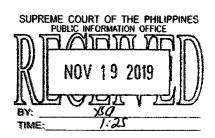
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MISAEL DOMINGO C. BATTUNG III Deputy Division Clerk of Court Third Division

NOV 1 3 2019

Republic of the Philippines Supreme Court Manila



THIRD DIVISION

CLARET SCHOOL OF QUEZON G. R. No. 226358 CITY,

Petitioner,

Present:

PERALTA, J., Chairperson,

LEONEN

-versus-

CAGUIOA.*

REYES, A., JR., HERNANDO, and

MADELYN I. SINDAY,

Promulgated:

Respondent.

October 9, 2019

MissocBatt

DECISION

LEONEN, J.:

Brent School, Inc. v. Zamora¹ recognized that the Civil Code and the Labor Code allow the execution of fixed-term employment contracts. However, in cases where periods are imposed to prevent an employee from acquiring security of tenure, such contracts must be disregarded for being contrary to public policy and morals. Brent's application is limited to cases where the employer and the employee are more or less on an equal footing when they enter into the contract.²

This Court resolves a Petition for Review on Certiorari³ assailing the Decision⁴ and Resolution⁵ of the Court of Appeals, which ruled that

¹ 260 Phil. 747 (1990) [Per J. Narvasa, En Banc].

^{*} Additional member per raffle dated September 18, 2019.

GMA Network, Inc. v. Pabriga, 722 Phil. 161 (2013) [Per J. Leonardo-De Castro, Third Division]. Rollo, pp. 3–47.

⁴ Id. at 49-61. The Decision dated March 30, 2016 in CA-G.R. SP No. 141183 was penned by Associate

respondent Madelyn I. Sinday (Sinday) was a regular employee and was illegally dismissed.

Claret School of Quezon City (Claret) is an educational institution located on Mahinhin Street, UP Village, Quezon City.⁶ Sinday is the wife of Wencil Sinday, one (1) of Claret's longtime drivers. Their children are scholars of Claret.⁷

On February 18, 2014, Sinday filed her Complaint for illegal dismissal against the school.⁸

Sinday narrated that in April 2010, Claret engaged her as a releasing clerk in its book sale, tasking her with the inventory and release of books to Claret's students.⁹

Afterwards, in July 2010, Sinday worked as a filing clerk at Claret's Human Resources Department, where she updated employees' files, delivered memoranda to different departments, and assisted in school programs. ¹⁰ In April 2011, she was posted back as a releasing clerk. She held this position until July 14, 2011. ¹¹

Before her job as releasing clerk expired, Sinday applied for work at one (1) of Claret's departments, Claret Technical-Vocational Training Center (Claretech), which taught vocational and technical skills to underprivileged students. On July 15, 2011, she started her new work as secretary, preparing materials, assisting in the delivery of correspondence to other departments, and encoding and filing documents, among other tasks.¹²

Sinday claimed that Fr. Renato B. Manubag (Fr. Manubag), the institution director of Claretech, signed a January 10, 2013 letter, approving the request of Head of Operations Timmy Bernaldez and Program Coordinator Rosario Butaran¹³ to classify her as a regular employee. ¹⁴ She was classified under the non-teaching or non-academic school employees. ¹⁵

Justice Socorro B. Inting, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla of the Second Division, Court of Appeals, Manila.

Id. at 63–64. The Resolution dated July 26, 2016 in CA-G.R. SP No. 141183 was penned by Associate Justice Socorro B. Inting, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla of the Second Division, Court of Appeals, Manila.

⁵ Id. at 5.

⁷ Id. at 7 and 9.

⁸ Id. at 89.

⁹ Id. at 84.

¹⁰ Id. at 84-85.

¹¹ Id. at 85.

¹² Id. at 85 and 189.

Id. at 405. Timmy was at times spelled Timme in the *rollo*.

¹⁴ Id. at 85.

¹⁵ Id. at 69.

On February 20, 2013, Claret paid Sinday ₱ 9,458.00 representing the salary differential from June 1, 2012 to February 1, 2013. 16

However, in May 2013, Claret asked Sinday to sign a Probationary Employment Contract covering the period of January 16, 2013 to July 15, 2013. When the contract expired, Sinday asked Leticia Perez, the Human Resources head of Claret, regarding her employment status, but she was told that her tenure would expire on July 31, 2013 because of the change in school administration. Sinday also spoke to her supervisor, Rosario Butaran, and the latter told her that her dismissal was due to cost-cutting, particularly the need to reduce the employees from three (3) to two (2).

Desperate for work, Sinday continued to work for Claret and was employed on August 1, 2013 as a substitute teacher aide at Claret's Child Study Center. When the permanent teacher aide returned on October 25, 2013, Sinday stopped working for Claret. 19

Sinday repeatedly pleaded to be reinstated at least as a checker at the school's water station, but Claret denied her requests.²⁰

Thus, Sinday filed her Complaint, claiming that she had been a regular employee as she performed various jobs that were usually necessary and desirable in the usual business of Claret.²¹

On the other hand, Claret denied Sinday's claims averring that she was merely a part-time fixed-term contractual employee whom the school accommodated because her husband was its longtime driver.²² It also argued that Sinday was well aware of her fixed-term employment as confirmed by her application letters and biodata, which showed her employment's duration.²³

Moreover, Claret claimed that Sinday's position at Claretech was not a plantilla position because the department was only at its experimental stage, merely relying on donations and the school's marketing research fund. When Claretech began incurring deficits, the clerical functions were

¹⁶ Id. at 85.

¹⁷ Id. at 90.

¹⁸ Id.

¹⁹ Id. at 89.

²⁰ Id. at 69.

²¹ Id

²² Id. at 89.

²³ Id. at 70.

allegedly absorbed by the administrator's functions, dissolving Sinday's position.²⁴

Claret also pointed out that Sinday did not regularly work for eight (8) hours a day, five (5) days a week, her services being required only as needed. It further maintained that while Fr. Manubag indeed decided to classify her as regular employee, the decision was nonetheless revoked later due to Claretech's financial difficulties.²⁵

Claret also claimed that Sinday reportedly stole the school's relief goods intended for typhoon victims. The school supposedly let the incident slide, citing the security agency's failure to immediately investigate the incident and the impending expiration of Sinday's employment.²⁶

In a September 11, 2014 Decision,²⁷ the Labor Arbiter found that Sinday was illegally dismissed:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant Madelyn I. Sinday to have been illegally dismissed.

Accordingly, respondent Claret School of Quezon City is directed to reinstate complainant to her former position or a substantially equivalent designation and to pay complainant backwages which is provisionally computed in the sum of One Hundred Sixteen Thousand Two Hundred Sixty-Eight Pesos and 8/100 (P116,268.08) as well as attorney's fees equivalent to 10% of the total judgment award.

The reinstatement aspect is immediately executory and respondent school is directed to submit a report of compliance within ten (10) calendar days from receipt of the decision.

SO ORDERED. ²⁸ (Emphasis in the original)

The Labor Arbiter ruled that the repeated hiring of Sinday for around three (3) years conferred her with regular employment status.²⁹ Citing *Brent*, the Labor Arbiter explained that for a fixed-term employment to be valid, it must have been: (1) "knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent";³⁰ or (2) "[i]t satisfactorily appears that the employer and the

²⁴ Id.

²⁵ Id. at 70.

²⁶ Id. at 88.

Id. at 84–96. The Decision was penned by Labor Arbiter Joanne G. Hernandez-Lazo.

²⁸ Id. at 95–96.

²⁹ Id. at 91.

³⁰ Id. at 86.

employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter."31

The Labor Arbiter found that the conditions for a valid fixed-term employment were absent because Sinday did "not appear to have knowingly and voluntarily agreed to the arrangement." She found that Sinday badly needed a job, leaving her no choice but to apply from one (1) position to the other. This showed that Sinday and Claret were not on an equal footing in dealing with the terms of her employment.³³

Moreover, the Labor Arbiter held that Claret failed to prove that Sinday consented to the fixed-term employment. She found that Claret only presented a Memorandum of Agreement for Sinday's work as a substitute teacher aide, and by then, Sinday was already a regular employee, having been employed for more than two (2) years. Hence, the agreement could no longer alter Sinday's status as a regular employee.³⁴

Lastly, the Labor Arbiter found that Sinday's alleged infraction—the taking of relief goods—was a mere afterthought, considering that Claret had failed to act on it before.³⁵

Upon appeal, the National Labor Relations Commission, in its January 14, 2015 Decision,³⁶ reversed the Labor Arbiter's Decision and found that Sinday was not illegally dismissed:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The appealed Decision dated September 11, 2014 is REVERSED. The complaint is DISMISSED for lack of merit.

SO ORDERED.³⁷ (Emphasis in the original)

The National Labor Relations Commission ruled that it was clear to Sinday that her employment with Claret was merely part-time contractual, not regular, as shown in her biodata.³⁸

Additionally, the National Labor Relations Commission found that the lack of a document showing Sinday's contractual employment did not in

³¹ Id. at 91.

³² Id. at 92.

³³ Id. at 92–93.

³⁴ Id. at 92.

³⁵ Id. at 94.

Id. at 67–76. The Decision was penned by Presiding Commissioner Gerardo C. Nograles, and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go of the First Division of the National Labor Relations Commission, Quezon City.

³⁷ Id. at 75.

³⁸ Id. at 73.

itself grant Sinday regular employee status, since there are other contrary evidence such as Sinday's application letters and biodata.³⁹

For the National Labor Relations Commission, the fixed-term employment did not appear to be intended to circumvent security of tenure. Sinday was not pressured to accept the various positions, which were clearly needed only for certain periods. There was also no showing that Sinday was coerced or forced into applying for these positions; hence, if she disagreed with this arrangement, she should not have repeatedly applied with Claret.⁴⁰

Furthermore, the National Labor Relations Commission found that Claret did not exercise moral dominance over Sinday since both of them benefitted from the fixed-term employment.⁴¹ It likewise found that Sinday did not dispute that she was not required to regularly report to work, which was favorable to her because she could attend to the needs of her children, who were scholars at Claret.⁴²

Sinday moved for reconsideration, but in its May 4, 2015 Resolution,⁴³ the National Labor Relations Commission denied her Motion. Aggrieved, Sinday filed a Petition for Certiorari before the Court of Appeals.⁴⁴

In a March 30, 2016 Decision,⁴⁵ the Court of Appeals reversed the Decision of the National Labor Relations Commission and found that Sinday was illegally dismissed:

WHEREFORE, premises considered, the petition is GRANTED. The National Labor Relations Commission's Decision dated 14 January 2015 and its Resolution dated 04 May 2015 are REVERSED AND SET ASIDE. The Labor Arbiter's decision dated 11 September 2014 is hereby AFFIRMED WITH MODIFICATION. This Court finds petitioner as (sic) illegally dismissed and hereby orders respondent school to pay petitioner the following:

- 1) Backwages;
- 2) Separation pay in lieu of reinstatement in the amount of one month pay for every year of service;
- 3) Emergency Cost of Living Allowance (ECOLA);
- 4) 13th month pay;

³⁹ Id.

⁴⁰ Id. at 74.

⁴¹ Id.

⁴² Id. at 75.

Id. at 78–79. The Resolution was penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioner Romeo L. Go of the First Division, National Labor Relations Commission, Quezon City.

⁴⁴ Id. at 54.

⁴⁵ Id. at 49-61.

- 5) Legal interest of 12% *per annum* on the total monetary awards computed from date of illegal dismissal until finality of judgment and 6% *per annum* from finality of judgment until their full satisfaction; and
- 6) Costs of the suit.

SO ORDERED. 46 (Emphasis in the original)

The Court of Appeals, citing *Brent*, explained that for a fixed-term employment to be valid, there must be a "day certain agreed upon by the parties for the commencement and termination of [the] employment." Here, since there was no "day certain" agreed upon, the Court of Appeals said that Sinday's employment cannot be deemed to be for a fixed period. ⁴⁸

Moreover, the Court of Appeals found that neither of the two (2) criteria laid down in *Brent* was present in this case. It held that Claret failed to prove that it dealt with Sinday in more or less equal terms, with no moral dominance on its part.⁴⁹

For the Court of Appeals, the absence of the written contract defeated Claret's claim because it raised doubts as to whether Sinday was properly informed of the terms of her employment, such as its duration and scope, as well as her employment status.⁵⁰ Further, it found no evidence that Sinday signed an employment contract explicitly stating that she was hired as a fixed-term employee and that she was duly informed of the nature of her employment.⁵¹ Hence, Sinday was presumed to be a regular employee under Article 295 of the Labor Code absent any showing that she knowingly and voluntarily agreed to her employment status.⁵²

Claret moved for reconsideration, but its Motion was denied by the Court of Appeals in its July 26, 2016 Resolution.⁵³

On September 2, 2016, Claret filed before this Court a Petition for Review on Certiorari.⁵⁴

On November 9, 2016, this Court required respondent to comment on the Petition.⁵⁵ On December 19, 2016, respondent filed her Comment.⁵⁶

⁴⁶ Id. at 60–61.

⁴⁷ Id. at 56.

⁴⁸ Id. at 57.

⁴⁹ Id.

⁵⁰ Id. at 57–58.

⁵¹ Id. at 58.

⁵² Id.

⁵³ Id. at 63–64.

⁵⁴ Id. at 3–47.

⁵⁵ Id. at 545.

⁵⁶ Id. at 546–554.

In 1990, *Brent* recognized another classification of employment: fixed-term employment. There, this Court ruled that fixed-term employments are valid under both the Civil Code and the Labor Code:

On the one hand, there is the gradual and progressive elimination of references to term or fixed-period employment in the Labor Code, . . .

There is, on the other hand, the Civil Code, which has always recognized, and continues to recognize, the validity and propriety of contracts and obligations with a fixed or definite period, and imposes no restraints on the freedom of the parties to fix the duration of a contract, whatever its object, be it specie, goods or services, except the general admonition against stipulations contrary to law, morals, good customs, public order or public policy. Under the Civil Code, therefore, and as a general proposition, fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by nature seasonal or for specific projects with pre-determined dates of completion; they also include those to which the parties by free choice have assigned a specific date of termination.

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 [now Article 295] of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure. the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out; agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences. 88 (Citations omitted)

Brent recognized that the Civil Code and the Labor Code allow the execution of fixed-term employment contracts. But when periods have been imposed to prevent an employee from acquiring his or her security of tenure, the contract effectively runs counter to public policy and morals, and must, therefore, be disregarded.

^{88 260} Phil. 747, 760-763 (1990) [Per I. Marvasa, En Banc]

In drawing the line, *Brent* laid down the criteria under which a fixed-term employment cannot be deemed in circumvention of the security of tenure:

- (1) When the parties have knowingly and voluntarily agreed upon a fixed period of employment "without any force, duress[,] or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent";⁸⁹ or
- (2) When "it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms" with the employer not having exercised any moral dominance over the employee. 91

GMA Network, Inc. v. Pabriga⁹² further explained the rationale behind this safeguard:

The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee. . . .

To recall, it is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid. It is therefore the employer which must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee. ⁹³ (Citation omitted)

In Paguio v. National Labor Relations Commission:94

A stipulation in an agreement can be ignored as and when it is utilized to deprive the employee of his security of tenure. The sheer inequality that characterizes employer-employee relations, where the scales generally tip against the employee, often scarcely provides him real and better options. ⁹⁵ (Citation omitted)

Thus, the existence of a contract indicating a fixed term does not preclude regular employment.

⁸⁹ Id. at 763.

⁹⁰ Id.

⁹¹ Id

⁹² 722 Phil. 161 (2013) [Per J. Leonardo-De Castro, First Division].

⁹³ Id. at 178–179.

⁹⁴ 451 Phil. 243 (2003) [Per J. Vitug, First Division].

⁹⁵ Id. at 253.

To reiterate, fixed-term employment is not illegal per se or against public policy. Nevertheless, before this Court recognizes its validity, the criteria in *Brent* must first be sufficiently established. Aware that this form of employment was repeatedly used to circumvent security of tenure, this Court has been consistently circumspect in resolving issues on fixed-term employment. The validity of a fixed-term employment is an exception, not the general rule. Here, petitioner failed to show that either of the two (2) criteria is present and, quite the contrary, the case records reveal that petitioner and respondent did not deal with each other in more or less equal terms. Thus, this Court holds that respondent is a regular employee who is entitled to security of tenure.

III

Petitioner further argues that even if respondent is deemed a regular employee, she was validly dismissed for just cause because she was found stealing relief goods from the school premises.

A review of the records shows that this allegation was never substantiated by petitioner. Petitioner itself admits that it failed to act on the alleged infraction, and no investigations were ever conducted regarding the security agency's report.

Even if this Court gives credence to petitioner's allegations, respondent's dismissal is still illegal for petitioner's failure to comply with due process requirements.

In King of Kings Transport, Inc. v. Mamac, 114 this Court clarified the standard of due process in terminating employees. There, it was explained that to validly terminate an employee, an employer is required to comply with the two-notice rule. First, an initial notice must be given to the employee, stating the specific grounds or causes for the dismissal. It must direct the submission of a written explanation answering the charges. Second, after considering the employee's answer, an employer must give another notice providing the findings and reason for termination. 115

The employer has the burden of proof to show that an employee's dismissal was for a just or authorized cause, and that the dismissal was not illegal. Unfortunately for petitioner, it failed to discharge this burden.

E. Ganzon, Inc. v. Ando, Jr., 806 Phil. 58 (2017) [Per J. Peralta, Second Division].

¹¹⁴ 553 Phil. 108 (2007) [Per J. Velasco, Jr., Second Division].

¹¹⁵ Id.

Stanley Fine Furniture v. Gallano, 748 Phil. 624 (2014) [Per J. Leonen, Second Division].

No notice was served on respondent informing her of the grounds of her termination. She was not given the opportunity to be heard. Without complying with procedural due process requirements, petitioner could not have validly terminated respondent's services.

Theft is a serious accusation which must be sufficiently supported by evidence. Here, petitioner failed to act on the allegation by conducting an investigation and immediately acting on the report. Without any proof, this Court cannot give credence to petitioner's claims.

Since the termination of respondent's employment was rendered without regard to due process, this Court finds respondent to have been illegally dismissed.

The award of reinstatement, including backwages, is given to an illegally dismissed employee under Article 294 of the Labor Code:

ARTICLE 294. [279] Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis supplied)

If actual reinstatement is no longer possible, the employee becomes entitled to separation pay in lieu of reinstatement.¹¹⁷

The doctrine of strained relations provides that the payment of separation pay is an alternative when reinstatement is no longer viable for the parties. Strained relations must be demonstrated as a fact supported by evidence. It must be shown that the "relationship between the employer and the employee is indeed strained" as a consequence of the controversy.

Here, the Court of Appeals failed to state why reinstatement has been rendered impossible. On the other hand, the Labor Arbiter found that respondent's reinstatement may be ordered. Thus, this Court deletes the award of separation pay and instead orders that respondent be reinstated to her former position.

Golden Ace Builders v. Talde, 634 Phil. 364, 371 (2010) [Per J. Carpio Morales, First Division].

¹¹⁹ Id.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The March 30, 2016 Decision and July 26, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 141183 are **AFFIRMED WITH MODIFICATIONS**.

Petitioner Claret School of Quezon City is ordered to reinstate respondent Madelyn I. Sinday to her former position or a substantially equivalent designation, and to pay her the following: (1) backwages; (2) Emergency Cost of Living Allowance; (3) 13th month pay; (4) legal interest of six percent (6%) per annum on the total monetary awards computed from the finality of this Decision until fully satisfied; and (5) costs of suit.

SO ORDERED.

Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA

Assodiate Justice Chairperson

LFREDOBENJAMIN S. CAGUIOA

ssociate Justice

ANDRES BAREYES, JR.

Associate Justice

RAMON PAUL L. HERNANDO

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.

DIOSDADO M. PERALTA

Associate Justice Chairperson

Chief Justice

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.

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MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division
NOV 1 3 2019