

## SECOND DIVISION

[ G.R. No. 170388, September 04, 2013 ]

**COLEGIO DEL SANTISIMO ROSARIO AND SR. ZENAIDA S.  
MOFADA, OP, PETITIONERS, VS. EMMANUEL ROJO,\*  
RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the August 31, 2005 Decision<sup>[2]</sup> and the November 10, 2005 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 85188, which affirmed the July 31, 2003 Decision<sup>[4]</sup> of the National Labor Relations Commission (NLRC). Said NLRC Decision affirmed with modification the October 7, 2002 Decision<sup>[5]</sup> of the Labor Arbiter (LA) which, in turn, granted respondent Emmanuel Rojo's (respondent) Complaint<sup>[6]</sup> for illegal dismissal.

#### ***Factual Antecedents***

Petitioner Colegio del Santisimo Rosario (CSR) hired respondent as a high school teacher on probationary basis for the school years 1992-1993, 1993-1994<sup>[7]</sup> and 1994-1995.<sup>[8]</sup>

On April 5, 1995, CSR, through petitioner Sr. Zenaida S. Mofada, OP (Mofada), decided not to renew respondent's services.<sup>[9]</sup>

Thus, on July 13, 1995, respondent filed a Complaint<sup>[10]</sup> for illegal dismissal. He alleged that since he had served three consecutive school years which is the maximum number of terms allowed for probationary employment, he should be extended permanent employment. Citing paragraph 75 of the 1970 Manual of Regulations for Private Schools (1970 Manual), respondent asserted that "full-time teachers who have rendered three (3) consecutive years of satisfactory services shall be considered permanent."<sup>[11]</sup>

On the other hand, petitioners argued that respondent knew that his Teacher's Contract for school year 1994-1995 with CSR would expire on March 31, 1995.<sup>[12]</sup> Accordingly, respondent was not dismissed but his probationary contract merely expired and was not renewed.<sup>[13]</sup> Petitioners also claimed that the "three years" mentioned in paragraph 75 of the 1970 Manual refer to "36 months," not three school years.<sup>[14]</sup> And since respondent served for only three school years of 10 months each or 30 months, then he had not yet served the "three years" or 36 months mentioned in paragraph 75 of the 1970 Manual.<sup>[15]</sup>

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

The LA ruled that “three school years” means three years of 10 months, not 12 months.<sup>[16]</sup> Considering that respondent had already served for three consecutive school years, then he has already attained regular employment status. Thus, the non-renewal of his contract for school year 1995-1996 constitutes illegal dismissal.<sup>[17]</sup>

The LA also found petitioners guilty of bad faith when they treated respondent’s termination merely as the expiration of the third employment contract and when they insisted that the school board actually deliberated on the non-renewal of respondent’s employment without submitting admissible proof of his alleged regular performance evaluation.<sup>[18]</sup>

The dispositive portion of the LA’s Decision<sup>[19]</sup> reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering the [petitioners]:

1. To pay [respondent] the total amount of P39,252.00 corresponding to his severance compensation and 13<sup>th</sup> month pay, moral and exemplary damages.
2. To pay 10% of the total amount due to [respondent] as attorney’s fees.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>[20]</sup>

### ***Ruling of the National Labor Relations Commission***

On appeal, the NLRC affirmed the LA’s Decision with modification. It held that after serving three school years, respondent had attained the status of regular employment<sup>[21]</sup> especially because CSR did not make known to respondent the reasonable standards he should meet.<sup>[22]</sup> The NLRC also agreed with the LA that respondent’s termination was done in bad faith. It held that respondent is entitled to reinstatement, if viable; or separation pay, if reinstatement was no longer feasible, and backwages, viz:

WHEREFORE, premises considered, the appealed Decision is hereby, AFFIRMED with MODIFICATION only insofar as the award of separation pay is concerned. Since [respondent] had been illegally dismissed, [petitioner] Colegio Del Santisimo Rosario is hereby ordered to reinstate him to his former position without loss of seniority rights with full backwages until he is actually reinstated. However, if reinstatement is no longer feasible, the respondent shall pay separation pay, in [addition] to the payment of his full backwages.

The Computation Division is hereby directed to compute [respondent’s] full backwages to be attached and to form part of this Decision.

The rest of the appealed Decision stands.

SO ORDERED.<sup>[23]</sup>

Petitioners moved for reconsideration which the NLRC denied in its April 28, 2004 Resolution<sup>[24]</sup> for lack of merit.

### ***Ruling of the Court of Appeals***

Petitioners filed a Petition for *Certiorari*<sup>[25]</sup> before the CA alleging grave abuse of discretion on the part of the NLRC in finding that respondent had attained the status of a regular employee and was illegally dismissed from employment.

In a Decision<sup>[26]</sup> dated August 31, 2005, the CA denied the Petition for lack of merit. Citing *Cagayan Capitol College v. National Labor Relations Commission*,<sup>[27]</sup> it held that respondent has satisfied all the requirements necessary to acquire permanent employment and security of tenure *viz*:

1. The teacher is a full-time teacher;
2. The teacher must have rendered three (3) consecutive years of service; and
3. Such service must be satisfactory.<sup>[28]</sup>

According to the CA, respondent has attained the status of a regular employee after he was employed for three consecutive school years as a full-time teacher and had served CSR satisfactorily. Aside from being a high school teacher, he was also the Prefect of Discipline, a task entailing much responsibility. The only reason given by Mofada for not renewing respondent's contract was the alleged expiration of the contract, not any unsatisfactory service. Also, there was no showing that CSR set performance standards for the employment of respondent, which could be the basis of his satisfactory or unsatisfactory performance. Hence, there being no reasonable standards made known to him at the time of his engagement, respondent was deemed a regular employee and was, thus, declared illegally dismissed when his contract was not renewed.

Petitioners moved for reconsideration. However, the CA denied the motion for lack of merit in its November 10, 2005 Resolution.<sup>[29]</sup>

Hence, the instant Petition. Incidentally, on May 23, 2007, we issued a Resolution<sup>[30]</sup> directing the parties to maintain the status *quo* pending the resolution of the present Petition.

### **Issue**

WHETHER THE COURT OF APPEALS [AS WELL AS THE NATIONAL LABOR RELATIONS COMMISSION] COMMITTED GRIEVOUS AND REVERSIBLE ERROR WHEN IT RULED THAT A BASIC EDUCATION (ELEMENTARY) TEACHER HIRED FOR THREE (3) CONSECUTIVE SCHOOL YEARS AS A

PROBATIONARY EMPLOYEE *AUTOMATICALLY* AND/OR *BY LAW* BECOMES A PERMANENT EMPLOYEE UPON COMPLETION OF HIS THIRD YEAR OF PROBATION NOTWITHSTANDING [A] THE PRONOUNCEMENT OF THIS HONORABLE COURT IN *COLEGIO SAN AGUSTIN V. NLRC*, 201 SCRA 398 [1991] THAT A PROBATIONARY TEACHER ACQUIRES PERMANENT STATUS "ONLY WHEN HE IS ALLOWED TO WORK AFTER THE PROBATIONARY PERIOD" AND [B] DOLE-DECS-CHED-TESDA ORDER NO. 01, S. 1996 WHICH PROVIDE THAT TEACHERS WHO HAVE SERVED THE PROBATIONARY PERIOD "SHALL BE MADE REGULAR OR PERMANENT IF ALLOWED TO WORK AFTER SUCH PROBATIONARY PERIOD."<sup>[31]</sup>

Petitioners maintain that upon the expiration of the probationary period, both the school and the respondent were free to renew the contract or let it lapse. Petitioners insist that a teacher hired for three consecutive years as a probationary employee does not automatically become a regular employee upon completion of his third year of probation. It is the positive act of the school – the hiring of the teacher who has just completed three consecutive years of employment on probation for the next school year – that makes the teacher a regular employee of the school.

### **Our Ruling**

We deny the Petition.

In *Mercado v. AMA Computer College-Parañaque City, Inc.*,<sup>[32]</sup> we had occasion to rule that cases dealing with employment on probationary status of teaching personnel are not governed solely by the Labor Code as the law is *supplemented*, with respect to the period of probation, by special rules found in the Manual of Regulations for Private Schools (the Manual). With regard to the *probationary period*, Section 92 of the 1992 Manual<sup>[33]</sup> provides:

Section 92. *Probationary Period.* – **Subject in all instances to compliance with the Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels**, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis. (Emphasis supplied)

In this case, petitioners' teachers who were on probationary employment were made to enter into a contract effective for one school year. Thereafter, it may be renewed for another school year, and the probationary employment continues. At the end of the second fixed period of probationary employment, the contract may again be renewed for the last time.

Such employment for fixed terms during the teachers' probationary period is an accepted practice in the teaching profession. In *Magis Young Achievers' Learning Center v. Manalo*,<sup>[34]</sup> we noted that:

**The common practice is for the employer and the teacher to enter into a contract, effective for one school year.** At the end of the

school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year – since it would be the third school year – of probationary employment. **At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation.** Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract. It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status. (Emphases supplied)

However, this scheme "of fixed-term contract is a system that operates during the probationary period and for this reason is subject to Article 281 of the Labor Code," [35] which provides:

x x x 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. [Emphasis supplied]

In *Mercado*, we held that "[u]nless this reconciliation is made, the requirements of [Article 281] on probationary status would be fully negated as the school may freely choose not to renew contracts simply because their terms have expired." [36] This will have an unsettling effect in the equilibrium vis-a-vis the relations between labor and management that the Constitution and Labor Code have worked hard to establish.

That teachers on probationary employment also enjoy the protection afforded by Article 281 of the Labor Code is supported by Section 93 of the 1992 Manual which provides:

Sec. 93. *Regular or Permanent Status.* - Those who have served the probationary period shall be made regular or permanent. **Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.** (Emphasis supplied)

The above provision clearly provides that full-time teachers become regular or permanent employees once they have *satisfactorily* completed the probationary period of three school years. [37] The use of the term *satisfactorily* necessarily connotes the requirement for schools to set reasonable standards to be followed by