

SECOND DIVISION

[G.R. NO. 158703, June 26, 2009]

**TECHNOLOGICAL INSTITUTE OF THE PHILIPPINES TEACHERS
AND EMPLOYEES ORGANIZATION (TIPTEO) AND ITS MEMBER
MAGDALENA T. SALON, PETITIONERS, VS. THE HON. COURT OF
APPEALS AND TECHNOLOGICAL INSTITUTE OF THE
PHILIPPINES, RESPONDENTS.**

D E C I S I O N

BRION, J.:

Before this Court is the petition for review on *certiorari*^[1] challenging the Amended Decision dated May 22, 2003 of the Court of Appeals (CA) in the case *Technological Institute of the Philippines v. Technological Institute of the Philippines Teachers and Employees Organization*, CA G.R. SP No. 66896.^[2]

THE FACTUAL BACKGROUND

The facts of the case, set out in the original CA decision promulgated on November 20, 2002,^[3] are summarized below.

Petitioner Magdalena T. Salon (*Salon*) was a College Instructor 3 of the Humanities and Social Science Department (*HSSD*) of respondent Technological Institute of the Philippines (*TIP*) and a member of the Technological Institute of the Philippines Teachers and Employees Organization (*TIPTEO*). She commenced employment with the TIP on June 13, 1989.

On October 24, 2000, the TIP received complaints from students claiming that Salon was collecting *P1.50 per page* for the test paper used in the subject she was teaching at the time. She reportedly asked her students not to write on the test papers; these test papers were not returned to the students after the test. An allegation was made, too, that Salon committed an anomaly in the grading of her students.

Acting on the written complaints, the TIP - through Ms. Josephine Royer (*Ms. Royer*), the school's Assistant Faculty Coordinator - sent Salon a memorandum dated October 30, 2000 asking her to explain within 72 hours why she should not be disciplined on the basis of the complaints.^[4]

Salon answered the charges on October 31, 2000.^[5] She explained that she collected only P0.50 for each page of the test papers, which sum she spent in photocopying the papers; the amount collected was within the limits the school had set. She admitted that she asked her students not to write on the test papers because there was no space on these papers where they could write their answers;

it would be preferable to use the test booklets also provided to the students.

On the alleged grade manipulation, Salon explained that the incident involved the son of a fellow faculty member who actually failed her subject. Her fellow faculty member and mother of the student, upon learning of her son's failing grade, tried to persuade Salon to give her son a passing grade for fear that the father, if he learned of the failing mark, would harm his son. Salon claimed that she did not accede to the request; she gave the student a grade of 6.0 or "*dropped*" instead of giving him a grade of 5.0 or "*failed*."

The TIP created a three-man committee to conduct a formal investigation of the charges.^[6] The committee called a hearing on November 16, 2000 and issued the following findings:^[7]

Recommendation:

1. Evidences (sic) show that Ms. M.T. Salon has changed the grade of Mr. Joseph Florante Manalo. She disregarded the TIP grading system when she gave a grade of 6.0 (officially dropped) inspite of the class performance records. She admitted that the grade is 5.0 (failed) but made it 6.0 (officially dropped) which according to her is 'lesser degree of failure' because Mr. Joseph Florante Manalo, is the son of a co-faculty, Mrs. Elma Manalo in HSSD. She also changed the entry in the class record. The class record was already submitted to TIP so that this is already a TIP document.
2. With regards to the printed test questionnaires, Mrs. M.T. Salon has violated Memorandum No. P-66 SY 1992-1993 by not getting the approval of the department officer. It is unauthorized selling which the General Disciplinary Sanctions (Memorandum No. P-2 s. 1999-2000) classifies as a GRAVE offense.
3. The committee recommends the application of the corresponding sanction as contained in the General Disciplinary Sanctions (Memo No. P-3 s. 1999-2000) which is dismissal.
4. The recommendation shall take effect only after the approval of the President.

On December 4, 2000, the office of TIP President Dr. Teresita U. Quirino notified Salon of the termination of her service as member of the faculty of HSSD effective thirty (30) days from receipt of the notice.^[8] The dismissal was based on the investigation committee's recommendations.

Salon sought assistance from TIPTEO which then requested the TIP that a joint grievance investigation be conducted to take up her dismissal. The TIP denied the request arguing that Salon's dismissal was not proper for the grievance machinery because the ground for dismissal was a violation of the school's rules and regulations.

Faced with this denial, TIPTEO opted to file a complaint for illegal dismissal with the National Conciliation and Mediation Board (NCMB) in the National Capital Region. At

the NCMB, the parties agreed to submit the dispute to Voluntary Arbitrator Alfonso C. Atienza for voluntary arbitration.

On July 14, 2001, the voluntary arbitrator rendered an award in Salon's favor.^[9] The arbitrator ruled that Salon was dismissed without a valid cause and without due process. He found that the school was unable to prove by substantial evidence that Salon committed the acts charged. At the most, the arbitrator concluded that the TIP only proved that there was no permission, written or verbal, before Salon prepared and sold the test papers to her students. On the due process issue, the arbitrator found that Salon was not afforded an opportunity for a real investigation because she was denied the right to counsel; neither was she afforded the right to a hearing under the grievance procedure of the CBA and under the Labor Code.

The voluntary arbitrator ordered the TIP to reinstate Salon as College Instructor 3 with full backwages, but suspended her for one month "*for not getting a written permission from responsible officials of the school in charging students with the cost of examination papers.*"

The TIP sought the reconsideration of the award, but the voluntary arbitrator denied the motion on September 16, 2001. The TIP thereupon elevated the case to the CA through a petition for review. In a decision promulgated on November 20, 2002, the appellate court affirmed the voluntary arbitration award resulting in the dismissal of the petition.^[10] The appellate court agreed with the voluntary arbitrator that nothing in the TIP rules warrants the dismissal of a faculty member for selling examination papers without the school's written permission. It was not convinced that the infraction committed by Salon is a grave offense referred to in Memorandum No. P-25 s. 2000-2001 that the TIP cited as justification for the dismissal of Salon.^[11] The relevant portion of this memorandum reads:

1. In line with the school's thrust to provide quality education and service to its students, a photocopy center is created with the major task of servicing students on their handout requirements.

x x x

4. Please discuss these to your respective faculty members on one of your department meetings.

x x x

- 4.1 Explain to them the objectives for the creation of said photocopy center. Emphasize to them that they

are not authorized to sell instructional materials, and to do so is a grave offense. Explain further that this is one of the reasons why the center is being formed.

x x x

- 4.2 Make clear to them that services of the photocopy center shall be limited to required handouts and instructional

materials assigned by faculty members and will not include other photocopy needs of the student.

The CA ruled that examination papers do not fall within the term "*instructional materials*" that the memorandum covers; the memorandum only covers handouts and instructional materials needed by students and assigned by their teachers. The CA explained that from their nature and use, handouts and instructional materials are entirely different from examination papers; instructional materials are used to present and convey lessons to the students; whereas, examination papers measure the students' degree of comprehension of their lessons.

On a related matter, the CA held that if Salon committed an infraction, it should be limited to the fact that she did not ask the Faculty Coordinator and the Department Head to determine the cost of the papers which she disseminated among her students, as required under paragraph 4 of Memorandum No. P-22 s. 1988-1989.

[12] Additionally, the CA held that Salon could be cited for tampering with the grade of her student Joseph Florante Manalo (*Manalo*) - a violation of the TIP grading policy.

Undeterred, the TIP moved for the reconsideration of the CA decision. The CA granted the motion and handed down the now assailed amended decision on May 22, 2003.[13] It examined the facts for the second time and concluded that it erred in excluding examination papers from the ambit of the term "*instructional materials*." It reasoned out that "examination papers play as much, maybe even more importance in the determination of a student's aptitude than any kind of instructional material x x x to exclude examination papers from the perimeters of the term 'instructional materials' would amount to an incongruity." The CA also faulted Salon for changing the grade of Manalo from 5.0 (failed) to 6.0 (officially dropped) after the grades had been submitted.

For the reason that the infractions committed by Salon "*were unrefuted and proven,*" the CA found basis for the TIP's decision to dismiss her for the commission of a grave offense. This notwithstanding, the appellate court deemed it "*in accord with justice and equity to award her separation pay,*" in consideration of Salon's more than ten (10) years of service to TIP and because she had not previously been involved in any similar act or one that warrants a heavier penalty.

Accordingly, the CA annulled its decision dated November 20, 2002[14] as well as that of the Voluntary Arbitrator dated July 14, 2001.[15] It declared that Salon was dismissed for a valid cause, but awarded her separation pay at one month's basic salary for every year of service. From this decision, Salon and TIPTEO (now represented by the present counsel upon the demise of Mr. Antonio Diaz who had assisted her [Salon] from the beginning) now come before this Court to challenge the amended CA decision.

THE PETITION

The petition submits that the CA erred:

1. In ruling that Salon was dismissed for a valid cause.

2. In not finding that Salon was denied procedural due process.

3. In not dismissing the petition outright despite its failure to attach a certified statement of material dates in violation of Section 3, Rule 46 in relation to Rule 65 of the Rules of Court, and Revised Circular No. 1-88.

On the first ground, Salon and her union bewail the CA's shifting appreciation of the nature of test/examination papers, from "*non-instructional*" material to "*instructional*" material relying on the same policy document of the school, Memorandum No. P-25 s. 2000-2001.^[16] They contend that the appellate court's change of mind was not supported by any authority. Citing the dictionary definition^[17] of "*instructional*" and "*test*," they argue that "*instructional material*" and "*test papers*" are two different things; "*test*" is "*a series of questions, problems, etc., intended to measure the extent of knowledge, aptitudes, intelligence, and other mental traits*"; "*instructional*" is an adjective which means "*pertaining or relating to instruction; educational; containing information.*"

Further, petitioners posit that it is incorrect to conclude that Salon is guilty of selling photocopied test questionnaires to her students; she was not selling but merely securing reimbursement for the personal expenses she incurred in the preparation of the test papers. Salon cited as authority Memorandum No. P-22 s. 1988-1989,^[18] which expressly set guidelines for the cost of stenciled examination papers, P0.40 for newsprint, and P0.60 for whitewove paper.

Charging the students for the examination papers could have been avoided according to Salon had TIP performed its obligation of providing test and examination papers to the students; faculty members, who are not allowed to use school computers and typewriters in the preparation of the materials, had to type and photocopy the examination papers at their own expense and for which they had to seek reimbursement.

On the violation of the school's grading system, Salon submits that she did it for a noble intention; she changed the grade of Manalo - the son of a fellow faculty member - from a failing mark of 5.0 to a grade of 6.0 (dropped) to lessen the impact of the student's mother's guilt and to keep the student from being punished by his father, as she explained in her letter dated November 14, 2000 to TIP President Dr. Teresita Quirino.^[19]

Salon claims that when she realized that she violated the TIP's grading system, she consciously tried to rectify her error; on October 20, 2000, during the submission and re-checking of her grading sheets, she asked the permission of Ms. Royer to use the Arlegui computer room to correct the grade of Manalo, but Ms. Royer directed her to defer the correction until the date set by the Registrar's Office for the final audit of grades; the scheduled date, however, was overtaken by her dismissal from her teaching post. She submits that there was no malice in what she did or an intent to violate the school's grading system; at the very least, she committed an error in judgment that does not warrant the harsh penalty of dismissal; her dismissal would violate the constitutional guaranty of security of tenure.

On the due process issue, Salon points out that the investigation of the charges against her was a "hoax"; no genuine investigation took place as she stated in her