

SECOND DIVISION

[G.R. No. 224319, November 20, 2017]

**DE LA SALLE ARANETA UNIVERSITY, INC., PETITIONER, VS. DR.
ELOISA G. MAGDURULANG, RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated November 9, 2015 and the Resolution^[3] dated April 22, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 123219, which modified the Decision^[4] dated July 15, 2011 and the Resolution^[5] dated December 12, 2011 of the National Labor Relations Commission (NLRC) in NLRC Case No. NCR-08-11300-10, and accordingly, ordered petitioner De La Salle Araneta University, Inc. (petitioner) to pay respondent Dr. Eloisa G. Magdurulang (respondent) backwages corresponding to her full monthly salaries for three (3) semesters, *i.e.*, first and second semesters of school year (SY) 2010-2011 and first semester of SY 2011-2012, as well as pro-rated 13th month pay.

The Facts

This case stemmed from an amended complaint^[6] for constructive dismissal with prayer for reinstatement and payment of salaries and other benefits filed by respondent against petitioner.^[7] Respondent alleged that petitioner initially hired her as a part-time faculty member for the latter's College of Business for the second semester of SY 2007-2008 (November 5, 2007-March 18, 2008), as well as the summer semester of 2008 (March 31, 2008-May 13, 2008).^[8] For the second semester of SY 2008-2009 (October 13, 2008-May 31, 2009), she was then appointed as a full-time faculty member/BSBA Program Coordinator,^[9] with such designation being renewed for the first and second semesters of SY 2009-2010 (June 1, 2009-May 31, 2010).^[10] During the pendency of respondent's contract for SY 2009-2010, the University's Acting Assistant Dean recommended to the University President that respondent be already accorded a permanent status, effective the second semester of SY 2009-2010.^[11] While the University President initially acceded to such recommendation, he ended up not extending a permanent appointment to respondent, pursuant to Section 117 of the Manual of Regulations for Private Higher Education (MORPHE) which provides that "*[t]he probationary employment of academic teaching personnel shall not be more than a period of six (6) consecutive semesters or nine (9) consecutive trimesters of satisfactory service, as the case may be.*"^[12] Thus, on November 4, 2009, the University President instead issued a reappointment to respondent as full-time faculty member/BSBA Program Coordinator for the first and second semesters of SY 2010-2011 (June 1, 2010-May 31, 2011), with a re-classified ranking of Assistant Professor 4 and on

contractual basis.^[13]

As a result, respondent wrote a letter^[14] dated January 18, 2010 to the University President, asking clarification as to why: (a) her rank was changed from Associate Professor 2 to Assistant Professor 4 in her reappointment for SY 2010-2011, resulting in diminution of salaries and benefits; and (b) she was not extended a permanent appointment despite the favorable recommendation from the Acting Assistant Dean.^[15] In response thereto, the University President wrote respondent a letter^[16] dated February 23, 2010, explaining to her, among others, that she cannot be extended a regular and permanent appointment as of the moment as she has yet to finish the probationary period of six (6) straight semesters, as provided under Section 3.1.3 of the 2009 DLSAU Personnel Handbook,^[17] which in turn, expressly adopts Section 117 of the MORPHE.^[18] On July 20, 2010, respondent wrote another letter^[19] reiterating her concerns, this time addressed to the new University President. However, before the new University President could answer, respondent filed the instant complaint,^[20] claiming that despite her re-appointment for SY 2010-2011, she was no longer given any teaching load and that her academic administrative position as BSBA Program Coordinator was likewise discontinued.^[21] Respondent also insisted that she had already attained the status of a regular employee since she has been teaching for about three (3) years beginning in 2007,^[22] and considering too that the Acting Assistant Dean already recommended her permanent appointment.^[23]

In its defense,^[24] petitioner countered that it neither constructively nor actually dismissed respondent, maintaining that it could not appoint respondent to a regular and permanent position as she has yet to complete the probationary period of six (6) consecutive semesters, as laid down in the MORPHE, as well as in the 2009 DLSAU Personnel Handbook.^[25] In this regard, petitioner pointed out that respondent's appointments all throughout her probationary employment were on a fixed-term basis, which she voluntarily and freely accepted.^[26] As such, it is within the university's prerogative to re-hire her or not at the end of such contracts.^[27]

The Labor Arbiter's (LA) Ruling

In a Decision^[28] dated February 16, 2011, the LA dismissed the complaint for lack of merit.^[29] The LA found that since petitioner is a private educational institution for higher education, respondent's employment status therein is covered not only by the MORPHE but also the 2009 DLSAU Personnel Handbook.^[30] Since respondent has not held a full time academic teaching position for a period of six (6) consecutive semesters or nine (9) straight trimesters, she is not eligible for permanent appointment. Moreover, considering that respondent's employment contracts were on a fixed-term basis, her services may be subject to termination.^[31]

Aggrieved, respondent appealed^[32] to the NLRC.

The NLRC Ruling

In a Decision^[33] dated July 15, 2011, the NLRC reversed and set aside the LA ruling, and accordingly, declared respondent to have been constructively dismissed.^[34] Consequently, it ordered petitioner to reinstate her to the position of Associate Professor with full backwages reckoned from the first semester of SY 2010-2011 up to her actual reinstatement, and to pay her all other monetary benefits which inure to such position during the time she was not given any teaching load, as well as the honorarium for the position of BSBA Program Director until the end of her term on May 31, 2011.^[35]

The NLRC held that while petitioner has yet to complete the probationary period of six (6) consecutive semesters, such period was effectively shortened when the Acting Assistant Dean recommended her for a permanent status, which was initially formally acted upon by the University President.^[36] In this regard, petitioner's act of voluntary shortening respondent's probationary period effectively accorded the latter the status of a regular employee. Perforce, for not having been given any teaching load, as well as discontinuing her appointment as BSBA Program Coordinator, respondent was deemed to have been constructively dismissed.^[37]

Petitioner moved for reconsideration,^[38] which was, however, denied in a Resolution^[39] dated December 12, 2011. Dissatisfied, it filed a petition for *certiorari*^[40] before the CA.

The CA Ruling

In a Decision^[41] dated November 9, 2015, the CA modified the NLRC ruling, deleting respondent's reinstatement. In lieu thereof, it ordered petitioner to pay respondent backwages corresponding to her full monthly salaries for three (3) semesters, *i.e.*, the first and second semester of school year (SY) 2010-2011 and the first semester of SY 2011-2012, as well as prorated 13th month pay.^[42]

Contrary to the NLRC's ruling, the CA held that respondent has no vested right to a permanent appointment since she had not completed the pre-requisite six (6) consecutive semesters necessary to be eligible for the same. Nonetheless, as a probationary employee, respondent still enjoys a limited security of tenure, and therefore, cannot be terminated except for just or authorized causes, or if she fails to qualify in accordance with the reasonable standards set by petitioner.^[43] As respondent was not given any teaching load for SY 2010-2011 and her services as BSBA Program Coordinator were discontinued without any justifiable reason, she was deemed to have been constructively dismissed. As such, respondent is entitled to receive the benefits appurtenant to the remainder of her probationary period, namely, both semesters of SY 2010-2011 and the first semester of SY 2011-2012. However, the CA pointed out that due to the dispute of the litigating parties in this case, it may be inferred with certainty that petitioner had already opted not to retain respondent in its employ beyond her probationary period.^[44]

Undaunted, petitioner moved for reconsideration,^[45] but the same was denied in a Resolution^[46] dated April 22, 2016; hence, this petition.^[47]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that respondent was: (a) a probationary employee; and (b) constructively dismissed by petitioner, thereby entitling her to the benefits appurtenant to the remainder of her probationary period.

The Court's Ruling

Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast to the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision.^[48]

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.^[49]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare, and accordingly, dismiss the petition.^[50]

Guided by the foregoing considerations and as will be explained hereunder, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC, as the latter's finding that respondent had attained a regular status patently deviates from the evidence on record, as well as settled legal principles of labor law. Further, while the CA correctly ruled that petitioner constructively dismissed respondent, it erred in holding that respondent is entitled to the benefits pertaining to the remainder of her probationary period *i.e.*, both semesters of SY 2010-2011 and the first semester of SY 2011-2012.

A probationary employee or probationer is one who is on trial for an employer, during which the latter determines whether or not the former is qualified for permanent employment. During this period, the employer, on the one hand, is given the opportunity to observe the fitness of an employee while at work in order to ascertain the latter's efficiency and productivity; on the other hand, the employee seeks to prove to his employer that he has the qualifications to meet the reasonable standards for permanent employment. As used to describe such phase of employment, the word "probationary" implies the purpose of such term or period, and not necessarily its length.^[51]

Indeed, the employer has the right, or is at liberty, to choose who will be hired and

who will be declined. As a component of this right to select his employees, 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.^[52] Notably, the exercise of such right is regulated by law insofar as it sets a maximum allowable period within which the employer may subject an employee to a probationary period. As a general rule, such limit is set under Article 296^[53] of the Labor Code, ^[54] as amended:

Article 296. [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.

As an exception, however, case law has provided that the probationary period of employment of academic personnel such as professors, instructors, and teachers - including the determination as to whether they have attained regular or permanent status - shall not be governed by the Labor Code but by the standards established by the Department of Education and the Commission on Higher Education, as the case may be.^[55] In this regard, Section 92 of the 1992 Revised Manual of Regulations for Private Schools (8th Edition) explicitly provides that: (a) for those in elementary and secondary levels, the probationary period shall not be more than three (3) consecutive years of satisfactory service; and (b) for those in the tertiary level, such period shall be six (6) consecutive semesters or nine (9) consecutive trimesters, as the case may be.^[56]

The rule on the probationary employment of elementary and secondary academic personnel is reiterated in Section 63 of the 2010 Manual of Regulations for Private Schools in Basic Education, which reads:

Section 63. *Probationary Period; Regular or Permanent Status.* A probationary period of not more than three (3) years in the case of the school teaching personnel and not more than six (6) 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.

The rule relative to private higher education institutions^[57] is likewise reiterated in Sections 117 and 118 of the MORPHE:

Section 117. *Probationary Period.* - An academic teaching personnel who does not possess the minimum academic qualifications prescribed under Sections 35 and 36 of this Manual shall be considered as part-time employee, and therefore cannot avail of the status and privileges of a probationary employment. A part-time employee cannot acquire regular permanent status, and hence, may be terminated when a qualified teacher becomes available.