SUPREME COURT
SECOND DIVISION

ESPERANZA C. ESCORPIZO, and UNIVERSITY OF BAGUIO FACULTY EDUCATION WORKERS UNION,
***Petitioners*,**

-versus-

G.R. No. 121962
April 30, 1999

UNIVERSITY OF BAGUIO and VIRGILIO C. BAUTISTA and NATIONAL LABOR RELATIONS COMMISSION,
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

This Special Civil Action for *Certiorari* seeks to annul the Resolution[1] of NLRC promulgated on May 31, 1995 in NLRC Case No. RAB-CAR-07-0217-92 which dismissed petitioners' appeal and affirmed the decision of the Labor Arbiter.

Petitioner Esperanza Escorpizo was initially hired by respondent university on June 13, 1989 as a high school classroom teacher. Under the rules of the respondent university, appointment to teach during

the first two years at the university is probationary in nature. During the probation period, the teacher is observed and evaluated to determine his competency. Attainment of a permanent status by a faculty member is conditioned upon compliance with certain requirements, such as passing the professional board examination for teachers (PBET).

On March 18, 1991, respondent university informed Escorpizo that her employment was being terminated at the end of the school semester in view of her failure to pass the PBET. But before the start of the school year 1991-1992, Escorpizo reapplied and pleaded that she be given another chance. She told the respondent school that she had just taken the PBET and hoped to pass it.

As Escorpizo's appeal was favorably considered, she was allowed to teach during the school year 1991-1999. However, her continued employment was conditioned on her passing the PBET. Unfortunately, Escorpizo failed again. Undaunted, Escorpizo took the examination a third time in November 1991. At the end of the school year 1991-1992, respondent university evaluated the teachers performance to determine who would be in the list for the next school year. Escorpizo, not having passed the PBET yet, was not included.

Much later, on June 8, 1992, the results of the PBET were released and this time Escorpizo passed said examination. Nevertheless, on June 15, 1992, respondent university no longer renewed Escorpizo's contract of employment on the ground that she failed to qualify as a regular teacher. This prompted Escorpizo to file on July 16, 1992 a complaint for illegal dismissal, payment of backwages and reinstatement against private respondents.

On June 22, 1993, the labor arbiter ruled that respondent university had a "permissible reason" in not renewing the employment contract of Escorpizo.[2] Nevertheless, the labor official ordered the reinstatement of Escorpizo and disposed of the case as follows:

> "WHEREFORE, evidence and law considered, the respondents are hereby directed to cause the immediate reinstatement of the complainant but without backwages, and to extend to her regular status.

All other claims are hereby dismissed for lack of merit.

SO ORDERED."[3]

Dissatisfied with the decision there being no award of backwages, Escorpizo appealed to the National Labor Relations Commission (NLRC). But in its assailed Resolution[4] dated May 31, 1995, the NLRC dismissed said appeal and affirmed the labor arbiter's decision.

Instead of filing the required motion for reconsideration, petitioners filed this instant petition[5] imputing grave abuse of discretion on the part of public respondent in affirming the decision of the Labor Arbiter.

This precipitate filing of petition for *certiorari* under Rule 65 without first moving for reconsideration of the assailed resolution warrants the outright dismissal of this case. As we consistently held in numerous cases,[6] a motion for reconsideration is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had.

It is settled that *certiorari* will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against acts of public respondents. In the case at bar, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the impugned resolution, based on palpable or patent errors, to be made under oath and filed within ten (10) days from receipt of the questioned resolution of the NLRC,[7] a procedure which is jurisdictional. Hence, original action of *certiorari*, as in this case, will not prosper. Further, it should be stressed that without a motion for reconsideration seasonably filed within the ten-day reglementary period, the questioned order, resolution or decision of NLRC, becomes final and executory after ten (10) calendar days from receipt thereof. Consequently, the merits of the case can no longer be reviewed to determine if the public respondent had committed any brave abuse of discretion.[8]

Besides, petitioners did not comply with the rule on certification against forum shopping. As pointed out by the private respondents,

the certification in the present petition was executed by the counsel of petitioners,[9] which is not correct. The certification of non-forum shopping must be by the plaintiff or any of the principal party and not the attorney.[10] This procedural lapse on the part of petitioners is also a cause for the dismissal of this action.

To be sure, even if the aforesaid procedural and technical infirmities were to be set aside, we find no cogent reason to depart from the decision of public respondent as hereunder elucidated. Definitely, no grave abuse of discretion could be imputed to the public respondent in affirming the decision of the Labor Arbiter.

Petitioners contend that Escorpizo had attained the status of a regular employee having rendered very satisfactory performance as probationary teacher for two years, consistent with the collective bargaining agreement between the respondent university and petitioner union of which Escorpizo is a member. They argue that the prerequisite prescribed by respondent university that teachers pass the PBET to attain regular employment has no legal basis because it is not stipulated in the collective bargaining agreement.

This contention, in our view, is bereft of merit.

A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment. A probationary appointment affords the employer an opportunity to observe the skill, competence and attitude of a probationer. The word “probationary”, as used to describe the period of employment, implies the purpose of the term or period. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer at the same time, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment.[11]

There is no dispute that Escorpizo was a probationary employee from the time she was employed on June 13, 1989 and until the end of the school semester in March 1991 or for two academic years. Thereafter, on her plea, she was again allowed to teach for school year 1991-1992. She knew that her status then was not that of a regular employee. For,

she was also aware that her attainment of a regular employment is conditioned upon compliance with the requisites attached to her position, pursuant to the rules prescribed by respondent university, to wit:

> "PROBATIONARY STATUS"
>
> "An appointment to teach during the first two years at the University is probationary in nature.
>
> During the period of probation (four semesters, excluding summer terms), the teacher is observed and evaluated formally by a committee composed of: (1) the most ranking/senior member of the faculty in his discipline/field of specialization, (2) his department head or college dean, (3) the Personnel Director and (4) the Vice President for Academic Affairs, including his students to determine his competency and fitness to be elevated to permanent status.
>
> x x x
>
> "Permanent status is granted to the faculty member of the high school or elementary school who has satisfactorily complied with the requirements of the probationary period, has at least a bachelor's degree in education, and has passed the Professional Teacher Board Examination or an equivalent Civil Service Examination."[12]

Under the aforecited rule, the following conditions must concur in order that a probationary teacher may be extended a regular appointment; (1) the faculty member must satisfactorily complete the probationary period of four semesters or two years, within which his performance shall be observed and evaluated for the purpose of determining his competency and fitness to be extended permanent status; and (2) the faculty member must pass the PBET or an equivalent civil service examination.

Admittedly, while Escorpizo met the first requirement, she did not fulfill the second. She had failed the PBET twice at the time her probationary period ended. That she did not qualify to become a

permanent employee is further evidenced by the fact that before her employment contract expired, she was informed that her services would be terminated by the end of the school year in March 1991. When she was given, upon her plea, a teaching load in the next succeeding school year, it was already beyond the two-year probationary period. The most that could be conceded in this situation is that her continued employment was deemed an extension, ex-gratia, of her probationary period, affording her another chance to pass the requisite licensure test for teachers.[13] Petitioners did not even deny that Escorpizo was rehired on a temporary basis on condition that she has to pass the PBET in order to become a permanent employee. Under no circumstance could continued employment alone beyond the two-year period bestow on her the status of a regular employee. It was only after fulfilling the cited second requirement when, on the third try, she passed the PBET that she qualified for regular and permanent employment.

Petitioners' reliance on the collective bargaining agreement (CBA) alone is not tenable. Indeed, provisions of a CBA must be respected since its terms and conditions constitute the law between the contracting parties. Those who are entitled to its benefits can invoke its provisions. And in the event that an obligation therein imposed is not fulfilled, the aggrieved party has the right to go to court for redress.[14] To buttress their position, petitioners cite the following provision of the CBA between respondent university and petitioner union:

> "SECTION 3. Probationary academic employees. — A probationary academic employee is one hired by the Administration on trial or probation for the purpose of occupying, if found fit and qualified, a permanent or regular position in the University. Before such probationary employee becomes regular or permanent, he shall undergo for two (2) years, which period however, may be reduced by the Administration at the latter's discretion."[15]

Clearly the abovequoted provision does not mention that passing the PBET is a prerequisite for attaining permanent status as a teacher. Nevertheless, the aforecited CBA provision must be read in conjunction with statutory and administrative regulations governing

faculty qualifications. It is settled that an existing law enters into and forms part of a valid contract without the need for the parties expressly making reference to it.[16] Further, while contracting parties may establish such stipulations, clauses, terms and conditions as they may see fit, such right to contract is subject to limitation that the agreement must not be contrary to law or public policy.[17]

In this connection, DECS Order No. 38, series of 1990, a regulation implementing Presidential Decree No. 1006[18] or the Decree Professionalizing Teaching stipulates that no person shall be allowed to engage in teaching and/or act as a teacher unless he has registered as professional teacher with the National Board for Teachers. To be eligible as professional teacher, one must have passed the board examination for teachers or the examinations given by the Civil Service Commission or jointly by the Department of Education, Culture & Sports and the Civil Service Commission. The Order also provides that effective January 1, 1992, no teacher in the private schools shall be allowed to teach unless he or she is a registered professional teacher. Significantly, school officials are enjoined by the said administrative order to ensure that all persons engaged in teaching in the public or private elementary or secondary schools are registered professional teachers.

Undoubtedly, the requirement of passing the PBET before one could become a regular employee as prescribed by respondent university is legally in order. Being a prerequisite imposed by law, such requirement could not have been waived by respondent university, as herein insisted by petitioners. In the same vein, petitioners proposition that upon completion of two-year probationary period with a very satisfactory performance, Escorpizo automatically becomes permanent is not correct. For as earlier stressed, Escorpizo could only qualify to become permanent employee upon fulfilling the reasonable standards for permanent employment which include passing the board examination for teachers.

This is by no means to assert that probationary teachers do not enjoy security of tenure. They enjoy security of tenure in the sense that during their probationary employment they cannot be dismissed except for cause. However, upon expiration of their contract of employment, probationary academic personnel cannot claim security

of tenure and compel their employers to renew their employment contracts.[19] In fact, the services of an employee hired on probationary basis may be terminated when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. There is nothing that would hinder the employer from extending a regular or permanent appointment to an employee once the employer finds that the employee is qualified for regular employment even before the expiration of the probationary period. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground.[20]

In the instant case, Escorpizo was entitled to security of tenure during the period of her probation but such protection ended the moment her employment contract expired at the close of school year 1991-1992 and she was not extended a new appointment. No vested right to a permanent appointment had as yet accrued in Escorpizo's favor since she had not yet complied, during her probation, with the prerequisites necessary for the acquisition of permanent status.[21] Consequently, as respondent university was not under obligation to renew Escorpizo's contract of employment, her separation cannot be said to have been without justifiable cause. Legally speaking, Escorpizo was not illegally dismissed. Her contract merely expired.

WHEREFORE, the instant Petition is hereby **DISMISSED**, and the assailed **RESOLUTION** of public respondent is hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Bellosillo, Puno, Mendoza and Buena, *JJ.*, concur.

---

[1] Penned by Commissioner Ireneo B. Bernardo, and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Joaquin A. Tanodra.
[2] Labor Arbiter Decision quoted in NLRC Resolution, Rollo p. 30.
[3] Id., at p. 26.

[4] Id., at pp. 26-33.
[5] Id., at pp. 3-33.
[6] Manila Midtown Hotels & Land Corp. vs. NLRC, 288 SCRA 259, 264 (1998); ABS-CBN Employees Union vs. NLRC, 276 SCRA 123, 128 (1997), Building Care Corporation vs. NLRC, 268 SCRA 666, 674 (1997); Gonpu Services Corporation vs. NLRC, 266 SCRA 657, 660 (1997); Interorient Maritime Enterprises Inc. vs. NLRC, 261 SCRA 757, 764 (1996).
[7] Rule VII, Section 14, The New Rules of Procedure of the National Labor Relations Commission.
[8] Manila Midtown Hotels & Land Corporation vs. NLRC, 288 SCRA 259, 264-265 (1998).
[9] Private respondents' Comment, Rollo, p. 50; Petition, Supra, note 2.
[10] O.M. Herrera, Comments on the 1997 Rules of Civil Procedure As Amended 91 (1997); Supreme Court Revised Circular No. 28-91, Supreme Court Administrative Circular No. 04-94.
[11] International Catholic Migration Commission vs. NLRC, 169 SCRA 607, 613-614 (1989).
[12] University Memorandum Circular No 1, series of 1988, published in UB Faculty and Staff Manual, 1988 edition, pp. 49-56, cited in Private Respondents' Comment; Rollo, pp. 51-52.
[13] Mariwasa Manufacturing Inc. vs. Leogardo, Jr., 169 SCRA 465, 470 (1989).
[14] Roche (Philippines) vs. NLRC, 178 SCRA 386, 395 (1989).
[15] Article II, Section 3 of the CBA of University of Baguio and University of Baguio Faculty Education Workers Union, quoted in the Petition, Rollo, p. 9.
[16] Lakas Manggagawang Makabayan vs. Abiera, 36 SCRA 436, 442 (1970).
[17] P.M. Employees Savings and Loan Association Inc. vs. NLRC, 260 SCRA 758, 774 (1996); New Civil Code, Article 1306.
[18] The law in force at the time when the cause of action accrued. Now, the applicable statute is RA 7836 or the "Philippine Teachers Professionalization Act of 1994," approved on December 15, 1994.
[19] U.P. Sarmiento, Manual of Regulations for Private Schools Annotated 465 (1995).
[20] Supra, note 11.
[21] Escudero vs. Office of the President of the Philippines, 172 SCRA 783, 792 (1989).