

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

CONSUELO B. KUNTING,
Petitioner,

-versus-

**G.R. No. 101427
November 8, 1993**

**THE NATIONAL LABOR RELATIONS
COMMISSION (Fifth Division),
CAGAYAN DE ORO CITY, ST. JOSEPH
SCHOOL, FR. ALOYSIUS CHANG
and/or JOSEFINA MANUEL,**
Respondents.

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DECISION

BIDIN, J.:

This Special Civil Action for Certiorari seeks to set aside the Decision promulgated on October 20, 1989 by the respondent National Labor Relations Commission (NLRC) which modified the decision dated March 1, 1989 of the Executive Labor Arbiter declaring illegal petitioner Consuelo B. Kunting's dismissal from employment and ordering respondent St. Joseph School to pay her backwages equivalent to six months' pay, separation pay, emergency cost of living allowance differentials, 13th month pay and service incentive leave pay.

In 1969, Consuelo B. Kunting was employed as a teacher by respondent St. Joseph School in Gov. Camins Avenue, Zamboanga City. She was paid a basic pay and emergency cost of living allowance (ECOLA) except during the summer period when she was paid only the basic pay. Effective January, 1988, her monthly salary was One Thousand Eight Hundred and Twenty Pesos (P1,820.00) including the ECOLA integrated into the basic wage. She was also paid the 13th month pay up to 1987 but not her service incentive leave pay (Rollo, p. 30).

Every year from 1969 until the school year 1987-1988, Consuelo and St. Joseph School executed a Teacher's Contract. For the school year 1987-1988, her performance rating was very satisfactory (Rollo, pp. 45-47). In spite of this, St. Joseph School did not renew her employment contract for the school year 1988-1989, thereby terminating her employment with the school. The termination letter dated April 4, 1988 reads:

“Your teaching contract with this school has already expired at the close of this school year 1987-1988.

“We regret to inform you that the administration is not renewing your contract this coming school year 1988-1989. This notice is served upon you so that you will have time to look for another employment or to give you full time in your business.” (Ibid, p. 48).

On April 14, 1988 (Ibid. p. 31), Consuelo filed a complaint against the St. Joseph School, its Director, Fr. Aloysius Chang, and Principal, Sister Josephine Manuel, for illegal dismissal, reinstatement and backwages, wage differentials, 13th month pay, emergency cost of living allowance (ECOLA) and service incentive leave pay.

With only position papers and supporting documents submitted by the parties as basis, Executive Labor Arbiter Rhett Julius J. Plagata rendered the decision of March 1, 1989 declaring that Consuelo was illegally dismissed. The dispositive portion of the decision states:

“WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in the above-entitled case:

- (1) declaring the dismissal of Consuelo B. Kunting to be illegal, and ordering St. Joseph School to pay her backwages in the sum of TEN THOUSAND NINE HUNDRED TWENTY PESOS (P10,920.00) and separation pay in the sum of FOURTEEN THOUSAND FIVE HUNDRED SIXTY PESOS (P14,560.00); (2) further ordering St. Joseph School to pay Consuelo B. Kunting emergency cost of living allowance differentials in the sum of FIVE HUNDRED SEVENTY ONE & 32/100 PESOS (P571.32); 13th month pay, in the sum of FOUR HUNDRED FIFTY FIVE PESOS (P455.00); and service incentive leave pay, in the sum of SEVEN HUNDRED SIX & 45/100 PESOS (P706.45); and (3) dismissing the complainant’s claim for wage differentials, for lack of merit.

“SO ORDERED.”

Dissatisfied, petitioner appealed to the respondent NLRC. She prayed that the Executive Labor Arbiter’s decision be modified so as to include her re-instatement to her former position without loss of seniority rights with option to accept separation benefits and payment of full backwages from April 4, 1988 up to the actual date of re-instatement, the 13th month pay to cover the period between April 4, 1988 and her actual reinstatement, and moral damages of P25,000.00 plus attorney’s fees.

In its decision, the NLRC affirmed the finding of the Executive Labor Arbiter that Consuelo was illegally dismissed on the ground that the twin requirements of notice and hearing, which constitute essential elements of due process in cases of dismissal of employees, were not complied with. Inasmuch as Consuelo was a regular employee under Art. 280 of the Labor Code, the NLRC opined that her employment for more than sixteen (16) years could not be terminated by the school on the pretext that her “Teaching Contract” had expired.

Notwithstanding its finding of illegal dismissal, the NLRC nonetheless sustained the Executive Labor Arbiter's ruling as regards the payment of separation pay in lieu of reinstatement due to the alleged "strained relations" between the parties which existed as a result of the illegal dismissal, and the alleged failure of Consuelo to refute the accusations leveled against her by her employer. However, the NLRC modified the grant of six (6) months backwages and ordered instead the payment of backwages without qualification and deduction, computed from the date of dismissal on April 4, 1988 up to the date of promulgation of its decision, i.e., October 20, 1989. It further ordered that petitioner's length of service be reckoned from 1969 up to the promulgation of its decision.

The NLRC further upheld the Executive Labor Arbiter's decision with respect to the payment of 13th month pay and service incentive pay and the disallowance of claim for wage differentials. However, the NLRC, like the Executive Labor Arbiter, denied Consuelo's claims for moral damages and attorney's fees on the ground that although they were set out in her position paper, they had not been alleged in the complaint.

Consuelo moved for the reconsideration of the above decision but the same was denied. Dissatisfied, she filed the instant petition.

In this petition, petitioner contends that respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction in: (a) awarding separation pay in lieu of reinstatement after a "clear" finding of illegal dismissal; (b) failing to award full backwages from the time of her dismissal until actual reinstatement; (c) denying her claim for moral damages and attorney's fees, and (d) failing to award 13th month pay for school year 1988-1989.

Before considering the merits of the substantive issues raised in this petition, private respondents' contention that the instant petition for certiorari is not the proper remedy since the NLRC did not commit grave abuse of discretion and that only questions of facts are involved in this case (Ibid, p. 79), should be dealt with first.

Petitioner did not err in filing the instant petition. In *Pearl S. Buck Foundation vs. NLRC*, 182 SCRA 446 [1990], the Court held that the

only way it can review the decision of the NLRC is by way of petition for certiorari under Rule 65 of the Rules of Court.^[*] While factual findings of the NLRC are accorded not only respect but also finality if supported by substantial evidence (*Reyes & Lim Co., Inc., vs. NLRC*, 201 SCRA 772 [1991]) considering the NLRC's expertise in their field (*Chua vs. NLRC*, 182 SCRA 353 [1990]; *Lopez Sugar Corporation vs. FFW*, 189 SCRA 179 [1990]), any allegations of fact may still be considered by this Court but only to determine whether the NLRC had no jurisdiction, gravely abused its discretion, violated due process, denied substantial justice or erroneously interpreted the law (*Liberty Flour Mills Employees vs. Liberty Flour Mills, Inc.*, 180 SCRA 6689 [1989]). Hence, certiorari is the proper remedy in this case.

We now come to the merits of the issues raised by petitioner. She contends that the NLRC gravely abused its discretion in ordering the payment of separation pay in lieu of reinstatement notwithstanding its finding that she had been illegally dismissed. Interrelated with this contention is her allegation that as a consequence of the NLRC's finding of illegal dismissal, she is entitled to reinstatement with full backwages from the time of her illegal dismissal on April 4, 1988 up to the date of actual reinstatement in consonance with Art. 279 of the Labor Code. She argues that under said provision of law and the Constitution, her right to security of tenure should be upheld over and above the perceived "strained relations" between her and private respondents.

On the other hand, public respondent maintains that the right of an unjustly dismissed employee to reinstatement and backwages under Article 279 of the Labor Code is not without exceptions under the prevailing jurisprudence. Thus, it is argued, reinstatement may not be ordered when it has become a legal impossibility or to spare both employer and employee from an atmosphere of antipathy and antagonism (*Galindez vs. Rural Bank of Llanera, Inc.*, 175 SCRA 132 [1989]; *Commercial Motors Corporation vs. NLRC*, 192 SCRA 191 [1990]).

Indeed, an illegally dismissed employee's right to reinstatement is not absolute. The Court has a long line of decisions concerning non-reinstatement of illegally dismissed employees on various grounds

(Divine Word High School, et al. vs. NLRC, et al., 143 SCRA 346 [1986]; Asiaworld Publishing House, Inc. vs. Hon. Blas Ople, 152 SCRA 219 [1987]; Flores vs. Nuestro, 160 SCRA 568 [1988]; Galindez vs. Rural Bank of Llanera, Inc., supra; Century Textile Mills vs. NLRC, 161 SCRA 528 [1988]). One of these grounds is when there is a finding that the relationship between the parties has become so strained and ruptured as to preclude a harmonious working relationship (Citytrust Finance Corp. vs. NLRC, et al., G.R. 75740, January 15, 1988, 157 SCRA 87; Commercial Motors Corp. vs. NLRC, supra). In the case at bar, however, the peculiar circumstances surrounding the dismissal of petitioner simply do not show such kind of strained relationship as to warrant the severance of the working relationship between the parties.

The order to grant petitioner separation pay instead of reinstatement is predicated on the following finding of “strained relations” by the Executive Labor Arbiter which was sustained by the NLRC:

“In the instant case, while the manner of dismissal was patently illegal, still complainant failed to refute the charges or lapses in her conduct as a teacher, i.e. disrespectful at time, acts of insubordination; non-improvement in her teaching methods, etc. (Affidavit of Sister Josefina Manuel, O.P., Annex ‘7’ respondent’s position paper, p. 7, Record). As aptly put by the Executive Labor Arbiter, ‘reinstatement would bring the parties in close or frequent contact in work that may only serve to further aggravate and inflame the existing animosity and antagonism between them.’” (Rollo, p. 26; emphasis supplied)

As shown by the above-quoted portion of the decision of the NLRC, its conclusion on the “strained relations” between petitioner and private respondents was merely gathered from the latter’s evidence on the former’s less than ideal conduct and nothing more. There is no proof that such conduct actually caused animosity between her and private respondents. Besides, there is no clear showing that the perceived “strained relations” between the parties is of so serious a nature or of such a degree as to justify petitioner’s dismissal.

“Strained relations,” as amplified in *Employee’s Association of the Philippine American Life Insurance Company vs. NLRC*, 199 SCRA

628 [1991], must be of such a nature or degree as to preclude reinstatement. But, where the differences between the parties are neither personal nor physical, nor serious, then there is no reason why the illegally dismissed employee should not be reinstated rather than simply given separation pay and backwages. More so if the cause of the perceived “strained relations” is the filing of a complaint for illegal dismissal. As the Court held in *Globe-Mackay Cable and Radio Corporation vs. NLRC*, 206 SCRA 701 [1992], citing *Anscor Transport and Terminals vs. NLRC*, 190 SCRA 147 [1990]; *Sibal vs. Notre Dame of Greater Manila*, 182 SCRA 538 [1990]:

“Obviously, the principle of ‘strained relations’ cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.

“Besides, no strained relations should arise from a valid and legal act of asserting one’s right; otherwise an employee who shall assert his right could be easily separated from the service, by merely paying his separation pay on the pretext that his relationship with his employer had already become strained.”

Whatever resentments had been harbored by petitioner upon her unceremonious dismissal after having been employed by St. Joseph School for more than sixteen (16) years is understandable. Such resentments, however, would not suffice to deny her reemployment because to do so would render for naught her constitutional right to security of tenure and her corollary right to reinstatement under Article 279 of the Labor Code. Petitioner is, after all, a permanent teacher as she had rendered more than three years of satisfactory service (*St. Theresita’s Academy vs. NLRC*, 215 SCRA 181 [1992]). Given the fact that her employer is a religious institution, there can be no room for antagonism between the parties even after the termination of this litigation. Furthermore, this Court in *Tolentino vs. NLRC*, (152 SCRA 717 [1987]) held:

“Security of tenure is a right of paramount value as recognized and guaranteed under our new constitution. ‘The State shall afford full protection to labor, and promote full employment

and equality of employment opportunities for all. It shall guarantee the rights of all workers to security of tenure.’ (Sec. 3, Art. XIII on Social Justice and Human Rights, 1987 Constitution of the Republic of the Philippines.) Such constitutional right should not be denied on mere speculation of any similar unclear and nebulous basis.”

Closely related to the right to reinstatement is the employee’s right to receive backwages which represent the compensation that an unjustly dismissed employee should have received had said employee not been dismissed. Petitioner claims that she is entitled to full backwages (computed from the date of dismissal until actual reinstatement) under Article 279 of the Labor Code. This contention, however, is not supported by prevailing jurisprudence which limits the award of backwages to three (3) years without qualification and deduction (Maranaw Hotels and Resorts Corp. vs. Court of Appeals, 215 SCRA 501 [1992], citing Sealand Service, Inc. vs. NLRC, 190 SCRA 347 [1990]).

While Republic Act No. 6715 amending Sec. 279, of the Labor Code grants full backwages to dismissed employees computed from the date of their illegal dismissal up to the date of actual reinstatement, the same cannot be applied in the case at bar. This is because petitioner was illegally dismissed on April 4, 1988, or before the effectivity of RA 6715 on March 21, 1989.

In *Lantion vs. NLRC* (181 SCRA 513 [1990]), We held that nothing in RA 6715 provides for its retroactive application. Necessarily, awards of backwages in cases of illegal dismissal initiated before the effectivity of RA 6715 will have to be resolved by applying the three-year limit formulated in the case of *Mercury Drug Co., Inc. vs. CIR* (56 SCRA 694 [1974]; see *Ferrer vs. NLRC*, G.R. No. 100898, July 5, 1993).

Petitioner’s claim for the thirteenth month pay is mandated by Presidential Decree No. 851 which has been modified by Memorandum Order No. 28 issued by President Corazon C. Aquino on August 13, 1986 so as to remove the salary ceiling of P1,000 of employees entitled. The “Revised Guidelines on the Implementation of the 13th Month Pay Law” which was issued on November 16, 1987

by then Labor Secretary Franklin M. Drilon, specifically singles out the case of private school teachers like the petitioner herein. The guidelines state:

“(c) Private School Teachers. — Private school teachers, including faculty members of universities and colleges, are entitled to the required 13th month pay, regardless of the number of months they teach or are paid within a year, if they have rendered service for at least one (1) month within a year.”

Applying this guideline to the petitioner, she is entitled to a 13th month pay for 1988 as she served more than three months for that year. Although P.D. No. 851 was conceived “to further protect the level of real wages from the ravage of world-wide inflation,” it would be unfair for the employer to grant petitioner 13th month pay for the years she had not rendered service. Thus, upon her reinstatement, payment of the 13th pay should be in accordance with the aforementioned guideline and that set forth in *UST Faculty Union vs. NLRC*, 190 SCRA 215 [1990]), i.e., it shall not be granted if St. Joseph School gives its equivalent or when the said employer shall be subjected to “double-burden.”

As to the claims for moral damages and attorney’s fees, there appears to be no sufficient evidence thereon as its denial was due to petitioner’s failure to aver the same in her complaint although they were set out in her position paper. Nonetheless, the Solicitor General correctly supported petitioner’s allegation that rules of procedure should not be applied in a very rigid and technical sense in labor cases (Rollo., p. 90). This allegation is supported by Art. 221 of the Labor Code which provides that the rules of evidence prevailing in courts of law and equity are not controlling in labor proceedings.

Thus, instead of disregarding petitioner’s claims for moral damages and attorney’s fees, the Executive Labor Arbiter should have ascertained the facts alleged by petitioner in her position paper. The Labor Code is a social legislation intended primarily to promote and protect the rights of the laborers. Hence, labor officials should use all reasonable means to ascertain the facts in each case speedily and objectively without regard to technicalities of law or procedure, all in the interest of due process (211 SCRA 509 [1992], citing Philippine

Telegraph and Telephone Corporation vs. NLRC, 183 SCRA 451G [1990]). Thus, by their failure to rule on this particular claims, the Executive Labor Arbiter and committed grave abuse of discretion as they failed to avert further delay in the disposition of this case.

We cannot, however, subscribe to petitioner's assertion that the issue of damages can be ruled upon by this Court without the necessity of remanding the same to public respondent for determination (Rollo, pp. 101-102). While it is true that "sound practice seeks to accommodate the theory which avoids waste of time, effort and expense both to the parties and government, not to speak of the delay in the disposal of the case" (De Guzman vs. NLRC, G.R. No. 90856, July 23, 1992 citing Fernandez vs. Garcia, 92 Phil. 592 [1953]), nevertheless, it is in the best interest of both parties that the determination of whether or not moral damages and/or attorney's fees should be awarded, be left to the Executive Labor Arbiter who is in a better position to rule on said issue.

WHEREFORE, the decision of public respondent National Labor Relations Commission is hereby **AFFIRMED** with modifications as follows: Private respondent is hereby ordered to reinstate petitioner Consuelo B. Kunting to her former or equivalent position without loss of seniority rights with payment of backwages for three (3) years and the 13th month pay for 1988. The Executive Labor Arbiter is likewise ordered to determine with dispatch petitioner's claims for moral damages and attorney's fees. No costs.

SO ORDERED.

Feliciano, Melo and Vitug, JJ., concur.
Romero, J., took no part.

[*] Sec. 1 of Rule 65 of the Rules of Court provides that "when any tribunal, board, or officer exercising judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer."

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