

SECOND DIVISION

[G.R. No. 124548, October 08, 1998]

**MELODY PAULINO LOPEZ, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, LETRAN COLLEGE-MANILA, FR.
ROGELIO ALARCON, O.P., FR. EDWIN LAO, O.P. AND MS. PERLY
NAVARRO, RESPONDENTS.**

D E C I S I O N

MARTINEZ, J.:

The seminal issue to be resolved is whether a finding of illegal dismissal *ipso facto* results in reinstatement of the dismissed employee.

Petitioner Melody Paulino Lopez was employed^[1] with private respondent Letran College Manila^[2] from June 1979 to July 1, 1991.

The chronology of events as narrated by the NLRC^[3] are as follows:

"On February 16, 1988 " a Career Orientation Day for elementary pupils of Colegio de San Juan de Letran, Manila - complainant Melody Paulino Lopez, then Guidance Counselor of the elementary department, conceived and implemented an agenda where 1,070 of elementary students had an opportunity to witness and mingle with military men in uniform, capped with the landing of helicopters on the quadrangle of the school compound with no less than Gen. Isleta and the late Col. Florendo on board. As it turned out, it was a demonstration of military capability for civilian consumption and entertainment, albeit, there were some exhibition of military presence and equipment.

On March 16, 1988, complainant wrote a letter (Exhibit '12-A') to Rev. Fr. Thomas L. Francisco, O.P., Rector of Letran College that the program held last February 26, 1988 was a success, lamenting, however, the objections of some quarters of said festivities in the aftermath of the event.

On February 21, 1991, complainant wrote a letter to respondent Rev. Fr. Rogelio Alarcon, O.P. to bring to his attention her problem of a feeling that a conspiracy of harassment, intimidation and persecution had set in to make her resign since the time she approached Gen. De Villa for help in the Career Orientation, (Exh. '13') not to mention that a group had conspired to have her son kicked out from a school.

Since then, complainant became a frequent recipient of several memoranda (Exh. 'A-1' and Exh. 'A-15') requiring complainant to explain in writing why she by-passed the OIC Director of Student Services on the filing of application for sick leave dated January 16, 1991 and the filing of

requisition form dated January 22, 1991 and to remind complainant about the formalization of the agreement they had during the individual conference in the morning of March 15, 1991. Unsavory reports unknown to complainant surfaced in her 201 file, such as the letter-complaint of Dr. Alicia J. Ramos dated October 4, 1988 (Exh. 'A-16') and the incident report of Ms. Rosalinda S. Jarabelo dated September 29, 1988 (Exh. 'A-17') relating her humiliating experience when complainant challenged her to a fight.

After the Career Orientation, Mr. Moralino, Elementary Principal, ordered Dr. Ramos to remove complainant as Elementary Guidance Counselor and she was replaced by another staff who had no experience in the school set-up. (p. 146, Records, tsn. p. 17, Nov. 7, 1991).

Complainant was given the position of Head Psychometrician whose responsibility was to supervise the test given to all the three (3) departments; elementary, high school and college, but when tests were given in the elementary department, Mr. Moralino ordered the security guard not to let complainant enter the elementary department. Mr. Moralino's attitude towards complainant became negative when he learned that complainant was a union member. (tsn. p. 17, Nov. 7, 1991).

Later, complainant was offered a sizable amount of money by respondents in exchange for her voluntary resignation by Mrs. Perly Navarro, (tsn. p. 20, Nov. 7, 1991) sometime in January 1991 for the reason that respondent Fr. Alarcon wanted her out, but complainant refused the offer.

But what finally snapped the employment connection of complainant with respondents was the incident of 16 February 1991.

It appears that complainant, who earlier had been suspended for five (5) days, reported for work to assist in giving entrance examination for high school students.

At around 11:00 A.M. of said date (February 16, 1991), Mr. Ramon Mendoza, an employee of the Guidance Counselor Office of Letran College, asked from the security guard for the key to the guidance counseling office, but respondent Fr. Edwin Lao, who was then with the security guard refused to give the key. Thus, Mr. Mendoza asked complainant Melody Paulino Lopez to intercede for him. At this point, what actually happened appears rather hazy in view of the conflicting versions. Respondents insist that complainant uttered indecent and obscene remarks against respondent Fr. Lao and on the other hand, complainant denied the accusation and in turn accused Fr. Lao for embarrassing and humiliating her.

As a consequence, complainant Lopez was placed under preventive suspension for thirty (30) days effective March 19, 1991 after she failed to submit written explanation for her alleged slanderous utterances and insulting epithets against respondent Fr. Lao on 16 February 1991.

On April 2, 1991, complainant filed a complaint with the Arbitration of this Commission for illegal suspension, praying for the lifting of said suspension, plus recovery of damages. (p. 2, Records)

In the meantime, an Ad Hoc Committee was organized by respondent Fr. Lao composed of Mr. Salvador Abantina, President of the Association, Mrs. Amerlina Gaerlan, Chairman, Ms. Ellen Ambas who later resigned because at one time she asked complainant to sign a termination paper which was against complainant's conscience and replaced by Mrs. Lita delos Reyes, an elementary teacher. (tsn, p. 28, Nov. 7, 1991)

The Ad Hoc Committee was tasked to look into the charges against complainant for serious misconduct and offense by the employee against the person of her employer.

Required to explain in writing, complainant Lopez did so on April 19, 1991.

On May 9, 1991, complainant received an official notice dated 08 May 1991 dismissing her from employment for alleged acts of serious misconduct, commission of a crime (grave oral defamation), insubordination, unfaithfulness to employer's interest, quarreling and challenging to a fight and loss of confidence.

Thus, on July 1, 1991, complainant filed a Motion To Amend Complaint amending her cause of action from illegal suspension to illegal dismissal. (p. 8, Records)"[4]

After hearing, the Labor Arbiter found that petitioner was dismissed for just cause and with due process. The dispositive portion of the decision reads:

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

Respondent school is however ordered to pay complainant

[P4,500 x 12 years] P 27,000.00 separation pay.

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All other claims are also hereby dismissed for lack of merit.

SO ORDERED."[5]

On appeal, the National Labor Relations Commission (NLRC) ruled that there was an illegal dismissal due to absence of just cause and due process but ordered private respondents to grant petitioner separation pay in lieu of reinstatement. Petitioner's claim for damages was, however, dismissed. Thus,

"WHEREFORE, premises considered, the assailed decision should be, as it is hereby ordered REVERSED.

Respondents, therefore, are hereby ordered to pay complainant

separation pay equivalent to one (1) month's salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year.

The complaint for damages is hereby dismissed for lack of merit.

SO ORDERED."^[6]

Upon denial of the motion for reconsideration by the NLRC,^[7] petitioner elevated the case *via* petition for *certiorari*, seeking reinstatement to her former position without loss of seniority rights and payment of backwages including damages and attorney's fees.

Petitioner asserts that in view of a finding by the NLRC that she was illegally dismissed by private respondent school, she should perforce be entitled to reinstatement without loss of seniority rights and payment of backwages. Otherwise stated, petitioner questions the ruling of the NLRC in awarding separation pay in lieu of reinstatement despite the fact that there was an illegal dismissal effected by private respondent school. Accordingly, she also seeks payment of backwages, allowances, and other benefits from the time of her illegal dismissal until her actual reinstatement.

We are in accord with the ratiocination of the NLRC that despite a finding of illegal dismissal against private respondent school, petitioner should not be reinstated. The pertinent portion of said NLRC resolution reads as follows:

"Besides, if such 'litany of misconduct' were indeed committed by herein complainant dating as far back in 1987, they were deemed to have been condoned (National Service Corp. v. NLRC, 168 SCRA 122), for how to(sic) explain the incontrovertible fact that, notwithstanding such 'litany of misconducts,' complainant stayed on - and had even been promoted for the last thirteen (13) years of employment with respondents.

As adverted to earlier in this resolution, serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work is one of the grounds or just causes for termination of an employee.

The incident of February 16, 1991 wherein complainant allegedly uttered defamatory and offensive words against respondent Fr. Edwin Lao transpired when a certain Mr. Ramon Mendoza, an employee of the Guidance Counselor Office of Letran College asked from the security guard for the key to the guidance counseling office, but respondent Fr. Edwin Lao, O.P., who was then with the security guard refused to give the key. Mr. Mendoza asked complainant to intercede in his behalf. At this point, what actually happened appears rather hazy in view of the contrasting versions. Respondent Fr. Edwin Lao insisted that complainant uttered invectives against him to which vehemently complainant denied.

Note that the incident of February 16, 1991 occurred totally unrelated to the work of complainant as Head Psychometrician of respondent school. Complainant merely interceded in behalf of Mr. Mendoza in securing from