



Republic of the Philippines
Supreme Court
Manila

SPECIAL FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Special First Division, issued a Resolution dated **October 7, 2020** which reads as follows:*

“G.R. No. 234186 – (Union School International represented by Pastor Abraham Cho [School Superintendent], Jaime Nabua [Board President], and Jennifer Mandapat [School Head] v. Charley Jane Dagdag).

Before the Court is a Motion for Reconsideration filed by herein petitioner seeking the reversal of this Court’s Decision dated November 21, 2018.

In the Decision dated November 21, 2018, this Court denied the petition and ruled that the totality of the evidence does not justify the dismissal of Charley Jane Dagdag (*respondent*) from her employment as an elementary school teacher in Union School International (*petitioner*). The Court found that respondent agreed to resign because her actuation was perceived by petitioner as a ground for revocation of her license as a teacher. Records also disclose that the grievance committee voted for the dismissal of respondent as it concluded that she committed gross immorality in violation of the school rules and the Code of Ethics for Professional Teachers.

In its motion, petitioner insists that there was no constructive dismissal committed against respondent. It claims that the conduct of an administrative investigation does not constitute constructive dismissal and that the investigation committee did not make a pre-determination of respondent’s fate. The investigation was focused on gross immorality and violation of the Code of Ethics for Professional Teachers, and not on her expectancy. Petitioner further maintains that it never issued or released any order terminating respondent’s employment.

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Additionally, petitioner argues that respondent was a fixed period employee; thus, she is not entitled to a separation pay and/or backwages. The rulings of the Court granting separation pay and/or backwages from the time of severance up to the finality of its decision applied only when the employee concerned was a regular employee. The award should reasonably be only reckoned and computed from the supposed time of dismissal up to the end of the contractual or probationary employment. Citing *Pentagon International Shipping, Inc. v. Adelantar*,¹ petitioner contends that a contractual or fixed term employee subject of illegal dismissal may be entitled to backwages only up to the unexpired portion of the employment contract. Likewise, in *Carvajal v. Luzon Development Bank*,² upon finding of illegal dismissal, the Court awarded backwages only up to the end of the probationary contract. Relying on *Moreno v. San Sebastian College-Recoletos, Manila*,³ petitioner insists that the award of backwages is improper because it acted in good faith and gave respondent an opportunity to answer the charges against her. Petitioner also assails the award of attorney's fees.

We find that the grounds raised by petitioner are a mere rehash of its petition before the Court. Petitioner, however, failed to show a substantial argument or new matter which would merit a reversal of this Court's finding of constructive dismissal it committed against respondent. The finding of constructive dismissal had already been sufficiently passed upon by this Court in the assailed Decision.

However, We find merit in petitioner's plea to reconsider the monetary awards of respondent.

It is undisputed that respondent was hired as an elementary school teacher on a probationary status by petitioner from July 16, 2012 to May 31, 2013.⁴ There was also no finding by the Court that respondent attained a regular status of employment notwithstanding the finding of constructive dismissal.

Be that as it may, even as a probationary employee, respondent still enjoys *limited* security of tenure during the period of her probation – that is, she cannot be terminated except for just or authorized causes, or if she fails to qualify in accordance with reasonable standards prescribed by petitioner for the acquisition of

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¹ 479 Phil. 230 (2004).

² 692 Phil. 273 (2012).

³ 573 Phil. 533 (2008).

⁴ *Rollo*, p. 145.

permanent/regular status of its teaching personnel.⁵ Considering that petitioner failed to show just or authorized cause for severance of respondent's employment prior to the end of her probation, it was ruled that she was constructively dismissed. Simply put, respondent was a probationary employee who was constructively dismissed by petitioner during the course of her probationary employment.

We take this opportunity to correct the award of backwages and separation pay to respondent.

The CA granted backwages and separation pay, in lieu of reinstatement. It ruled that an illegally dismissed employee is entitled to reinstatement as a matter of right.⁶ But since reinstatement is no longer possible, the computation of backwages and separation pay shall accrue from the time of illegal termination until the finality of judgment.

We do not agree. The reinstatement of respondent is possible only for the unexpired portion of her probationary contract; thus, she is not entitled to backwages from the finality of the judgment and separation pay.

The probationary period of teaching personnel are not governed solely by the Labor Code as the law is supplemented, with respect to the period of probation, by special rules found in the Manual of Regulations for Private Schools.⁷

The 2010 Revised Manual of Regulations for Private Schools in Basic Education, provides:

SECTION 63. Probationary Period; Regular or Permanent Status. — A probationary period of not more than three years in the case of the school teaching personnel and not more than six months for non-teaching personnel shall be required for employment in all private schools. A school personnel who has successfully undergone the probationary period herein specified and who is fully qualified under the existing rules and standards of the school shall be considered permanent.⁸

The probationary status may ripen into a regular or permanent status if the following requisites are present, to wit: 1) that he/she has successfully undergone the probationary period, that is – 3 years for

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⁵ *De La Salle Araneta University, Inc. v. Magdurulang*, 820 Phil. 1133, 1151 (2017).

⁶ *Rollo*, p. 36.

⁷ *Mercado v. AMA Computer College-Parañaque City, Inc.*, 632 Phil. 228 (2010).

⁸ DepEd Order No. 088-10, June 24, 2010.

teaching personnel and 6 months for non-teaching personnel; and, 2) he/she is fully qualified under the existing rules and standards of the school. However, it must be emphasized that mere completion of the probationary period does not, *ipso facto*, make the employee a permanent employee of the educational institution, as [he/she] could only qualify as such upon fulfilling the reasonable standards for permanent employment as faculty member.⁹

In *De La Salle Araneta University, Inc. v. Magdurulang*,¹⁰ the Court held that “at the end of the probation period, the decision to re-hire a probationary employee, and thus, vest upon him a regular and permanent status, belongs to the educational institution as the employer alone. Otherwise stated, upon the expiration of their contract of employment, academic personnel on probation cannot automatically claim security of tenure and compel their employers to renew their employment contracts which would then transform them into regular and permanent employees.”¹¹

In this case, respondent’s appointment was effective for a period of one (1) school year. Petitioner may renew the contract for another school year on probation status upon its expiration; and lastly, for a third time on probation for another school year. But records show that petitioner did not hire respondent for the full duration of the probationary period.

Nevertheless, respondent was not able to finish the term of her probation contract, much less the maximum three (3)-year period of probation set by the rules. The first requisite to be considered as regular or permanent employee is obviously lacking. Suffice it to say, respondent’s employment did not ripen into a regular and permanent status even by operation of law.

Moreover, given the acrimony between the parties brought about by this controversy, it can be said that petitioner would have opted not to extend respondent’s employment upon the end of the period stated in her original appointment.

Although the three (3)-year maximum probationary period for teaching personnel may also be shortened upon the grant of a regular or permanent status of the educational institution on its discretion, there is no evidence that petitioners intended the same for respondent.

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⁹ Supra note 5, at 1149.

¹⁰ Id.

¹¹ Id.

Thus, in *Fr. Escudero, O.P. v. Office of the President of the Phils.*,¹² We held that “[t]he 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.”¹³

In other words, this Court cannot find any basis to rule that respondent became a regular or permanent employee simply because of her illegal termination.

Since the security of tenure of respondent is only until the end of her probationary contract, it follows, therefore, that backwages awarded in view of the finding of illegal dismissal, should be limited to the remaining period of respondent’s appointment. Accordingly, respondent is entitled to full backwages from the time she was illegally dismissed up to the supposed end of her probationary contract on May 31, 2013.

Likewise, even if there is a finding of illegal dismissal, respondent still would not be entitled to reinstatement. As discussed above, it is upon the employer’s discretion alone on whether to renew respondent’s probationary contract which would make her a regular or permanent employee, or terminate her services after completion of the probationary period. This would depend on the assessment of her performance based on the reasonable standards of the school.

Considering that respondent did not successfully finish her term of probation, and that there was no evidence adduced to show that it was renewed, petitioner is not bound to reinstate her. Therefore, the award of separation pay has no basis.

As to the award of attorney’s fees, we maintain the same. We agree with the CA that respondent was forced to litigate her interest.

In view of the foregoing, the Decision dated November 21, 2018 is hereby modified, insofar as the award of backwages and separation pay.

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¹² 254 Phil. 789 (1989).

¹³ *Id.* at 795, citing *Rev. Fr. Labajo v. Alejandro*, 248 Phil. 194, 200 (1988).

WHEREFORE, the motion is **PARTLY GRANTED**. The award of separation pay is hereby **DELETED**.

Petitioner Union International School is **ORDERED** to pay respondent Charley Jane Dagdag the following:

- a) Full backwages from the time respondent was illegally dismissed until the expiration of her probationary contract on May 31, 2013; and
- b) Attorney's fees equivalent to ten percent (10%) of the total monetary award.

In addition, the legal interest of six percent (6%) *per annum* shall be imposed on the total monetary award from the date of the finality of this Judgment until fully paid.¹⁴ The case is **REMANDED** to the Labor Arbiter for the exact computation of respondent's award.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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¹⁴ *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).