

THIRD DIVISION

[G.R. No. 193897, January 23, 2013]

UNIVERSITY OF THE EAST, DEAN ELEANOR JAVIER, RONNIE GILLEGO AND DR. JOSE C. BENEDICTO, PETITIONERS, VS. ANALIZA F. PEPANIO AND MARITI D. BUENO, RESPONDENTS.

DECISION

ABAD, J.:

This case is about the employment status of college teachers with no postgraduate degrees who have been repeatedly extended semester-to-semester appointments as such.

The Facts and the Case

In 1992, the Department of Education, Culture and Sports (DECS) issued the Revised Manual of Regulations for Private Schools,^[1] Article IX, Section 44, paragraph I(a), of which requires college faculty members to have a master's degree as a minimum educational qualification for acquiring regular status.^[2]

In 1994 petitioner University of the East (UE) and the UE Faculty Association executed a five-year Collective Bargaining Agreement (CBA) with effect up to 1999 which provided, among others, that UE shall extend only semester-to-semester appointments to college faculty staffs who did not possess the minimum qualifications. Those with such qualifications shall be given probationary appointments and their performance on a full-time or full-load basis shall be reviewed for four semesters.^[3]

Meantime, on February 7, 1996 several concerned government agencies issued DECS-CHED-TESDA-DOLE Joint Order 1^[4] which reiterated the policy embodied in the Manual of Regulations that "teaching or academic personnel who do not meet the minimum academic qualifications shall not acquire tenure or regular status." In consonance with this, the UE President issued a University Policy stating that, beginning the School Year 1996-1997, it would hire those who have no postgraduate units or master's degree for its college teaching staffs, in the absence of qualified applicants, only on a semester-to-semester basis.

UE hired respondent Mariti D. Bueno in 1997^[5] and respondent Analiza F. Pepanio in 2000,^[6] both on a semester-to-semester basis to teach in its college. They could not qualify for probationary or regular status because they lacked postgraduate degrees. Bueno enrolled in six postgraduate subjects at the Philippine Normal University's graduate school but there is no evidence that she finished her course. Pepanio earned 27 units in her graduate studies at the Gregorio Araneta University Foundation but these could no longer be credited to her because she failed to

continue with her studies within five years.

In 2001 UE and the UE Faculty Association entered into a new CBA^[7] that would have the school extend probationary full-time appointments to full-time faculty members who did not yet have the required postgraduate degrees provided that the latter comply with such requirement within their probationary period. The CBA granted UE, however, the option to replace these appointees during their probationary period if a qualified teacher becomes available at the end of the semester.^[8]

Pursuant to the new CBA, UE extended probationary appointments to respondents Bueno and Pepanio. Two years later in October 2003, the Dean of the UE College of Arts and Sciences, petitioner Eleanor Javier, sent notices^[9] to probationary faculty members, reminding them of the expiration of the probationary status of those lacking in postgraduate qualification by the end of the first semester of the School Year 2003-2004. Pepanio replied that she was enrolled at the Polytechnic University of the Philippines Graduate School. Bueno, on the other hand, replied that she was not interested in acquiring tenure as she was returning to her province.

In any event, Dean Javier subsequently issued a memorandum, stating that she would recommend the extension of the probationary appointees for two more semesters for those who want it based on the wishes of the University President. Respondent Pepanio requested a three-semester extension but Dean Javier denied this request and directed Pepanio to ask for just a two-semester extension. The records do not show if Bueno submitted a request for extension. At any rate, the school eventually wrote respondents, extending their probationary period but neither Pepanio nor Bueno reported for work.

Bueno later wrote UE, demanding that it consider her a regular employee based on her six-and-a-half-year service on a full-load basis, given that UE hired her in 1997 when what was in force was still the 1994 CBA. Pepanio made the same demand, citing her three-and-a-half years of service on a full-load basis.^[10] When UE did not heed their demands, respondents filed cases of illegal dismissal against the school before the Labor Arbiter's (LA) office.

For its defense, UE countered that it never regarded respondents as regular employees since they did not hold the required master's degree that government rules required as minimum educational qualification for their kind of work.

On March 10, 2005 the LA held that Bueno and Pepanio were regular employees, given that they taught at UE for at least four semesters under the old CBA.^[11] The new CBA, said the LA, could not deprive them of the employment benefits they already enjoyed. Since UE enjoined Pepanio from attending her classes and since it did not give Bueno any teaching load, they were dismissed without just cause. The LA directed UE to reinstate respondents with backwages.^[12] Dissatisfied, UE appealed to the National Labor Relations Commission (NLRC).

Bueno and Pepanio questioned the timeliness of the appeal to the NLRC. They pointed to the postmaster's certification that its office received the mail containing the LA's Decision on March 17, 2005 and "informed the Office of Atty. Mison right away but they only got the letter on April 4, 2005." Bueno and Pepanio claim that

the 10-day period for appeal should be counted from March 22, 2005, five days after the postmaster's first notice to Atty. Mison to claim his mail.

On September 27, 2006 the NLRC Third Division set aside the LA Decision. It rejected the technical objection and ruled that the four-semester probationary period provided under the old CBA did not automatically confer permanent status to Bueno and Pepanio. They still had to meet the standards for permanent employment provided under the Manual of Regulations and the Joint Order mentioned above. The non-renewal of their contract was based on their failure to obtain the required postgraduate degrees and cannot, therefore, be regarded as illegal.

On petition for *certiorari*, the Court of Appeals (CA) rendered a Decision^[13] on July 9, 2010, reinstating the LA's Decision by reason of technicality. It held that the 10-day period for appeal already lapsed when UE filed it on April 14, 2005 since the reckoning period should be counted five days from March 17, when the postmaster gave notice to UE's legal counsel to claim his mail or from March 22, 2005. This prompted UE to file the present petition.

Respondents point out, however, that the petition should be denied since it failed to enclose a certification from the UE Board of Trustees, authorizing petitioner Dean Javier to sign the verification and certification of non-forum shopping.

The Issues

The following issues are presented for the Court's resolution:

1. Whether or not UE filed a timely appeal to the NLRC from the Decision of the LA;
2. Whether or not UE's petition before this Court can be given due course given its failure to enclose a certification from the UE Board of Trustees' empowering petitioner Dean Javier to execute the verification and certification of non-forum shopping; and
3. Whether or not UE illegally dismissed Bueno and Pepanio.

The Court's Rulings

One. Respondents Bueno and Pepanio contend that UE filed its appeal to the NLRC beyond the required 10-day period. They point out that the postmaster gave notice to Atty. Mison on March 17, 2005 to claim his mail that contained the LA Decision. He was deemed in receipt of that decision five days after the notice or on March 22, 2005. UE had 10 days from the latter date or until April 1, 2005 within which to file its appeal from that decision. UE contends, on the other hand, that the period of appeal should be counted from April 4, 2005, the date appearing on the registry return receipt of the mail addressed to its counsel.

For completeness of service by registered mail, the reckoning period starts either (a) from the date of actual receipt of the mail by the addressee or (b) after five days *from the date he received the first notice from the postmaster.*^[14] There must be a conclusive proof, however, that the registry notice was received by or at least served on the addressee before the five-day period begins to run.^[15]