

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**MEDICAL DOCTORS, INC. (MAKATI
MEDICAL CENTER),**

Petitioners,

-versus-

**G.R. No. 56633
April 24, 1985**

**NATIONAL LABOR RELATIONS
COMMISSION, LABOR ARBITER
CONRADO MAGLAYA and EVELYN
ELOÑA,**

Respondents.

X-----X

DECISION

MAKASIAR, J.:

SEPARATE OPINIONS:

AQUINO, J., dissenting.:

The Labor Arbiter in his Decision dated May 9, 1979 and promulgated on June 8, 1979, directed the reinstatement of private respondent Evelyn Elona without loss of seniority rights and other privileges with one year back wages from the date of her dismissal on February 14,

1976, and likewise directed petitioner to issue to her a permanent appointment as secretary pursuant to the recommendation of Sis. Consolacion Briones, department head of the out-patient department of petitioner Makati Medical Center (Annex A, pp. 14-24, rec.).

The majority resolution of the respondent National Labor Relations Commission promulgated on March 31, 1981 dismissed the appeal of herein petitioner and directed it to show proof of immediate compliance with the affirmed decision of the labor arbiter, after ten (10) days from receipt of said resolution (Annex B, pp. 25-32, rec.).

The aforesaid resolution of the respondent National Labor Relations Commission quoted the findings of facts and conclusions of the labor arbiter, thus:

“It appears from the records and the evidence presented by the parties that complainant was given a probationary appointment as Clerk by the Makati Medical Center from July 16, 1975 to January 15, 1976 (Exhibit ‘8’-respondent) and assigned at the Out Patient Charity Department (OPCD) of the aforesaid Medical Center. Two of the conditions embodied in the appointment are that she would ‘comply with all existing policies, rules and regulations and those that may be adopted or promulgated in the future deemed necessary in the internal affairs of the employer’ and that ‘if at anytime during the probationary employment of the employee her services are judged to be unsatisfactory, the employer may terminate such employment’ (par. 5 & 6 of the appointment).

“As clerk in the OPCD-Charity, complainant’s duties are and were assisting the doctors in the registration of patients, in charge of registration and processing of application of indigent patients seeking medical consultation and treatment and also assisting her immediate supervisor in calling meetings of different heads of the Makati Medical Center (TSN, pp. 8-9, January 25, 1977).

“Complainant worked in this capacity of clerk continuously until February 14, 1976 when she was dismissed or terminated

effective at the close of business hours of said date. For clarity, we quote the letter of termination (Exhibit '13'-respondent):

'13 February, 1976

Miss Evelyn Elona
OPCD-Charity
Makati Medical Center
Makati, Rizal

Dear Miss Elona:

Reference is made to your employment dated July 17, 1975 on a six months probationary period. We have reviewed your performance with this department and regret to advise that you have not measured up to the requirement of this department.

In view of the above, we regret to advise that your services on a probationary employment is terminated effective close of business hours of February 14, 1976.

We wish you success in your future endeavor.

Very truly yours,
MAKATI MEDICAL CENTER
(Medical Doctors, Inc.)

(Sgd.)
MARSHAL FIELD A. WANDAG
Industrial Relations Officer

cc. Ind. Relations Department File
N.B. Probationary period extended
from January 16, 1976 up to
February 14, 1976.'

“It should be stated at this stage that the termination or dismissal was and is predicated mainly on the fact that Evelyn Elona borrowed P50.00 from one of the patients, Mrs. Leticia

Lavapiez sometime in September 1976 (Affidavit of Mrs. Leticia Lavapiez — Exhibit '15' — respondent; TSN, p. 22, April 1, 1977; TSN, pp. 34-35, May 12, 1977) allegedly in violation of respondent's policies, rules and regulations against solicitation of any consideration from indigent patients.

“x x x

“There can be no debate as to the right and prerogative of an employer to promulgate its own rules and regulations and establish policies necessary to discipline its employees and administer effectively its business or enterprise. But these rules, regulations and policies must be reasonable.

“It is conceded that complainant borrowed money from Mrs. Leticia Lavapiez. The borrowing took place at her house and after she was discharged from the Out-Patient Charity Department (OPCD) of the hospital (Affidavit of Leticia Lavapiez which is Exhibit '15' for respondent, see pars. 3 & 4). The amount of P50.00 that was borrowed was also returned, remitted or paid by complainant to Mrs. Lavapiez (TSN, pp. 34-35, May 12, 1977). And based only on this act of borrowing money, respondent terminated her employment.

“Borrowing money and paying the same is not an act of dishonesty, of immorality, of illegality, or of omissions punishable by law as to be a ground for dismissal as in this case. We so hold that the Rules and Regulations & Policies of respondent Medical Center are whimsical, capricious, arbitrary and oppressive and the same becomes even more whimsical, capricious, arbitrary and oppressive in the manner it was enforced and implemented. The rules, regulations and policies of any employer must be responsive to the demands of justice and to the needs of a rapidly changing times. For to borrow the language of Justice Holmes ‘the political or philosophical aphorisms of one generation is doubted by the next and entirely discarded by the third.’ Stated differently, and as applied in this case, the rules, regulations and policies of the Makati Medical Center must be in cadence with the political, social, economic and physical conditions of the country; must be consistent with

the laws of the land; must remain subject to the reasonable rules and regulations that the State may impose in the exercise of its Police Power and must yield to the Constitutional injunction of security of tenure of employees (Article II, Section 9, Constitution).

“x x x

“Indeed, complainant’s cause is impressed with merit. The facts and the law point unerringly to her side. She has completed her probationary period. Her employment contract is not covered by an apprenticeship agreement stipulating a longer period. She was allowed to work after the expiration of her probationary employment — July 16, 1975 to January 15, 1976. She was terminated without just or lawful cause. She qualified as a regular employee in accordance with reasonable standards prescribed by her employer and was recommended for promotion — permanent position — from clerk to secretary by her immediate supervisor, Sis. Consolacion Briones. Thus, Article 282 of the Labor Code provides:

“ART. 282. Probationary employment — probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.’

“And Article 280 of the same Code states:

‘ART. 280. 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.’

“In view of all these overriding considerations, we so hold that complainant’s dismissal or termination is unwarranted and illegal” (pp. 26-30, rec.).

As stressed by the labor arbiter in the aforequoted paragraphs, borrowing money is neither dishonest, nor immoral nor illegal, much less criminal. Private respondent paid the money she borrowed from the hospital patient. She was even recommended for permanent appointment from her probationary status, from clerk to secretary, by her immediate superior, Sis. Consolacion Briones.

It may be added that she must have been compelled to borrow P50.00 from her patient because of economic necessity, which circumstance should evoke sympathy from this Court, the very constitutional organ mandated by the fundamental law to implement the social justice guarantee for the protection of the lowly, efficient and honest employee, who is economically disadvantaged, like herein petitioner! Private respondent Evelyn Elona was dismissed on February 14, 1976, over seven (7) years ago. Consequently, the decision of the labor arbiter should be modified to the effect that she should be paid back wages covering the period of three (3) years without any modification pursuant to existing jurisprudence.

WHEREFORE, THE PETITION IS HEREBY DISMISSED AND THE DECISION OF THE LABOR ARBITER, AS AFFIRMED BY THE RESPONDENT NATIONAL LABOR RELATIONS COMMISSION, IS HEREBY SUSTAINED WITH THE AMENDMENT THAT THE BACK WAGES SHOULD COVER A PERIOD OF THREE (3) YEARS. SO ORDERED.

Fernando, C.J., Teehankee, Concepcion Jr., Plana, Escolin, Relova, De la Fuente, Cuevas and Alampay, JJ., concur. Concepcion, Jr., J., took no part.

SEPARATE OPINIONS

AQUINO, J., dissenting:

I dissent. This case is about the dismissal of Evelyn Elona, a probationary clerk in the Outpatient Charity Department of the Makati Medical Center, who was charged with borrowing money from a patient.

Evelyn started working for the Makati Medical Center when she was appointed as a clerk in the Outpatient Charity Department for one month, June 16 to July 15, 1975. Later, she was contracted to work as a probationary clerk for six months or from July 16, 1975 to January 15, 1976 (Exh. 8-R).

Under her probationary appointment, Evelyn was obligated to “comply with all existing policies, rules and regulations and those that may be adopted or promulgated in the future deemed necessary in the internal affairs of the employer” and that “if at anytime during the probationary employment of the employee her services are judged to be unsatisfactory, the employer may terminate such employment” (p. 15, Rollo).

In a letter dated December 18, 1975 (about a month prior to the expiration of Evelyn’s probationary term), Nicolas A. Zarate, the chief of the public information assistance division, Manila regional office of the Department of Public Information, apprised the Makati Medical Center, with special attention of Marcial Wandag, the personnel officer, of Evelyn’s conduct.

Zarate alleged that Evelyn “has the habit of borrowing money from OPD patients of that hospital.” Evelyn allegedly borrowed P100 from Leticia Lavapiez after she delivered a baby. She attempted to borrow money from Teofila Luzon and tried to ask for lunch from another patient, Mrs. Fabian. A copy of the denunciation was furnished Mayor Nemesio Yabut.

To have more time for investigating the charge, Evelyn's probationary appointment was extended by one month or up to February 15, 1976. After due investigation, Consolacion Briones, the supervisor of the Outpatient Charity Department, submitted a report exonerating Evelyn. The Barangay Secretariat of Makati also recommended Evelyn's exoneration.

Notwithstanding those findings, the Makati Medical Center terminated Evelyn's services at the close of business hours on February 14, 1976. Marshalfield A. Wandag, the industrial relations officer of the hospital, in his letter to Evelyn said that her "performance with this department" has not measured up to its requirements.

On August 5, 1976, Evelyn filed with the Manila regional office of the Ministry of Labor a complaint for illegal dismissal and unfair labor practice.

The Labor Arbiter found as a fact that Evelyn borrowed fifty pesos from Leticia Lavapiez after she was discharged from the hospital. It was later repaid. (Exh. 15, p. 19, Rollo.).

The Labor Arbiter in his decision of May 9, 1979 ruled that Evelyn should be reinstated with one year's backpay amounting to P3,168 and that she be appointed, not as a clerk, but as "secretary".

Commissioners Diego Atienza and Geronimo Q. Quadra of the National Labor Relations Commission affirmed that decision in their resolution of March 20, 1981. Commissioner Cleto T. Villatuya dissented. He said:

"Complainant was on probationary status when a complaint for soliciting loans from patients was received by the hospital management Complainant (Evelyn) was among those involved. As a result, her probationary appointment was extended for another month because of the investigation then being conducted, but it was expressly reserved that such extension was subject to the findings of the investigation. While it is true that her superior recommended her for permanent appointment, her recommendation was made prior to and

without awareness of the completion of the investigation and the result thereof.

“There can be no question as to the prerogative of the management to determine the fitness of probationary employees for regular status. Assuming that the final investigation result may show that the complaint was not true, yet this does not mean that she should get the regular status for management’s standards for regularship (sic) may go beyond the work capability of the employee and include the right to test the latter’s working habits and other personal traits.” (pp 44-45, Rollo.)

The Labor Arbiter ordered the reinstatement of Evelyn because it is not a crime to borrow money and repay it. But we hold that she should not be reinstated or placed under permanent status because, as correctly observed by Commissioner Villatuya, she was dismissed when she was still a probationary employee.

It is true that the probationary status does not exceed six months but under the peculiar circumstances of this case Evelyn’s probationary or temporary status was extended for one month due to the investigation. This may well be considered an exceptional case. Evelyn is not the kind of employee who can invoke security of tenure.

WHEREFORE, I vote to reverse the resolution of the National Labor Relations Commission and to dismiss the complaint for reinstatement of Evelyn Elona-Fernando.

Abad-Santos, Melencio-Herrera and Gutierrez, JJ., concur.