

FIRST DIVISION

[G.R. NO. 164376, July 31, 2006]

NATIONAL LABOR RELATIONS COMMISSION, ST. JUDE CATHOLIC SCHOOL, REV. FR. NOEL BEJO, MS. PRISCILLA LOPEZ, MS. NATIVIDAD TAN, MS. VILMA LAO, MS. JENNIFER GIL, MS. REMEDIOS CABANLIT AND MR. CAMILO GELIDO, PETITIONERS, VS. MA. BERNADETTE S. SALGARINO, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

Before us is a Petition for Review of the Decision^[1] and Resolution^[2] of the Court of Appeals, dated 21 May 2003 and 1 July 2004, respectively, reversing and setting aside the Decision^[3] dated 28 September 2001, and Resolution^[4] dated 29 November 2001 of National Labor Relations Commission (NLRC), and reinstating the Decision^[5] of Labor Arbiter Edgardo M. Madriaga, dated 11 January 2001, finding petitioners guilty of illegal dismissal.

The facts are:

In April 1988, respondent Maria Bernadette A. Salgarino was employed by petitioner St. Jude Catholic School as Mathematics teacher. She was tasked to teach Algebra, Trigonometry, Statistics and Analytical Geometry for third and fourth year high school students.^[6]

On 15 February 1999, or two weeks before the fourth periodical test of that school year, respondent went on maternity leave. She was expected to be back in petitioner school on 19 March 1999. During her official leave, she conducted make-up tests in her house in order to improve the grades of some of her students. However, this was done by the respondent without the prior permission of petitioners. At this same period, her co-teachers, Ms. Maria Luisa Capistrano (Capistrano), Mrs. Angelita Rivera and Mrs. Michel Bongyad substituted for her in her classes. On 2 March 1999, the periodical test for Mathematics IV was conducted and the same was administered by Capistrano, since respondent was still on leave.^[7]

One of herein petitioners, Head Teacher Ms. Priscila Lopez (Lopez), instructed the substitute teachers to check the test papers and compute the grades of the students in Sections 4-A, 4-B and 4-C.^[8]

On 9 March 1999, the white sheets or the grading sheets for the 4th year students were accomplished by the substitute teachers. It was shown that some 4th year students obtained a failing grade in Math.^[9] Subsequently, respondent, while still on leave, requested Capistrano to deliver to her house the white sheets which

contained the grades in Math of respondent's students. Capistrano delivered the white sheets to respondent's home through a student named Eunice Weeguano.^[10] Upon receiving them, respondent encircled the failing grades under the column of Daily Work (DW) and placed a passing grade beside each encircled grade. Respondent asserted that as the handling teacher, she had the prerogative to pass her students. She revealed that she required her students to do some projects and conducted make-up tests for them before she went on maternity leave and to improve the final grades of the concerned students. She avers that out of valid and humanitarian reasons, she indicated a passing grade of 75% beside the grades of those with failing grades. Her decision was based on:

- (1) The concerned students could have performed better in their periodical test if a substitute teacher was assigned during the two weeks that she was on maternity leave before the examination;
- (2) [Respondent] had required her students before she went on leave to make extra projects and activities and those who had failing grades made well enough to pull up their grades;
- (3) The concerned students have good 4th quarter test results before she went on leave; and
- (4) Had the student[s] with the lowest grade (70%) been failed x x x, the school would have violated Section 68 (b) of the Manual of Regulation for Private Schools.^[11]

Upon return of the white sheets, the substitute teachers noticed therein the additions made by respondent. The substitute teachers immediately reported the matter to Lopez who, in turn, referred the matter to petitioner Rev. Fr. Noel Bejo (Fr. Bejo), SVD, Acting Director/Principal of petitioner school.^[12]

On 24 March 1999, Fr. Bejo instructed respondent to report to his office. He gave her a letter which directed her to submit herself to a panel of investigators and explain why she had allegedly tampered school records, violated school policies and committed misconduct.^[13]

On 26 March 1999, respondent was investigated for her act of increasing the grades of her students while she was on maternity leave. Respondent and the substitute teachers were allowed to attend and participate in the investigation. The investigation yielded the following relevant facts^[14]:

- (1) That respondent increased the grades of her students who failed;
- (2) That respondent gave tests in her house to some students;
- (3) That respondent's reason for giving tests in her house is because she wanted to help the students who were failing x x x. [S]he wanted to give considerations and she admitted that it was her fault for asking the students go to her house;
- (4) That respondent admitted changing her student's grades before they were submitted and checked by the school principal;

(5) Respondent x x x argued that she had the right to pass her students.

The investigating panel reached the conclusion that respondent altered her students' grades while she was on leave, which is, according to them, a case of education malpractice or grave misconduct and grossly prejudicial to the good name of the petitioner school. In particular, the investigating committee found respondent to have violated Article XV, Section 79 and Article XVII, Section 94, paragraph (b) of the Manual of Regulations for Private Schools, to wit:

Article XV, Section 79. *Basis for Grading.* The final grade or rating given to a pupil or student in a subject should be based solely on his scholastic performance. Any addition or diminution to the grade in a subject for co-curricular activities, attendance, or misconduct shall not be allowed, except as may otherwise be explicitly provided for by an individual school x x x, and provided further that such adjustments are relevant to the subject content and requirements x x x.

Article XVII, Section 94, par. (b). Negligence in keeping school or student records, or tampering with or falsification of the same; x x x.

On these bases, the members of the investigating committee ruled to terminate respondent's services. On 15 April 1999, a termination letter was served on respondent. On 29 April 1999, respondent filed with the Labor Arbiter a Complaint for illegal dismissal, proportionate 13th month pay, actual, moral and exemplary damages, and attorney's fees against petitioners.^[15]

In his Decision^[16] dated 11 January 2001, Labor Arbiter Edgardo Madriaga ruled that respondent was illegally dismissed as there was no valid or just cause to terminate her employment. The relevant portion of the Decision reads:

A teacher has the academic freedom to pass or fail any or all her students as (sic) per his or her discretion. In this case, the teacher opted for liberality rather than strictness. There was no proof that she did so out of malice or immoral considerations. There are liberal or generous teachers and there are so-called terror teachers who prefer to flunk all their students. They balance each other out.

We, therefore, rule that complainant was not dismissed for a valid or just cause.

She is therefore entitled to reinstatement with backwages, proportionate 13th month pay and 10% thereof as attorney's fees, computed below as follows:

x x x x

WHEREFORE, premises considered, complainant is hereby declared to have been illegally dismissed, and respondent school is hereby directed to reinstate her and pay her money claims as computed above.

On appeal by petitioners, the NLRC reversed and set aside the Decision of the Labor Arbiter, on the ground that respondent's act of giving failing students higher grades

than what they actually earned is tantamount to serious misconduct which justified her dismissal. The relevant portion of the NLRC Decision^[17] reads:

The very actuations of the complainant - first claiming that it was her prerogative to pull up failing grades, then blaming the substitute teachers for copying the grades she gave the failing students, and even Mr. Lopez for supposedly scheming to get rid of her; claiming that she gave the failing students extra projects before she went on leave, yet failing to reflect the credits they earned from the supposed extra projects in the grading sheets - are not consistent with her avowed innocence.

In conclusion, this Commission finds the complainant's act of giving failing students higher grades than what they actually earned to be tantamount to serious misconduct, which justifies her dismissal. The notion of academic freedom, which to her credit, she did not raise as a defense, does not excuse her misconduct.

WHEREFORE, the decision appealed from is hereby REVERSED and the instant case DISMISSED for lack of merit.

Respondent filed a Motion for Reconsideration of the NLRC Decision which was denied for lack of merit in a Resolution dated 29 November 2001.^[18] Aggrieved, respondent filed a Petition for *Certiorari* before the Court of Appeals. The appellate court reversed and set aside the Decision dated 28 September 2001, and Resolution dated 29 November 2001 of the NLRC. Reinstating the 11 January 2001 Decision of the Labor Arbiter, the Court of Appeals ratiocinated:

Absent any proof that the giving of passing grades was done with malice or immoral considerations, this court has no other choice but to declare that the herein petitioner [respondent] was illegally dismissed for choosing to be a considerate mentor to her students. Whether such choice is a mistake of the teacher should not be visited with a consequence so severe. Indeed, the penalty of dismissal is unduly harsh considering that the petitioner had been in the employ of the respondent school for eleven years and it does not appear that she had a previous derogatory record, notwithstanding the claim there was alleged breach of trust. The law regards the workers with compassion. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.

WHEREFORE, for having been issued with grave abuse of discretion, the assailed decision and resolution of the respondent commission are REVERSED and SET ASIDE. The Decision of Labor Arbiter Edgardo M. Madriaga is hereby REINSTATED.^[19]

Petitioners moved for a reconsideration thereof, which was denied by the appellate court^[20] in the Resolution dated 1 July 2004.

Consequently, on 2 September 2004, petitioners filed before this Court, a Petition for Review on *Certiorari*. In our Resolution^[21] dated 13 October 2004, we denied the Petition in this wise:

In accordance with Rule 45 and other related provisions of the 1997 Rules of Civil Procedure, as amended, governing appeals by certiorari to the Supreme Court, only petitions which are accompanied by or comply strictly with the requirements specified therein shall be entertained. On the basis thereof, the Court Resolves to DENY the petition for review on certiorari for petitioners' failure to:

(a) submit a valid affidavit of service of copies of the petition in accordance with Sections 3 and 5, Rule 45 and Section 5(d), Rule 56 in relation to Section 13, Rule 13 of the Rules, since the jurat of the attached affidavit of service does not indicate the affiants' community tax certificate numbers or any competent evidence of affiants' identity; and

(b) properly verify the petition in accordance with Section 1, Rule 45 in relation to Section 4, Rule 7, and submit a valid certification on nonforum shopping in accordance with Section 4(e), Rule 45 in relation to Section 5, Rule 7, Section 2, Rule 42 and Sections 4 and 5(d), Rule 56, since only five (5) of seven (7) petitioners signed the attached verification and certification of nonforum shopping, and no proof of authority has been shown by affiants to sign on behalf of petitioner school and co-petitioners x x x.^[22]

On 4 April 2005, petitioners filed a Motion for Reconsideration with motion to exclude Rev. Fr. Noel Bejo and Jennifer Gill as petitioners, alleging therein that:

The reason for the failure of Fr. Bejo and Ms. Gill to sign the verification and certification of non-forum shopping is the fact that they were impleaded in the case below merely in their representative capacities. Since they are no longer connected with the school, they are, for all intents, no longer interested in this case. The undersigned counsel still included their names in the caption with the intention to maintain consistency in the caption of the case as Fr. Bejo and Ms. Gill were also impleaded by herein respondent Salgarino in the Court of Appeals case she filed. Undersigned counsel now realizes that they should not have been included as petitioners in this case since there could be no personal liability on their part. The matter now in issue are limited to backwages and reinstatement, which concern only the school.^[23]

Thus, we reinstated the Petition but replaced Rev. Fr. Teodoro Gapuz for Fr. Bejo as one of the petitioners hereof since Fr. Bejo was replaced by Fr. Gapuz as School Director in 2001.^[24]

Petitioners raise the following issues for our consideration:

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WHETHER OR NOT RESPONDENT LABOR ARBITER MADRIAGA AND THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION WHEN IT FOUND PRIVATE RESPONDENT SALGARINO TO HAVE BEEN ILLEGALLY DISMISSED NOTWITHSTANDING THE FACT THAT PRIVATE RESPONDENT ADMITTED TO HAVE CHANGED THE FAILING GRADES TO