



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**UNIVERSITY OF THE EAST,
DEAN ELEANOR JAVIER,
RONNIE GILLEGO and
DR. JOSE C. BENEDICTO,**
Petitioners,

G.R. No. 193897

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

**ANALIZA F. PEPANIO and
MARITI D. BUENO,**
Respondents.

Promulgated:

January 23, 2013

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DECISION

ABAD, J.:

This case is about the employment status of college teachers with no postgraduate degrees who have been repeatedly extended semester-to-semester appointments as such.

The Facts and the Case

In 1992, the Department of Education, Culture and Sports (DECS) issued the Revised Manual of Regulations for Private Schools,¹ Article IX, Section 44, paragraph 1(a), of which requires college faculty members to have a master's degree as a minimum educational qualification for acquiring regular status.²

¹ Issued as DECS Order 92, s. 1992, August 10, 1992.

² Section 104. Effectivity. This Manual of Regulations for Private Schools is hereby approved and shall take effect beginning with the summer session of 1993.

In 1994 petitioner University of the East (UE) and the UE Faculty Association executed a five-year Collective Bargaining Agreement (CBA) with effect up to 1999 which provided, among others, that UE shall extend only semester-to-semester appointments to college faculty staffs who did not possess the minimum qualifications. Those with such qualifications shall be given probationary appointments and their performance on a full-time or full-load basis shall be reviewed for four semesters.³

Meantime, on February 7, 1996 several concerned government agencies issued DECS-CHED-TESDA-DOLE Joint Order 1⁴ which reiterated the policy embodied in the Manual of Regulations that “teaching or academic personnel who do not meet the minimum academic qualifications shall not acquire tenure or regular status.” In consonance with this, the UE President issued a University Policy stating that, beginning the School Year 1996-1997, it would hire those who have no postgraduate units or master’s degree for its college teaching staffs, in the absence of qualified applicants, only on a semester-to-semester basis.

UE hired respondent Mariti D. Bueno in 1997⁵ and respondent Analiza F. Pepanio in 2000,⁶ both on a semester-to-semester basis to teach in its college. They could not qualify for probationary or regular status because they lacked postgraduate degrees. Bueno enrolled in six postgraduate subjects at the Philippine Normal University’s graduate school but there is no evidence that she finished her course. Pepanio earned 27 units in her graduate studies at the Gregorio Araneta University Foundation but these could no longer be credited to her because she failed to continue with her studies within five years.

In 2001 UE and the UE Faculty Association entered into a new CBA⁷ that would have the school extend probationary full-time appointments to full-time faculty members who did not yet have the required postgraduate degrees provided that the latter comply with such requirement within their probationary period. The CBA granted UE, however, the option to replace these appointees during their probationary period if a qualified teacher becomes available at the end of the semester.⁸

Pursuant to the new CBA, UE extended probationary appointments to respondents Bueno and Pepanio. Two years later in October 2003, the Dean of the UE College of Arts and Sciences, petitioner Eleanor Javier, sent notices⁹ to probationary faculty members, reminding them of the expiration

³ Records, Vol. I, p. 182.

⁴ CA *rollo*, p. 66, DECS-CHED-TESDA-DOLE Order 1, Series of 1996.

⁵ *Rollo*, p. 148.

⁶ Id. at 149.

⁷ Section 2, Article VII.

⁸ Records, Vol. I, p. 21.

⁹ Dated October 16 and October 20, 2003.

of the probationary status of those lacking in postgraduate qualification by the end of the first semester of the School Year 2003-2004. Pepanio replied that she was enrolled at the Polytechnic University of the Philippines Graduate School. Bueno, on the other hand, replied that she was not interested in acquiring tenure as she was returning to her province.

In any event, Dean Javier subsequently issued a memorandum, stating that she would recommend the extension of the probationary appointees for two more semesters for those who want it based on the wishes of the University President. Respondent Pepanio requested a three-semester extension but Dean Javier denied this request and directed Pepanio to ask for just a two-semester extension. The records do not show if Bueno submitted a request for extension. At any rate, the school eventually wrote respondents, extending their probationary period but neither Pepanio nor Bueno reported for work.

Bueno later wrote UE, demanding that it consider her a regular employee based on her six-and-a-half-year service on a full-load basis, given that UE hired her in 1997 when what was in force was still the 1994 CBA. Pepanio made the same demand, citing her three-and-a-half years of service on a full-load basis.¹⁰ When UE did not heed their demands, respondents filed cases of illegal dismissal against the school before the Labor Arbiter's (LA) office.

For its defense, UE countered that it never regarded respondents as regular employees since they did not hold the required master's degree that government rules required as minimum educational qualification for their kind of work.

On March 10, 2005 the LA held that Bueno and Pepanio were regular employees, given that they taught at UE for at least four semesters under the old CBA.¹¹ The new CBA, said the LA, could not deprive them of the employment benefits they already enjoyed. Since UE enjoined Pepanio from attending her classes and since it did not give Bueno any teaching load, they were dismissed without just cause. The LA directed UE to reinstate respondents with backwages.¹² Dissatisfied, UE appealed to the National Labor Relations Commission (NLRC).

Bueno and Pepanio questioned the timeliness of the appeal to the NLRC. They pointed to the postmaster's certification that its office received the mail containing the LA's Decision on March 17, 2005 and "informed the Office of Atty. Mison right away but they only got the letter on April 4,

¹⁰ *Rollo*, p. 348.

¹¹ *Id.* at 141-146.

¹² *Id.* at 147.

2005.” Bueno and Pepanio claim that the 10-day period for appeal should be counted from March 22, 2005, five days after the postmaster’s first notice to Atty. Mison to claim his mail.

On September 27, 2006 the NLRC Third Division set aside the LA Decision. It rejected the technical objection and ruled that the four-semester probationary period provided under the old CBA did not automatically confer permanent status to Bueno and Pepanio. They still had to meet the standards for permanent employment provided under the Manual of Regulations and the Joint Order mentioned above. The non-renewal of their contract was based on their failure to obtain the required postgraduate degrees and cannot, therefore, be regarded as illegal.

On petition for *certiorari*, the Court of Appeals (CA) rendered a Decision¹³ on July 9, 2010, reinstating the LA’s Decision by reason of technicality. It held that the 10-day period for appeal already lapsed when UE filed it on April 14, 2005 since the reckoning period should be counted five days from March 17, when the postmaster gave notice to UE’s legal counsel to claim his mail or from March 22, 2005. This prompted UE to file the present petition.

Respondents point out, however, that the petition should be denied since it failed to enclose a certification from the UE Board of Trustees, authorizing petitioner Dean Javier to sign the verification and certification of non-forum shopping.

The Issues

The following issues are presented for the Court’s resolution:

1. Whether or not UE filed a timely appeal to the NLRC from the Decision of the LA;
2. Whether or not UE’s petition before this Court can be given due course given its failure to enclose a certification from the UE Board of Trustees’ empowering petitioner Dean Javier to execute the verification and certification of non-forum shopping; and
3. Whether or not UE illegally dismissed Bueno and Pepanio.

¹³ Penned by Associate Justice Elihu A. Ybañez with the concurrence of Associate Justices Bienvenido L. Reyes and Estela M. Perlas-Bernabe (now Members of the Court), *id.* at 67-79.

The Court's Rulings

One. Respondents Bueno and Pepanio contend that UE filed its appeal to the NLRC beyond the required 10-day period. They point out that the postmaster gave notice to Atty. Mison on March 17, 2005 to claim his mail that contained the LA Decision. He was deemed in receipt of that decision five days after the notice or on March 22, 2005. UE had 10 days from the latter date or until April 1, 2005 within which to file its appeal from that decision. UE contends, on the other hand, that the period of appeal should be counted from April 4, 2005, the date appearing on the registry return receipt of the mail addressed to its counsel.

For completeness of service by registered mail, the reckoning period starts either (a) from the date of actual receipt of the mail by the addressee or (b) after five days *from the date he received the first notice from the postmaster*.¹⁴ There must be a conclusive proof, however, that the registry notice was received by or at least served on the addressee before the five-day period begins to run.¹⁵

Here, the records fail to show that Atty. Mison in fact received the alleged registry notice from the post office on March 22, 2005 that required him to claim his mail. Respondents have not presented a copy of the receipt evidencing that notice. The Court has no choice but to consider the registry return receipt bearing the date April 4, 2005 which showed the date of Atty. Mison's receipt of a copy of the LA Decision a conclusive proof of service on that date. Reckoned from April 4, UE filed its appeal to the NLRC on time.

Two. Respondents alleged that UE failed to attach to its petition a Secretary's Certificate evidencing the resolution from its Board of Trustees, authorizing a representative or agent to sign the verification and certification of non-forum shopping.

As a general rule, the Board of Directors or Board of Trustees of a corporation must authorize the person who signs the verification and certification against non-forum shopping of its petition. But the Court has held¹⁶ that such authorization is not necessary when it is self-evident that the signatory is in a position to verify the truthfulness and correctness of the allegations in the petition. Here the verification and certification were

¹⁴ 2005 NLRC Rules of Procedure provides:

Section 7. Proof and Completeness of Service. – The return is *prima facie* proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time.

¹⁵ *Antonio v. Court of Appeals*, 249 Phil. 123, 129 (1988).

¹⁶ *Agayan Valley Drug Corporation v. Commissioner of Internal Revenue*, G.R. No. 151413, February 13, 2008, 545 SCRA 10, 18-19.

signed by petitioner Dean Javier who, based on the given facts of the case, was “in a position to verify the truthfulness and correctness of the allegations in the petition.”¹⁷

Three. Respondents argue that UE hired them in 1997 and 2000, when what was in force was the 1994 CBA between UE and the faculty union. Since that CBA did not yet require a master’s degree for acquiring a regular status and since respondents had already complied with the three requirements of the CBA, namely, (a) that they served full-time; (b) that they rendered three consecutive years of service; and (c) that their services were satisfactory,¹⁸ they should be regarded as having attained permanent or regular status.

But the policy requiring postgraduate degrees of college teachers was provided in the Manual of Regulations as early as 1992. Indeed, recognizing this, the 1994 CBA provided even then that UE was to extend only semester-to-semester appointments to college faculty staffs, like respondents, who did not possess the minimum qualifications for their positions.

Besides, as the Court held in *Escorpizo v. University of Baguio*,¹⁹ a school CBA must be read in conjunction with statutory and administrative regulations governing faculty qualifications. Such regulations form part of a valid CBA without need for the parties to make express reference to it. While the contracting parties may establish such stipulations, clauses, terms and conditions, as they may see fit, the right to contract is still subject to the limitation that the agreement must not be contrary to law or public policy.

The State through *Batas Pambansa Bilang 232* (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 (now Department of Education). Accordingly, in promulgating the Manual of Regulations, DECS was exercising its power of regulation over educational institutions, which includes prescribing the minimum academic qualifications for teaching personnel.²⁰

In 1994 the legislature transferred the power to prescribe such qualifications to the Commission on Higher Education (CHED). CHED’s charter authorized it to set minimum standards for programs and institutions of higher learning.²¹ The Manual of Regulations continued to apply to

¹⁷ Id. at 19.

¹⁸ *University of Santo Tomas v. National Labor Relations Commission*, 261 Phil. 483, 489 (1990).

¹⁹ 366 Phil. 166 (1999).

²⁰ Section 3. The standards or criteria provided for in this Manual are the minimum required to government recognition, and schools may adopt higher standards or criteria consistent with laws, rules and regulations.

²¹ Republic Act 7722, Sec. 8(d) and 8(o).

colleges and universities and suppletorily the Joint Order until 2010 when CHED issued a Revised Manual of Regulations which specifically applies only to institutions involved in tertiary education.

The requirement of a masteral degree for tertiary education teachers is not unreasonable. The operation of educational institutions involves public interest. The government has a right to ensure that only qualified persons, in possession of sufficient academic knowledge and teaching skills, are allowed to teach in such institutions. Government regulation in this field of human activity is desirable for protecting, not only the students, but the public as well from ill-prepared teachers, who are lacking in the required scientific or technical knowledge. They may be required to take an examination²² or to possess postgraduate degrees as prerequisite to employment.

Respondents were each given only semester-to-semester appointments from the beginning of their employment with UE precisely because they lacked the required master's degree. It was only when UE and the faculty union signed their 2001 CBA that the school extended petitioners a conditional probationary status subject to their obtaining a master's degree within their probationary period. It is clear, therefore, that the parties intended to subject respondents' permanent status appointments to the standards set by the law and the university.

Here, UE gave respondents Bueno and Pepanio more than ample opportunities to acquire the postgraduate degree required of them. But they did not take advantage of such opportunities. Justice, fairness, and due process demand that an employer should not be penalized for situations where it had little or no participation or control.²³

WHEREFORE, the Court **GRANTS** the petition and **REVERSES** the Decision of the Court of Appeals in CA-G.R. SP 98872 dated July 9, 2010 and **REINSTATES** the Decision of the National Labor Relations Commission dated September 27, 2006 as well as its Resolutions dated December 29, 2006 and February 27, 2007 that dismissed the complaints of respondents Analiza F. Pepanio and Mariti D. Bueno.

SO ORDERED.


ROBERTO A. ABAD
Associate Justice

²² *Professional Regulation Commission v. De Guzman*, 476 Phil. 596, 618 (2004).

²³ *St. Luke's Medical Center Employee's Association-AFW v. National Labor Relations Commission*, G.R. No. 162053, March 7, 2007, 517 SCRA 677, 688.

WE CONCUR:

PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson

DIOSDADO M. PERALTA

Associate Justice

JOSE CATRAL MENDOZA

Associate Justice

MARVIC MARIO VICTOR F. LEONEN

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.

PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

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.

MARIA LOURDES P. A. SERENO

Chief Justice