

## FIRST DIVISION

[ G.R. NO. 167177, September 27, 2006 ]

**ESTRELLA S. BAÑEZ, DE LA SALLE UNIVERSITY EMPLOYEES ASSOCIATION (DLSUEA), REPRESENTED BY UNION PRESIDENT, BAYLON R. BAÑEZ, PETITIONERS, VS. DE LA SALLE UNIVERSITY, DR. CARMELITA QUEBENGCO, BRO. ANDREW GONZALEZ, FSC, GENEROSO TAMAYO, LIEZEL BUÑO, DR. CECILIA ALABASTRO, DR. GERARDO JANAIRO, CYNTHIA LIM, AND GLORIA DE LEON,**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This petition for review assails the April 30, 2004 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 56176, setting aside (1) the Decision<sup>[2]</sup> dated August 25, 1999 and Resolution<sup>[3]</sup> dated September 30, 1999 of the National Labor Relations Commission (NLRC), which set aside the July 31, 1998 Decision<sup>[4]</sup> of Labor Arbiter Felipe T. Garduque II in NLRC NCR Case Nos. 00-09-05877-96 and 00-11-06874-96 and ordered their remand to the Arbitration Branch for further proceedings; and (2) the August 14, 2001 Decision<sup>[5]</sup> of Labor Arbiter Nieves V. de Castro ordering, among other things, petitioner Bavez's reinstatement. Also assailed is the February 21, 2005 Resolution<sup>[6]</sup> denying petitioners' motion for reconsideration.

The antecedent facts are as follows:

Petitioner Estrella S. Bañez was the Curriculum Evaluator of respondent De La Salle University ("the University") tasked with assessing fees for comprehensive examinations or defense of thesis of Graduate Studies students.

In August 1996, the University received a report that several Graduate Studies students paid comprehensive examination fees to a certain "Ester" of the Registrar's Office who issued temporary receipts without, however, remitting them to cashiers at the Accounting Office.

After due investigation, it was determined that petitioner Bañez and Virginia Cantillas, Records-in-Charge of the Registrar's Office, were responsible for the reported anomalies. Bañez would assess the fees and direct the students to pay to Cantillas.

The University required Bañez and Cantillas to explain why they should not be administratively charged for their unauthorized collection of fees from graduate students<sup>[7]</sup> and at the same time placed them under preventive suspension for 20 days pending investigation of the case.<sup>[8]</sup>

Prior to receiving the memo to explain, Cantillas tendered her resignation and

requested payment of retirement benefits<sup>[9]</sup> which remained unacted pending investigation of the charges against her.<sup>[10]</sup>

Bañez denied the charges against her. She claimed that the University was harassing her husband, who is the President of the De La Salle University Employees Association (the "Union"), who had previously initiated complaints for and on behalf of Union members. Cantillas also denied the accusations against her.

The University formally charged Bañez and Cantillas with fraudulent collection of fees before the Human Resources Development Office Ad Hoc Investigating Committee but both failed to attend any of the three scheduled hearings.

Meantime, Bañez and the Union filed a complaint for unfair labor practice, illegal suspension, reinstatement and backwages, with prayer for payment of moral and exemplary damages and attorney's fees against respondents, docketed as NLRC NCR Case No. 00-09-05877-96.<sup>[11]</sup> This was later consolidated with Cantillas's complaint, docketed as NLRC NCR Case No. 00-11-06874-96, for retirement benefits, 13th month pay, cash conversion of sick leave benefits, moral damages and attorney's fees.<sup>[12]</sup>

On October 30, 1996, the University issued separate letters terminating the employment of Bañez and Cantillas and forfeiting all their benefits.<sup>[13]</sup>

Bañez accordingly amended her complaint to include illegal dismissal and additionally prayed for 13th month pay, unpaid wages, salary differential, and longevity benefits.<sup>[14]</sup> Cantillas also amended her complaint to include illegal dismissal and payment of longevity and service incentive leave benefits.<sup>[15]</sup>

On July 31, 1998, Labor Arbiter Felipe T. Garduque II rendered a consolidated Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, complainants' charges of illegal suspension/dismissal and unfair labor practice including their prayer for damages are hereby dismissed for lack of merit.

However, respondent De La Salle University is hereby ordered to pay within ten (10) days from receipt hereof, the herein complainants Estrella Banez her salary increases and 13th month pay differential in the total amount of P6,912.90, and Virginia C. Cantillas, the sum of P9,491.67, as her pro-rata 13th month pay for 1996, including her longevity and cash conversion of her sick leave under the CBA, plus ten percent (10%) attorney's fees.

For lack of concrete and convincing evidence, respondents' counterclaims are hereby denied.

SO ORDERED.<sup>[16]</sup>

All the parties filed their respective partial appeals.<sup>[17]</sup>

The NLRC remanded the cases to the Arbitration Branch for further proceedings

finding that Bañez's involvement in the conspiracy had not been fully established. Respondents' motion for reconsideration was denied hence they filed a petition for certiorari with the Court of Appeals with prayer for issuance of a temporary restraining order or injunction.

At the NLRC Arbitration Branch, Labor Arbiter Garduque inhibited from the consolidated cases, which were eventually presided over by Labor Arbiter Nieves V. de Castro. The parties submitted additional affidavits and documentary evidence in support of their causes of action and defenses. In an Order<sup>[18]</sup> dated February 21, 2001, Labor Arbiter de Castro, after noting that the Court of Appeals had not issued a restraining order against the conduct of compulsory arbitration proceeding, submitted the consolidated cases for resolution.

On August 14, 2001, Labor Arbiter de Castro rendered judgment (1) ordering respondents to reinstate Bañez with payment of backwages, salary increases, 13th month pay differential, moral and exemplary damages and attorney's fees; and (2) dismissing Cantillas's complaint, but ordering respondents to pay pro-rata 13th month pay, longevity benefits and cash converted sick leave credits under the University's Collective Bargaining Agreement (CBA).

Respondents filed an Urgent Manifestation and Motion<sup>[19]</sup> with the Court of Appeals reiterating their earlier motion for issuance of temporary restraining order or injunction and praying that Labor Arbiter de Castro refrain from executing her decision. They also filed with the NLRC a partial appeal *ad cautelam*.<sup>[20]</sup>

Pursuant to Labor Arbiter De Castro's decision, the University reinstated petitioner Bañez in its payroll.<sup>[21]</sup>

On April 30, 2004, the Court of Appeals rendered the assailed Decision, the dispositive portion of which states:

WHEREFORE, foregoing premises considered, the assailed NLRC decision dated August 25, 1999 and its Resolution dated September 30, 1999, inclusive of the August 14, 2001 decision of Labor Arbiter De Castro are hereby SET ASIDE and the July 31, 1998 decision of Labor Arbiter Felipe Garduque II is REINSTATED, with modification that the award of salary increases, cash conversions of sick leave benefits, longevity pay and attorney's fee in favor of respondents is deleted.

SO ORDERED.<sup>[22]</sup>

The Court of Appeals denied the motion for reconsideration of petitioners and Cantillas in its February 21, 2005 Resolution. Hence, this petition,<sup>[23]</sup> filed only by the Union and Bañez.

The issue for resolution is whether Bañez was illegally dismissed.

For a dismissal to be valid, it must be for any of the causes provided for in Article 282 of the Labor Code and the employee must be afforded an opportunity to be heard and defend himself. An employer can terminate the services of an employee for just and valid causes, which must be supported by clear and convincing

evidence. The employee must be given notice, with adequate opportunity to be heard, before he is notified of his actual dismissal for cause. [24]

There is substantial evidence that Bañez conspired with Cantillas in committing fraudulent acts against the University, thus:

(a) Cynthia Lim, the University's Internal Auditor, testified that Cantillas issued provisional receipt dated May 7, 1996 [25] to Sr. Bernadette Padawel of St. Paul College for payment of comprehensive examination fee in the amount of P799.00 which had no corresponding official receipt. Lim also testified that several graduate students whom she interviewed submitted provisional receipts issued by Cantillas showing payment of proposal fees, oral defense fees, and graduation and binding fees which had no corresponding official receipts in the accounting records. [26]

(b) Sr. Ma Teresa S. Cantos testified that it was Bañez who directed her to pay comprehensive examination fees and fees for thesis proposal defense and oral defense to Cantillas; that for the graduation ceremonies in September 1996, Bañez gave her an assessment of P1,707.00 and told her to pay the same to Cantillas; that upon payment, Cantillas issued a temporary receipt; that on September 13, 1996, she returned the provisional receipt to Bañez who told her to go to Cantillas, who thereupon gave her P1,407.00 cash and a Student Account Record with an assessment for P1,407.00; that Cantillas told her to pay at the Accounting Office and explained that the missing P300.00 was used for snacks. [27]

(3) Rehbi J. Baraca, a Palestinian enrolled in the Master of Science in Computer Studies program, testified that in connection with the oral defense of his thesis for the first term of school year 1996-1997, Cantillas told her to pay P3,532.00, which he did; and that Cantillas later informed him that out of that payment, only P1,825.00 was covered with an official receipt. [28]

(4) Washington Lee Alto, who was also enrolled in Master of Science in Computer Studies from SY 1993-1994 to SY 1995-1996, testified that he paid Cantillas P3,047.00 for his thesis defense fee and P1,707.00 for thesis binding and graduation fee; that for the latter amount, he was issued handwritten receipt number 0001 dated July 22, 1996; and that he later found out that he overpaid these fees and demanded a refund thereof. [29]

(5) Lourdes S. Bangcoy, a student of Master of Arts in Philippine Studies, testified that on January 20, 1994, Bañez told her to pay her comprehensive examination fee in the amount of P660.00 for which Cantillas issued a receipt; that on July 5, 1996, Bañez again told her to pay P550.00 thesis proposal fee to Cantillas who issued an acknowledgement receipt; and that she later found out that her payments were not covered by official receipts, thus her name was excluded from the list of students who took the exams.

Bañez denied the allegations and alleged that respondents failed to prove that she conspired with Cantillas to commit the alleged fraudulent transactions or that she partook of the proceeds thereof.

She claimed that Cantillas absolved her of any complicity because in her Counter-Affidavit dated February 26, 1997 in I.S. No. 96L-66594, the theft case filed by the University against Bañez and Cantillas, the latter claimed: (a) that Bañez had no knowledge or involvement in the fraudulent transactions; (b) that Drs. Richard Gonzales, Carmelita Quebengco and Cecilia Alabastro, instructed her to prepare the provisional receipts to frame up Bañez in exchange for double the amount of her retirement benefits; (3) that when she refused to execute an affidavit implicating Bañez, her employment was terminated, constraining her to file a labor case.<sup>[30]</sup>

Cantillas's Counter-Affidavit<sup>[31]</sup> is unreliable and, at best, an afterthought as it was issued five months after she underwent administrative investigation. It contradicted her earlier declarations in her September 17, 1996 letter,<sup>[32]</sup> where she denied receiving money from graduate students but explained that she accepted the payments from Sisters Nicole and Bernie of St. Paul College as a form of charity but did not turn over the payments to the Accounting Office because the nuns were full scholars. She never mentioned that she prepared provisional receipts upon the instructions of the University officials.

In another letter dated October 12, 1996,<sup>[33]</sup> Cantillas denied receiving any fees from Cantos or from other students. Again, there was no mention about her preparing provisional receipts in exchange for twice the amount of her retirement benefits.

The University correctly suspended Bañez and Cantillas during the pendency of the administrative investigation. Where the continued employment of an employee poses a serious and imminent threat to the life and property of the employer or his co-employees, preventive suspension is proper.<sup>[34]</sup> This is especially so where, as here, the employee repeatedly committed acts of misconduct and willful breach of trust.

In termination cases, the employer has the burden of proving that an employee has been lawfully dismissed.<sup>[35]</sup> Respondents have discharged the burden of proving serious misconduct in this case. As defined, "[m]isconduct is improper or wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment."<sup>[36]</sup> To be a just cause for dismissal under Art. 282 of the Labor Code, such misconduct (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.<sup>[37]</sup>

Tested against the foregoing requisites, it is clear that Bañez and Cantillas were guilty of serious misconduct. They had defrauded the University. Both accepted fees from students in violation of the University rule requiring payment of such fees only to the cashiers at the accounting office. Labor Arbiter Garduque and the Court of Appeals correctly found Bañez and Cantillas to have conspired in the illegal scheme for which they were rightfully dismissed by the University. Direct evidence of such