



Republic of the Philippines  
 Supreme Court  
 Baguio City

THIRD DIVISION

**DIVINE WORD COLLEGE OF  
 LAOAG,**

Petitioner,

**G.R. No. 195155**

Present:

VELASCO, JR., J.,  
*Chairperson,*  
 PERALTA,  
 PEREZ,  
 REYES, and  
 JARDELEZA, JJ.

- versus -

**SHIRLEY B. MINA, as heir-  
 substitute of the late DELFIN A.  
 MINA.**

Respondent.

Promulgated:

April 13, 2016

x-----*Rosmar D. Carandang*-----x

DECISION

**REYES, J.:**

Assailed in this petition for review<sup>1</sup> under Rule 45 of the Rules of Court is the Decision<sup>2</sup> dated July 19, 2010 and Resolution<sup>3</sup> dated January 13, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 107749 declaring respondent Delfin A. Mina (Mina) to have been constructively dismissed by petitioner Divine Word College of Laoag (DWCL) and awarding him backwages, damages and attorney's fees.

<sup>1</sup> Rollo, pp. 11-34.

<sup>2</sup> Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios concurring; id. at 35-46.

<sup>3</sup> Id. at 47-50.

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### Antecedent Facts

DWCL is a non-stock educational institution offering catholic education to the public. It is run by the Society of Divine Word (SVD), a congregation of Catholic priests that maintains several other member educational institutions throughout the country.<sup>4</sup>

On July 1, 1969, the Society of Divine Word Educational Association (DWEA) established a Retirement Plan to provide retirement benefits for qualified employees of DWEA's member institutions, offices and congregations.<sup>5</sup> The DWEA Retirement Plan<sup>6</sup> contains a clause about the portability of benefits, to wit:

When a member who resigns or is separated from employment from one Participating Employer and who is employed by another Participating Employer, the member will carry the credit he earned under his former Participating Employer to his new Employer and the length of service in both will be taken into consideration in determining his total years of continuous service on the following conditions:

- a. The transfer is approved by both the Participating Employer whose service he is leaving and the new Participating Employer;
- b. The Retirement Board is notified of the transfer; and
- c. The member is employed by another Participating Employer on the next working day after his resignation.<sup>7</sup>

Mina was first employed in 1971 as a high school teacher, and later on a high school principal, at the Academy of St. Joseph (ASJ), a school run by the SVD. On June 1, 1979, he transferred to DWCL and was accorded a permanent status after a year of probationary status.<sup>8</sup> He was subsequently transferred in 2002 to DWCL's college department as an Associate Professor III. Thereafter, on June 1, 2003, Mina was assigned as the College Laboratory Custodian of the School of Nursing and was divested of his teaching load, effective June 1, 2003 until May 31, 2004, subject to automatic termination and without need for any further notification.<sup>9</sup> He was the only one among several teachers transferred to the college department who was divested of teaching load.<sup>10</sup>

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<sup>4</sup> Id. at 36, 198.

<sup>5</sup> Id. at 199.

<sup>6</sup> Id. at 178-190.

<sup>7</sup> Id. at 161.

<sup>8</sup> Id. at 147.

<sup>9</sup> Id. at 148.

<sup>10</sup> Id. at 36.

In early June 2004, Mina was offered early retirement by Professor Noreen dela Rosa, Officer-in-Charge of DWCL's School of Nursing. He initially declined the offer because of his family's dependence on him for support. He later received a Memorandum<sup>11</sup> dated July 27, 2004 from the Office of the Dean enumerating specific acts of gross or habitual negligence, insubordination, and reporting for work under the influence of alcohol. He answered the allegations against him;<sup>12</sup> sensing, however, that it was pointless to continue employment with DWCL, he requested that his retirement date be adjusted to September 2004 to enable him to avail of the 25-year benefits. He also requested for the inclusion of his eight years of service in ASJ, to make his total years of service to 33 years pursuant to the portability clause of the retirement plan, which was denied by DWCL. Instead, he was paid ₱275,513.10 as retirement pay.<sup>13</sup> It was made to appear that his services were terminated by reason of redundancy to avoid any tax implications. Mina was also made to sign a deed of waiver and quitclaim<sup>14</sup> stating that he no longer has any claim against DWCL with respect to any matter arising from his employment in the school.<sup>15</sup>

On September 21, 2004, he filed a case for illegal dismissal and recovery of separation pay and other monetary claims.<sup>16</sup> Pending resolution of his case, Mina passed away on June 18, 2005.<sup>17</sup>

### **Ruling of the Labor Arbiter**

On August 26, 2005, the Labor Arbiter (LA) rendered its Decision,<sup>18</sup> ruling that the actuation of DWCL is not constitutive of constructive dismissal. The LA ratiocinated, however, that the computation of Mina's retirement pay based on redundancy is illegal; hence, it was modified, and the number of years he worked for ASJ was added to the years he worked for DWCL thus making his creditable number of years of service to 33 years. According to the LA, his length of service in both institutions will be taken into consideration in determining his total years of continuous service since the DWEA Retirement Plan has a provision on portability, which allows a member to carry the earned credit for his number of years of service from his former participating employer to his new employer. Moreover, the LA held that there is no showing that Mina ceased to be a member of the plan when he left the ASJ as there was not a day that he was separated from any school that is the member of the plan. The LA's computation of Mina's retirement benefits is as follows:

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<sup>11</sup> Id. at 149.

<sup>12</sup> Id. at 150-151.

<sup>13</sup> Id. at 195.

<sup>14</sup> Id. at 197.

<sup>15</sup> Id. at 36-38.

<sup>16</sup> Id. at 206.

<sup>17</sup> Mina was substituted by his widow, Shirley B. Mina; id. at 223.

<sup>18</sup> Issued by Executive Labor Arbiter Irenarco R. Rimando; id. at 198-217.

Monthly salary: P13,006.23  
 Date hired: June 1971  
 Years in service: 33 years  
 Birth day: 24 December 1950

Monthly pay/26.22 x 22.2 x 33 years x 100%	
P13,006.23/26.23 x 22.2 [x] 33 years x 100%	= P363,400.29
Less: Severance benefits received:	= P275,513.10
Deficiency	= P 87,887.19 <sup>19</sup>

The LA disposed thus:

**IN VIEW THEREOF**, judgment is hereby rendered with the following dispositions:

1. Finding that [Mina] was underpaid in his retirement benefits pursuant to the DWEA Retirement Plan. Consequently, [DWCL] must pay the deficiency in his retirement benefits in the amount of P87,887.19.
2. Finding that the respondents were harsh on him. Consequently, the DWCL must be adjudged to pay him P50,000 as moral damages and P50,000 as exemplary damages.
3. That his claims for additional separation pay for his future services are denied.
4. [DWCL] must pay [Mina] 10% of the total award as attorney's fees for his having been forced to litigate to protect his rights as an employee.

**SO ORDERED.**<sup>20</sup>

Both DWCL and Mina appealed to the National Labor Relations Commission (NLRC), with DWCL mainly questioning the LA's decision making Mina's creditable years of service 33 years, and awarding moral and exemplary damages.<sup>21</sup>

### **Ruling of the NLRC**

The NLRC ruled that Mina was constructively dismissed when he was appointed as College Laboratory Custodian and divested of his teaching load without any justification.<sup>22</sup> It also ruled that Mina was not deemed to have waived all his claims against DWCL as quitclaims cannot bar employees from demanding benefits to which they are legally entitled.<sup>23</sup> The NLRC, however, disregarded Mina's eight years of service in ASJ in the

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<sup>19</sup> Id. at 212-213.

<sup>20</sup> Id. at 216-217.

<sup>21</sup> Id. at 218-231.

<sup>22</sup> Id. at 101.

<sup>23</sup> Id. at 103.

computation of his retirement pay because of his failure to show compliance with the portability provision.<sup>24</sup> The dispositive portion of the NLRC Decision dated July 10, 2008 provided:

**WHEREFORE,** We grant in partly [sic] the appeals of both [Mina] and [DWCL]. The decision dated August 26, 200[5] is hereby modified to delete the order adding the length of service rendered by [Mina] to the [ASJ] in the computation of the latter's retirement pay from the former. **Accordingly, [DWCL] is held liable to pay [Mina] full backwages and separation pay, in lieu of reinstatement and to his full compulsory retirement pay, less the amount already received by him representing his optional retirement.**

**SO ORDERED.**<sup>25</sup> (Emphasis ours)

DWCL sought reconsideration of the NLRC decision but it was denied in a Resolution<sup>26</sup> dated November 28, 2008.

DWCL thus filed a petition for *certiorari* before the CA, seeking to reverse and set aside the NLRC decision and resolution.<sup>27</sup> DWCL primarily asserted that the NLRC committed grave abuse of discretion in holding that Mina was constructively dismissed from work, in holding DWCL liable for moral and exemplary damages, and in ordering the payment of separation pay as well as retirement pay computed up to the age of 60.<sup>28</sup>

### **Ruling of the CA**

On July 19, 2010, the CA rendered the assailed Decision, denying the petition but modifying the award. It sustained the NLRC's ruling that Mina was indeed constructively dismissed from work. The CA also held that Mina is entitled to receive backwages, to be computed from the time of hiring on June 1, 1979 until the time of his death on June 18, 2005, as he was constructively dismissed from work, as follows:

Monthly Salary	Php 13, 006.23 x 26 (1 June 1979 - 18 June 2005)
Backwages	Php 338,161.98 <sup>29</sup>

The dispositive portion of the CA decision provided:

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<sup>24</sup> Id. at 103-104.

<sup>25</sup> Id. at 105-106.

<sup>26</sup> Id. at 108-109.

<sup>27</sup> Id. at 63-82.

<sup>28</sup> Id. at 71.

<sup>29</sup> Id. at 45.

**WHEREFORE**, the petition is **DENIED**, granting to [Mina] substituted by his heirs in addition to the full retirement benefits at Php275,513.10, the following:

1. backwages in the amount of Php 338,161.98;
2. moral and exemplary damages at Php50,000.00; and
3. attorney's fees at ten percent (10%) of the amount due herein.

**SO ORDERED.**<sup>30</sup>

DWCL's motion for reconsideration was denied by the CA in its Resolution<sup>31</sup> dated January 13, 2011.

Hence, the present petition, anchored on the following grounds:

I.

The Honorable [CA] erred in upholding [NLRC's] findings that [Mina] was constructively dismissed.

II.

The Honorable [CA] erred in holding [DWCL] liable for moral and exemplary damages and attorney's fees.

III.

Even assuming, without admitting that [Mina] was constructively dismissed, the Honorable [CA] erred in ordering the payment of his backwages "computed from the time of hiring, 1 June 1979 until the time of his death 18 June 2005."

IV.

Even assuming, without admitting, that [Mina] was constructively dismissed, the Honorable [CA] has no legal basis in awarding him full retirement benefits since it invalidated Mina's retirement for which the retirement benefits were given to him.<sup>32</sup>

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<sup>30</sup> Id. at 46.

<sup>31</sup> Id. at 47-50.

<sup>32</sup> Id. at 20-21.

### Ruling of the Court

In a petition for review on *certiorari* under Rule 45, only questions of law may be raised. The *raison d'être* is that the Court is not a trier of facts.<sup>33</sup> The rule, however, admits of certain exceptions, such as when the factual findings of the LA differ from those of the NLRC, as in the instant case, which opens the door to a review by this Court.<sup>34</sup>

The Constitution<sup>35</sup> and the Labor Code<sup>36</sup> mandate that employees be accorded security of tenure. The right of employees to security of tenure, however, does not give the employees vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.<sup>37</sup> In cases of transfer of an employee, the employer is charged with the burden of proving that its conduct and action are for valid and legitimate grounds such as genuine business necessity and that the transfer is not unreasonable, inconvenient or prejudicial to the employee.<sup>38</sup> If the employer cannot overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal.<sup>39</sup>

Constructive dismissal is a dismissal in disguise.<sup>40</sup> There is cessation of work in constructive dismissal because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits."<sup>41</sup> To be considered as such, an act must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his employment.<sup>42</sup> The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.<sup>43</sup>

In this case, Mina's transfer clearly amounted to a constructive dismissal. For almost 22 years, he was a high school teacher enjoying a permanent status in DWCL's high school department. In 2002, he was appointed as an associate professor at the college department but shortly

<sup>33</sup> *Norkis Trading Co., Inc. and/or Albos, Jr. v. Gnilo*, 568 Phil. 256, 265 (2008).

<sup>34</sup> *Perez v. The Medical City General Hospital*, 519 Phil. 129, 133 (2006).

<sup>35</sup> Article XIII, Section 3 of the 1987 Constitution states that workers shall be entitled to security of tenure, humane conditions of work, and a living wage.

<sup>36</sup> Art. 3. *Declaration of basic policy*. The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

<sup>37</sup> *Philippine Japan Active Carbon Corporation v. NLRC*, 253 Phil. 149, 153 (1989).

<sup>38</sup> *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 121 (2012).

<sup>39</sup> *Westmont Pharmaceuticals, Inc. v. Samaniego*, 518 Phil. 41, 51 (2006).

<sup>40</sup> *Dimagan v. Dacworks United, Inc. and/or Cancino*, 677 Phil. 472, 481 (2011).

<sup>41</sup> *Verdadero v. Barneys Autolines Group of Companies Transport, Inc.*, 693 Phil. 646, 656 (2012).

<sup>42</sup> *Gemina, Jr. v. Bankwise, Inc. (Thrift Bank)*, G.R. No. 175365, October 23, 2013, 708 SCRA 403, 416.

<sup>43</sup> *Dimagan v. Dacworks United, Inc. and/or Cancino*, supra note 40.

thereafter, or on June 1, 2003, he was appointed as a college laboratory custodian, which is a clear relegation from his previous position. Not only that. He was also divested of his teaching load. His appointment even became contractual in nature and was subject to automatic termination after one year “without any further notification.”<sup>44</sup> Aside from this, Mina was the only one among the high school teachers transferred to the college department who was divested of teaching load. More importantly, DWCL failed to show any reason for Mina’s transfer and that it was not unreasonable, inconvenient, or prejudicial to him.<sup>45</sup>

Also, the CA correctly ruled that Mina’s appointment as laboratory custodian was a demotion. There is demotion when an employee occupying a highly technical position requiring the use of one’s mental faculty is transferred to another position, where the employee performed mere mechanical work – virtually a transfer from a position of dignity to a servile or menial job. The assessment whether Mina’s transfer amounted to a demotion must be done in relation to his previous position, that is, from an associate college professor, he was made a keeper and inventory-taker of laboratory materials. Clearly, Mina’s new duties as laboratory custodian were merely perfunctory and a far cry from his previous teaching job, which involved the use of his mental faculties. And while there was no proof adduced showing that his salaries and benefits were diminished, there was clearly a demotion in rank. As was stated in *Blue Dairy Corporation v. NLRC*,<sup>46</sup> “[i]t was virtually a transfer from a position of dignity to a servile or menial job.”<sup>47</sup>

Given the finding of constructive dismissal, Mina, therefore, is entitled to reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement.<sup>48</sup> The Court notes that aside from full compulsory retirement pay, the NLRC awarded full backwages and separation pay, in lieu of reinstatement.<sup>49</sup> The CA, however, computed the amount to be awarded as backwages from the time of Mina’s hiring on June 1, 1979 until the time of his death on June 18, 2005, apparently interchanging backwages and separation pay.<sup>50</sup> Aside from this, the CA omitted to include a separate award of separation pay.

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<sup>44</sup> *Rollo*, p. 148.

<sup>45</sup> *See Peckson v. Robinsons Supermarket Corporation*, G.R. No. 198534, July 3, 2013, 700 SCRA 668, 678-679, citing *Rural Bank of Cantilan, Inc. v. Julve*, 545 Phil. 619, 624-625 (2007).

<sup>46</sup> 373 Phil. 179 (1999).

<sup>47</sup> *Id.* at 188.

<sup>48</sup> *See Bani Rural Bank, Inc. v. De Guzman*, G.R. No. 170904, November 13, 2013, 709 SCRA 330.

<sup>49</sup> *Rollo*, p. 105.

<sup>50</sup> *Id.* at 45.

The Court has repeatedly stressed that the basis for the payment of backwages is different from that of the award of separation pay. “The basis for computing separation pay is usually the length of the employee’s past service, while that for backwages is the **actual period when the employee was unlawfully prevented from working.**”<sup>51</sup> Thus, the Court explained in *Bani Rural Bank, Inc. v. De Guzman*<sup>52</sup> that:

[U]nder Article 279 of the Labor Code and as held in a catena of cases, an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement *or* payment of separation pay in lieu thereof:

X X X X

The normal consequences of respondents’ illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed *from the time compensation was withheld up to the date of actual reinstatement.* Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.<sup>53</sup> (Emphasis and underscoring deleted, and italics ours)

Thus, the computation of Mina’s backwages should be from the time he was constructively dismissed on June 1, 2003.

Aside from the foregoing, the CA should have also awarded separation pay since reinstatement is no longer viable due to Mina’s death in 2005. As stated before, the award of separation pay is distinct from the award of backwages. The award of separation pay is also distinct from the grant of retirement benefits. These benefits are not mutually exclusive as “[r]etirement benefits are a form of reward for an employee’s loyalty and service to an employer and are earned under existing laws, [Collective Bargaining Agreements], employment contracts and company policies.”<sup>54</sup> Separation pay, on the other hand, is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment.<sup>55</sup> In the computation of separation pay, **the Court stresses that it should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible.**<sup>56</sup> The period for the

<sup>51</sup> *Wenphil Corp. v. Abing*, G.R. No. 207983, April 7, 2014, 721 SCRA 126, 141.

<sup>52</sup> G.R. No. 170904, November 13, 2013, 709 SCRA 330.

<sup>53</sup> *Id.* at 349-350, citing *Macasero v. Southern Industrial Gases Philippines and/or Lindsay*, 597 Phil. 494, 500-501 (2009).

<sup>54</sup> *Goodyear Philippines, Inc. and Remegio M. Ramos v. Marina L. Angus*, G.R. No. 185449, November 12, 2014.

<sup>55</sup> *Id.*

<sup>56</sup> *Bordomeo, et al. v. CA, et al.*, 704 Phil. 278, 300 (2013).

computation of separation pay Mina is entitled to shall therefore begin to run from June 1, 1979, when he was transferred to DWCL from ASJ, until his death on June 18, 2005, or for a period of 26 years.

The award of damages was also justified given the CA and NLRC's finding that DWCL acted in a manner wherein Mina was not treated with utmost good faith. The intention of the school to erase him out of employment is too apparent.<sup>57</sup> The Court upholds the CA's finding that when DWCL's act of unceremoniously demoting and giving Mina contractual employment for one year and citing him for numerous violations of school regulations when he rejected the school's offer to voluntarily retire is constitutive of bad faith.<sup>58</sup>

Lastly, the Court affirms the NLRC's findings that the eight years of service rendered by Mina in ASJ shall not be included in the computation of his retirement benefits. No adequate proof is shown that he has complied with the portability clause of the DWEA Retirement Plan. The employee has the burden of proof to show compliance with the requirements set forth in retirement plans, being in the nature of privileges granted to employees. Failure to overcome the burden of proof would necessarily result in the employee's disqualification to receive the benefits.

**WHEREFORE**, the Decision dated July 19, 2010 and Resolution dated January 13, 2011 of the Court of Appeals in CA-G.R. SP No. 107749 are **MODIFIED** in that, in addition to the award of attorney's fees, and moral and exemplary damages, petitioner Divine Word College of Laoag is **ORDERED** to pay Shirley B. Mina, as heir-substitute of the late Delfin Mina, the following:

- (1) backwages, to be computed from June 1, 2003 until June 18, 2005, or  $\text{₱}13,006.23 \times 24$  (months) =  $\text{₱}312,149.52$ ; and
- (2) separation pay, to be computed from June 1, 1979 until June 18, 2005, or  $\text{₱}13,006.23 \times 26$  (years) =  $\text{₱}338,161.98$ .

The monetary awards granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

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<sup>57</sup> *Rollo*, p. 44.

<sup>58</sup> *Id.* at 43.

**SO ORDERED.**



**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

(on official leave)  
**DIOSDADO M. PERALTA**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

**ATTESTATION**

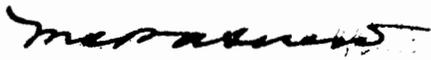
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

## 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

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