



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ARLENE PALGAN,
Petitioner,

G.R. No. 219916

Present:

- versus -

LEONEN, J.,
Chairperson,
HERNANDO,
INTING,
GAERLAN,* and
LOPEZ, J. Y., JJ.

HOLY NAME UNIVERSITY
and/or FR. FRANCISCO
ESTEPA, SVD/ FR. ERNESTO
LAGURA, SVD,
Respondents.

Promulgated:

February 10, 2021

Mis-DCB-17

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DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ seeks to set aside the February 26, 2015 Decision² and July 15, 2015 Resolution³ of the Court of Appeals (CA) in CA-GR. SP No. 07820 finding petitioner Arlene Palgan not to have been illegally terminated by respondent Holy Name University (HNU).

The factual antecedents:

Arlene filed a complaint for illegal dismissal against HNU. She alleged that even though she was already a regular employee, HNU did not renew her

* Designated as additional Member per raffle dated December 21, 2020 vice J. Delos Santos who recused himself for having penned the assailed Decision and Resolution of the Court of Appeals.

¹ *Rollo*, pp. 9-29.

² *Id.* at 32-46; penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court) and concurred in by Associate Justices Ma. Luisa Quijano-Padilla and Marie Christine Azcarraga-Jacob.

³ *Id.* at 49-50; penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court) and concurred in by Associate Justices Renato C. Francisco and Marie Christine Azcarraga-Jacob.

contract of employment without due process. She sought moral and exemplary damages in her complaint.⁴

Petitioner started working as a Casual or Assistant Clinical Instructor for two semesters for school year (S.Y.) 1992-1993 in HNU's College of Nursing while awaiting the results of her Nursing Board Examination.⁵ She alleged that upon her hiring, HNU did not inform her of the standards for the evaluation of her satisfactory completion of her probationary period.⁶

In the second semester of S.Y. 1994-1995, she was hired as a full-time Clinical Instructor until S.Y. 1998-1999, and was assigned at the Medical Ward.⁷ During the second semester of S.Y. 1998-1999, she was transferred to the Guidance Center as a Nursing Guidance Instructor handling guidance, education, and graduate school courses.⁸ At this time, she was elected as Municipal Councilor of Carmen, Bohol.⁹ Upon her reelection as Municipal Councilor for the 2001-2004 term, she took a leave of absence from HNU.¹⁰

Sometime in the year 2004, petitioner rejoined HNU and was given a full-time load for the S.Y. 2004-2005.¹¹ For S.Y. 2005-2006 and 2006-2007, petitioner signed contracts for term/semestral employment.¹² However, in a notice dated February 28, 2007, HNU informed Arlene that her contract of employment, which would have expired on March 31, 2007, will no longer be renewed.¹³

Arlene argued that since she taught at HNU for more than six consecutive regular semesters,¹⁴ she already attained the status of a regular employee pursuant to the Manual of Regulations for Private School Teachers.¹⁵ There having been no valid or justifiable cause for her dismissal as she was not guilty of any infractions under the Labor Code or the Manual of Regulations for Private School Teachers, petitioner claimed that her employment was illegally terminated.¹⁶

On the other hand, respondents contended that in S.Y. 2004-2005, 2005-2006 and 2006-2007, Arlene remained a probationary employee.¹⁷ The completion of her probationary period did not automatically make her a permanent employee since she failed to comply with all the conditions of her

⁴ Id. at 33.

⁵ Id. at 13.

⁶ Id.

⁷ Id. at 33.

⁸ Id.

⁹ Id.

¹⁰ Id. at 13.

¹¹ Id. at 14.

¹² Id. at 14-15.

¹³ Id. at 15.

¹⁴ Id. at 61.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 79.

probationary employment satisfactorily. Respondents insisted that petitioner was not dismissed; rather, her contract of employment merely expired on March 31, 2007.¹⁸

For S.Y. 1995-1996, 1996-1997 and 1997-1998, Arlene received letters of appointment for each and every semester,¹⁹ with definite dates of commencement and end of her employment.²⁰ Thus, when her probationary appointment for the period June 1, 1997 until March 31, 1998 expired, HNU is not obliged to renew her contract.²¹

Ruling of the Labor Arbiter (Arbiter):

The Arbiter dismissed Arlene's complaint for lack of merit.²² Since her employment was probationary in nature, she has no vested right yet to a permanent appointment until after the completion of the pre-requisite three-year period for the acquisition of a permanent status.²³

Ruling of the National Labor Relations Commission (NLRC):

The NLRC denied Arlene's appeal and affirmed the ruling of the Arbiter, *viz.*:

WHEREFORE, premises considered, complainant's appeal is DISMISSED as We find no compelling reason to deviate from the findings of the Labor Arbiter. The decision appealed from is hereby AFFIRMED IN TOTO.

SO ORDERED.²⁴

However, on reconsideration, the NLRC reversed its earlier pronouncement. In a Resolution dated March 27, 2013,²⁵ the NLRC resolved, to wit:

WHEREFORE, premises considered, complainant's motion for reconsideration is GRANTED. Our Decision, dated 29 November 2012, is SET ASIDE and a NEW ONE ENTERED declaring complainant to have been illegally dismissed and DIRECTING Respondent HOLY NAME UNIVERSITY to immediately reinstate complainant to her previous or equivalent position, without loss of seniority rights and benefits, and to pay her backwages and attorney's fees in the sum of PESOS: ONE MILLION FIVE HUNDRED SEVENTY-TWO THOUSAND THIRTY-ONE & 62/100 (PhP 1,572,031.62). The same respondent is, likewise, DIRECTED to report compliance of this directive within ten (10) days from receipt hereof.

¹⁸ Id.

¹⁹ Id. at 84.

²⁰ Id.

²¹ Id.

²² Id. at 94-103.

²³ Id. at 102.

²⁴ Id. at 147-157.

²⁵ Id. at 166-171.

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SO ORDERED.²⁶

Respondents assailed the NLRC's March 27, 2013 Resolution through a Motion for Reconsideration²⁷ but it was denied by the NLRC in its Resolution dated May 31, 2013.²⁸ This denial prompted the respondents to file a Petition for *Certiorari* under Rule 65 of the Rules before the CA.²⁹

Ruling of the Court of Appeals:

On February 26, 2015, the appellate court issued the assailed Decision reversing the May 23, 2013 Resolution of the NLRC, to wit:

WHEREFORE, premises considered, the instant petition for certiorari is hereby GRANTED. The decision of the NLRC declaring the private respondent to have been illegally dismissed is REVERSED AND SET ASIDE. Accordingly, the February 27, 2012 Decision of the Labor Arbiter is hereby REINSTATED.

SO ORDERED.³⁰

Petitioner filed a motion for reconsideration but this was denied by the appellate court in its Resolution dated July 15, 2015.³¹

Hence, the instant Petition for Review on *Certiorari*.

Issues:

1. Whether or not the Court of Appeals has shown bias in favor of [respondents] and decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court;
2. Whether or not the Court of Appeals' findings of fact and conclusion was grounded entirely on speculation, surmise and conjecture;
3. Whether or not the Court of Appeals committed grave abuse of discretion; and
4. Whether or not the Court of Appeals' findings of fact are premised on the supposed evidence, but are contradicted by the evidence on record.

Our Ruling

We deny the petition for lack of merit.

²⁶ Id. at 171.

²⁷ Id. at 172-182.

²⁸ Id. at 190-193.

²⁹ Id. at 194-219.

³⁰ Id. at 45.

³¹ Id. at 49-50.

The governing law for the employment status of teachers/professors/instructors are the manuals of regulations for private schools.

Batas Pambansa Bilang 232, or The Education Act of 1982, delegated the administration of the education system and the supervision and regulation of educational institutions to the Ministry of Education, Culture and Sports, which eventually became known as the Department of Education, Culture and Sports (DECS), now known as the Department of Education (DepEd).

In 1992, the then DECS issued the Revised Manual of Regulations for Private Schools (1992 Manual), which covered all employees in all levels of private educational institutions. However, as part of the broad agenda of reforms on the country's education system at that time, the education sector was trifocalized into three governing bodies: the Commission on Higher Education (CHED) for tertiary and graduate education, the Department of Education (DepEd) for basic education, and the Technical Education and Skills Development Authority (TESDA) for technical-vocational and middle-level education. The CHED was created in 1994 through the passage of Republic Act No. 7722 (RA 7722), or the Higher Education Act of 1994, and in its charter, the CHED was authorized to set minimum standards for programs and institutions of higher education.

In *Lacuesta v. Ateneo de Manila University (Lacuesta)*,³² We held that the Manual of Regulations for Private Schools and not the Labor Code determines whether or not a faculty member in a private educational institution has attained a permanent or regular status, to wit:

The Manual of Regulations for Private Schools, and not the Labor Code, determines whether or not a faculty member in an educational institution has attained regular or permanent status. In *University of Santo Tomas v. National Labor Relations Commission* the Court *en banc* said that under Policy Instructions No. 11 issued by the Department of Labor and Employment, "the probationary employment of professors, instructors and teachers shall be subject to the standards established by the Department of Education and Culture." Said standards are embodied in paragraph 75 (now Section 93) of the Manual of Regulations for Private Schools.³³

Petitioner did not meet all the criteria required to be considered as a permanent employee.

³² 513 Phil. 329 (2005).

³³ *Id.* at 335.

We have laid down in *Lacuesta* the following requisites before a private school teacher acquires permanent status, namely: 1) The teacher serves full-time; 2) he/she must have rendered three consecutive years of service; and 3) such service must have been satisfactory.³⁴

These requisites find basis in Sections 92 and 93 of the 1992 Manual, which provide:

Section 92. *Probationary Period.* Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.

Section 93. *Regular or Permanent Status.* Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

While petitioner has rendered three consecutive years of satisfactory service, she was, however, not a full-time teacher at the College of Nursing of HNU.

It must be stressed that only a full-time teaching personnel can acquire regular or permanent status. This rule has been reiterated in a long line of cases, one of which is *Herrera-Manaois v. St. Scholastica's College*,³⁵ where We held:

In the light of the failure of Manaois to satisfy the academic requirements for the position, she may only be considered as a part-time instructor pursuant to Section 45 of the 1992 Manual. In turn, as we have enunciated in a line of cases, a part-time member of the academic personnel cannot acquire permanence of employment and security of tenure under the Manual of Regulations in relation to the Labor Code. We thus quote the ruling of this Court in *Lacuesta*, viz.:

Section 93 of the 1992 Manual of Regulations for Private Schools provides that full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent. Moreover, for those teaching in the tertiary level, the probationary period shall not be more than six consecutive regular semesters of satisfactory service. The requisites to acquire permanent employment, or security of tenure, are (1) the teacher is a full-time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory.

³⁴ Id. at 336.

³⁵ 723 Phil. 495 (2013).

As previously held, a part-time teacher cannot acquire permanent status. Only when one has served as a full-time teacher can he acquire permanent or regular status. The petitioner was a part-time lecturer before she was appointed as a full-time instructor on probation. As a part-time lecturer, her employment as such had ended when her contract expired. Thus, the three semesters she served as part-time lecturer could not be credited to her in computing the number of years she has served to qualify her for permanent status.³⁶ (Underscoring supplied)

Thus, given that petitioner was not a full-time teaching personnel as will be explained in detail hereafter, she could not have acquired permanent status no matter the length of her satisfactory service.

Petitioner was never qualified to be a full-time faculty due to the apparent lack of the required clinical experience under the governing law and its relevant regulations.

Section 45 of the 1992 Manual provides the minimum requirements in order for an academic personnel to be considered as full-time, to wit:

Section 45. *Full-time and Part-time Faculty.* As a general rule, all private schools shall employ full-time academic personnel consistent with the levels of instruction.

Full-time academic personnel are those meeting all the following requirements:

- a. Who possess at least the minimum academic qualifications prescribed by the Department under this Manual for all academic personnel;
- b. Who are paid monthly or hourly, based on the regular teaching loads as provided for in the policies, rules and standards of the Department and the school;
- c. Whose total working day of not more than eight hours a day is devoted to the school;
- d. Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and
- e. Who are not teaching full-time in any other educational institution.

x x x x

All teaching personnel who do not meet the foregoing qualifications are considered part-time. (Underscoring supplied)

³⁶ Id. at 513.

In relation to the minimum academic qualifications required for academic personnel involved specifically in nursing education, Section 1, Article IV of CHED Memorandum Order No. 30 Series of 2001 (CMO 30-01) provides:

Section 1. The faculty shall have academic preparation appropriate to teaching assignment. In addition, she/he must:

- a. be a Filipino citizen;
- b. be a current registered nurse in the Philippines;
- c. be a holder of Master's degree in their major field and/or allied subjects;
- d. have at least three (3) years of clinical practice in the field of specialization;
- e. be a member of good standing of the accredited national nursing association.

In 2009, CHED issued Memorandum No. 14, Series of 2009, which appears to have lowered the clinical experience requirement from at least three years to at least one year.

The foregoing CHED regulations must be read together with the provisions of RA 9173, also known as The Philippine Nursing Act of 1991 (1991 Nursing Act). Section 27 of the 1991 Nursing Act expressly provides for the following qualifications of the faculty in nursing education:

SEC. 27. *Qualifications of the Faculty.* — A member of the faculty in a college of nursing teaching professional courses must:

- (a) Be a registered nurse in the Philippines;
- (b) Have at least one (1) year of clinical practice in a field of specialization;
- (c) Be a member of good standing in the accredited professional organization of nurses; and
- (d) Be a holder of a master's degree in nursing, education, or other allied medical and health sciences conferred by a college or university duly recognized by the Government of the Republic of the Philippines.

In addition to the aforementioned qualifications, the dean of a college must have a master's degree in nursing. He/she must have at least five (5) years of experience in nursing. (Underscoring supplied)

From the foregoing, it is clear that the three-year or one-year clinical practice experience is a minimum academic requirement to qualify as a faculty member in a college of nursing, and is therefore, required for one to be considered as a full-time faculty of such.

As applied in this case, and as correctly observed by the CA, petitioner failed to meet the required minimum clinical practice experience under the law and the relevant regulations.

Petitioner's experience as clinical instructor cannot be considered as "clinical practice experience" as there is no substantial evidence on record that would prove that petitioner actually engaged in activities that may be considered as clinical practice within the ambit of the law.

Evidence on record would reveal that petitioner was hired by HNU as a "full-time" clinical instructor assigned at the medical ward from 1994-1997.³⁷ From 1998-2002, Arlene worked as a "part-time" faculty member until she was again hired in 2004.³⁸

While there is no exact definition of "clinical practice" under the law, its ordinary meaning can be ascertained through rules of statutory construction. By using clinical as an adjective to describe practice, it can be reasonably construed to have a meaning narrower in scope than the more general practice of nursing, the scope of which is defined under Section 27, Article V of the 1991 Nursing Act:

ARTICLE V NURSING PRACTICE

Sec. 27. Scope of Nursing. — A person shall be deemed to be practicing nursing within the meaning of this Act when he, for a fee, salary or other reward or compensation, singly or in collaboration with another, initiates and performs nursing services to individuals, families and communities in various stages of development towards the promotion of health, prevention of illness, restoration of health, and alleviation of suffering through:

(a) Utilization of the nursing process, including assessment, planning, implementation and evaluation of nursing care. Nursing care includes, but not limited to, traditional and innovative approaches in self-executing nursing techniques and procedures, comfort measures, health teaching and administration of legal and written prescription for treatment therapies, medication and hypodermic intramuscular or intravenous injections: Provided, however, That, in the administration of intravenous injections, special training shall be required according to protocol established;

(b) Establishment of linkages with community resources and coordination of the health team;

³⁷ *Rollo*, p. 67.

³⁸ *Id.*

(c) Motivation of individuals, families and communities; resources and coordination of services with other members of the health team;

(d) Participation in teaching, guidance and supervision of student in nursing education programs, including administering nursing services in varied settings such as hospitals, homes, communities and the like; undertaking consultation services; and engaging in such other activities that require the utilization of knowledge and decision-making skill of a registered nurse; and

(e) Undertaking nursing and health manpower development training and research and soliciting finances therefor, in cooperation with the appropriate government or private agency: Provided, however, That this provision shall not apply to nursing students who perform nursing functions under the direct supervision of qualified faculty.

“Clinical” as an adjective is defined in the ordinary sense as “relating to the examination and treatment of patients and their illnesses,”³⁹ or “to be relating to the observation and treatment of actual patients as rather than theoretical or laboratory studies.”⁴⁰

Another aspect to consider when defining “clinical practice” is the context in which it was used under the law. Under the 1991 Nursing Act, clinical practice experience is a requirement to be a nursing faculty, hence it is apparent that this clinical practice experience, being a requisite to being hired as a faculty member, refers to something distinct from teaching or any academical background.

Given the foregoing, we look back to the matter of whether Arlene's experience as a clinical instructor assigned to a medical ward can be considered as amounting to “clinical practice.” We have reiterated in several cases the rule that “of primordial consideration is not the nomenclature or title given to the employee, but the nature of his functions.”⁴¹ It is not the job title but the actual work that the employee performs.⁴² Thus, actual work performed should be considered when characterizing work experience as “clinical practice” or otherwise.

While we can presume the same to be purely academical from the nomenclature, it is entirely possible that petitioner was performing clinical duties concurrently with her teaching duties, especially since she was assigned at the medical ward. However, since she never alleged to be performing clinical duties such as treating actual patients or assisting doctors in such treatment, nor did she present any substantial evidence to prove such, we cannot assume that she indeed performed clinical duties during her stint as a

³⁹ “clinical” <https://www.oxfordlearnersdictionaries.com/us/definition/american_english/clinical> (visited July 3, 2020).

⁴⁰ “clinical” <<https://www.lexico.com/en/definition/clinical>> (visited July 3, 2020).

⁴¹ *SPI Technologies, Inc. v. Mapua*, 731 Phil. 480, 498 (2014).

⁴² *Id.*

clinical instructor. Thus, since petitioner failed to provide substantial evidence, much less clearly describe what kind of work she rendered as a clinical instructor, we cannot consider such work experience as “clinical practice.”

Being unqualified as a nursing faculty from the start, petitioner cannot possibly be considered a full-time faculty and thus, could not, even after rendering satisfactory service for three years, be entitled to permanency.

Therefore, her stint as a clinical instructor from 1994-1997 cannot even be considered as compliance with the clinical practice experience requirement for the purpose of determining whether or not she is a full-time faculty when she was employed again as a clinical instructor from 2004-2007.

The evidence on record would show that petitioner was not illegally dismissed since no dismissal occurred in the first place. Her fixed-term contract merely expired.

It can be reasonably presumed that when petitioner was engaged for employment, she and HNU were aware of the fact that the former cannot attain permanency due to her lack of the minimum academic requirements. Thus, there was no intention for petitioner to be placed under probation, as she cannot acquire permanency anyway. Rather, the evidence on record would reveal the intent of the parties to enter into an employment contract for a fixed-term.

Jurisprudence has long recognized the validity of fixed-term employment contracts, as long as such contracts do not circumvent the employee’s right to security of tenure.⁴³ In *Caparoso v. Court of Appeals*,⁴⁴ we have reiterated the criteria under which fixed-term employment could not be said to be in circumvention of the law on security of tenure, to wit:

The Court thus laid down the criteria under which fixed-term employment could not be said to be in circumvention of the law on security of tenure, thus:

1. The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or

2. It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.⁴⁵

⁴³ *Brent School, Inc. v. Zamora*, 260 Phil. 747 (1990)

⁴⁴ 544 Phil. 721 (2007).

⁴⁵ *Id.* at 728.

As applied in this case, the fixed-term contracts presented as evidence would reveal that the parties intended that their employee-employer relationship would last only for a specific period.⁴⁶ Considering petitioner's part-time status, even if no written fixed-term contract was presented, judicial notice can be made upon the fact that teachers' employment contracts are for a specific semester or term.⁴⁷

With respect to consent, the fixed-term contracts must be presumed to be knowingly and voluntarily entered into. It is a basic rule that "one who alleges defect or lack of valid consent to a contract by reason of fraud or undue influence must establish by full, clear and convincing evidence such specific acts that vitiated a party's consent, otherwise, the latter's presumed consent to the contract prevails."⁴⁸ In this case, petitioner merely alleged that she was a regular employee and that her being a contractual employee was just a lame reason given by HNU to terminate her without due process.⁴⁹ These self-serving and unsubstantiated allegations are not the clear and convincing evidence required to overturn the presumption mentioned earlier. Thus, the fixed-term contracts should be presumed as having been knowingly and voluntarily entered into by both parties.

For the second requisite of a valid fixed-term contract, petitioner was more or less on equal footing with HNU. Petitioner, by her own admission, was an honors graduate and has stellar qualifications.⁵⁰ Moreover, she has also admitted that she is an elected public official and appears to be quite popular, given that she has won as municipal councilor multiple times and even placed number one in terms of votes garnered.⁵¹ These facts would make apparent that petitioner is not a mere run-of-the-mill employee, and that she certainly has the capability to be on equal footing in dealing with her employer when it came to her employment terms.

In view of the foregoing, we must conclude that petitioner was validly contracted for a fixed-term. The expiry of her latest contract on March 31, 2007, effectively ended the employee-employer relationship she had with HNU. No dismissal, whether illegal or not, ever happened. Therefore, she is not entitled to any of the reliefs sought.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The February 26, 2015 Decision and the July 15, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 07820, are hereby **AFFIRMED**.

⁴⁶ *Rollo*, at pp. 328 & 332

⁴⁷ *Saint Mary's University v. Court of Appeals*, 493 Phil. 232, 239 (2005)

⁴⁸ *Fontana Resort and Country Club, Inc v. Spouses Tan*, 680 Phil. 395, 412 (2012).

⁴⁹ *Rollo*, pp.25-27.

⁵⁰ *Id.* at 22-23.


⁵¹ *Id.* at 13-14.


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SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


MARVIC M. V. F. LEONEN
Associate Justice
Chairperson



HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice