

## FIRST DIVISION

**[ G.R. No. 193857, November 28, 2012 ]**

**MA. MERCEDES L. BARBA, PETITIONER, VS. LICEO DE CAGAYAN UNIVERSITY, RESPONDENT.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before the Court is a petition for review on certiorari assailing the March 29, 2010 Amended Decision<sup>[1]</sup> and September 14, 2010 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 02508-MIN. The CA had reconsidered its earlier Decision<sup>[3]</sup> dated October 22, 2009 and set aside the September 25, 2007 and June 30, 2008 Resolutions<sup>[4]</sup> of the National Labor Relations Commission (NLRC) as well as the September 29, 2006 Decision<sup>[5]</sup> of the Labor Arbiter. The CA held that the Labor Arbiter and NLRC had no jurisdiction over the illegal dismissal case filed by petitioner against respondent because petitioner's position as Dean of the College of Physical Therapy of respondent is a corporate office.

The facts follow.

Petitioner Dr. Ma. Mercedes L. Barba was the Dean of the College of Physical Therapy of respondent Liceo de Cagayan University, Inc., a private educational institution with school campus located at Carmen, Cagayan de Oro City.

Petitioner started working for respondent on July 8, 1993 as medical officer/school physician for a period of one school year or until March 31, 1994. In July 1994, she was chosen by respondent to be the recipient of a scholarship grant to pursue a three-year residency training in Rehabilitation Medicine at the Veterans Memorial Medical Center (VMMC). The Scholarship Contract<sup>[6]</sup> provides:

5. That the SCHOLAR after the duration of her study and training shall serve the SCHOOL in whatever position the SCHOOL desires related to the SCHOLAR's studies for a period of not less than ten (10) years;

After completing her residency training with VMMC in June 1997, petitioner returned to continue working for respondent. She was appointed as Acting Dean of the College of Physical Therapy and at the same time designated as Doctor-In-Charge of the Rehabilitation Clinic of the Rodolfo N. Pelaez Hall, City Memorial Hospital.

On June 19, 2002, petitioner's appointment as Doctor-In-Charge of the Rehabilitation Clinic was renewed and she was appointed as Dean of the College of Physical Therapy by respondent's President, Dr. Jose Ma. R. Golez. The appointment

letter<sup>[7]</sup> reads:

x x x x

Dear Dr. Barba:

You are hereby re-appointed Dean of the College of Physical Therapy and Doctor-In-Charge of the Rehabilitation Clinic at Rodolfo N. Pelaez Hall, City Memorial Hospital and other rehabilitation clinics under the management of Liceo de Cagayan University for a period of three years effective July 1, 2002 unless sooner revoked for valid cause or causes.

Your position is one of trust and confidence and the appointment is subject to the pertinent provisions of the University Administrative Personnel and Faculty Manuals, and Labor Code.

x x x x

Petitioner accepted her appointment and assumed the position of Dean of the College of Physical Therapy. In the school year 2003 to 2004, the College of Physical Therapy suffered a dramatic decline in the number of enrollees from a total of 1,121 students in the school year 1995 to 1996 to only 29 students in the first semester of school year 2003 to 2004. This worsened in the next year or in school year 2004 to 2005 where a total of only 20 students enrolled.<sup>[8]</sup>

Due to the low number of enrollees, respondent decided to freeze the operation of the College of Physical Therapy indefinitely. Respondent's President Dr. Rafaelita Pelaez-Golez wrote petitioner a letter<sup>[9]</sup> dated March 16, 2005 informing her that her services as dean of the said college will end at the close of the school year. Thereafter, the College of Physical Therapy ceased operations on March 31, 2005, and petitioner went on leave without pay starting on April 9, 2005. Subsequently, respondent's Executive Vice President, Dr. Mariano M. Lerin, through Dr. Glory S. Magdale, respondent's Vice President for Academic Affairs, sent petitioner a letter<sup>[10]</sup> dated April 27, 2005 instructing petitioner to return to work on June 1, 2005 and report to Ma. Chona Palomares, the Acting Dean of the College of Nursing, to receive her teaching load and assignment as a full-time faculty member in that department for the school year 2005-2006.

In reply, petitioner informed Dr. Lerin that she had not committed to teach in the College of Nursing and that as far as she can recall, her employment is not dependent on any teaching load. She then requested for the processing of her separation benefits in view of the closure of the College of Physical Therapy.<sup>[11]</sup> She did not report to Palomares on June 1, 2005.

On June 8, 2005, petitioner followed up her request for separation pay and other benefits but Dr. Lerin insisted that she report to Palomares; otherwise, sanctions will be imposed on her. Thus, petitioner through counsel wrote Dr. Golez directly, asking for her separation pay and other benefits.

On June 21, 2005, Dr. Magdale wrote petitioner a letter<sup>[12]</sup> directing her to report for work and to teach her assigned subjects on or before June 23, 2005. Otherwise, she will be dismissed from employment on the ground of abandonment. Petitioner, through counsel, replied that teaching in the College of Nursing is in no way related to her scholarship and training in the field of rehabilitation medicine. Petitioner added that coercing her to become a faculty member from her position as College Dean is a great demotion which amounts to constructive dismissal.<sup>[13]</sup>

Dr. Magdale sent another letter<sup>[14]</sup> to petitioner on June 24, 2005 ordering her to report for work as she was still bound by the Scholarship Contract to serve respondent for two more years. But petitioner did not do so. Hence, on June 28, 2005, Dr. Magdale sent petitioner a notice terminating her services on the ground of abandonment.

Meanwhile, on June 22, 2005, prior to the termination of her services, petitioner filed a complaint before the Labor Arbiter for illegal dismissal, payment of separation pay and retirement benefits against respondent, Dr. Magdale and Dr. Golez. She alleged that her transfer to the College of Nursing as a faculty member is a demotion amounting to constructive dismissal.

Respondent claimed that petitioner was not terminated and that it was only petitioner's appointment as College Dean in the College of Physical Therapy that expired as a necessary consequence of the eventual closure of the said college. Respondent further averred that petitioner's transfer as full-time professor in the College of Nursing does not amount to constructive dismissal since the transfer was without loss of seniority rights and without diminution of pay. Also, respondent added that pursuant to the Scholarship Contract, petitioner was still duty bound to serve respondent until 2007 in whatever position related to her studies the school desires.

### ***Labor Arbiter's Ruling***

In a Decision<sup>[15]</sup> dated September 29, 2006, the Labor Arbiter found that respondent did not constructively dismiss petitioner; therefore, she was not entitled to separation pay. The Labor Arbiter held that petitioner's assignment as full-time professor in the College of Nursing was not a demotion tantamount to constructive dismissal. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing the complaint for illegal dismissal for utter lack of merit, but ordering the respondent Liceo de Cagayan University to reinstate complainant to an equivalent position without loss of seniority rights, but without back wages.

However, if reinstatement is no longer feasible or if there is no equivalent position to which complainant may be reinstated, respondent may opt to pay complainant her separation pay equivalent to one-half (1/2) month pay for every year of service or in the sum of P195,000.00, subject to deduction for advances or accountabilities which complainant may have had.

Other claims are ordered dismissed for lack of merit.

SO ORDERED.<sup>[16]</sup>

### ***NLRC's Ruling***

Petitioner appealed the above decision to the NLRC. On September 25, 2007, the NLRC issued a Resolution<sup>[17]</sup> reversing the Labor Arbiter's decision and holding that petitioner was constructively dismissed. The NLRC held that petitioner was demoted when she was assigned as a professor in the College of Nursing because there are functions and obligations and certain allowances and benefits given to a College Dean but not to an ordinary professor. The NLRC ruled:

WHEREFORE, in view of the foregoing, the assailed decision is hereby MODIFIED in that complainant is hereby considered as constructively dismissed and thus entitled to backwages and separation pay of one (1) month salary for every year of service, plus attorney's fees, which shall be computed at the execution stage before the Arbitration Branch of origin.

SO ORDERED.<sup>[18]</sup>

The NLRC denied respondent's motion for reconsideration in a Resolution<sup>[19]</sup> dated June 30, 2008.

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

Respondent went to the CA on a petition for certiorari alleging that the NLRC committed grave abuse of discretion when it declared that petitioner's transfer to the College of Nursing as full-time professor but without diminution of salaries and without loss of seniority rights amounted to constructive dismissal because there was a demotion involved in the transfer and because petitioner was compelled to accept her new assignment.

Respondent also filed a Supplemental Petition<sup>[20]</sup> raising for the first time the issue of lack of jurisdiction of the Labor Arbiter and the NLRC over the case. Respondent claimed that a College Dean is a corporate officer under its by-laws and petitioner was a corporate officer of respondent since her appointment was approved by the board of directors. Respondent posited that petitioner was a corporate officer since her office was created by the by-laws and her appointment, compensation, duties and functions were approved by the board of directors. Thus, respondent maintained that the jurisdiction over the case is with the regular courts and not with the labor tribunals.

In its original Decision<sup>[21]</sup> dated October 22, 2009, the CA reversed and set aside the NLRC resolutions and reinstated the decision of the Labor Arbiter. The CA did not find merit in respondent's assertion in its Supplemental Petition that the position of

petitioner as College Dean was a corporate office. Instead, the appellate court held that petitioner was respondent's employee, explaining thus:

Corporate officers in the context of PD 902-A are those officers of a corporation who are given that character either by the Corporation Code or by the corporation's By-Laws. Under Section 25 of the Corporation Code, the "corporate officers" are the president, secretary, treasurer and such other officers as may be provided for in the By-Laws.

True, the By-Laws of LDCU provides that there shall be a College Director. This means a College Director is a corporate officer. However, contrary to the allegation of petitioner, the position of Dean does not appear to be the same as that of a College Director.

Aside from the obvious disparity in name, the By-Laws of LDCU provides for only one College Director. But as shown by LDCU itself, numerous persons have been appointed as Deans. They could not be the College Director contemplated by the By-Laws inasmuch as the By-Laws authorize only the appointment of one not many. **If it is indeed the intention of LDCU to give its many Deans the rank of College Director, then it exceeded the authority given to it by its By-Laws because only one College Director is authorized to be appointed.** It must amend its By-Laws. Prior to such an amendment, the office of College Dean is not a corporate office.

Another telling sign that a College Director is not the same as a Dean is the manner of appointment. **A College Director is directly appointed by the Board of Directors.** However, a **College Dean is appointed by the President** upon the recommendation of the Vice President for Academic Affairs and the Executive Vice President and approval of the Board of Directors. There is a clear distinction on the manner of appointment indicating that the offices are not one and the same.

x x x x

**This shows that it was not the intention of LDCU to make Dr. Barba a corporate officer** as it was stated in her letter of appointment that the same shall be subject to the provisions of the Labor Code. Otherwise, the appointment letter should have stated that her appointment is governed by the Corporation Code. Thus, We find the arguments in the Supplemental Petition on the matter of lack of jurisdiction of the Labor Arbiter and the NLRC to be without merit. Dr. Barba, being a College Dean, was not a corporate officer.<sup>[22]</sup> (Emphasis not ours)

The CA further found that no constructive dismissal occurred nor has petitioner abandoned her work. According to the CA, a transfer amounts to constructive dismissal when the transfer is unreasonable, unlikely, inconvenient, impossible, or prejudicial to the employee or it involves a demotion in rank or a diminution of