

FIRST DIVISION

[G.R. NO. 157788, March 08, 2005]

SAINT MARY'S UNIVERSITY, REPRESENTED BY ITS PRESIDENT REV. JESSIE M. HECHANOVA, CICM, PETITIONER, VS. COURT OF APPEALS (FORMER SPECIAL TWELFTH DIVISION), NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND MARCELO A. DONELO, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

For review on certiorari are the **Decision**^[1] dated May 21, 2002 and the **Resolution**^[2] dated February 12, 2003 of the Court of Appeals in CA-G.R. SP No. 63240 which dismissed the petition for certiorari of St. Mary's University and its motion for reconsideration, respectively.

Respondent Marcelo Donelo started teaching on a contractual basis at St. Mary's University in 1992. In 1995, he was issued an appointment as an Assistant Professor I. Later on, he was promoted to Assistant Professor III. He taught until the first semester of school year 1999-2000 when the school discontinued giving him teaching assignments. For this, respondent filed a complaint for illegal dismissal against the university.

In its defense, petitioner St. Mary's University showed that respondent was merely a part-time instructor and, except for three semesters, carried a load of less than eighteen units. Petitioner argued that respondent never attained permanent or regular status for he was not a full-time teacher. Further, petitioner showed that respondent was under investigation by the university for giving grades to students who did not attend classes. Petitioner alleged that respondent did not respond to inquiries relative to the investigation. Instead, respondent filed the instant case against the university.

The Labor Arbiter ruled that respondent was lawfully dismissed because he had not attained permanent or regular status pursuant to the Manual of Regulations for Private Schools. The Labor Arbiter held that only full-time teachers with regular loads of at least 18 units, who have satisfactorily completed three consecutive years of service qualify as permanent or regular employees. ^[3]

On appeal by respondent, the National Labor Relations Commission (NLRC) reversed the Decision of the Labor Arbiter and ordered the reinstatement of respondent without loss of seniority rights and privileges with full backwages from the time his salaries were withheld until actual reinstatement.^[4] It held that respondent was a full-time teacher as he did not appear to have other regular remunerative employment and was paid on a regular monthly basis regardless of the number of teaching hours. As a full-time teacher and having taught for more than 3 years,

respondent qualified as a permanent or regular employee of the university.

Petitioner sought for reconsideration and pointed out that respondent was also working for the Provincial Government of Nueva Vizcaya from 1993 to 1996. Nevertheless, the NLRC denied petitioner's Motion for Reconsideration. Aggrieved, petitioner elevated the matter to the Court of Appeals, which affirmed the Decision of the NLRC.

Hence, this petition with a motion for temporary restraining order, alleging that the Court of Appeals erred in:

...FINDING THAT THE RESPONDENT DONELO ATTAINED A PERMANENT STATUS, THE SAID FINDING BEING CLEARLY CONTRARY TO THE EVIDENCE AT HAND AND DEVOID OF BASIS IN LAW.

...HOLDING THAT THE TWIN-NOTICE REQUIREMENT IMPOSED BY LAW BEFORE TERMINATION OF EMPLOYMENT CAN BE LEGALLY EFFECTED MUST BE COMPLIED WITH BY THE PETITIONER.

...AFFIRMING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION IN ORDERING THE PETITIONER TO REINSTATE RESPONDENT DONELO TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND PRIVILEGES WITH FULL BACKWAGES FROM THE TIME OF HIS DISMISSAL UNTIL ACTUALLY REINSTATED.^[5]

Plainly, the ultimate questions before us are:

1. Was respondent a full-time teacher?
2. Had he attained permanent status?
3. Was he illegally dismissed?

Petitioner contends that respondent did not attain permanent status since he did not carry a load of at least 18 units for three consecutive years; and that only full-time teachers can attain permanent status. Further, since respondent was not a permanent employee, the twin-notice requirement in the termination of the latter's employment did not apply.

Respondent argues that, as early as 1995, he had a permanent appointment as Assistant Professor, and he was a permanent employee regardless of the provisions of the Manual of Regulations for Private Schools. He asserts that he should not be faulted for not carrying a load of at least 18 units since the university unilaterally controls his load assignment in the same manner that the university has the prerogative to shorten his probationary period. He points out also that the present Manual allows full-time teachers to hold other remunerative positions as long as these do not conflict with the regular school day. Since he is a permanent employee, respondent insists that petitioner's failure to give him the required notices constitutes illegal dismissal.

Section 93 of the 1992 Manual of Regulations for Private Schools, provides that full-time teachers who have satisfactorily completed their probationary period shall be