

## FIRST DIVISION

[ G.R. No. 189262, July 06, 2015 ]

**GBMLT MANPOWER SERVICES, INC., PETITIONER, VS. MA.  
VICTORIA H. MALINAO, RESPONDENT.**

### DECISION

**SERENO, C.J.:**

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision<sup>[1]</sup> dated 29 May 2009 and Resolution<sup>[2]</sup> dated 24 August 2009 in CA-G.R. SP No. 107378.

The CA found grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) when the latter reversed the decision of the labor arbiter, which granted respondent's money claims under her complaint for illegal dismissal against petitioner. The CA Resolution denied petitioner's motion for reconsideration.

### Facts

Sometime in May 2005, respondent applied to petitioner for a job as teacher for deployment abroad.<sup>[3]</sup> She went through the usual application process and was later called for an interview by the president of an Ethiopian university.<sup>[4]</sup> The interviewer endorsed her for the post of accounting lecturer.<sup>[5]</sup> Petitioner issued her a wage response slip,<sup>[6]</sup> which provided that she would receive a monthly salary of USD 900.

Respondent paid petitioner the processing and placement fees equivalent to her one-month salary.<sup>[7]</sup> She also signed a Contract of Employment for Foreign Academic Personnel<sup>[8]</sup> (Contract of Employment) covering a period of two academic years. The contract had been approved by the Philippine Overseas Employment Administration (POEA).

On 12 December 2005, respondent departed for Ethiopia. Upon her arrival, she was informed by the Vice Minister of the Ministry of Education that her credentials would have to be re-evaluated, because it appeared that she did not have a master's degree.<sup>[9]</sup> Respondent was given a new contract for signing, which at first she refused to sign. However, upon reading that it was a duplicate of the original contract, she affixed her signature.<sup>[10]</sup>

Respondent was assigned to teach at the Alemaya University.<sup>[11]</sup> On 10 January 2006, she unilaterally decided to discontinue teaching the course in cooperative accounting that had been assigned to her.<sup>[12]</sup> The reason she gave was that auditing, not accounting, was her specialization. Another lecturer took over the

course, and respondent spent the rest of the semester without a teaching load.

On 1 March 2006, Alemaya University Academic and Research Vice President Tena Alamirew (Vice President Alamirew) circulated a memorandum<sup>[13]</sup> addressed to the college faculties and Filipino teaching staff. It stated that the Ministry of Education required the university to evaluate the credentials of the Filipino teaching staff and suggest an academic rank for them pursuant to the national norm. Later, on 15 March 2006, another memorandum<sup>[14]</sup> was issued lowering the ranks of most of the Filipino teaching staff and asking them to sign a new contract reflecting a change in rank and salary.<sup>[15]</sup> In particular, respondent's designation was lowered from lecturer to assistant lecturer<sup>[16]</sup> with a monthly salary of USD 600.<sup>[17]</sup>

Respondent refused to sign a new contract. Together with her affected Filipino colleagues, she went to the Ministry of Education on 17 March 2006 to protest the re-ranking.<sup>[18]</sup> They also asked for an audience with Vice President Alamirew on 27 March 2006.<sup>[19]</sup> During the meeting, respondent raised her hand in order to be acknowledged to speak. However, Vice President Alamirew told her, "You are not allowed to speak before this meeting. Alemaya University does not need your services anymore, you are terminated, you are fired."<sup>[20]</sup>

Later that afternoon, Vice President Alamirew apologized to respondent for the retort,<sup>[21]</sup> saying that she thought the latter was the leader of the protest before the Ministry of Education. Nevertheless, in a letter<sup>[22]</sup> dated 28 March 2006, respondent requested Vice President Alamirew to issue a notice of termination to her "in order not to prolong [her] agony."<sup>[23]</sup>

A memorandum<sup>[24]</sup> dated 4 April 2006 was issued by Temesgen Keno, Head of the Department of Accounting (Mr. Keno). He informed the Faculty of Business and Economics that due to a students' petition, another instructor had been assigned to replace respondent in Auditing II. The latter was again left idle. Attached to the memorandum was the class compliance on the performance of respondent, together with the individual signatures of the students.<sup>[25]</sup> Respondent checked the signatures and found that some had signed twice, while two were not in her class.<sup>[26]</sup>

Another memorandum<sup>[27]</sup> of the same date was issued by Workneh Kassa, Dean of the Faculty of Business and Economics (Dean Kassa) addressed to Vice President Alamirew. Dean Kassa indicated that the qualification of respondent had been highly debated as the faculty had never approved the recruitment of expatriate staff who were bachelor's degree holders. He noted that this was the second time that the Department of Accounting had to replace respondent in her course assignment, because "she has never handled any course effectively."<sup>[28]</sup> Dean Kassa requested Vice President Alamirew to take the necessary action, because keeping an idle expatriate staff was unacceptable.

Respondent took great offense at being referred to as a bachelor's degree holder, insisting that she was a certified public accountant and a law graduate.<sup>[29]</sup> She responded<sup>[30]</sup> to the memorandum on the same day stating that in the Philippines, a person who had a law degree and passed the bar examinations has a degree more

than a master's, but less than a doctorate. She recognized that the university had the right to terminate her at any time, but insisted that there was no need to discredit her.<sup>[31]</sup>

On 6 April 2006, Vice President Alamirew issued the notice of termination<sup>[32]</sup> to respondent. The notice alluded to the two instances when the Department of Accounting had to replace respondent in her course assignments. Part of the notice reads:

Despite the efforts of the head of the Department, the dean of the faculty and myself to bring you on board, it seems that you are not fitting anywhere. On the contrary, to cover up your incompetence and personal problems, you are insulting students, the staff and the management in particular and Ethiopians in general in the class. In view of these facts, it will be difficult to expect any positive contribution by keeping you here any longer. But as per Article X Sub-article 2 of the contract, we are obliged to give you this three months advance notice as regards the contract termination. In the mean time, however, you are expected to duly carry the assignment which shall be given by your Department. Please note that if you continue insulting and abusing any of the students, the Department or the Faculty Community, we shall be forced either to invoke Article X Sub article 1 or bring you into the court of law. There is, therefore, to bring to your notice the fact that the University has decided to terminate your contract three months from now. In the mean time, however, you're strongly advised to have an iota of decency and behave rationally.<sup>[33]</sup>

To this notice, respondent replied in a letter dated 7 April 2006, which reads:

Dear Dr. Tena:

You did it first! I only defended myself from all the insults I received from the students, the staff and management. I believe this is within my constitutional rights. I did not insult anybody!

I cannot resort to such vile tactics because I am not an incompetent person, as you perceived me to be. All the incidents that had happened were the aftermath of your evaluation and as a subsequence, the defamation committed against me when you insulted me and fired me from my job before my colleagues.

Your accusations are merely based on hearsays, and hearsays are inadmissible in evidence under the law. They remain allegations unless proven by substantial evidence under administrative proceedings and beyond reasonable doubt under criminal procedure.

You cannot legally base your decision in terminating my contract on facts not proven. Your statement that it will be difficult to expect positive contribution by keeping me here is a mere speculation. In law, it must be conclusive, not speculative. It must be a fact that must be proved, substantially and procedurally, as required by due process.

If you really believe I am guilty as charged, what could have prevented you anyway from enforcing it before the court of law? I am ready to face any charges because I know I have not violated the rights of other people and the law. I could have appreciated it better had you filed the case in court; at least I could have been accorded my day in court.

I cannot understand why there is a need for you to open an old issue about Cooperative Accounting Course, and use this against me, when it has already been resolved a long time ago. And please be reminded that Auditing is an area in Accounting and you know very well that this was not my reason when I refused to handle the abovementioned course.

In addition, your incompetent statement that Auditing is my self-acclaimed specialization shows sarcasm; very damaging not only to my person, but also to my profession, and ultimately, to my government, and the Professional Regulations Commission itself which conferred to me the license of being a Certified Public Accountant.

For your further information, I am not only an expert in financial audit, but I am actually an expert in the audit of management systems.

Again, your last sentence on the notice of termination is provocative, malicious and defamatory. You mean, I am indecent and behaving irrationally? That is very hard to prove. I guess it is not only the undersigned that should behave rationally.

Giving three months prior notice to the other party is required only if the termination is for no cause. To reiterate, you are not under obligation to give me three months advance notice as per Art. X, par. 3 of the employment contract, unless you really believe that there exists no valid ground to terminate my contract.

Thank you very much.<sup>[34]</sup>

While waiting for the three-month period to expire, respondent was offered a post at the Internal Audit Department by Alemaya University President Belay Kassa (President Kassa). She accepted the job through a letter dated 19 April 2006.<sup>[35]</sup>

However, in another letter<sup>[36]</sup> dated 27 April 2006 addressed to President Kassa, respondent signified her change of mind and rejected the offered post at the Internal Audit Department. She narrated that on her first day on the job, she was made to wait for several hours before attending a meeting. In that meeting, the Vice President for Administration Dr. Belaineh and two staff members from the department conversed in Amharic, which she did not understand. She was also assigned to work under the acting head, who was merely a holder of a diploma in accounting. Respondent manifested that "[she does] not deserve to be insulted."<sup>[37]</sup>

Respondent was repatriated on 27 June 2006.<sup>[38]</sup> She later signed a Quitclaim and Release dated 5 July 2006 in favor of petitioner. The waiver reads as follows:

That for and in consideration of the sum of NINE HUNDRED DOLLARS (\$900 USD), and for other invaluable considerations extended to me by GBMLT MANPOWER SERVICES, INC., receipt of which is hereby acknowledged to my full and complete satisfaction, I hereby forever release and discharge said GBMLT MANPOWER SERVICES, INC., all its Officers and Directors, from any and all claims by way of unpaid salaries, wages, and all other monetary claims or otherwise due me in connection with my deployment as lecturer/teacher in Ethiopia.

I hereby state further x x x that this Quitclaim and Release is executed on my own free will and that I have no more claims [or] right of action [of] whatever nature and kind, whether past, present and/or contingent against GBMLT MANPOWER SERVICES, INC.,[,] its Officers and Directors as a consequence of such deployment.<sup>[39]</sup>

On 18 July 2006, respondent filed a complaint before the labor arbiter against petitioner as local agency and Alemaya University as foreign principal.<sup>[40]</sup> She sought full payment of the unexpired portion of the two-year contract, moral and exemplary damages, and attorney's fees.

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

In a Decision<sup>[41]</sup> dated 29 March 2007, the labor arbiter found respondent to have been unduly repatriated in breach of the employment contract.<sup>[42]</sup> Petitioner and Alemaya University were ordered to pay her *in solidum* the amounts of USD 4,500 as unrealized income - from which the amount paid to her under the Quitclaim and Release had already been deducted - Php 30,000 as moral damages, Php 20,000 as exemplary damages, plus costs.<sup>[43]</sup>

According to the labor arbiter, respondent did not hide the fact that she had no master's degree "in the strict sense of the word,"<sup>[44]</sup> because she was a holder of a bachelor of laws degree. Some law schools in the Philippines actually confer the degree of *Juris Doctor* on their graduates because a four-year undergraduate degree is one of the qualifications for acceptance.<sup>[45]</sup> Thus, it was incumbent upon Alemaya University to allow respondent to finish her two-year employment contract instead of forcing her to sign a new contract with lower pay, just because she did not have a master's degree.<sup>[46]</sup>

The labor arbiter also ruled that the protest of respondent and her colleagues before the Ministry of Education, as well as the question of whether she was the leader of that protest, should not be taken against her. The labor arbiter ruled that respondent had simply acted based on her right to protest changes in her contract.<sup>[47]</sup>

The labor arbiter gave no credence either to the allegation that respondent was dismissed for incompetence based on the students' petition. It was noted that the petition only came out after she was fired by Vice President Alamirew during the meeting.<sup>[48]</sup> Furthermore, the alleged petition contained double signatures and signatures of students not included in the class list.