

## THIRD DIVISION

[ G.R. No. 198350, September 14, 2016 ]

**ATTY. MARCOS D. RISONAR, JR., PETITIONER, VS. COR JESU COLLEGE AND/OR EDGARDO S. ESCURIL, RESPONDENTS.**

### DECISION

**REYES, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court seeking to annul and set aside the Decision<sup>[2]</sup> dated December 9, 2010 and the Resolution<sup>[3]</sup> dated July 28, 2011 issued by the Court of Appeals (CA) in CA-G.R. SP No. 02957-MIN.

### Facts

Atty. Marcos D. Risonar, Jr. (petitioner) was initially appointed as Dean of the Law School of Cor Jesu College (CJC) effective August 1, 2003 until May 31, 2004.<sup>[4]</sup> On June 7, 2004, his appointment as Law School Dean was renewed for a term of three years effective June 1, 2004.<sup>[5]</sup> His appointment letter, *inter alia*, provided that "if [CJC] does not intend to renew/extend [the petitioner's] appointment[,] he will be informed in writing 30 days before [the] term appointment ends."<sup>[6]</sup>

After his three-year term ended on May 31, 2007, the petitioner had not received any notice of termination from CJC. Thus, despite the lapse of the term of his appointment as Law School Dean, the petitioner continued to perform his duties and proceeded to prepare for the forthcoming first semester of school year 2007-2008.<sup>[7]</sup>

In June 2007, Edgardo S. Ecuril (Ecuril) assumed office as President of CJC. On June 11, 2007, during a party held in honor of the retiree President of CJC, the petitioner was introduced to Ecuril, but they did not discuss the status of the petitioner's appointment. On June 25, 2007, the petitioner met with Ecuril. During the said meeting, they discussed the situation of the law school; the termination of the petitioner's services was not discussed.<sup>[8]</sup>

On July 12, 2007, the petitioner received a letter from Ecuril informing him that his services as Law School Dean was already terminate and that the new Dean will report on July 13, 2007 for a formal turn-over of office and responsibilities. The petitioner then immediately called Ecuril to express his disappointment as regards the manner of terminating his service as Law School Dean.<sup>[9]</sup>

On July 13, 2007, the petitioner wrote Ecuril to protest the termination of his services. He pointed out that, pursuant to the stipulations in his appointment letter, it is required for CJC to give him a written notice informing him that the administration does not intend to renew/extend his appointment as Law School Dean

within 30 days prior to the expiration of the term of his previous appointment. He pointed out that the written notice of termination he received from Escuril was sent and received by him well beyond the 30-day period indicated in his appointment letter. The petition sent a copy of his letter to the Board of Trustees of CJC. Escuril and CJC (collectively, the respondents) ignored the petitioner's protest.<sup>[10]</sup>

On July 20, 2007, the petitioner filed a complaint for illegal dismissal and damages with the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) in Davao City against the respondents. He claimed that the respondents violated the express provision in his appointment letter as regards the written notice of termination sent within 30 days prior to the expiration of the term of his appointment in case the respondents do not desire to renew or extend his services. He likewise claimed that no just or authorized cause exists to warrant his dismissal.<sup>[11]</sup>

The petitioner further posited that he should have been considered as a regular employee since he had continuously and uninterruptedly worked for CJC for four years and that he performed activities which are necessary and desirable in the usual business or trade of CJC. Moreover, the petitioner averred that the respondents' failure to send him the required written notice of termination resulted in the automatic renewal of his appointment as Law School Dean for another three-year term starting from June 1, 2007.<sup>[12]</sup>

For their part, the respondents claimed that the petitioner's appointment is a term employment which presupposes that a day certain has been agreed upon by the parties for the commencement and termination of the employment contract. They claimed that the petitioner's appointment as Law School Dean expired on May 31, 2007 and, thus, he was not illegally dismissed.<sup>[13]</sup>

They also claimed that the petitioner was informed that his term as Law School Dean would no longer be renewed, albeit orally in a meeting. They averred that Escuril, during the said meeting, informed the petitioner that he was already being replaced in view of the expiration of his contract. They further alleged that while the petitioner continued to hold office as Law School Dean, he however knew that he only holds that office temporarily and in hold-over capacity. In any case, the respondents averred that the lack of a written notice of termination is inconsequential since the petitioner's employment was terminated by reason of the expiration of the period stated in the appointment letter.<sup>[14]</sup>

### **Ruling of the Labor Arbiter**

On February 28', 2008, the Labor Arbiter (LA) rendered a Decision declaring the petitioner's dismissal as valid, but directed the respondents to pay the petitioner the following amounts: (1) P50,000.00 as nominal damages; (2) P100,000.00 as moral and exemplary damages; and (3) an amount equivalent to 15% of the total monetary award as attorney's fees.<sup>[15]</sup> The LA opined that notwithstanding that the petitioner's employment was a fixed-term employment, the parties were nevertheless bound by the contract of employment which indicated that CJC should send the petitioner a written notice of termination 30 days prior to the expiration of the term of appointment. The LA held that when CJC failed to send the petitioner the required written notice of termination, it violated the petitioner's right to due

process, thus, making it liable to pay nominal, moral and exemplary damages.<sup>[16]</sup>

Both parties elevated their cases to the NLRC on partial appeal.<sup>[17]</sup> The petitioner insisted that his dismissal is illegal and, thus, prayed, in addition to the damages awarded by the LA, that his reinstatement be ordered plus backwages, inclusive of allowances and benefits.<sup>[18]</sup> On the other hand, respondents maintained that the termination of the petitioner's employment was valid as it was only a fixed-term employment; they asked the NLRC to delete the award of nominal, moral and exemplary damages, and attorney fees.<sup>[19]</sup>

### **Ruling of the NLRC**

On January 30, 2009, the NLRC issued a Resolution reversing the LA's disposition. The NLRC declared the petitioner's dismissal as illegal and, thus, directed the respondents to reinstate the petitioner to his form position as Law School Dean and to pay him full backwages. However, if reinstatement is no longer possible, the NLRC directed the respondents to instead pay the petitioner's wages equivalent to three years. The NLEC affirmed the awards for moral and exemplary damages, but deleted the award of nominal damages. The NLRC likewise reduced the award of attorney's fees to 10% of the total monetary awards granted.<sup>[20]</sup>

The NLRC held that in view of the respondents' failure to comply with the written notice of termination requirement stipulated in the letter appointment, and considering that the petitioner was allowed to continue serve as Law School Dean more than a month after the stipulated end of his appointment, his appointment was deemed renewed and extended on such terms and conditions set forth in his original appointment.<sup>[21]</sup> Accordingly, the NLRC ruled that the petitioner has the right to tenurial security at least within the same period of three years and his employment cannot be terminated except for a just or an authorized cause provided by law or in his appointment letter.<sup>[22]</sup>

The respondents filed a motion for partial reconsideration, but it was denied by the NLRC in its Resolution dated March 31, 2009.<sup>[23]</sup> Aggrieved, the respondents filed a petition for review on *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion when it ruled that the petitioner's appointment was deemed renewed and extended on account of their failure to send him the required written notice of termination. They also claimed that the NLRC's award of nominal and exemplary damages and attorney's fees is without factual and legal basis.<sup>[24]</sup>

### **Ruling of the CA**

On December 9, 2010, the CA rendered the herein assailed Decision<sup>[25]</sup> reversing the NLRC's Resolutions dated January 30, 2009 and March 31, 2009. The CA pointed out that the petitioner's employment with CJC is a fixed-term employment and, thus, the petitioner cannot be considered as a regular employee.<sup>[26]</sup> The CA further held that the respondents' failure to send the petitioner the required written notice of termination, contrary to the NLRC's ruling, does not result in the automatic renewal or extension of the petitioner's appointment as Law School Dean. The CA stressed that the petitioner's appointment is clearly and categorically fixed for a

period of three years effective June 1, 2004 until May 31, 2007 only.<sup>[27]</sup> Nevertheless, the CA opined that respondents' failure to afford the 30-day notice amounts to violation of the due process requirement making them liable to pay the petitioner nominal damages. Accordingly, the CA directed the respondents to pay the petitioner the amount of P30,000.00 as nominal damages.

The petitioner sought reconsideration of the Decision dated December 9, 2010, but it was denied by the CA in its Resolution<sup>[28]</sup> dated July 28, 2011.

In this petition for review on *certiorari*, the petitioner claims that the NLRC did not abuse its discretion when it ruled that he was illegally dismissed from his employment.<sup>[29]</sup> He insists that the respondents' duty to send him a written notice of termination 30 days prior to the expiration of the term of his appointment is a contractual duty; the respondents' failure to send him the required written notice of termination resulted in the automatic renewal of his original appointment for another three years.<sup>[30]</sup> Further, the petitioner insinuates that he should be considered a regular employee of CJC since he was allowed to work after the expiration of his term of employment and that he performs activities which are usually necessary or desirable the usual business or trade of CJC.<sup>[31]</sup>

On the other hand, the respondents, in their Comment,<sup>[32]</sup> maintain that the petitioner's dismissal was valid since his fixed-term contract employment with CJC had already expired. The respondents likewise aver that the petitioner cannot be considered as a regular employee of CJC considering that he has not been in the continued service of CJC for more than two years after the expiration of the term of his appointment as La School Dean.<sup>[33]</sup>

### **Issue**

Essentially, the issue for the Court's resolution is whether the petitioner was illegally dismissed.

### **Ruling of the Court**

The petition is granted.

***The petitioner's appointment as Law School Dean is a fixed-term employment.***

At the outset, it bears stressing that the nature of the petitioner's employment with CJC, contrary to his assertion, is not a regular employment, but a fixed-term employment. The validity of a fixed-term employment, as aptly pointed out by the CA, had long been settled by the Court. Indeed, where the duties of the employee consist of activities which are necessary or desirable in the usual business of the employer, the parties are not prohibited from agreeing on the duration of employment.<sup>[34]</sup> Article 280<sup>[35]</sup> of the Labor Code does not proscribe or prohibit an employment contract with a fixed period. There is nothing essentially contradictory between a definite period of employment and the nature of the employee's duty.<sup>[36]</sup>

A contract of employment with a fixed period necessitates that: (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 on the employee and without any circumstances vitiating consent; or (2) it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter.<sup>[37]</sup>

It is indisputable that the petitioner and CJC knowingly and voluntarily agreed upon the petitioner's fixed period of employment as the Law School Dean and, in doing so, they dealt with each other on equal terms. Verily, appointments to the position of Dean of an educational institution involves an employment contract to which a fixed term is an essential and natural appurtenance.<sup>[38]</sup>

***The fixed-term employment of the petitioner was impliedly renewed after its expiration.***

In reversing the NLRC's resolutions, the CA opined that the petitioner's dismissal was valid since the cause thereof was the lapse of the term of the petitioner's appointment as the Law School Dean. The CA held that there is nothing in the petitioner's appointment letter that expressly or impliedly allowed an automatic renewal or extension of the term of office. It declared that the petitioner's fixed-term contract ended automatically after its expiration.<sup>[39]</sup>

The Court does not agree.

The pertinent portion of the petitioner's appointment letter reads:

*You will serve the entire duration of this appointment. However, if you decide to discontinue your services before the term ends, you must submit a written notice, at least, 30 days before the effectivity of such discontinuance of service. **Likewise, if the administration does not intend to renew/extend this appointment[,]** you will be informed in writing 30 days before this term appointment ends.*<sup>[40]</sup>  
(Emphasis ours and italics in the original)

The foregoing *proviso* in the petitioner's appointment letter is clear; the petitioner will serve as the Law School Dean for the entire duration of his appointment, *i.e.* from June 1, 2004 to May 31, 2007. However, should CJC no longer wish to employ the petitioner's services after the term of the initial appointment, it shall send him a written notice informing him that the administration no longer intends to renew/extend his appointment at least 30 days prior to the expiration of the term of his initial appointment.

Should CJC fail to send the petitioner the required written notice of termination 30 days prior to the expiration of the term of the original appointment, as what happened in this case, it can be logically and necessarily inferred that CJC intended to renew the petitioner's appointment as Law School Dean under such terms and conditions set forth in his original appointment. A contrary interpretation would render inutile the requirement on the part of CJC to send the petitioner a written notice informing him his appointment would no longer be renewed. Indeed, CJC would not impose the said requirement on itself if the expiration of the term of petitioner's original appointment does not result in the automatic renewal of the latter's appointment.