SUPREME COURT
THIRD DIVISION

INTERNATIONAL CATHOLIC MIGRATION COMMISSION,
***Petitioner*,**

-versus-

G.R. No. 72222
January 30, 1989

NATIONAL LABOR RELATIONS COMMISSION and BERNADETTE GALANG,
***Respondents*.**
x----------x

D E C I S I O N

FERNAN, *J.*:

The issue to be resolved in the instant case is whether or not an employee who was terminated during the probationary period of her employment is entitled to her salary for the unexpired portion of her six-month probationary employment.

The facts of the case are undisputed.

Petitioner International Catholic Migration Commission (ICMC), a non-profit organization dedicated to refugee service at the Philippine Refugee Processing Center in Morong, Bataan engaged the services of private respondent Bernadette Galang on January 24, 1983 as a probationary cultural orientation teacher with a monthly salary of P2,000.00.

Three (3) months thereafter, or on April 22, 1983, private respondent was informed, orally and in writing, that her services were being terminated for her failure to meet the prescribed standards of petitioner as reflected in the performance evaluation of her supervisors during the teacher evaluation program she underwent along with other newly-hired personnel.

Despite her termination, records show that private respondent did not leave the ICMC refugee camp at Morong, Bataan, but instead stayed thereat for a few days before leaving for Manila, during which time, she was observed by petitioner to be allegedly acting strangely.

On July 24, 1983, private respondent returned to Morong, Bataan on board the service bus of petitioner to accomplish the clearance requirements. In the evening of that same day, she was found at the Freedom Park of Morong wet and shivering from the rain and acting bizarrely. She was then taken to petitioner's hospital where she was given the necessary medical attention.

Two (2) days later, or on July 26, 1983, she was taken to her residence in Manila aboard petitioner's service bus. Thru a letter, her father expressed appreciation to petitioner for taking care of her daughter. On that same day, her father received, on her behalf, the proportionate amount of her 13th month pay and the equivalent of her two week pay.

On August 22, 1983, private respondent filed a complaint[1] for illegal dismissal, unfair labor practice and unpaid wages against petitioner with the then Ministry of Labor and Employment, praying for reinstatement with backwages, exemplary and moral damages.

On October 8, 1983, after the parties submitted their respective position papers and other pleadings, Labor Arbiter Pelagio A. Carpio rendered his decision dismissing the complaint for illegal dismissal as well as the complaint for moral and exemplary damages but ordering the petitioner to pay private respondent the sum of P6,000.00 as payment for the last three (3) months of the agreed employment period pursuant to her verbal contract of employment.[2]

Both parties appealed the decision to the National Labor Relations Commission. In her appeal, private respondent contended that her dismissal was illegal considering that it was effected without valid cause. On the other hand, petitioner countered that private respondent who was employed for a probationary period of three (3) months could not rightfully be awarded P6,000.00 because her services were terminated for failure to qualify as a regular employee in accordance with the reasonable standards prescribed by her employer.

On August 22, 1985, the NLRC, by a majority vote of Commissioners Guillermo C. Medina and Gabriel M. Gatchalian, sustained the decision of the Labor Arbiter and thus dismissed both appeals for lack of merit. Commissioner Miguel Varela, on the other hand, dissented and voted for the reversal of the Labor Arbiter's decision for lack of legal basis considering that the termination of services of complainant, now private respondent, was effected during her probationary period on valid grounds made known to her.[3]

Dissatisfied, petitioner filed the instant petition.

Petitioner maintains that private respondent is not entitled to the award of salary for the unexpired three-month portion of the probationary period since her services were terminated during such period when she failed to qualify as a regular employee in accordance with the reasonable standards prescribed by petitioner; that having been terminated on valid grounds during her probationary period, or specifically on April 24, 1983, petitioner is not liable to private respondent for services not rendered during the unexpired three-month period, otherwise, unjust enrichment of her part would result; that under Article 282 (now Article 261) of the Labor Code, if the

employer finds that the probationary employees does not meet the standards of employment set for the position, the probationary employee may be terminated at any time within the six-month period, without need of exhausting said entire six-month term.[4]

The Solicitor General, on the other hand, contends that a probationary employment for six (6) months, as in the case of herein private respondent, is an employment for a definite period of time and, as such, the employer is duty-bound to allow the probationary employee to work until the termination of the probationary employment before her re-employment could be refused; that when petitioner disrupted the probationary employment of private respondent, without giving her the opportunity to improve her method of instruction within the said period, it held itself liable to pay her salary for the unexpired portion of such employment by way of damages pursuant to the general provisions of civil law that he who in any manner contravenes the terms of his obligation without any valid cause shall be liable for damages;[5] that, as held in Madrigal vs. Ogilvie, et al.,[6] the damages so awarded are equivalent to her salary for the unexpired portion of her employment for a fixed period.[7]

We find for petitioner.

There is justifiable basis for the reversal of public respondent's award of salary for the unexpired three-month portion of private respondent's six-month probationary employment in the light of its express finding that there was no illegal dismissal. There is no dispute that private respondent was terminated during her probationary period of employment for failure to qualify as a regular member of petitioner's teaching staff in accordance with its reasonable standards. Records show that private respondent was found by petitioner to be deficient in classroom management, teacher-student relationship and teaching techniques.[8] Failure to qualify as a regular employee in accordance with the reasonable standards of the employer is a just cause for terminating a probationary employee specifically recognized under Article 282 (now Article 281) of the Labor Code which provides thus:

> "ART. 281. Probationary employment. — Probationary employment shall not exceed six months from the date the

> employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged in a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee." (Emphasis supplied.)

It must be noted that notwithstanding the finding of legality of the termination of private respondent, public respondent justified the award of salary for the unexpired portion of the probationary employment on the ground that a probationary employment for six (6) months is an employment for a "definite period" which requires the employer to exhaust the entire probationary period to give the employee the opportunity to meet the required standards.

The legal basis of public respondent is erroneous. A probationary employee, as understood under Article 282 (now Article 281) of the Labor Code, is one who is on trial by an employer during which the employer determines whether or not he is qualified for permanent employment. A probationary appointment is made to afford the employer an opportunity to observe the fitness of a probationer while at work, and to ascertain whether he will become a proper and efficient employee.[9] The word "probationary", as used to describe the period of employment, implies the purpose of the term or period, but not its length.[10]

Being in the nature of a "trial period"[11] the essence of a probationary period of employment fundamentally lies in the purpose or objective sought to be attained by both the employer and the employee during said period. The length of time is immaterial in determining the correlative rights of both in dealing with each other during said period. While the employer, as stated earlier, observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other, seeks to prove to the employer, that he has the qualifications to meet the reasonable standards for permanent employment.

It is well settled that the employer has the right or is at liberty to choose who will be hired and who will be denied employment. In that sense, it is within the exercise of the right to select his employees that the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently. The equality of right that exists between the employer and the employee as to the nature of the probationary employment was aptly emphasized by this Court in Grand Motor Parts Corporation vs. Minister of Labor, et al., 130 SCRA 436 (1984), citing the 1939 case of Pampanga Bus. Co., Inc. vs. Pambusco Employees Union, Inc. 68 Phil. 541, thus:

> "The right of a laborer to sell his labor to such persons as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer and the employee have thus an equality of right guaranteed by the Constitution. If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression."

As the law now stands, Article 281 of the Labor Code gives ample authority to the employer to terminate a probationary employee for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. There is nothing under Article 281 of the Labor Code that would preclude the employer from extending a regular or a permanent appointment to an employee once the employer finds that the employee is qualified for regular employment even before the expiration of the probationary period. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, Article 281 of the Labor Code does not likewise preclude the employer from terminating the probationary employment on justifiable causes as in the instant case.

We find unmeritorious, therefore, public respondent's argument that the security of tenure of probationary employees within the period of their probation, as in the case of herein private respondent, justified the award of salary for the unexpired portion of her probationary employment. The termination of private respondent predicated on a

just cause negates the application in this case of the pronouncement in the case of Biboso vs. Victorias Milling Co., Inc.,[12] on the right of security of tenure of probationary employees.

Upon inquiry by the then Ministry of Labor and Employment as a consequence of the illegal dismissal case filed by private respondent before it, docketed as Case No. NLRC NCR-8-3786-83, it was found that there was no illegal dismissal involved in the case, hence, the circumvention of the rights of the probationary employees sought to be regulated as pointed out in Biboso vs. Victorias Milling Co., Inc.,[13] is wanting.

There was no showing, as borne out by the records, that there was circumvention of the rights of private respondent when she was informed of her termination. Her dismissal does not appear to us as arbitrary, fanciful or whimsical. Private respondent was duly notified, orally and in writing, that her services as cultural orientation teacher were terminated for failure to meet the prescribed standards of petitioner as reflected in the performance evaluation conducted by her supervisors during the teacher evaluating program. The dissatisfaction of petitioner over the performance of private respondent in this regard is a legitimate exercise of its prerogative to select whom to hire or refuse employment for the success of its program or undertaking. More importantly, private respondent failed to show that there was unlawful discrimination in the dismissal.

It was thus a grave abuse of discretion on the part of public respondent to order petitioner to pay private respondent her salary for the unexpired three-month portion of her six-month probationary employment when she was validly terminated during her probationary employment. To sanction such action would not only be unjust, but oppressive on the part of the employer as emphasized in Pampanga Bus Co., Inc., vs. Pambusco Employer Union, Inc.[14]

WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The Resolution of the National Labor Relations Commission dated August 22, 1985, is hereby **REVERSED** and **SET ASIDE** insofar as it ordered petitioner to pay private respondent her P6,000.00 salary for the unexpired portion of her six-month probationary employment. No cost.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin and Cortes, *JJ.*, concur.

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[1] Records, p. 1.
[2] Records, p. 93.
[3] Rollo, pp. 9-12.
[4] Rollo, pp. 43-45.
[5] Article 1170 of the Civil Code.
[6] 104 Phil. 749.
[7] Rollo, pp. 29-36.
[8] Annexes "A", "A-1 to A-5"; "B", Records, pp. 21-27.
[9] 34 Words and Phrases 113, citing 53 P.S. s9370, 9377; McCartney vs. Johnston, 191 A. 121, 124, 326 Pa. 442.
[10] Id., at 115, citing People vs. Kearney, 58 N.E. 14, 15, 164 N.Y. 64.
[11] Id., at 114, citing Application of Williams, 150 N.Y.S. 2d 420, 423, 1 Misc. 2d 804.
[12] 76 SCRA 250 (1977).
[13] Supra.
[14] Supra.
