SUPREME COURT
SECOND DIVISION

GREGORIO ARANETA UNIVERSITY FOUNDATION,
***Petitioner*,**

-versus-

G.R. No. 75583
November 8, 1988

ANTONIO J. TEODORO and NATIONAL LABOR RELATIONS COMMISSION,
***Respondent*.**
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D E C I S I O N

REGALADO, *J.*:

Petitioner seeks the annulment of the Decision, dated September 28, 1984, of Labor Arbiter Apolinario L. Sevilla in Case No NLRC-NCR-1399-84 for illegal dismissal, separation pay, retirement benefits and other monetary claims filed by therein complainant, herein private respondent Antonio J. Teodoro, against the Gregorio Araneta University Foundation (GAUF, for brevity) which ordered the petitioner, as respondent therein:

"1. To pay complainant six (6) months backwages amounting to P36,468.00, accrued leave of P12,018 (59.75 days) and gratuity pay of P176,262.00;

2. To pay complainant the amount of P200,000.00 as moral damages and P10,000.00 as exemplary damages; and

3. To pay complainant's counsel the sum equivalent to 20% of the foregoing award as attorney's fees."[1]

and which on appeal to the National Labor Relations Commission (NLRC) was affirmed by its Third Division[2] with modifications, by eliminating the awards for attorney's fees and moral and exemplary damages.[3]

The antecedental employment record of private respondent in GAUF is not in dispute. Private respondent started as a clerk in the Registrar's Office of petitioner GAUF on September 15, 1954. In the course of his continuous employment, he was promoted to Assistant Cashier, Cashier, Treasurer, Finance Director and, ultimately on election by the Board of Trustees, as Vice President and concurrently Treasurer, effective March 5, 1981.

As of March 23, 1983, private respondent was holding his position on an "Ad Interim Extension of Appointment/Tenure" issued by the University President up to March 31, 1983 pending appropriate action of the Board of Trustees at its next meeting. His services were thereafter reextended to April 30, 1983, with his signed conformity, and finally up to May 31, 1983 after which he was no longer elected by the Board as Vice-President and/or Treasurer.[4]

He filed his basic complaint with the NLRC on April 6, 1984.

Petitioner, in its Reply of June 24, 1987, raised for the first time in this Court the issue of jurisdiction of the NLRC, a threshold objection which should have been invoked at the earliest stages of the proceedings. Relying on Philippine School of Business Administration, et al. vs. Leaño, et al.,[5] and Dy, et al. vs. National Labor Relations Commission, et. al.,[6] petitioner theorizes that since private respondent was a corporate officer, the present controversy is

within the jurisdiction of the Securities and Exchange Commission, pursuant to P.D. 902-A, and not in the public respondent.

Without the need of applying the rule on estoppel by laches against petitioner,[7] its contention must fail on the ground of misplaced reliance. As explained in Dy, and the same is true with Philippine School of Business Administration, the controversies therein were intracorporate in nature and squarely within the purview of Section 5 (c), P.D. 902-A since the real question was the invalidity of the board of directors' meetings wherein the corporate officers involved were not reelected, resulting in the termination of their services. Thus:

> "There is no dispute that the position from which private respondent Vailoces claims to have been illegally dismissed is an elective corporate office. He himself acquired that position through election by the bank's Board of Directors at the organizational meeting of November 17, 1979. He lost that position because the Board that was elected in the special stockholders' meeting of June 4, 1983 did not re-elect him. And when Vailoces, in his position paper submitted to the Labor Arbiter, impugned said stock holders' meeting as illegally convoked and the Board of Directors thereby elected as illegally constituted, he made it clear that the heart of the matter was the validity of the directors' meeting of June 4, 1983 which, by not re-electing him to the position of manager, in effect caused termination of his services."[8]

Those considerations do not obtain in the case at bar. No intracorporate controversy exists and the jurisdiction of the public respondent herein should be sustained.

We turn then to the main issues in this case, that is, whether private respondent was illegally dismissed and the matter of his right to reinstatement and the monetary awards he claims.

The amendments to the Labor Code[9] maintain virtually the same relevant provisions on the matter.

> "ART. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of

> an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of his reinstatement.
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> "ART. 280. Regular and Casual Employment. — The provisions of written agreements to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the contemplation or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season."

It is beyond cavil that the private respondent is a regular employee with a total length of service, as of May 31, 1983, of 28 years, 8 months and 17 days, or 29 years in legal contemplation. As We have stated in a case of similar factual setting —

> 'From the facts of the case and the very nature of respondent's employment, it is indubitably shown that he was engaged to perform activities that are usually necessary or desirable in the usual business or trade of the University and that he was not hired for a specific project or undertaking the completion of the which has been determined at the time of the engagement is regular, thus he is entitled to the security of tenure. Even on the assumption that respondent that respondent tacitly agreed to the condition in the contract as to his term of office, it did not affect his regular status.'[10]

There is, therefore, no legal bar to private respondent's entitlement to backwages and gratuity and these are unaffected by his change of status from a rank-and-file employee to a corporate officer of managerial rank. That much is evident from the aforecited case. The matter of his separation from the service by GAUF, however, presents a different situation, hence a disparate approach is required.

As already stated, he was appointed by the Board of Trustees to the position last held by him, as Vice-President and concurently Treasurer, on March 5, 1981. Such office was for a particular term as, in fact, he had to be given and ad interim extension up to March 21, 1983. Thereafter, his services were again extended up to April 30, 1983 and, ultimately, up to May 31, 1983, but with his written conformity thereto. There is nothing in the record to show that he was under pressure or in a disadvantaged position when he agreed to such extension with a definite period. His acquiescence thereto was express, not tacit, and a man of his intellectual stature could not have been unaware of the projected end of his employment.

The case of University of Sto. Tomas, heretofore cited and which he invokes, was decided on different features on this particular point. Aside from the fact that the therein physician-employee never expressly gave his consent to the change of the nature of his employment from one without a fixed period to one with a definite period, the court found that the reorganization of the hospital was resorted to in bad faith in order to deny the therein employee his accrued and vested rights, thus:

> "Since the fixing of the term of office which was up to 31 October 1975 only is clearly oppressive and arbitrary, the same being in clear circumvention of the right of the respondent to be secure in his employment, we hold and rule that respondent's tacit or implied acceptance of the same is ineffective. Respondent's employment remains and is deemed to be without a definite period.
>
> "And considering that from year to year, for 25 years, respondent continued to render the same kind of service without renewal or re-appointment when all of a sudden, petitioners came up with the reorganization of the hospital and converted respondent's employment to one with a definite period, it becomes very obvious and apparent that the intention of the petitioners in providing for a fixed period is to `ease him out of the service' because of the denunciation made by respondent against the management. The injustice done to respondent is not difficult to see."

Private respondent posits that the non-extension of his employment is due to his having furnished the founder's daughters, in their role as "visitators" of the foundation, with a copy of his "insight report" ascribing questionable practices and irregularities to GAUF's officers and trustees. It will be noted, however, that while copies thereof were supposedly circulated by private respondent even before the visitator's request of March 19, 1983, as petitioner contends, yet private respondent's services were nevertheless repeatedly extended up to May 31, 1983.

Furthermore, assuming that private respondent's employment was without a valid fixed period and that his said report was a controlling consideration in the non-extension of his employment, his aforesaid irresponsible imputations which he failed to substantiate and for which he even had to apologize constituted a valid cause for such non-renewal of his services. As public respondent held, not without merit, and which meets with Our approval —

> "It is clear on record that herein complainant is not entirely without fault. In fact in his letter to the Chairman of the Board dated 26 May 1983 (Annex `H', Respondent's Position Paper) complainant offered his apologies for his report without first clearing it with the President of the University. Complainant knew all along that because of his report, his appointment would no longer be extended (see Annex `B', Respondent's Position Paper). Thus, it cannot be said that respondent acted in bad faith when it unilaterally did not extend the appointment of complainant."[11]

The award of attorney's fees was properly disallowed since the same is granted only in cases of unlawful withholding of wages.[12]

WHEREFORE, the decision of the National Labor Relations Commission is hereby **AFFIRMED** and the petition is hereby **DISMISSED**.

SO ORDERED.

Melencio-Herrera, Paras, Padilla and Sarmiento, *JJ.*, concur.

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[1] Rollo 60.
[2] Presiding Commissioner Guillermo C. Medina and Commissioners Gabriel M. Gatchalian and Miguel B. Varela.
[3] Rollo 61-64.
[4] Memorandum for the Petitioner, 2-3; Comment of Public Respondent, Rollo, 9596.
[5] 127 SCRA 778 (1984); Rollo, 107.
[6] 145 SCRA 211 (1985); Ibid., 108.
[7] See, e.g., Tijam vs. Sibonghanoy, et al., 23 SCRA 29 (1968).
[8] Op. cit., 217-218.
[9] P.D. 442, as last amended by E.O. 252.
[10] University of Sto. Tomas, et al. vs. National Labor Relations Commission et al., 125 SCRA 480 (1983).
[11] Rollo, 63.
[12] Section 111 (a), P.D. 442, as amended.
