CHANROBLES PUBLISHING COMPANY

SUPREME COURT
EN BANC

UNIVERSITY OF STO. TOMAS, FR. MAXIMO MARINA, O.P. AND GILBERTO L. GAMEZ,
***Petitioners*,**

-versus-

G.R. No. 85519
February 15, 1990

NATIONAL LABOR RELATIONS COMMISSION, HONORABLE LABOR ARBITER BIENVENIDO S. HERNANDEZ AND BASILIO E. BORJA,
***Respondent*.**
x----------x

D E C I S I O N

GANCAYCO, *J.*:

SEPARATE OPINIONS:

***SARMIENTO, J., dissenting.*:**

The herein private respondent Dr. Basilio E. Borja was first appointed as "affiliate faculty" in the Faculty of Medicine and Surgery at the University of Sto. Tomas (UST for short) on September 29, 1976. In

the second semester of the school year 1976-77 he was appointed instructor with a load of twelve (12) hours a week. He was reappointed instructor for the school year 1977-78 with a load of nine (9) hours a week in the first semester and two (2) hours a week in the second. On June 10, 1978 he was appointed as Instructor III for the school year 1978-79. His load for the first semester was eight (8) hours a week, and for the second semester, seven (7) hours a week.

On March 19, 1979 Dean Gilberto Gamez observed that Dr. Borja should not be reappointed based on the evaluation sheet that shows his sub-standard and inefficient performance.[1] Nevertheless in view of the critical shortage of staff members in the Department of Neurology and Psychiatry, Dr. Gamez recommended the reappointment of Dr. Borja, after informing the latter of the negative feedbacks regarding his teaching and his promise to improve his performance. Thus on July 27, 1979 he was extended a reappointment as Instructor III in the school year 1979-80. He was given a load of six (6) hours a week. In all these appointments he was a part time instructor.

At the end of the academic year, it appearing that Dr. Borja had not improved his performance in spite of his assurances of improvement, his reappointment was not recommended.

In July, 1982 he filed a complaint in the National Labor Relations Commission (NLRC for short) for illegal dismissal against the UST. After the submission of the pleadings and due proceedings the labor arbiter rendered a decision on July 19, 1984, the dispositive part of which reads as follows:

> "WHEREFORE this Office finds in favor of the complainant. The respondents (sic) university are hereby ordered to effect the immediate reinstatement of complainant to his former position with full backwages, rights and benefits appertaining thereto. Respondent university is likewise ordered to pay the complainant the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00) as and by way of moral damages and another 10% of the gross amount due him, and as and by way of attorney's fees.

> Respondents are hereby ordered to effect this decision immediately."[2]

The UST appealed therefrom to the NLRC which in due course rendered a decision on September 30, 1988, modifying the appealed decision as follows:

> "WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED with a modification limiting the backwages to three (3) years without qualification or deduction, computed at P660.00 per month, ordering respondents to pay complainant P100,000.00 as and for actual or compensatory damages, ordering respondents to pay complainant P300,000.00 as and for moral damages, and further ordering them to pay complainant P100,000.00 as and for exemplary damages.
>
> Finally, respondents are ordered to pay to complainant the sum of ten (10%) percent of the total sum due as and for attorney's fees."[3]

Hence the instant petition for *certiorari* and prohibition with a prayer for the issuance of a writ of preliminary injunction and restraining order that was filed by the UST and its officers wherein it is alleged that the public respondent NLRC committed the following errors:

> "I
>
> THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED SERIOUS REVERSIBLE ERRORS OF SUBSTANCE AMOUNTING TO GRAVE ABUSE OF DISCRETION AND/OR LACK OR EXCESS OF JURISDICTION IN FINDING THAT BASILIO E. BORJA ACQUIRED TENURE, THE SAID FINDING BEING CLEARLY CONTRARY TO THE EVIDENCE AT HAND AND DEVOID OF BASIS IN LAW.

II

THE HONORABLE NLRC COMMITTED A SERIOUS AND REVERSIBLE ERROR AND GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE SERVICES OF BASILIO E. BORJA HAD BEEN CONSTRUCTIVELY TERMINATED, HIS APPOINTMENT HAVING MERELY LAPSED IN ACCORDANCE WITH ITS TERMS AS ACCEPTED BY THE COMPLAINANT-APPELLEE BORJA.

III

THE HONORABLE NLRC COMMITTED A SERIOUS AND GRAVE ERROR IN AFFIRMING, ALBEIT REDUCING THE AWARD OF THE HONORABLE LABOR ARBITER A QUO OF CLEARLY EXCESSIVE, UNJUST, UNCONSCIONABLE AND SHOCKING MORAL DAMAGES OF P300,000.00 AND IN AWARDING MOTU PROPIO EXEMPLARY DAMAGES IN THE AMOUNT OF P100,000.00 IN GRAVE ABUSE OF ITS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION."[4]

The petition is impressed with merit.

In the questioned decision of the public respondent NLRC it found that private respondent had earned to his credit eight (8) semesters or four (4) academic years of professional duties with the UST and that he has met the requirements to become a regular employee under the three (3) years requirement in the Manual of Regulations for Private Schools.

The appealed decision is correct insofar as it declares that it is the Manual of Regulations for Private Schools, not the Labor Code, that determines the acquisition of regular or permanent status of faculty members in an educational institution, but the Court disagrees with the observation that it is only the completion of three (3) years of service that is required to acquire such status.

According to Policy Instructions No. 11 issued by the Department of Labor and Employment, "the probationary employment of professors, instructors and teachers shall be subject to standards established by the Department of Education and Culture." Said standards are embodied in paragraph 75 of the Manual of Regulations for Private Schools, to wit:

> "75. Full time teachers who have rendered three consecutive years of satisfactory service shall be considered permanent." (Emphasis supplied)

The legal requisites, therefore, for acquisition by a teacher of permanent employment, or security of tenure, are as follows:

1) the teacher is a full time teacher;

2) the teacher must have rendered three (3) consecutive years of service; and

3) such service must have been satisfactory.

Now, the Manual of Regulations also states that "a full-time teacher" is "one whose total working day is devoted to the school, has no other regular remunerative employment and is paid on a regular monthly basis regardless of the number of teaching hours" (Par. 77); and that in college, "the normal teaching load of a full-time instructor shall be eighteen hours a week" (par. 78).

It follows that a part-time member of the faculty cannot acquire permanence in employment under the Manual of Regulations in relation to the Labor Code.

Hence, the crucial question is whether or not the private respondent was a full-time or part-time member of the faculty during the three (3) years that he served in the petitioner-university's College of Medicine. Stated otherwise, the question is (1) whether or not the said respondent's "total working day (was) devoted to the school" and he had "no other regular remunerative employment" and was "paid on a regular monthly basis regardless of the number of teaching hours;"

and/or (2) whether or not his normal teaching load was eighteen (18) hours a week.

It cannot be said that respondent's total working day was devoted to the school alone. It is clear from the record that he was practising his profession as a doctor and maintaining a clinic in the hospital for this purpose during the time that he was given a teaching load. In other words, he had another regular remunerative work aside from teaching. His total working day was not, therefore, devoted to the school. Indeed, his salaries from teaching were computed by the respondent Commission itself at only an average of P660.00 per month; he, therefore, had to have other sources of income, and this of course was his self-employment as a practising psychiatrist. That the compensation for teaching had to be averaged also shows that he was not paid on a regular monthly basis. Moreover, there is absolutely no evidence that he performed other functions for the school when not teaching. All things considered, it would appear that teaching was only a secondary occupation or "sideline," his professional practice as a psychiatrist being his main vocation.

The record also discloses that he never had a normal teaching load of eighteen (18) hours a week during the time that he was connected with the university. The only evidence on this equally vital issue was presented by the petitioner through the affidavit of Dr. Gilberto Gamez who was the dean of the medical school during the time material to the proceedings at bar. His sworn declaration is to the effect that as "affiliate faculty" member of the Department of Neurology and Psychiatry from September 29, 1976, private respondent had no teaching functions: that in fact, when he was appointed in September, 1976, classes for the first semester were already nearing their end; that as "affiliate faculty" he was merely an observer acquainting himself with the functions of an instructor while awaiting issuance of a formal appointment as such; that in the school year 1977-78 he had a teaching load of nine (9) hours a week in the first semester and two (2) hours a week in the second semester; that in the school year 1978-1979 he had a load of eight (8) hours a week in the first semester and seven (7) hours a week in the second semester; that in the school year 1979-1980 he had a load of six (6) hours a week in each semester. This evidence does not appear to have been refuted at all by the private respondent, and has inexplicably

been ignored by public respondent. No discussion of this particular point is found in the decisions of the Labor Arbiter or the NLRC.

The private respondent, therefore, could not be regarded as a full-time teacher in any aspect. He could not be regarded as such because his total working day was not devoted to the school and he had other regular remunerative employment. Moreover, his average teaching load was only 6.33 hours a week.

In view of the explicit provisions of the Manual of Regulations above-quoted, and the fact that private respondent was not a full-time teacher, he could not have and did not become a permanent employee even after the completion of three (3) years of service.

Having found that private respondent did not become a permanent employee of petitioner UST, it correspondingly follows that there was no duty on the part of petitioner UST to reappoint private respondent as Instructor, the temporary appointment having lapsed. Such appointment is a matter addressed to the discretion of said petitioner.

The findings, therefore, of the public respondent NLRC that private respondent was constructively terminated is without lawful basis. By the same token, the order for reinstatement of private respondent with backwages plus an award of actual or compensatory, moral and exemplary damages must be struck down.

WHEREFORE, the Petition is hereby **GRANTED**. The questioned Orders of public respondent NLRC dated September 13, 1988 and public respondent labor arbiter Bienvenido S. Hernandez dated July 19, 1988 are hereby **SET ASIDE** and another judgment is hereby rendered **DISMISSING** the complaint of private respondent, without pronouncement as to costs.

SO ORDERED.

Fernan, *C.J.*, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Cortes, Griño-Aquino, Medialdea and Regalado, *JJ.*, concur.
Narvasa and Padilla, *JJ.*, took no part.

SEPARATE OPINIONS

SARMIENTO, J., dissenting:.

I vote to deny this petition for lack of merit.

From the records, it appears, that:

Complainant is a Doctor of Medicine with well-rounded experience in the field of Psychiatry. In consideration of his impressive qualifications, respondents appointed him as a faculty member in the UST Faculty of Medicine and Surgery, Department of Neurology and Psychiatry. His services in respondent university are: Affiliate Faculty member for the school year 1976-77; Instructor I in 1976-1977; Instructor III on January 5, 1977 and for the school year 1978-1979; professor-in-charge of Psychiatry II for the school year 1978-1979; and Instructor II for the school year 1979-1980. He was also allowed by respondents to hold his clinic in the UST Hospital by virtue of a contract which started in 1978, renewable from year to year. Complainant claims that respondents failed without justifiable reason to give him a teaching load for the school year 1980-1981, and, therefore, he called the attention of the Head of Academic Affairs and the Dean of the Faculty who referred the matter to the University Rector. He further wrote a letter to the respondents on August 12, 1981, but the same was not answered at all, and so he went to the Rector's Office on March 16 and 18, 1982, but was told that the Rector could not see or talk to him. For these reasons, the complainant charged respondents of illegal dismissal as he was not given a teaching load for the school year 1980-1981. He further alleged that the door leading to his clinic was locked twice without notice. Based on the above allegations, complainant seeks recovery of actual and moral damages allegedly suffered by him by reason of his dismissal by the respondents. Most importantly, he alleges that he was also denied practice of his profession in the hospital.

Respondents traversed complainant's charges alleging that complainant had not yet acquired tenure of employment under the

provisions of the UST Faculty Code as he had not completed four (4) academic years of service; hence, his services in the university were no longer renewed upon its expiration.

Respondents likewise denied complainant's allegation that the door leading to his clinic in the hospital was locked. (Rollo, 68-70.)

The issues are:

1. Whether or not complainant's services in the university had been constructively terminated by the respondents when the former was not given a teaching load for the school year 1980-1981; and

2. Whether or not complainant's claims for actual, moral and exemplary damages as well as attorney's fees are supported by the facts and jurisprudence.

It is Our considered opinion that complainant's services as a member of the faculty in respondent university were terminated without just cause. (Id., 70.)

As I have indicated, I sustain the NLRC. No grave abuse of discretion, so I find, has been successfully attributed to it to warrant the extraordinary remedy of *certiorari*.

There is no question that under the Manual of Regulations for Private Schools, employees on probation status have three years within which to serve their probation. Within that period they may not be terminated unless for just cause.

From the records, the private respondent had been with the petitioner-university as instructor since 1976, when in 1980, he was laid off. He was also informed that there had been "previous negative feedbacks regarding his teaching." (Id., 6.) That notwithstanding, I submit he had acquired security of tenure after his three-year probation. The fact that it was extended another year means, in my view, that the school had been satisfied of his performance. The petitioner-university can not now be heard to say otherwise.

I am agreed that:

> The records show that the ground relied upon by the respondents in not renewing complainant's last appointment when no teaching load for the school year 1980-1981 was assigned to him was due to the alleged termination of his appointment and there was no obligation on the part of respondents to extend to him a permanent appointment in accordance with the provisions of the UST Faculty Code or Manual of Regulations for private Schools. We do not agree with respondents' view. Complainant was first employed as Affiliate Faculty of respondent University in the first semester of the school year 1976-1977 or on September 29, 1976 as shown in his appointment signed by the Dean of the Faculty of Medicine and Surgery of UST. (Annexes "A" & "B", Reply to Respondent's Position Paper.) Additional evidences which will fortify the fact of complainant having rendered forty (40) months of eight (8) semesters could be gleaned from the Faculty Statement of Earnings and Deductions (Exhibits "D", "E" and "H" to "H-38", for complainant). Most likely, complainant's early appointment (supra) had been deliberately omitted by the respondents to confuse the Labor Arbiter a quo in believing that the former had not yet acquired the tenurial rights under the Faculty Code. This, to our mind, is a scheme resorted to by the respondents to preclude complainant from becoming a regular professor of the University. We find complainant to have earned to his credit eight (8) semesters or four (4) academic years of professional duties with the respondents. Since it to say, therefore, complainant met the requirement to become a regular employee under the 3 years requirement in the Manual of Regulations for Private Schools (par. 75), and, as such, complainant should not have been deprived of subject load by the respondents for the school year 1980-1981. (Decision, 4-6.)

The university's contention that under the UST Faculty Code, tenure is acquired after four years in office, has no merit. First, the code can not prevail over the Manual of Regulations for Private Schools, which has the character and force of law.

Under the Manual:

> 75. Full-time teachers who have rendered three consecutive years of satisfactory service shall be considered permanent.

What "full-time" means is stated as follows:

> 76. For this purpose, a full-time teacher should be one whose total working day is devoted to the school. has no other regular remunerative employment, and is paid on a regular monthly basis regardless of the number of teaching hours.

It is true that under paragraph 78 of the Manual, "the normal teaching load of a full-time instructor shall be eighteen hours a week." It is my reading of this provision, however, that a full-time instructor can not merely be made to teach for longer hours. Hence, the succeeding paragraph states:

> 79. Any teaching assignment in excess of the foregoing must be taken up with the Bureau, which case shall be considered only on the basis of educational qualifications, experience, efficiency rating, and subject preparations of the teachers concerned.

It is my understanding of paragraph 78 that it operates as a restraint upon schools against a grant of excessive manhours, although school authorities may prescribe a longer period, but provided that it has the imprimatur of the Bureau of Private Schools. A lesser number of hours, however, does not make an instructor part-time, if he has otherwise complied with the requisites of paragraph 76. The decision of the NLRC indicates that the private respondent worked on a full-time basis - whatever the number of teaching hours given to him — and we can not disturb its findings. (See Decision, id., 6.)

Second, assuming that the four-year rule is permissible, the private respondent's tenure during that period was nevertheless secure, which could only be perished by a valid cause. "Negative feedbacks," short of actual violations of the faculty code, are no excuse for termination.

The rule is that, unless otherwise provided by contract, a probationary employee can not be dismissed (during the three-year period), unless dismissal is compelled by a just cause or causes. However, if thereafter, the school finds the employee's performance unsatisfactory, it is at liberty to rehire or not the employee, unless a grave abuse of discretion has been committed. Here, the fact that the private respondent was allowed to stay one year more gave the latter security of tenure.

I must not be understood, however, as holding that schools may or can not enter into contracts for specific periods (less or more than three years; see also Manual, par. 74) with teaching applicants. Here, however, there is no "contract" to speak of, other than the implied agreement between the parties. In that case, the Manual is applicable.

The closure of the doctor's clinic, finally, is a valid basis for the award of moral and exemplary damages, and attorney's fees.

Hence, I cast this dissenting vote.

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[1] Annexes E to E-1 to Petition.
[2] Page 103, Rollo.
[3] Page 81, Rollo.
[4] Pages 3 to 4, Rollo.

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