

## THIRD DIVISION

[ G.R. NO. 152949, August 14, 2007 ]

**AKLAN COLLEGE, INCORPORATED AND MSGR. ADOLFO P. DEPRA,  
PETITIONERS, VS. RODOLFO P. GUARINO, RESPONDENT.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Aklan College, Incorporated (ACI) and Msgr. Adolfo P. Depra (Msgr. Depra) assailing the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated March 9, 2001, and its Resolution<sup>[2]</sup> of April 5, 2002 in CA-G.R. SP No. 54035.

The undisputed facts, as summarized by the CA, are as follows:

Private respondent Guarino was first hired in 1972 as an instructor by petitioner College.

In 1974, private respondent was appointed as Acting Dean of the Commerce and Secretarial Department.

On November 26, 1990, he was again appointed by the petitioner as Acting Personnel Director, in addition to his duties as acting dean. His appointment as Acting Personnel Director was in a temporary basis and until it is revoked by the President or Rector of the College. (Annex "A", Rollo, 32)

A year after, private respondent went on leave for one year from November 4, 1991 up to November 4, 1992.

On October 20, 1992, private respondent wrote the petitioner through its Rector informing the latter of his intention of reassuming his positions with the petitioner college.

However, in petitioner's response, it informed private respondent that he cannot anymore reassume his former position as Acting Dean of the Commerce and Secretarial Department because he is not qualified for the position.

Then, on November 10, 1992, petitioner formally informed private respondent that the Board of Trustees of the petitioner college has decided not to allow him to reassume his position as Acting Dean for the reason that he has not qualified to continue holding the position and that the position of Acting Personnel director has already been filled up by a regular incumbent.

Hence, on November 11, 1992, private respondent filed the instant case for illegal dismissal against petitioner with the office of the Department of Labor in Kalibo, Aklan.<sup>[3]</sup>

On May 24, 1994, the Labor Arbiter (LA) handling the case rendered judgment dismissing the complaint for lack of merit.

Rodolfo P. Guarino (respondent) filed an appeal with the National Labor Relations Commission (NLRC). On March 9, 1995, the NLRC rendered a Decision reversing the LA, with the following dispositive portion:

WHEREFORE, the respondents are hereby ordered to pay the complainant separation pay for his discharge from the position of Dean of Commerce and Secretarial Science, equivalent to one month pay for every year of service, a fraction of six months being considered one year.

The respondents are further ordered to reinstate the complainant in his position as personnel director with full backwages from the time his salaries were withheld from him until his actual reinstatement, and as instructor without backwages.

The respondents are furthermore ordered to pay the complainant 10% of the monetary awards as attorney's fees.

Other claims are hereby DISMISSED for lack of sufficient evidence.

Complainant's monetary awards up to March 10, 1995 are (sic) P149,955.85 computed as follows:

I Separation Pay as Dean P 4, 395.50 x 17 years	P 74, 723.50
II Backwages as Personnel Director (Nov. 10, 1992-March 10, 1995) P 2,200 x 28 months	P 61, 600.00
Sub-total	P 136, 323.50
II 10% ATTORNEY'S FEES	P 13, 623.35
Grand total	P 149, 955.85

Aggrieved by the Decision of the NLRC, petitioners filed a special civil action for *certiorari* with the CA. On March 9, 2001, the CA rendered judgment denying the petition and affirming the assailed decision of the NLRC.<sup>[5]</sup> Petitioners' Motion for Reconsideration was subsequently denied by the CA in its Resolution dated April 5, 2002.<sup>[6]</sup>

Hence, herein petition with a sole Assignment of Error, to wit:

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE WELL-SETTLED DOCTRINE LAID DOWN IN **LA SALETTE OF SANTIAGO, INC. v. NLRC**, 195 SCRA 80 [1991] THAT NO EMPLOYEE ATTAINS A SECOND SECURITY OF TENURE TO AN ADMINISTRATIVE POSITION.<sup>[7]</sup>

Petitioners contend that it is not a disputed fact that, during his employment with petitioner ACI, respondent held three concurrent positions: those of an instructor, Acting Dean of the Commerce Department and Acting Personnel Director; what petitioners refused to give back to respondent when he was sent a letter dated November 10, 1992 were his positions as Acting Dean and Acting Personnel Director; respondent was never stripped of his position as an instructor. Citing the case of *La Salette of Santiago, Inc. v. National Labor Relations Commission*,<sup>[8]</sup> petitioners assert that while an employee attains security of tenure as a member of the teaching staff of a private educational institution from which he could only be removed for cause, he cannot always aspire for a second tenure in an administrative position and can, therefore, be stripped of this position by the appointing power without the latter being held responsible for illegal dismissal. Petitioners argue that when private respondent was not allowed to re-assume his former administrative positions as Acting Dean and Acting Personnel Director but was still considered as an instructor and was even prodded to resume his teaching responsibilities, he could not be considered as having been illegally dismissed.

Petitioners further argue that there was no law or agreement which gave respondent additional tenure as dean; that his appointment as dean in a regular capacity was made dependent on his graduation with a degree of Master in Business Administration (MBA), as this is a requirement imposed by DECS Order No. 5, Series of 1990 as well as the Manual of Regulations for Private Schools; that petitioner was not able to finish his MBA which compelled petitioner ACI to withhold the position from him.

Petitioners also aver that respondent's appointment as Dean and Personnel Director was only in an acting but never in a regular capacity. Citing various rulings of this Court, petitioners contend that a *bona fide* appointment in an acting capacity is essentially temporary and revocable in character and the holder of such an appointment may be removed anytime even without hearing or cause.

On the other hand, respondent argues that petitioners' reliance on *La Salette* is misplaced, as the factual circumstances obtaining therein are materially different from those in the present case. Respondent contends that in *La Salette*, the complainant therein was appointed to various administrative positions for a definite or fixed term, while in the present case respondent was appointed as dean not for a fixed duration but for an indefinite period. In addition, respondent claims that by continuously serving as Dean of ACI's Commerce and Secretarial Department for more than 17 years, his assumption of the said office could not be considered as temporary. He claims that while he was not formally appointed as dean, he has acquired security of tenure as such pursuant to the provisions of Article 280 of the Labor Code.<sup>[9]</sup>

The Court finds the petition meritorious.

Respondent's termination as Acting Personnel Director is valid.

The factual milieu in *La Salette* is similar to the present case insofar as respondent's position as Personnel Director is concerned. In *La Salette*, the respondent therein occupied different administrative positions in various capacities every so often and for a period not exceeding three years. For three years, she was the principal of La

Salette Jones High School. For the next three years she worked as teacher and Subject Area Coordinator of a sister school, La Salette of Santiago. Thereafter, for seven years, she was employed as a full-time instructor in still another sister corporation, La Salette College; and for two years of that period, she served as the Head of the Department of Education and Liberal Arts. After which, for three years, she was assigned as Assistant Principal of the High School Department of La Salette of Santiago, concurrently with her work as part-time instructor in La Salette College. For the last two years of her connection with the La Salette School System, she was designated as High School Principal of La Salette of Santiago. On this matter, the Court held as follows:

What is immediately apparent from this second look at the material facts is that while Clarita Javier's work as teacher in the La Salette School System was more or less continuous, or was evidently intended to be on a permanent basis, her assignment in one administrative office or another-i.e., as high school principal, subject area coordinator, head of a college department, assistant principal- was not. In these administrative posts, she served in a non-permanent capacity, either at the pleasure of the school or for a fixed term. She could not but have become aware of the pattern in her employment relationship with her employer, of the duality in the nature of her employment, particularly of the non-permanent character of her stints in the administrative positions to which she was designated.

There was therefore no cause for her to believe that security of tenure could be obtained by her in any of the administrative positions she held at one time or another. On the contrary, the temporariness of her occupancy of those administrative offices must have become quite apparent to her, in light of the facts. x x x<sup>[10]</sup>

In the present case, it is not disputed that respondent was appointed as Acting Personnel Director on November 26, 1990. He went on leave for one year from November 4, 1991 until November 4, 1992, after which he was no longer allowed to re-assume his administrative posts. Having assumed the position of Personnel Director in an acting capacity, respondent could not reasonably have expected that he had acquired security of tenure.

Moreover, in *La Salette*, the respondent's appointment to the various administrative positions she held were not even in an acting capacity. Yet this Court held that she never attained security of tenure with respect to these positions. In the present case, with all the more reason should respondent not expect that he has gained security of tenure, considering that his appointment<sup>[10]</sup> was only in an acting capacity.

This Court has held that an acting appointment is merely temporary, or one which is good until another appointment is made to take its place.<sup>[11]</sup> And if another person is appointed, the temporary appointee should step out and cannot even dispute the validity of his successor's appointment.<sup>[12]</sup> The undisturbed unanimity of cases is that one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated anytime at the pleasure of the appointing power without need to show that it is for cause.<sup>[13]</sup>

Insofar as the principles governing permanent and temporary appointments are

concerned, this Court finds the ruling in the more recent case of *Achacoso v. Macaraig*<sup>[14]</sup> relevant and instructive. While *Achacoso* served as the jurisprudential basis in cases involving the issue of security of tenure in career executive service positions in the government, this Court finds the rules on permanent and temporary appointments enunciated therein applicable to the present case.

This Court held in *Achacoso* that a permanent appointment can be issued only to a person who meets all the requirements for the position to which he is being appointed; a person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, only as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of persons who are qualified; the purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge the same pending the selection of a permanent or another appointee; the person named in an acting capacity accepts the position under the condition that he shall surrender the office once he is called upon to do so by the appointing authority.<sup>[15]</sup>

Consistent with the rulings in *La Salette*, *Achacoso* and the other cases cited above, respondent could not have attained security of tenure with respect to his position as Personnel Director of ACI. His termination as such is valid.

On the other hand, the factual circumstances are different with respect to respondent's appointment as Acting Dean of ACI's Commerce Department. In the present case, respondent was allowed to occupy the position of Acting Dean for a continuous period of 17 years, more or less, beginning in 1974 until he went on leave on November 4, 1991. Unlike the private respondent in *La Salette*, herein respondent's term as acting dean remained uninterrupted. In fact, there was not even any showing that he was handed any re-appointment paper or made to sign a renewal contract regarding the said position.

Nonetheless, the Court finds respondent's termination as Acting Dean also valid for the following reasons:

Petitioners assert that under DECS Order No. 5, Series of 1990, as well as Section 41 of the Manual of Regulations for Private Schools, the acquisition of a Master's degree has been made a requirement before a person can be appointed as Dean of an undergraduate program.

Article IV (1) (1.2) of DECS Order No. 5, Series of 1990, provides for the following minimum qualifications for the position of chairman, dean or director of a school's accounting program, to wit:

- a. Holder of a CPA certificate issued by the Professional Regulation Commission;
- b. Holder of at least a master's degree in business, accountancy, or business education;**
- c. Teaching experience of at least three (3) years;
- d. The ability to lead and gain the confidence and respect of the faculty.