

SECOND DIVISION

[G.R. No. 127932, December 07, 2001]

**VIRGINIA M. ANDRADE, PETITIONER, VS. COURT OF APPEALS
AND DOMINADOR S. WINGSING, RESPONDENTS.**

DECISION

DE LEON, JR., J.:

Before us is a petition for review on certiorari seeking nullification of the Decision^[1] and Resolution^[2] dated September 28, 1995 and January 23, 1997, respectively, of the Court of Appeals^[3] reversing the Decision^[4] dated August 31, 1990 of the Regional Trial Court, Branch 106, Quezon City which adjudged private respondent Dominador S. Wingsing liable to petitioner Virginia M. Andrade for actual and compensatory damages, attorney's fees and the costs of suit.

The pertinent facts are as follows:

On July 6, 1971, petitioner was appointed as permanent teacher in the Division of City Schools, Manila. She was initially assigned as English teacher at the Araullo High School, Manila.

On June 14, 1985, two (2) days before the opening of classes for the school year 1985-1986, petitioner inquired from the English Department Head, Virginia E. Fermin, about her teaching load, and in response thereto, she was referred to private respondent Dominador Wingsing, Principal of the Araullo High School. However, a subsequent visit by petitioner to private respondent Wingsing on June 19, 1985 yielded negative results as the latter merely referred back the petitioner to English Department Head Fermin.

Irked by the manner by which she was being referred back and forth from one person to another, the petitioner wrote on July 17, 1985 to Arturo F. Coronel, Assistant Schools Division Superintendent of the Division of City Schools, Manila, requesting that she be given a teaching assignment.^[5] In an indorsement dated July 30, 1985, addressed to Superintendent Coronel, private respondent Wingsing cited three (3) reasons why petitioner Andrade was not given any teaching load: (1) drastic drop of enrollment; (2) she was declared an excess teacher; and (3) she ranked lowest in her performance rating.^[6] Hence, on August 22, 1985, Superintendent Coronel informed the petitioner, through private respondent Wingsing, that the petitioner would be designated to a non-teaching position in the meantime that arrangements were being made for her eventual reassignment to other schools where her services may be needed.^[7]

On October 4, 1985, petitioner made a request to Benedicto M. Hormilla, Chief of Personnel Services of the Division of City Schools of Manila, that she be transferred

from Araullo High School to Ramon Magsaysay High School in Manila,^[8] and said request was favorably acted upon by Superintendent Coronel.^[9] Petitioner then reported for work on October 9, 1985 at the Ramon Magsaysay High School,^[10] but in a letter of the same date, petitioner relayed that she is withdrawing her request for transfer and indicated her intention of remaining at the Araullo High School.^[11] Thereafter, petitioner discovered that her name has been deleted from the regular monthly payroll and transferred to a special voucher list.

Feeling aggrieved, petitioner filed an action for damages with mandatory injunction^[12] against private respondent Dominador S. Wingsing, English Department Head Virginia E. Fermin and Assistant Schools Division Superintendent Arturo F. Coronel before the Regional Trial Court (RTC),^[13] Quezon City. Petitioner claimed that Wingsing, Fermin and Coronel conspired in depriving her of her teaching load and humiliated her further by excluding her name from the regular monthly payroll.

In his answer, private respondent Wingsing disclaimed any intention to maliciously deprive the petitioner of her teaching load. He explained that the decrease in the enrollment for the school year 1985-1986 necessitated that a number of teachers be declared in a list as excess teachers, and as petitioner had the lowest performance rating, she was included in the said list. Nonetheless, respondent Wingsing asserted that due consideration was extended to petitioner upon instruction from Superintendent Coronel to provide her with a non-teaching job in the meantime that her next assignment was being determined. However, petitioner declined his offer to handle Developmental Reading lessons and to function as an Assistant Librarian. As for the deletion of petitioner's name from the regular monthly payroll, respondent Wingsing declared that he and his co-defendants were merely exercising and doing their duties in accordance with the existing school policies, rules and regulations.

On August 31, 1990, the trial court rendered its Decision absolving Virginia Fermin and Arturo Coronel, but held herein respondent Wingsing liable to petitioner for:

1. Actual and compensatory damages in the amount of Ninety Three Thousand Five Hundred Seventy-five and 99/100 Pesos (P93,575.99);
2. Attorney's fees in the sum of Ten Thousand Pesos (P10,000.00);
and
3. Costs of suit.

Aggrieved by the said decision, private respondent Wingsing appealed to the Court of Appeals,^[14] maintaining the necessity of declaring excess teachers, including the petitioner, during the subject school year and invoking regularity in the performance of his functions as principal of the Araullo High School. Finding merit in his argument, the appellate court on September 28, 1995 reversed the decision of the trial court and dismissed the complaint of petitioner.

The appellate court in its Resolution dated January 23, 1997 denied petitioner's motion for reconsideration. The petitioner now challenges the correctness of the Court of Appeal's decision *via* the instant petition.

Petitioner contends that public respondent Court of Appeals erred in applying the *Orcino Doctrine*^[15] and that Sec. 31 of P.D. No. 807, otherwise known as the Civil Service Commission,^[16] Sec. 6 of R.A. No. 4670, otherwise known as The Magna Carta for Public School Teachers^[17] and R.A. No. 2260, as amended ^[18] should be the applicable laws.

Petitioner asserts that private respondent Wingsing failed to comply with the said laws considering that no performance evaluation plan which can be the basis for personal action was ever presented in evidence to justify the latter's actions. What was shown were performance rating sheets and the Certification on the Audit of Teachers, allegedly prepared by petitioner's co-teachers and personnel from the Office of the Research and Evaluation Services, which petitioner Andrade did not conform to nor sign. And assuming that the above-cited documents were valid and credible, petitioner nonetheless argues that she had not been informed periodically by private respondent Wingsing of her performance ratings, nor was she warned that she needed to improve her performance.

Petitioner also doubts the veracity of private respondent Wingsing's claim that there was a reduction of classes for the school year 1985-1986 as reason for her being declared as an excess teacher since Araullo High School even hired three (3) more new teachers that school year. To underscore her claim that she had been singled out, petitioner asserts that, contrary to the declaration of respondent Wingsing, there was no other person declared as an excess teacher in Araullo High School for that school year.

Petitioner likewise argues that the procedure for transferring teachers to other work stations as laid down in Republic Act No. 4670 was not observed when private respondent tried to effect her transfer from Araullo High School to Ramon Magsaysay High School. Although petitioner admits that she initiated the request for transfer, she claims that she was misled by respondent Wingsing regarding the availability of a teaching position in the Ramon Magsaysay High School. Even then, upon learning that there was no vacancy in the Ramon Magsaysay High School, she immediately withdrew her request for transfer and returned to Araullo High School. As the order to transfer has not been revoked, she thereafter questioned its validity before the Regional Director and the Secretary of the Department of Education, Culture and Sports. Petitioner argues that her failure to report for work on the first day of classes at the Ramon Magsaysay High School did not justify her exclusion from the teachers' regular monthly payroll. She points out that as clarified by Chief Accountant Priscilla Fabian, Accounting Section of the Division of City Schools, a minimum of three (3) days is usually given to teachers or personnel who fail to report for duty on the first day of classes before such employee can be deleted from the regular monthly payroll. She claims that this 3-day period was not extended to her before her name was deleted from the regular monthly payroll.

The petition is not meritorious.

It must be noted that the present petition originated from an action for damages for alleged withholding of petitioner's teaching load and deletion of her name from the regular monthly payroll caused by private respondent Dominador S. Wingsing, Virginia E. Fermin and Arturo F. Coronel. From the initial pleading and the testimony

of petitioner Andrade, it appeared that her claim for damages was based on Article 19 of the New Civil Code which provides that:

"Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

While Article 19 of the New Civil Code may have been intended as a declaration of principle, the "cardinal law on human conduct" expressed in said article has given rise to certain rules, *e.g.*, that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to civil liability. The elements of abuse of one's rights under the said Article 19 are the following: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.^[19] In this regard, it appeared that the complaint of petitioner Andrade failed to meet the second and third requirements.

A careful review of the records reveals that the declaration of petitioner as an excess teacher was not motivated by any personal desire on the part of respondent Wingsing to cause her undue misery or injury, but merely the result of the valid exercise of authority. The decrease in the enrollment for the school year 1985-1986 in the Araullo High School resulted in a number of teachers being declared as excess teachers in the following subjects: Social Studies, 1; Math, 2, and English, 1.^[20] In exercising his judgment, the evidence reveals that respondent Wingsing was not at all dictated by whim or fancy, nor of spite against the petitioner but was rather guided by the following factors: qualification to teach, seniority, teaching performance and attitude towards the school community. For two (2) consecutive years petitioner received an unsatisfactory rating, the lowest, from two (2) English Department Heads, namely: Herminia Valdez and Virginia Fermin.^[21] Petitioner knew about her poor rating, but she refused to acknowledge it. She did not question nor contest the same. Homeroom teacher Zaida Perez^[22] and Remedios P. Rutaquio,^[23] a retired Supervisor of English, Division of City Schools, Manila, both testified that petitioner frequently absented herself from classes. Assistant Principal Romeo F. Amparado likewise testified that petitioner was often the subject of complaints from school personnel and students, one of which involved the slapping of a student without provocation, for which petitioner was suspended for one month without pay.^[24] Petitioner Andrade was therefore declared as an excess teacher, as rightfully recommended by private respondent, the latter being the school principal. It was a judgment made in good faith by respondent.

Contrary to the claim of petitioner, there were no new teachers hired that school year in Araullo High School; rather, existing substitute teachers were merely given permanent designation or assigned new subjects, significantly, prior to the teachers' audit or to the declaration of excess teachers on July 27, 1985. Thus, Teresita Luz was appointed regular substitute teacher on June 6, 1985; Linda Fincalero was appointed English teacher on May 31, 1985, while Estelita A. Durucan, a history teacher was made to teach English at about the same date.^[25] Moreover, the said three (3) teachers were appointed to teach the English subject after petitioner Andrade refused to teach the said subject when it was offered to her. Private respondent Wingsing testified in that regard, to wit: