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SUPREME COURT
THIRD DIVISION

FR. PEDRO ESCUDERO, O.P., JOSEFINA AGUILAR and UNIVERSITY OF SANTO TOMAS,
***Petitioners*,**

-versus-

G.R. No. 57822
April 26, 1989

OFFICE OF THE PRESIDENT OF THE PHILIPPINES and CARMELITA B. REYES,
***Respondents*.**
x---x

D E C I S I O N

CORTES, *J*.:

This special civil action for *certiorari* stemmed from a complaint for reinstatement and backwages filed by private respondent Carmelita B. Reyes against the petitioners University of Santo Tomas (UST), Friar Pedro Escudero and Josefina Aguilar, the Assistant Regent and Principal, respectively, of the Elementary School Department of UST.

Carmelita B. Reyes was appointed by petitioner UST on June 17, 1972 as a teacher with a "probationary rank" in the latter's Elementary School Department," "with all the duties, rights and privileges

appertaining thereto in accordance with the Statutes and Faculty Code of the University and other existing rules and regulations" [Rollo, p. 7.] This appointment expressly provided that it was to take effect on July 5, 1972 and will terminate at the end of the 1972-1973 school year.

On June 7, 1973, Reyes's appointment was renewed effective on June 4, 1973 and to terminate at the end of the school year 1973-1974. Her appointment was again renewed on April 2, 1974, to take effect on June 3, 1974 and to terminate at the end of school year 1974-1975. There was no mention in these two renewals whether her appointment was permanent or still probationary.

On February 7, 1975, private respondent Reyes received from petitioners a notice of termination of her services, advising her that she will not be given a new contract of appointment for the ensuing school year. Claiming that she was illegally terminated she filed on February 14, 1975 a complaint for reinstatement with backwages with Regional Office No. IV of the Department of Labor.

On November 13, 1975, Labor Arbiter Ricarte T. Soriano rendered a decision upholding the termination of Reyes but ordering petitioner to grant her separation pay, equivalent to one and one-half months pay. The Labor Arbiter justified the award in this wise:

x x x

> Although the respondents have shown by overwhelming evidence to the satisfaction of the undersigned that the dismissal was justified, hence, reinstatement of the complainant is unwarranted, the undersigned Arbiter finds it rather still reasonable to order respondents to pay complainant one-half month pay for every year of service. The same is in line with the goals of the Labor Code to be more sympathetic to the cause of the laborers. [Rollo, p. 68.]

From this decision of the Labor Arbiter, both parties appealed to the National Labor Relations Commission (NLRC). The NLRC however found no valid cause for the termination and ordered petitioners to reinstate Reyes to her former position with full backwages from the

time her services were terminated on. February 7, 1975 up to her actual reinstatement without loss of seniority rights and other benefits appertaining thereto.

On appeal to the Secretary of Labor, the then Acting Secretary of Labor, Amado G. Inciong, issued an Order dated November 22, 1977 modifying the NLRC decision by deleting the order for the reinstatement of Reyes and ordering petitioners to instead pay her separation pay equivalent to one-half months salary for every year of service.

Private respondent appealed to the Office of the President and on May 27, 1980, the Office of the President rendered a decision reversing that of the Acting Secretary of Labor, the decretal portion of which reads:

> In view of the foregoing, respondents-appellees should reinstate complainant-appellant Carmelita B. Reyes to her former position with full back wages from the time her services were terminated on February 7, 1975 up to her actual reinstatement, without loss of seniority rights, as well as to other pertinent benefits. [Rollo, p. 36.]

Hence, petitioner filed the instant special civil action for *certiorari* seeking to annul the decision of the respondent Office of the President on the principal ground that the private respondent Reyes has not been illegally terminated and therefore, the order for her reinstatement with full backwages had no legal basis.

The pivotal issue in this case is whether grave abuse of discretion can be attributed to the respondent Office of the President in holding that private respondent Reyes was dismissed illegally.

Petitioners maintain that Reyes' last appointment was one with a fixed period; i.e., from June 3, 1974 until the end of the 1974-1975 school year, hence her employment was not covered by then Article 318[**] of the Labor Code prohibiting dismissals without any just cause. Petitioners assert that Reyes' appointment terminates upon expiration of the period fixed therein such that when Reyes was sent a notice of the termination of her services as of the end of the 1974-1975

school year, petitioners were merely enforcing the provisions of her last appointment. Moreover, Reyes' employment was subject as well to the UST Faculty Code which prescribes a three-year probationary period in accordance with the 1970 Manual of Regulations for Private Schools. That Code requires a third renewal of the annual appointment in order that a teacher may be considered permanent, thus:

x x x

> The provisions of Sections 3 and 4 notwithstanding, faculty members who have rendered three consecutive years (six semesters) of satisfactory service on full time basis as determined by the pertinent rules of the University and of the Bureau of Private Schools shall be considered permanent upon the third renewal of their annual appointment."

x x x
[Rollo, p. 16.]

Petitioners maintain that Reyes failed to render three consecutive years of satisfactory service [Rollo, pp. 16-17,] as shown by her poor efficiency rating found established by the Labor Arbiter, and that it is the third renewal of the appointment of Reyes which is the operative act that will confer her a permanent status. Since her appointment was not renewed for the third time, petitioners insist that she has not attained permanent status [Rollo, p. 17].

There is merit in the petition.

The provisions of the Labor Code, in force at the time the cause of action of Reyes accrued on February 7, 1976 [Villones vs. Employees' Compensation Commission, G.R. No. L-46200, July 30, 1979, 92 SCRA 320], states that "[t]he termination of employment of probationary employees and those employed with a fixed period shall be subject to such regulations as the Secretary of Labor may prescribe to prevent the circumvention of the right of the employees to be secured in their employment as provided herein" [Section 320; Italics supplied]

Under Section 6, Rule I, Book IV of the Rules Implementing the Labor Code:

> Section 6. Probationary and fixed period employment. — (a) Where the work for which an employee has been engaged is learnable apprenticeable in accordance with the standards prescribed by the Department of Labor, the probationary employment period of the employee shall be limited to the authorized learnership or apprenticeable period, whichever is applicable.
>
> (b) Where the work is neither learnable nor apprenticeable the probationary period of employment shall not exceed 6 months from the date the employee actually started working.
>
> x x x
>
> However, the six-month probationary period prescribed by the Secretary of Labor is merely the general rule. The recognized exceptions to this rule, as further set forth in Policy Instructions No. 11 issued by the Secretary of Labor on April 23, 1976, are:
>
> x x x
>
> Probationary employment has been the subject of misunderstanding in some quarters. Some people believe six (6) months is the probationary period in all cases. On the other hand, employees who have already served the probationary period are sometimes required to serve again on probation.
>
> Under the Labor Code, six (6) months is the general probationary period, but the probationary period is actually the period needed to determine fitness for the job. This period, for lack of a better measurement, is deemed to be the period needed to learn the job.
>
> Thus, if the job is apprenticeable, then the probationary period is the apprenticeship period, which may be six (6) months, less than six (6) months, or more than six (6) months, depending upon the nature of the job. Therefore, upon graduation an

> apprentice may not be put under probationary employment in the company in which he trained. In another company, however, the probationary period for him would be six (6) months. The reason is to allow the employer to test his working habits and other personal traits with respect to his fitness for regularization in the company. If the job is learnable — can be learned within three months — then the probationary period is three months or less. The learner upon completion of the learning period must be considered regular.
>
> The probationary employment of professors, instructors and teachers shall be subject to standards established by the Department of Education and Culture.

x x x

Rollo, p. 110; Emphasis supplied.]

It is thus clear that the Labor Code authorizes different probationary periods, according to the requirements of the particular job. For private school teachers, the period of probation governed by the 1970 Manual of Regulations for Private Schools, adopted by the Department of Education and Culture pursuant to the provisions of Act No. 2076, as amended by Act No. 3075 and Commonwealth Act No. 180. Paragraph 75 of the Manual provides that "[f]ull-time teachers who have rendered three consecutive years of satisfactory service shall be considered permanent," while the preceding paragraph requires that the employment contracts be in writing with at least one schoolyear's duration. That the probationary period for private school teachers is three years has already been confirmed by this Court in the recent case of Labajo vs. Alejandro [G.R. No. 80383, September 26, 1988] wherein it was declared:

x x x

> The three (3)-year period of service mentioned in paragraph 75 [of the Manual of Regulations for Private Schools] is of course the maximum period or upper limit, so to speak, of probationary employment allowed in the case of private school teachers. This necessarily implies that a regular or permanent employment status may, under certain conditions, be attained

> in less than three (3) years. By and large, however, whether or not one has indeed attained permanent status in one's employment, before the passage of three (3) years, is a matter of proof. [at p. 7.]

x x x

The best proof as to whether Reyes had already attained permanent status, is her contract with petitioner UST. That contract which was only the second renewal of her original probationary appointment reads as follows:

> April 2, 1974
>
> Mrs. Carmelita Reyes
> Elementary School Department
> University of Santo Tomas
>
> Dear Mrs. Reyes:
>
> Upon recommendation of the Elementary's Council of the
> ELEMENTARY SCHOOL DEPARTMENT
> I have the pleasure to appoint you.
>
> TEACHER
>
> With all the duties, rights and privileges appertaining thereto in accordance with the Statutes and Faculty Code of the University and other existing rules and regulations.
>
> This appointment takes effect on June 3, 1974 and terminates at the end of the 1974-1976 school year.
>
> Sincerely,
>
> *(Signed)*
> FR. EXCELSIO GARCIA, O.P.
> *Assistant to the Rector for Academic Affairs*

NON-TENURED APPOINTMENT

ACCEPTED:

(Signed)
CARMELITA B. REYES

DATED: June 3, 1974

The above contract reveals two significant points: 1) that the contract is one with a definite period to start on June 3, 1974 to end at the close of the 1974-75 school year and 2) that Reyes' signature appears underneath the words "NON-TENURED APPOINTMENT ACCEPTED." These features in the contract indicate that the appointment of Reyes subsists only for the 1974-75 school year. That the contract contained the words "non-tenured appointment accepted" reveals the non-permanent status of her employment. Nothing therein states that a permanent appointment was extended to her nor that UST was obliged to extend her one upon the expiration of the above contract.

Moreover no vested right to a permanent appointment had as yet accrued in her favor since she had not yet completed the prerequisite three year period necessary for the acquisition of permanent status, as required both by the Manual of Regulations for Private Schools and the UST Faculty Code. That her appointment was only for a fixed duration is further evinced be the fact that on February 7, 1975, before the expiration of the abovementioned contract, Reyes was served a notice that she may not expect her appointment to be renewed the next school year and that her probationary employment was to terminate at the close of the school year 1974-75. Although Reyes was allowed to complete her term according to the stipulated period, indeed no new contract was extended her. Reyes however construed the February 7, 1975 notice as a notice of termination and claims that it constituted dismissal without just cause and thus filed the instant case.

Reyes' argument is not persuasive. It loses sight of the fact that her employment was probationary, contractual in nature, and one with a definite period. At the expiration of the period stipulated in the

contract, her appointment was deemed terminated and the letter informing her of the non-renewal of her contract is not a condition sine qua non before Reyes may be deemed to have ceased in the employ of petitioner UST. The notice is a mere reminder that Reyes' contract of employment was due to expire and that the contract would no longer be renewed. It is not a letter of termination. The interpretation that the notice is only a reminder is consistent with the court's finding in Labajo, supra, where the Court in construing a similar letter sent to private school teachers whose contracts with San Andres High School were due to expire said:

x x x

> Such letter was either a formal reminder to private respondents that their respective contracts of employment with petitioners for school year 1984-85 were due to expire on 31 March 1986, or advance notice that such contracts would no longer be renewed for school year 1985-86, or both. [at p. 10.]

As to the question of the existence of just cause to justify the dismissal, the Court finds applicable here the case of Biboso vs. Victorias Milling Company, Inc. [G.R. No. L-44360, March 31, 1977, 76 SCRA 250, (1977).] In that case, the Court held that while probationary employees enjoy security of tenure such that they cannot be removed except for cause as provided law, such protection extends only during the period of probation. Once that period expires, the constitutional protection could no longer be invoked. This has been reiterated in subsequent cases [Manila Hotel Corporation vs. NLRC, G.R. No. 53453, January 22, 1986, 141 SCRA 169; Euro-Linea, Phils., Inc. vs. National Labor Relations Commission, G.R. No. 75782, December 1, 1987, 156 SCRA 78; Labajo vs. Alejandro, et al, supra.]

In the instant case, the probation period provided is three years covered by three separate written annual contracts. Reyes as a probationary and contractual employee was entitled to security of tenure only during the three year period of her probation and such protection ended the moment her last employment contract expired at the close of school year 1974-75 and she was not extended a renewal of her appointment.

The Office of the President therefore gravely abused its discretion in finding that Reyes was illegally terminated, in ordering her reinstatement and in awarding her backwages from the time her services were terminated on February 7, 1975 up to her actual reinstatement" [Rollo, p. 36.]

WHEREFORE, the Decision of the respondent Office of the President is hereby **SET ASIDE**, and the Order of the Assistant Secretary of Labor dated November 22, 1977 is **REINSTATED.**

SO ORDERED.

Fernan, *C.J., (Chairman)*, Gutierrez, Jr., Feliciano and Bidin, *JJ.*, concur.

[**] Now Art. 279 as amended. Art. 318 then read as follows:
Art. 318. In cases of employment without a definite period, the employer shall not terminate the services of an employee except for a just cause or when authorized by this charter. An employee who is unjustly dismissed from work shall entitled to reinstatement without loss of seniority rights and his back wages computed from the time this compensation was withheld from him up to the time of his reinstatement.

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