

THIRD DIVISION

[G.R. No. 201663, March 31, 2014]

**EMMANUEL M. OLORES, PETITIONER, VS. MANILA DOCTORS
COLLEGE AND/OR TERESITA O. TURLA, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the January 9, 2012^[1] and April 27, 2012^[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 122596.

The facts, as found by the National Labor Relations Commission (*NLRC*), are as follows:

Respondent is a private higher educational institution dedicated to providing academic degrees and certificate courses related to Allied Medical Services and Liberal Arts and Sciences.

[Petitioner] was hired as a part-time faculty of respondent on 07 November 2005. He was assigned at the Humanities Department of the College of Arts and Sciences. Thereafter, he signed fixed term employment contracts as part-time instructor. From 03 November 2008, [petitioner] signed fixed term employment contracts, this time as a full-time instructor.

For the second semester of academic year 2009-2010, [petitioner] was given the following load assignments:

Subject	Year/Section	No. of Students
Bioethics	BSN 11-B6	46
Bioethics	BSN 11-B7	40
Bioethics	BSN 11-A3	40
Bioethics	BSN 11-A4	40
Bioethics	BSN – A10	41
Philosophy of Man	PSYCH 11	23
Philosophy of Man	HNCA 1	43

Respondent's course syllabus for Bioethics and Philosophy of Man outlined the grading system as follows:

"Bioethics

1. *Class Standing (40%)*

*Quizzes; Recitation; Individual/Group Oral Presentation;
Reflection/Reaction Papers*

2. Midterm/Final Examinations (60%)

Philosophy of Man

1. Class Standing (40%)

*Term Paper and Completion of Reflection Papers; Group Debates on
Current Issues; Group Presentation/Discussion; Exercises/Seat
Work/ Board Work; Recitation; Quizzes; Long Test*

2. Midterm/Final Examinations (60%)”

The midterm/final examination questionnaires for Bioethics and Philosophy of Man were divided into two (2) parts with the following corresponding points:

	Bioethics	Philosophy of Man
Part I Multiple Choice	65 pts	60 pts
Part II Essay	15 pts	20 pts
Total	80 pts	80 pts

[Petitioner] submitted the final grades of his students to Mr. Jacinto Bernardo, Jr. (Bernardo), the chair of the Humanities Area. On 13 April 2010, Bernardo charged [petitioner] with gross misconduct and gross inefficiency in the performance of duty. [Petitioner] was accused of employing a grading system not in accordance with the system because he: a) added 50 pts to the final examination raw scores; b) added 50 pts to students who have not been attending classes; c) credited only 40% instead of 60% of the final examination; d) did not credit the essay questions; and e) added further incentives (1-4 pts) aside from 50 pts. In so doing, [petitioner] gave grades not based solely on scholastic records.

On 14 April 2010, [petitioner] submitted his answer stating that he: a) did not add 50 pts to the raw scores as verified by the dean and academic coordinator; b) made certain adjustments to help students pass; c) did not credit the essay questions because these have never been discussed in the meetings with Bernardo; and d) did have the judgment to give an incentive for a task well done. Also on this date, [petitioner] wrote a letter to respondent's Human Resources Manager asking that he should now be granted a permanent status.

Meanwhile, summer classes started on 15 April 2010 without [petitioner] having signed an employment contract.

Acting on the report of Bernardo, respondent created the Manila Doctors Tribunal (MDT) which was tasked to ascertain the truth. The MDT sent notices of hearing to [petitioner].

During the administrative hearing, [petitioner] stood pat on his answer. He, however, elucidated on his points by presenting slides.

On 31 May 2010, the MDT submitted its recommendation to the president of respondent. The culpability of [petitioner] was established, hence, dismissal was recommended. On 07 June 2010, respondent terminated the services of [petitioner] for grave misconduct and gross inefficiency and incompetence.

Aggrieved by the decision of respondent, [petitioner] filed a case for: a) illegal dismissal with a claim for reinstatement; b) non-payment of service incentive leave and 13th month pay; c) moral and exemplary damages; d) attorney's fees; and e) regularization.^[3]

In a Decision^[4] dated December 8, 2010, the Labor Arbiter found merit in petitioner's charge for illegal dismissal. However, it dismissed petitioner's claim for regularization. The decretal portion of said decision reads:

WHEREFORE, judgment is hereby made finding the [petitioner] to have been illegally dismissed from employment. Concomitantly, the respondent school is hereby ordered to reinstate him as faculty member under the same terms and conditions of his employment, without loss of seniority rights but without backwages. However, instead of being reinstated, the [petitioner] is hereby given the option to receive a separation pay equivalent to his full month's pay for every year of service, a fraction of at least six months to be considered a full year or the amount of P100,000.00 (his monthly salary of P20,000.00) multiplied by the equivalent of five years' service.

Other claims are dismissed for lack of merit.

SO ORDERED.^[5]

Respondent appealed from the aforesaid decision to the NLRC. However, the same was denied in a Resolution^[6] dated February 10, 2011. The NLRC reasoned that respondent's appeal was not accompanied by neither a cash nor surety bond, thus, no appeal was perfected from the decision of the Labor Arbiter. Pertinent portion of said resolution reads:

Records disclose that the appeal was not accompanied by neither a cash nor surety bond as mandated by Section 6, Rule VI of the 2005 Revised Rules of Procedure of the NLRC, to wit –

"SECTION 6. BOND. – In case the decision of the Labor Arbiter involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to monetary award, exclusive of damages and attorney's fees."

The Supreme Court in *Rural Bank of Coron (Palawan) Inc. vs. Annalisa Cortes*, December 6, 2006, emphasized that:

"In the case at bar, petitioner did not post a full or partial appeal bond within the prescribed period, thus, no appeal was perfected from the Decision of the Labor Arbiter. For this reason, the decision sought to be appealed to the NLRC had become final and executory, and therefore, immutable. Clearly then, the NLRC has no authority to entertain the appeal much less to reverse the decision of the Labor Arbiter. Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceeding held for that purpose."

On account of this infirmity, We are (sic) do not have the jurisdictional competence to entertain the appeal.

WHEREFORE, the appeal is DISMISSED for Non-Perfection.

SO ORDERED.^[7]

Respondent, thus, sought reconsideration of the NLRC's resolution.

In a Decision^[8] dated September 30, 2011, the NLRC granted respondent's appeal and reversed its earlier resolution. Its *fallo* reads:

WHEREFORE, premises considered, the appeal is GRANTED. The 08 December 2010 Decision is Reversed and a new one entered: a) dismissing the complaint for lack of merit; and b) ordering respondent Manila Doctors College to pay [petitioner]'s service incentive leaves for the last three years.

SO ORDERED.^[9]

Resultantly, petitioner filed a *certiorari* petition with the CA.

In a Resolution dated January 9, 2012, the CA held that since petitioner failed to file a motion for reconsideration against the NLRC decision before seeking recourse to it via a *certiorari* petition, the CA dismissed petitioner's special civil action for *certiorari*, viz.:

It appears that petitioner has not shown that other than this special civil action under Rule 65, he has no plain, speedy and adequate remedy in the ordinary course of law against his perceived grievance.

It is now settled in our jurisdiction that while it is true that the only way by which a labor case may reach this Court is through a petition for *certiorari* under Rule 65 of the Rules of Court, it must, however, be shown that the NLRC acted without or in excess of jurisdiction, or with grave abuse of discretion, and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. Section 15, Rule VII of the 2005 Revised Rules of Procedure of the NLRC, which allows the aggrieved party to file a motion for reconsideration of any decision, resolution or order of the NLRC, constitutes a plain, speedy and adequate remedy which said party may avail of. Accordingly, in the light of the

doctrine of exhaustion of administrative remedies, a motion for reconsideration must first be filed before the special civil action for *certiorari* may be availed of.

In the instant case, the records do not show and neither does petitioner make a claim that it filed a motion for reconsideration of the challenged decision before it came to us through this action. It had not, as well, suggested any plausible reason for direct recourse to this Court against the decision in question.

WHEREFORE, the instant special civil action for *certiorari* is DISMISSED.

SO ORDERED.^[10]

Petitioner filed a motion for reconsideration against said resolution.

In a Resolution dated April 27, 2012, the CA denied petitioner's motion for reconsideration. It ruled that except for his bare allegations, petitioner failed to present any plausible justification for dispensing with the requirement of a prior motion for reconsideration. The CA further stated that although there are exceptions to the rule that *certiorari* will not lie unless a motion for reconsideration is filed, petitioner nevertheless failed to prove that his case falls within any of the recognized exceptions.

Accordingly, petitioner filed the present petition.

Petitioner raises the following grounds to support his petition:

I.

THE COURT OF APPEALS FAR DEPARTED FROM ACCEPTED AND USUAL COURSE OF JURISPRUDENCE WHEN IT IGNORED THE GROSSLY ERRONEOUS DECISION OF THE NLRC GIVING DUE COURSE TO AN APPEAL WITHOUT THE POSTING OF A BOND AS MANDATED BY ARTICLE 223 OF THE LABOR CODE AND THE 2005 NLRC RULES OF PROCEDURE.

II.

THE COURT OF APPEALS FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JURISPRUDENCE WHEN IT FAILED TO RULE THAT THE NLRC DID NOT ACQUIRE JURISDICTION TO REVERSE THE 08 DECEMBER 2010 DECISION OF THE LABOR ARBITER IN FAVOR OF PETITIONER, HENCE, THE SAME BECAME FINAL, EXECUTORY AND UNAPPEALABLE ON THE PART OF RESPONDENTS.

III.

THE COURT OF APPEALS FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JURISPRUDENCE WHEN IT REQUIRED PETITIONER TO FILE ANOTHER MOTION FOR RECONSIDERATION AND GIVE THE NLRC MULTIPLE OPPORTUNITIES TO RECONSIDER THE CASE BEFORE FILING A