

SECOND DIVISION

[G.R. No. 121962, April 30, 1999]

**ESPERANZA C. ESCORPIZO, AND UNIVERSITY OF BAGUIO
FACULTY EDUCATION WORKERS UNION, PETITIONERS, VS.
UNIVERSITY OF BAGUIO AND VIRGILIO C. BAUTISTA AND
NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This special civil action for *certiorari* seeks to annul the Resolution^[1] of NLRC promulgated on May 31, 1995 in NLRC Case No. RAB - CAR - 07-0217-92 which dismissed petitioners' appeal and affirmed the decision of the Labor Arbiter.

Petitioner Esperanza Escorpizo was initially hired by respondent university on June 13, 1989 as a high school classroom teacher. Under the rules of the respondent university, appointment to teach during the first two years at the university is probationary in nature. During the probation period, the teacher is observed and evaluated to determine his competency. Attainment of a permanent status by a faculty member is conditioned upon compliance with certain requirements, such as passing the professional board examination for teachers (PBET).

On March 18, 1991, respondent university informed Escorpizo that her employment was being terminated at the end of the school semester in view of her failure to pass the PBET. But before the start of the school year 1991-1992, Escorpizo reapplied and pleaded that she be given another chance. She told the respondent school that she had just taken the PBET and hoped to pass it.

As Escorpizo's appeal was favorably considered, she was allowed to teach during the school year 1991-1992. However, her continued employment was conditioned on her passing the PBET. Unfortunately, Escorpizo failed again. Undaunted, Escorpizo took the examination a third time in November 1991. At the end of the school year 1991-1992, respondent university evaluated the teachers performance to determine who would be in the list for the next school year. Escorpizo, not having passed the PBET yet, was not included.

Much later, on June 8, 1992, the results of the PBET were released and this time Escorpizo passed said examination. Nevertheless, on June 15, 1992, respondent university no longer renewed Escorpizo's contract of employment on the ground that she failed to qualify as a regular teacher. This prompted Escorpizo to file on July 16, 1992 a complaint for illegal dismissal, payment of backwages and reinstatement against private respondents.

On June 22, 1993, the labor arbiter ruled that respondent university had a "permissible reason" in not renewing the employment contract of Escorpizo.^[2]

Nevertheless, the labor official ordered the reinstatement of Escorpizo and disposed of the case as follows:

"WHEREFORE, evidence and law considered, the respondents are hereby directed to cause the immediate reinstatement of the complainant but without backwages, and to extend to her regular status.

All other claims are hereby dismissed for lack of merit.

SO ORDERED."^[3]

Dissatisfied with the decision there being no award of backwages, Escorpizo appealed to the National Labor Relations Commission (NLRC). But in its assailed Resolution^[4] dated May 31, 1995, the NLRC dismissed said appeal and affirmed the labor arbiter's decision.

Instead of filing the required motion for reconsideration, petitioners filed this instant petition^[5] imputing grave abuse of discretion on the part of public respondent in affirming the decision of the labor arbiter.

This precipitate filing of petition for *certiorari* under Rule 65 without first moving for reconsideration of the assailed resolution warrants the outright dismissal of this case. As we consistently held in numerous cases,^[6] a motion for reconsideration is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had.

It is settled that *certiorari* will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against acts of public respondents. In the case at bar, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the impugned resolution, based on palpable or patent errors, to be made under oath and filed within ten (10) days from receipt of the questioned resolution of the NLRC,^[7] a procedure which is jurisdictional. Hence, original action of *certiorari*, as in this case, will not prosper. Further, it should be stressed that without a motion for reconsideration seasonably filed within the ten-day reglementary period, the questioned order, resolution or decision of NLRC, becomes final and executory after ten (10) calendar days from receipt thereof. Consequently, the merits of the case can no longer be reviewed to determine if the public respondent had committed any grave abuse of discretion.^[8]

Besides, petitioners did not comply with the rule on certification against forum shopping. As pointed out by the private respondents, the certification in the present petition was executed by the counsel of petitioners,^[9] which is not correct. The certification of non-forum shopping must be by the plaintiff or any of the principal party and not the attorney.^[10] This procedural lapse on the part of petitioners is also a cause for the dismissal of this action.

To be sure, even if the aforesaid procedural and technical infirmities were to be set aside, we find no cogent reason to depart from the decision of public respondent as hereunder elucidated. Definitely, no grave abuse of discretion could be imputed to the public respondent in affirming the decision of the labor arbiter.

Petitioners contend that Escorpizo had attained the status of a regular employee having rendered very satisfactory performance as probationary teacher for two years, consistent with the collective bargaining agreement between the respondent university and petitioner union of which Escorpizo is a member. They argue that the prerequisite prescribed by respondent university that teachers pass the PBET to attain regular employment has no legal basis because it is not stipulated in the collective bargaining agreement.

This contention, in our view, is bereft of merit.

A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment. A probationary appointment affords the employer an opportunity to observe the skill, competence and attitude of a probationer. The word "probationary", as used to describe the period of employment, implies the purpose of the term or period. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer at the same time, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment.^[11]

There is no dispute that Escorpizo was a probationary employee from the time she was employed on June 13, 1989 and until the end of the school semester in March 1991 or for two academic years. Thereafter, on her plea, she was again allowed to teach for school year 1991-1992. She knew that her status then was not that of a regular employee. For, she was also aware that her attainment of a regular employment is conditioned upon compliance with the requisites attached to her position, pursuant to the rules prescribed by respondent university, to wit:

" PROBATIONARY STATUS"

"An appointment to teach during the first two years at the University is probationary in nature. xxx.

During the period of probation (four semesters, excluding summer terms), the teacher is observed and evaluated formally by a committee composed of: (1) the most ranking/senior member of the faculty in his discipline/field of specialization, (2) his department head or college dean, (3) the Personnel Director and (4) the Vice President for Academic Affairs, including his students to determine his competency and fitness to be elevated to permanent status.

xxx xxx xxx

"Permanent status is granted to the faculty member of the high school or elementary school who has satisfactorily complied with the requirements of the probationary period, has at least a bachelor's degree in education, and has passed the Professional Teacher Board Examination or an equivalent Civil Service Examination."^[12]

Under the aforecited rule, the following conditions must concur in order that a probationary teacher may be extended a regular appointment; (1) the faculty