caused the shortage of teaching loads, petitioner argues that such constitute as justifiable reason for

¹¹ Id. at 64-65.

¹² Id. at 8-9.

the non-renewal of respondent's contract.

In *Caparoso v. Court of Appeals*,¹³ the Court stated the criteria, as pronounced in *Brent School, Inc. v. Zamora*,¹⁴ for which a fixed-term employment cannot be considered to be in circumvention of the law on security of tenure, thus:

1. The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or

2. It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.

Thus, in *Fuji Television Network, Inc. v. Espiritu*,¹⁵ the Court recognized the validity of fixed-term contracts as long as the guidelines laid down in *Brent* are satisfied, emphasizing that the *Brent* doctrine is "applicable only in a few special cases wherein the employer and employee are on more or less in equal footing in entering into the contract."¹⁶

In this case, the NLRC and the CA found that the term/semestral employment contracts were signed after the prescribed period of employment had already started, *to wit*: (1) the term/semestral employment contract for the period 01 June 2012 to 31 October 2012 was dated 23 June 2012, and signed by respondent on said date;¹⁷ (2) the term/semestral employment contract for the period 01 November 2012 to 30 March 2013 was dated 19 November 2012, and signed by respondent on said date;¹⁸ (3) the term/semestral employment contract for the period April 2013 to May 2013 was dated 20 April 2013, and signed by respondent on said date;¹⁹ and (4) the term/semestral employment contract for the period 10 June 2013 to 31 October 2013 was dated 01 July 2013, and signed by respondent on said date.

Under Section 116²⁰ of the 2008 Manual of Regulations for Private Higher Education (MORPHE), the written employment contract of the teaching and non-teaching academic employees should be executed before or at the start of school term. The signing of the contracts after the start of

¹³ 544 Phil. 721 (2007).

¹⁴ 260 Phil. 747 (1990).

¹⁵ 749 Phil. 388 (2014).

¹⁶ *Id.* citing *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 170 (2013).

¹⁷ *Rollo*, p. 124.

¹⁸ *Id.* at 127.

¹⁹ *Id.* at 130.

²⁰ Section 116. *Employment Contract*. Before or at the start of school term, the institution shall execute a written employment contract with its teaching and non-teaching academic employees, whether permanent, probationary or part-time. The contract with a permanent teaching and non-teaching academic employee does not affect his/her tenure or status, but binds him/her to work for the entire school term and to complete the requirements thereof, including the submission of final grades.

the semestral classes clearly puts respondent at a disadvantage and leaves her with very limited options for employment in other schools, thus, negating petitioner's claim that the parties to the contract dealt with each other on equal terms.

Moreover, the NLRC and the CA correctly categorized petitioner's status as probationary. In *Brazil v. STI Education Service Group, Inc.*,²¹ the Court stated that "a full-time faculty, by default, is given a probationary status unless: (1) the employer decides to cut short the probationary period for causes provided under the law; or (2) said faculty is hired merely as a substitute of a permanent faculty who is on leave." As explained by the Court in *Mercado v. AMA Computer College-Parañaque City, Inc.*,²² on the nature of a fixed-term employment as applied to a faculty member:

To highlight what we mean by a fixed-term contract specifically used for the fixed term it offers, a replacement teacher, for example, may be contracted for a period of one year to temporarily take the place of a permanent teacher on a one-year study leave. The expiration of the replacement teachers contracted term, under the circumstances, leads to no probationary status implications as she was never employed on probationary basis; her employment is for a specific purpose with particular focus on the term and with every intent to end her teaching relationship with the school upon expiration of this term.

In this case, petitioner hired respondent as a full-time faculty and not merely as a substitute for a permanent faculty who is on leave. This is evidenced by the four letters addressed to respondent dated 03 July 2012,²³ 13 December 2012,²⁴ 21 May 2013,²⁵ and 22 July 2013,²⁶ captioned "Term Employment" and signed by the University President, stating that respondent is "employed as a full-time faculty in the Department of Business Administration of the University of San Carlos x x x." In fact, respondent was given the following teaching load units: (1) 24 units for the first semester AY 2012-2013;²⁷ (2) 21 units for the second semester AY 2012-2013;²⁸ and (3) 24 units for the first semester AY 2013-2014.²⁹ For the summer 2013, respondent was given a tutorial load for one student.³⁰

Further, petitioner's contention that respondent was hired primarily for the new REM course is belied by the subjects taught by respondent which were not included in the REM course curriculum. As found by the CA, respondent taught only one REM-offered subject for the entire AY 2012-2013 and only three REM-offered subjects for the first semester of AY

²¹ G.R. No. 233314, 21 November 2018.

²² 632 Phil. 228 (2010).

²³ *Rollo*, p. 125.

²⁴ *Id.* at 128.

²⁵ *Id.* at 131.

²⁶ *Id.* at 134.

²⁷ *Id.* at 126.

²⁸ *Id.* at 129.

²⁹ *Id.* at 135.

³⁰ *Id.* at 12.

2013-2014, indicating that respondent was hired as a regular faculty of the BA Department and not just specifically for the REM course.

Besides, if indeed the reason for the non-renewal of respondent's contract was due to the dwindling enrollees in the REM course, the evidence does not show that such was duly communicated to respondent prior to her termination. In fact, when respondent complained to the University President regarding her illegal termination, the letter-reply from the Vice President for Academic Affairs merely stated that her contract has already ended. Petitioner never proffered any just or authorized cause to respondent for the termination of her services other than that her contract has ended. Although a fixed-term employment is valid, such kind of contract may be disregarded when the periods are imposed to prevent an employee from acquiring security of tenure.³¹

In *Mercado v. AMA Computer College-Parañaque City, Inc.*,³² although the Court recognized the right of the school to use fixed-term employment contracts in hiring its faculty, the Court also emphasized that the teachers' probationary status should not be disregarded just because the contracts were designated as fixed-term. The Court explained:

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**

³¹ *Claret School of Quezon City v. Sindy*, G.R. No. 226358, 09 October 2019.

³² 632 Phil. 228 (2010).

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. x x x (Emphasis supplied)

Thus, "if the fixed term is intended to run simultaneously with the probationary period of employment, then the fixed term is not to be considered the probationary period, unless a shorter probationary period is expressly adopted by the institution," and the non-renewal thereof prior to the expiration of the probationary period constitutes dismissal for which the provisions of the Labor Code on just and authorized causes apply.³³ Section 117 of the MORPHE provides that the probationary employment of academic teaching personnel shall not be more than a period of six consecutive semesters or nine consecutive trimesters of satisfactory service. Since respondent was illegally dismissed prior to the expiration of the probationary period (six consecutive semesters) without just or valid cause, the CA correctly held that respondent is entitled to backwages for the remaining three semesters of her probationary period.

The assailed issuances, however, must be modified to include the payment of legal interest at the rate of six percent (6%) per *annum* on the monetary awards due to respondent, from the time of finality of this Resolution until fully satisfied based on jurisprudence.

WHEREFORE, the Decision dated 28 October 2015 and the Resolution dated 13 July 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 09187 are **AFFIRMED with MODIFICATION** in that the total monetary awards due to respondent Maria Fe P. Imbong should earn legal interest at the rate of six percent (6%) per *annum* from finality of this Resolution until fully satisfied.

³³ *University of St. La Salle v. Glaraga*, G.R. No. 224170, 01 June 2020.

SO ORDERED.” (Carandang, J., on official leave.)
Dimaampao, J., designated additional Member per Special Order No. 2839.

By authority of the Court:

Misael Domingo C. Battung III
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