



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 26, 2021** which reads as follows:*

“G.R. No. 193924 (Jerome D. Rodriguez, Petitioner v. Cagayan De Oro College/PHINMA and/or Meliton B. Salazar, Ph.D., Respondents). – This petition for review on *certiorari* assails the Resolution¹ dated 17 November 2009 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 03183-MIN dismissing outright the petition for *certiorari* filed by Jerome D. Rodriguez (Rodriguez) against the National Labor Relations Commission (NLRC). The NLRC in the Resolution² dated 29 May 2009 reversed the Decision³ dated 30 September 2008 of the Labor Arbiter (LA), which declared that Cagayan De Oro College (CDOC) had illegally dismissed Rodriguez.

Antecedents

Rodriguez was hired by CDOC on 18 June 2005 as part-time professor in its Graduate School. She became a regular professor on 01 December 2005, with an administrative rank of Senior Manager (DM4), a managerial level position. She was also appointed as Director of the Center for Institutional Research and Concurrent Coordinator of the Graduate Program. She held these positions until she was dismissed on 30 March 2007.⁴

As averred by Rodriguez, on 02 March 2007, she was preventively suspended for a month because of charges of

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¹ *Rollo*, pp. 146-148; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybanez of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

² *Id.* at 91-103.

³ *Id.* at 82-89.

⁴ *Id.* at 92.

misdemeanor and acts inimical to the interest of the school filed by students Laurence Bazan (Bazan) and Henry D. Cay-as (Cay-as), and faculty member Gerry J. Caño (Caño). As a result thereof, she was barred from entering the school premises during the suspension period.⁵

On 14 March 2007, Rodriguez received an invitation for a hearing to be held the following day. However, she failed to attend the same due to her confinement in the hospital for heart ailments. Instead, she was represented by her counsels.⁶

In a letter dated 16 March 2007 addressed to Rodriguez, CDOC specified the offenses she committed which are allegedly grave offenses under the COC Academic Personnel Manual, as follows:

“Acting as Thesis writer and data interpreter not merely as a thesis adviser and mentor for a fee; xxx

2.3.4.8. Breach of Trust and Loss of Confidence;

2.3.4.8.1 Fraud and willful breach of an employee of the trust reposed on her by the school administration or its authorized representative;

2.3.4.8.2 Participation direct or indirect in activities which harm or discredit the name of COC”⁷

Eventually, Rodriguez was terminated from employment on 30 March 2007.⁸ Unable to accept the verdict, Rodriguez filed a case for illegal dismissal on 02 October 2007,⁹ praying for reinstatement or separation pay and the award of full back wages, moral damages, exemplary damages, and attorney's fees before the LA.¹⁰

Rodriguez claimed there was no valid ground to terminate her. Aside from being sweeping, the complaint is groundless since charging a fee for assuming the role of a thesis adviser/mentor is not a violation of school policy.¹¹ Further, the affidavits did not allege that Rodriguez wrote a thesis for Cay-as and Bazan, the same merely alleged that they paid a fee to engage Rodriguez as a thesis adviser/mentor.¹² Only Caño's affidavit definitively charged her with said infraction, and such knowledge is hearsay.¹³

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⁵ *Id.* at 82-83.

⁶ *Id.* at 83.

⁷ *Id.*

⁸ *Id.* at 83-84.

⁹ *Id.* at 27-32.

¹⁰ *Id.* at 31.

¹¹ *Id.* at 29.

¹² *Id.*

¹³ *Id.* at 224.

In its Position Paper, CDOC narrated that in February 2007, Caño, a member of the faculty of the College of Commerce, reported to the school president about receiving information from Cay-as, then a Master of Science in Criminology student, that the latter had paid Rodriguez "more than five thousand pesos but less than ten thousand pesos" for the completion of his thesis.¹⁴ CDOC informed Rodriguez of the complaint.

During the initial investigation, Cay-as confirmed that he had paid Rodriguez a "considerable amount of money."¹⁵ It was further discovered that Rodriguez had also asked Php13,000.00 from Bazan, for the preparation of his thesis. Moreover, during the initial administrative hearing conducted on 13 March 2007, it was uncovered that Rodriguez solicited from Dean Marinela Bordo (Dean Bordo) of the Iligan Capitol College and Dean Rolly Sotto (Dean Sotto) of Iligan Medical Center a substantial amount of money for the preparation of their thesis and/or interpretation of the data to be used in their thesis.¹⁶

Considering the result of the initial investigation, CDOC decided to conduct a full-blown investigation, and created an Investigating Committee for that purpose.¹⁷ Pending investigation, however, and considering the gravity and seriousness of the offense allegedly committed, CDOC preventively suspended Rodriguez for one (1) month effective 02 March 2007.¹⁸

The Investigating Committee formally charged Rodriguez with violating provisions 2.3.4.8, 2.3.4.8.1 and 2.3.4.8.2 of the COC Academic Personnel Manual for her participation in the preparation of the thesis and/or interpretation of the data for a fee on 16 March 2007. It again required Rodriguez to submit her written explanation on the charges. She was also invited to attend the administrative hearing set on 19 March 2007,¹⁹ but she failed to attend. She, however, submitted her written explanation on the charges against her through her counsel.²⁰

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¹⁴ *Id.* at 34.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 35.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

Another administrative hearing was set on 22 March 2007, specifically to tackle the issues Rodriguez raised in her Counter-Affidavit. Prior to that date, the Investigating Committee extended Rodriguez an invitation to attend.²¹ However, like in the previous instances, Rodriguez did not appear at the hearing.²²

Thereafter, the members of the Investigating Committee deliberated on the case. After a careful review of the records, they categorically ruled that Rodriguez was guilty as charged. In its report to the president, the Investigating Committee underscored that Rodriguez's violation was classified as a "Grave Offense" under the Academic Personnel Manual, which is punishable by dismissal with forfeiture of all benefits.²³

Acting on the findings of the Investigating Committee, CDOC terminated the services of Rodriguez per letter dated 30 March 2007.²⁴ Subsequently, CDOC also learned that Rodriguez, while still a professor of Liceo de Cagayan University, was also involved in similar infractions which caused her dismissal from that institution.²⁵

Ruling of the Labor Arbiter

On 30 September 2008, the LA issued a decision finding that CDOC illegally dismissed Rodriguez, *viz*:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered:

1. Declaring respondent guilty of illegally dismissing complainant from his employment;
2. Ordering respondent to pay complainant in the total amount of Php562,564.25 representing full backwages, separation pay, and attorney's fees.
3. All other claims are dismissed for lack of merit.

SO ORDERED.²⁶

The LA ruled that the infraction charged against Rodriguez was not established by the evidence on record. As such, CDOC failed to prove that Rodriguez' termination was for a just cause.

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²¹ *Id.*

²² *Id.* at 36.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 89; penned by Executive Labor Arbiter Noel Augusto S. Magbanua.

Aggrieved, CDOC appealed to the NLRC.

Ruling of the NLRC

In a Resolution dated 29 May 2009, the NLRC reversed the findings of the LA, to wit:

WHEREFORE, premises considered, the instant appeal is **GRANTED**. Accordingly, the assailed Decision dated 30 September 2008 is hereby **REVERSED and SET ASIDE**, and a new one is entered, declaring the dismissal of complainant from her employment as valid due to the existence of just cause and compliance with the procedural due process, and ordering respondent CAGAYAN DE ORO COLLEGE - PHINMA EDUCATION NETWORK to pay complainant her salary for one (1) month corresponding to the period that she was placed under illegal preventive suspension.

SO ORDERED.²⁷

The NLRC ruled that the Notices of Charges, the Affidavits of Cay-as, Bazan, and Caño, the admissions made by Rodriguez in her Counter-Affidavit, the minutes of the investigation conducted, the Investigation Report, and the Notice of Termination constitute substantial evidence to support the finding and conclusion that Rodriguez' dismissal was just and legal.²⁸ As Director of the Center for Institutional Research and Concurrent Coordinator of the Graduate Program, CDOC placed upon Rodriguez greater trust and confidence, and from whom greater fidelity to duty and exacting standards of her lofty position is correspondingly expected.²⁹

Further, the NLRC held that there was substantial compliance with the posting of the appeal bond. This, coupled with the clearly meritorious appeal of CDOC, warranted extending some leniency over the procedural technicality in CDOC's posting of its bank's deposit in lieu of the appeal bond so as to avoid miscarriage of justice.³⁰ Nevertheless, it found the 30-day preventive suspension illegal since no formal complaint had yet been filed against Rodriguez when the same was imposed.³¹

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²⁷ *Id.* at 103; penned by Presiding Commissioner Salic B. Dumarpa, and concurred in by Commissioners Proculo T. Sarmen and Dominador B. Medorso, Jr.

²⁸ *Id.* at 98.

²⁹ *Id.*

³⁰ *Id.* at 96.

³¹ *Id.* at 102.

The NLRC denied Rodriguez' 12 June 2009 Motion for Reconsideration³² in its Resolution³³ dated 30 June 2009. Subsequently, Rodriguez filed a petition for *certiorari* dated 29 September 2009 before the CA.

Ruling of the CA

On 17 November 2009,³⁴ the CA dismissed outright Rodriguez' petition for failure to: (1) attach a written explanation as to why the filing of the petition was served upon respondents through registered mail instead of the preferred mode of personal service in violation of Section 11, Rule 13 of the Revised Rules of Court, and (2) append a copy of the Complaint filed before the Labor Arbiter which is a material portion of the record referred to in the petition in violation of Section 3, paragraph 3, Rule 46 in relation to Section 1, Rule 65 of the Revised Rules of Court (Rules), thus:

WHEREFORE, all the foregoing considered, the instant petition is hereby **DISMISSED**.

SO ORDERED.³⁵

Rodriguez moved for reconsideration,³⁶ but the same was denied in the assailed Resolution³⁷ dated 24 August 2010.

Issues

Aggrieved by the CA's decision and resolution, Rodriguez now raises the following issues for the Court's resolution:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION BY RELYING TOO MUCH ON FORM OR ON THE GROUND OF TECHNICALITIES RATHER THAN ON THE MERIT OF THE PETITION THEREBY DENYING THE RIGHT OF DUE PROCESS.

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³² *Id.* at 104-112.

³³ *Id.* at 114.

³⁴ *Id.* at 146-148.

³⁵ *Id.* at 148.

³⁶ *Id.* at 149-151.

³⁷ *Id.* at 153-154; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Loencia R. Dimagiba and Ramon Paul L. Hernando (now a Member of this Court) of the Special Former Twenty-First Division, Court of Appeals, Cagyan de Oro City.

II.

THE PUBLIC RESPONDENT, NLRC GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE DECISION OF THE HONORABLE EXECUTIVE LABOR ARBITER DESPITE OF LACK OF EVIDENCE.

III.

THE PUBLIC RESPONDENT, NLRC GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT FINDING PRIVATE RESPONDENT[S] FAILURE TO SUBSTANTIALLY COMPLY WITH THE TWIN REQUIREMENTS OF DUE PROCESS THEREBY VIOLATING THE CONSTITUTIONAL RIGHTS OF THE PETITIONER.

IV.

THE PUBLIC RESPONDENT, NLRC GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ENTERTAINING THE APPEAL OF THE PRIVATE RESPONDENT DESPITE FAILURE IN THE FILING OF THE REQUIRED BOND AND NO SPECIFIC ASSIGNMENT OF ERROR IN THE RESOLUTION OF THE LABOR ARBITER.³⁸

Essentially, the issues are: (1) whether the CA erred in dismissing Rodriguez' Rule 65 petition outright; and (2) whether CDOC's appeal before the NLRC was perfected despite its failure to post a bond.

Ruling of the Court

The petition is meritorious.

There was substantial compliance with the formal requirements of a petition for certiorari

As found by the CA, Rodriguez failed to attach the following: (1) a written explanation as to why the filing of the petition was served upon respondents through registered mail, and (2) a copy of the Complaint filed before the Labor Arbiter.³⁹

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³⁸ *Id.* at 10-11.

³⁹ *Id.* at 146-148.

Indeed, the last paragraph of Section 3, Rule 46 of the Rules of Court states that non-compliance with any of the requirements stated therein shall constitute sufficient ground for the dismissal of the petition. However, the Court has also consistently declared that said provision must not be taken to mean that the petition shall be automatically dismissed in every instance of non-compliance. The power conferred upon the CA to dismiss an appeal, or even an original action, as in this case, is discretionary and not merely ministerial. With that affirmation comes the caution that such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.⁴⁰

In the exercise of its equity jurisdiction, We may disregard procedural lapses so that a case may be resolved on its merits. Rules of procedure should promote, not defeat, substantial justice. Hence, the Court may opt to apply the Rules liberally to resolve substantial issues raised by the parties.⁴¹ With this in mind, this Court finds that there was substantial compliance with the procedural requirements and that the CA should have given the petition due course.

As regards the written explanation for service by registered mail, Rodriguez substantively explained the resort to the same in the Affidavit of Service and Explanation/Proof of Service attached to the Petition for *certiorari*.⁴² Anent the failure of Rodriguez to attach a copy of the complaint filed before the LA, the same may be excused. This Court has ruled that even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also be found in another document already attached to the petition.⁴³

Here, Rodriguez failed to append a copy of the Complaint filed before the LA. However, the Position Papers of the parties were attached, the contents of which include the allegations in the Complaint.

Given the foregoing, the CA should not have been too rigid in applying the Rules to dismiss the petition based on mere technicalities. Relaxation of procedural rules is proper in the instant case especially considering the merits of the petition.

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⁴⁰ *Tuatis v. Spouses Escol*, G.R. No. 175399, 27 October 2009, 619 Phil. 465 (2009) [Per J. Chico-Nazario], citing *Philippine Merchant Marine School, Inc. v. Court of Appeals*, G.R. No. 137771, 06 June 2002, 432 Phil. 742 (2002) [Per J. Quisumbing].

⁴¹ *Durban Apartments Corp. v. Catacutan*, G.R. No. 167136, 14 December 2005, 514 Phil. 187 (2005) [Per J. Ynares-Santiago].

⁴² *Rollo*, pp. 143-144; see *Spouses Lanaria v. Planta*, G.R. No. 172891, 22 November 2007, 563 Phil. 400 (2007) [Per J. Chico-Nazario].

⁴³ *Id.*

*There was no compliance with
the appeal bond requirement*

At the outset, it must be underlined that Article 223 of the Labor Code, now Article 229, states that an appeal by the employer to the NLRC from a judgment of a Labor Arbiter, which involves a monetary award, may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC, in an amount equivalent to the monetary award in the judgment appealed from.⁴⁴

The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decisions of the Labor Arbiter. In fact, the filing of the bond is not only mandatory, but a jurisdictional requirement as well, that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance therewith renders the decision of the Labor Arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.⁴⁵

In *Mindanao Times Corporation v. Confesor*, the employer, instead of posting a cash or surety bond, submitted to the NLRC a Deed of Assignment and a passbook. The Court was emphatic in its ruling that the employer's appeal was not perfected, rendering the LA's decision final and executory.⁴⁶

Prescinding from the above, CDOC's submission before the NLRC of its China Bank passbook with a Bank Certification, in lieu of posting a cash or surety bond, cannot be considered substantial compliance of the appeal bond requirement. The filing of the same is a jurisdictional requirement and the rules thereon mandate no less than a strict construction. For failure to properly post a bond, CDOC's appeal was not perfected.⁴⁷ The decision of the Labor Arbiter sought to be appealed before the NLRC, then, had already become final and

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⁴⁴ *Olores v. Manila Doctors College*, G.R. No. 201663, 31 March 2014 [Per J. (now CJ) Peralta].

⁴⁵ *Id.*

⁴⁶ *Quirante v. Oroport Cargo Handling Services, Inc.*, G.R. No. 209689, 02 December 2015 [Per J. Reyes] citing *Mindanao Times Corporation v. Confesor*, G.R. No. 183417, 05 February 2010, 625 Phil. 589 (2010) [Per J. Carpio Morales].

⁴⁷ *Id.*

executory. Consequently, the NLRC had no authority to entertain the appeal, much less to reverse the LA's decision.⁴⁸

While the bond requirement on appeals involving monetary awards has been relaxed in certain cases, this can only be done where there was substantial compliance of the NLRC Rules of Procedure or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond or where the failure to comply with the requirements for perfection of appeal was justified.⁴⁹

In the instant case, CDOC has not by any overt act shown substantial compliance or exhibited intent to comply therewith in view of its absolute failure to post a bond during the pendency of the appeal. There is likewise no satisfactory showing of the existence of meritorious grounds, allowed by law and jurisprudence to justify a departure from the effect of non-compliance. Therefore, guided by the above doctrines, the Court is left with no alternative but to state that the failure of CDOC to post the requisite appeal bond resulted in the non-perfection of its appeal, and consequently, the finality of the Labor Arbiter's decision.⁵⁰

To underscore, absent exceptional circumstances, this Court adheres to the rule that certain procedural precepts must remain inviolable. After all, the right to appeal is not a natural right or a part of due process, but merely a statutory privilege that may be exercised only in the manner and in accordance with the provisions of the applicable law.⁵¹ Hence, the perfection of an appeal in the manner and within the period prescribed by law is, not only mandatory, but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable.⁵²

At this juncture, it must be emphasized that the decision of the NLRC has already become final and executory due to CDOC's failure to perfect the appeal. It is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be

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⁴⁸ *Roos Industrial Construction, Inc. v. National Labor Relations Commission*, G.R. No. 172409, 04 February 2008, 567 Phil. 631 (2008) [Per J. Tinga].

⁴⁹ *Philux, Inc. v. National Labor Relations Commission*, G.R. No. 151854, 03 September 2008, 586 Phil. 19 (2008) [Per J. Leonardo-De Castro].

⁵⁰ *Forever Security & General Services v. Flores*, G.R. No. 147961, 07 September 2007, 559 Phil. 228 (2007) [Per J. Azcuna].

⁵¹ *Boardwalk Business Ventures, Inc. v. Villareal*, G.R. No. 181182, 10 April 2013, 708 Phil. 443 (2013) [Per J. Del Castillo].

⁵² *U-Bix Corp. v. Hollero*, G.R. No. 199660, 13 July 2015, 763 Phil. 668 (2015) [Per J. Del Castillo].

modified, directly or indirectly, even by the highest court of the land.⁵³ While this principle of immutability of judgments admits several exceptions, such as (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, none of these were shown to exist in the instant petition.⁵⁴

With the failure of CDOC to perfect its appeal before the NLRC in the manner required under the applicable rules, the Court can no longer disturb the findings of the Labor Arbiter. For “[w]hile the Court has relaxed the application of this requirement in cases where the failure to comply with the requirement was justified or where there was substantial compliance with the rules, the overpowering legislative intent of Article 223 remains to be for a strict application of the appeal bond requirement as a requisite for the perfection of an appeal and as a burden imposed on the employer.”⁵⁵

Legal interest is imposed

Finally, the monetary award due to Rodriguez shall earn legal interest at the rate of six percent (6%) *per annum*, to be computed from finality of this Resolution until full payment.⁵⁶

WHEREFORE, the petition is hereby **GRANTED**. The Resolution dated 17 November 2009 issued by the Court of Appeals in CA-G.R. SP No. 03183-MIN and the Resolution dated 29 May 2009 of the National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated 30 September 2008 of the Labor Arbiter is **REINSTATED**. Legal interest at the rate of six percent (6%) *per annum* is imposed on the total monetary award, to be computed from the finality of this Resolution until fully satisfied.

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⁵³ *Peralta v. De Leon*, G.R. No. 187978, 24 November 2010. 650 Phil. 592 (2010) [Per J. Perez].

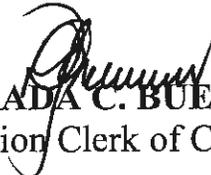
⁵⁴ *Republic of the Philippines v. Gotengco*, G.R. No. 226355, 24 January 2018 [Per J. Gesmundo]

⁵⁵ *Supra* at note 48.

⁵⁶ *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 716 Phil. 267 (2013) [Per J. (now CJ) Peralta].

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *4/1/20*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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(NLRC No. MAC 12-010591-2008)
[RAB 10-10-00762-2007)

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