

SECOND DIVISION

[G.R. No. 212774, January 23, 2017]

**WESLEYAN UNIVERSITY-PHILIPPINES, PETITIONER, VS.
GUILLERMO T. MAGLAYA, SR., RESPONDENT.**

DECISION

PERALTA, J.:

For this Court's resolution is a petition for review on *certiorari* filed by petitioner Wesleyan University-Philippines (*WUP*) assailing the Resolution^[1] dated January 20, 2014 of the Court of Appeals (*CA*) which denied its petition for *certiorari*.

The facts are as follows:

WUP is a non-stock, non-profit, non-sectarian educational corporation duly organized and existing under the Philippine laws on April 28, 1948.^[2]

Respondent Atty. Guillenno T. Maglaya, Sr. (*Maglaya*) was appointed as a corporate member on January 1, 2004, and was elected as a member of the Board of Trustees (*Board*) on January 9, 2004 both for a period of five (5) years. On May 25, 2005, he was elected as President of the University for a five-year term. He was re-elected as a trustee on May 25, 2007.^[3]

In a Memorandum dated November 28, 2008, the incumbent Bishops of the United Methodist Church (*Bishops*) apprised all the corporate members of the expiration of their terms on December 31, 2008, unless renewed by the former.^[4] The said members, including Maglaya, sought the renewal of their membership in the WUP's Board, and signified their willingness to serve the corporation.^[5]

On January 10, 2009, Dr. Dominador Cabasal, Chairman of the Board, informed the Bishops of the cessation of corporate terms of some of the members and/or trustees since the by-laws provided that the vacancy shall only be filled by the Bishops upon the recommendation of the Board.^[6]

On March 25, 2009, Maglaya learned that the Bishops created an *Ad Hoc* Committee to plan the efficient and orderly turnover of the administration of the WUP in view of the alleged "gentleman's agreement" reached in December 2008, and that the Bishops have appointed the incoming corporate members and trustees.^[7] He clarified that there was no agreement and any discussion of the turnover because the corporate members still have valid and existing corporate terms.^[8]

On April 24, 2009, the Bishops, through a formal notice to all the officers, deans, staff, and employees of WUP, introduced the new corporate members, trustees, and officers. In the said notice, it was indicated that the new Board met, organized, and

elected the new set of officers on April 20, 2009.^[9] Manuel Palomo (*Palomo*), the new Chairman of the Board, informed Maglaya of the termination of his services and authority as the President of the University on April 27, 2009.^[10]

Thereafter, Maglaya and other former members of the Board (*Plaintiffs*) filed a Complaint for Injunction and Damages before the Regional Trial Court (*RTC*) of Cabanatuan City, Branch 28.^[11] In a Resolution^[12] dated August 19, 2009, the RTC dismissed the case declaring the same as a nuisance or harassment suit prohibited under Section 1(b),^[13] Rule 1 of the Interim Rules for Intra-Corporate Controversies.^[14] The RTC observed that it is clear from the by-laws of WUP that insofar as membership in the corporation is concerned, which can only be given by the College of Bishops of the United Methodist Church, it is a precondition to a seat in the WUP Board.^[15] Consequently, the expiration of the terms of the plaintiffs, including Maglaya, as corporate members carried with it their termination as members of the Board.^[16] Moreover, their continued stay in their office beyond their terms was only in hold-over capacities, which ceased when the Bishops appointed new members of the corporation and the Board.^[17]

The CA, in a Decision^[18] dated March 15, 2011, affirmed the decision of the RTC, and dismissed the petition for *certiorari* filed by the plaintiffs for being the improper remedy. The CA held that their status as corporate members of WUP which expired on December 31, 2008 was undisputed. The CA agreed with the RTC that the plaintiffs had no legal standing to question the Bishops' alleged irregular appointment of the new members in their Complaint on May 18, 2009 as the termination of their membership in the corporation necessarily resulted in the conclusion of their positions as members of the Board pursuant to the WUP by-laws.^[19]

Thereafter, Maglaya filed on March 22, 2011 the present illegal dismissal case against WUP, Palomo, Bishop Lito C. Tangonan (*Tangonan*), and Bishop Leo A. Soriano (*Soriano*).^[20] Maglaya claimed that he was unceremoniously dismissed in a wanton, reckless, oppressive and malevolent manner on the eve of April 27, 2009.^[21] Tangonan and Soriano acted in evident bad faith when they disregarded his five-year term of office and delegated their protege Palomo as the new university president.^[22] Maglaya alleged that he faithfully discharged his necessary and desirable functions as President, and received P175,000.00 as basic salary, P10,000.00 as cost of living allowance, and P10,000.00 as representation allowance. He was also entitled to other benefits such as: the use of university vehicles; the use of a post paid mobile cellular phone in his official transactions; the residence in the University Executive House located at Inday Street, Magsaysay Sur, Cabanatuan City, with free water, electricity, and services of a household helper; and receipt of 13th month pay, vacation leave pay, retirement pay, and shares in related learning experience.^[23] On May 31, 2006, his basic salary was increased to P95,000.00 due to his additional duty in overseeing the operations of the WUP Cardiovascular and Medical Center.

Maglaya presented the following pieces of evidence: copies of his appointment as President, his Identification Card, the WUP Administration and Personnel Policy Manual which specified the retirement of the university president, and the check

disbursement in his favor evidencing his salary, to substantiate his claim that he was a mere employee.^[24]

WUP, on the other hand, asseverated that the dismissal or removal of Maglaya, being a corporate officer and not a regular employee, is a corporate act or intra-corporate controversy under the jurisdiction of the RTC.^[25] WUP also maintained that since Maglaya's appointment was not renewed, he ceased to be a member of the corporation and of the Board; thus, his term for presidency has also been terminated.^[26]

Meanwhile, this Court, in a Resolution dated June 13, 2011, denied the petition for review on *certiorari* filed by Maglaya and the other former members of the Board for failure to show any reversible error in the decision of the CA. The same became final and executory on August 24, 2011.^[27]

In a Decision^[28] dated September 20, 2011, the Labor Arbiter (LA) ruled in favor of WUP. The LA held that the action between employers and employees where the employer-employee relationship is merely incidental is within the exclusive and original jurisdiction of the regular courts.^[29] Since he was appointed as President of the University by the Board, Maglaya was a corporate officer and not a mere employee. The instant case involves intra-corporate dispute which was definitely beyond the jurisdiction of the labor tribunal.^[30] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant complaint is hereby dismissed for lack of jurisdiction.

SO ORDERED.^[31]

In a Decision^[32] dated April 25, 2012, the National Labor Relations Commission (NLRC) in NLRC-LAC No. 01-000470-12, reversed and set aside the Decision of the LA ruling that the illegal dismissal case falls within the jurisdiction of the labor tribunals. Since the reasons for his termination cited by WUP were not among the just causes provided under Article 282^[33] (now Article 297) of the Labor Code, Maglaya was illegally dismissed. The NLRC observed that the Board did not elect Maglaya, but merely appointed him. Maglaya was appointed for a fixed period of five (5) years from May 7, 2005 to May 6, 2010, while the period of his appointment as member of the corporation was five (5) years from January 2004.^[34] The decretal portion of the decision reads:

WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE, declaring:

- (a) jurisdiction over this case by virtue of the employer-employee relation of the parties
- (b) the illegality of the dismissal of [respondent] by [petitioner]

[Petitioner] therefore [is] hereby ordered to pay [respondent]:

1. separation pay	- [P] 375,000.00
2. full backwages	- 1,252,462.50
3. retirement pay	- 500,000.00
4. moral damages	- 100,000.00
5. exemplary damages	- 50,000.00
6. 10% of the above as attorney's fees	- <u>227,746.25</u>
TOTAL AWARDS	- [P] <u>2,505,208.75</u>

based on the attached computation of this Commission's Computation Unit.

SO ORDERED.^[35]

Ruling in favor of Maglaya, the NLRC explicated that although the position of the President of the University is a corporate office, the manner of Maglaya's appointment, and his duties, salaries, and allowances point to his being an employee and subordinate.^[36] The control test is the most important indicator of the presence of employer-employee relationship. Such was present in the instant case as Maglaya had the duty to report to the Board, and it was the Board which terminated or dismissed him even before his term ends.^[37]

Thereafter, the NLRC denied the motion for reconsideration filed by WUP in a Resolution^[38] dated February 11, 2013.

In a Resolution, the CA dismissed the petition for *certiorari* filed by WUP. The CA noted that the decision and resolution of the NLRC became final and executory on March 16, 2013.^[39] WUP's attempt to resurrect its lost remedy through filing the petition would not prosper since final and executory judgment becomes unalterable and may no longer be modified in any respect.^[40] Thus:

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.^[41]

Upon denial of his Motion for Reconsideration, WUP elevated the case before this Court raising the issue:

The Court of Appeals committed an error of law when it summarily dismissed the special civil action for *certiorari* raising lack of jurisdiction of the NLRC filed by [WUP] where it was very clear that the NLRC had no jurisdiction over the case involving a corporate officer and where the nature of the controversy is an intra-corporate dispute.

We find the instant petition impressed with merit.

WUP alleges that while the NLRC decision became final and executory on March 16, 2013, it did not mean that the said decision had become immutable and unalterable as the CA ruled. WUP maintains that the remedy of the aggrieved party against a final and executory decision of the NLRC is the filing of the petition for *certiorari* under Rule 65 of the Rules of Court. As such, it was able to meet the conditions set forth in filing the said remedy before the CA.

Settled is the rule that while the decision of the NLRC becomes final and executory after the lapse of ten calendar days from receipt thereof by the parties under Article 223^[42] (now Article 229) of the Labor Code, the adverse party is not precluded from assailing it *via* Petition for *Certiorari* under Rule 65 before the CA and then to this Court *via* a Petition for Review under Rule 45.^[43]

This Court has explained and clarified the power of the CA to review NLRC decisions, *viz.*:

The power of the Court of Appeals to review NLRC decisions *via* Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission*. This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of *Batas Pambansa Blg. 129*, as amended by Republic Act No. 7902^[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg. 129* as amended, known as the *Judiciary Reorganization Act of 1980*), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* - is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.^[44]

Consequently, the remedy of the aggrieved party is to **timely file a motion for reconsideration as a precondition for any further or subsequent remedy**, and then seasonably avail of the special civil action of *certiorari* under Rule 65, for a period of sixty (60) days from notice of the decision.^[45]

Records reveal that WOP received the decision of the NLRC on May 12, 2012, and filed its motion for reconsideration on May 24, 2012.^[46] WUP received the