SUPREME COURT
THIRD DIVISION

PHILIPPINE MANPOWER SERVICES, INC., ADAWLIAH UNIVERSAL ELECTRONICS and AFISCO INSURANCE CORPORATION,
***Petitioners*,**

-versus-

G.R. No. 98450
July 21, 1993

NATIONAL LABOR RELATIONS COMMISSION and ARTHUR P. PANGAN,
***Respondents*.**
x----------x

D E C I S I O N

ROMERO, *J.*:

Separate Opinions:

***VITUG, J., concurring*.:**

On August 10, 1990, the Philippine Overseas Employment Administration (POEA) rendered a decision in POEA Case No. (L) 88-07-595 entitled Arthur Pangan vs. Philippine Manpower Services,

Inc. and Adawliah Universal Electronics and Afisco Insurance Corporation, disposing as follows:

> "WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Philippine Manpower Service Corporation, jointly and severally with its principal Adawliah Universal Electronics, to pay complainant Arthur F. Pangan the following amounts:
>
> 1. ELEVEN THOUSAND FIVE HUNDRED FIFTY U.S. DOLLARS (US$11,550.), representing his salaries for the unexpired portion of his contract of employment; and
>
> 2. FIVE PERCENT (5%) of the total award as and by way of attorney's fees.
>
> All other claims of complainant as well as respondent's counterclaims are hereby dismissed for lack of merit."
>
> Payment of the above awards shall be made in Philippine Currency at the prevailing rate of exchange at the time of payment.
>
> SO ORDERED.[1]

Petitioners herein appealed said POEA decision before public respondent National Labor Relations Commission (NLRC). The NLRC, in its Resolution of March 4, 1991, modified the decision of the POEA but only insofar as it corrected the POEA on the proper rate of exchange to be applied in converting the award of US$11,550.00 to its equivalent in Philippine currency. It thus held:

> "However, while we are convinced that because Pangan was illegally dismissed, he should be paid the salaries corresponding to the unexpired portion of his contract, we believe that because of the erratic devaluation of the Philippine Peso vis-a-vis, the US Dollars, simple fairness dictates that the payment of the awards in Philippine Currency should not be 'at the rate of exchange at the time of payment,' as mandated by the POEA,

> but rather at the rate of exchange prevailing at the time the complainant's cause of action accrued or at the time he was illegally dismissed on 21 July 1988."[2]

Consequently, said resolution disposed as follows:

> "WHEREFORE, subject to the modification above-stated, the decision appealed from should be, as it is hereby, AFFIRMED.
>
> SO ORDERED."[3]

A motion for reconsideration of NLRC's Resolution of March 4, 1991 was denied in its Resolution of April 24, 1991.

As a final recourse, petitioners filed the instant petition for annulment of the NLRC's Resolutions of March 4, 1991 and April 24, 1991.

The alleged dismissal without cause of private respondent Arthur F. Pangan by his employer Adawliah Union Electronics and Afisco Insurance Corporation (Adawliah, for short) based in Alkhobar, Saudi Arabia, spawned the present controversy. Pangan filed with the POEA, a case for illegal dismissal, underpayment of overtime pay, separation pay, actual damages representing his salaries for the unexpired portion of his contract of employment, and exemplary damages of US$10,000.00 plus attorney's fees. His complaint alleged that he entered into a two-year contract of employment with Adawliah, as a data entry clerk technician for US$550.00 a month, commencing on April 30, 1988. He complained that he rendered overtime work of fourteen (14) hours last May 1988 and another twenty-four (24) hours in June 1988 without having received any compensation therefor; worse, he was ordered to work as programmer in addition to his work as data entry clerk technician without any offer to correspondingly increase his salary; that Pangan's demand for salary adjustment irked Mr. Ahmed Yosul, Administrative Manager of Adawliah, who thus ordered Pangan's termination on grounds of incompetence. Pangan was consequently compelled to accept payment of only US389.00 dollars, covering his services for July 1-21. All other claims were waived by him after he was threatened to be jailed.

Petitioner Philippine Manpower Services, Inc. (Philman) denied Pangan's allegations in his complaint. Philman justified Pangan's termination as a valid exercise by his employer Adawliah, of its management prerogative to fire employees who proved to be incompetent while still under probation. It thus prayed for the dismissal of the instant case.

The POEA, however, found Pangan's complaint meritorious. Though it recognized the management prerogative to select its employees, it nevertheless ruled that the exercise thereof is not without any qualification. The POEA explained that probationary employees can only be dismissed for just cause duly proved. In the case at bar, it found that there was no justified dismissal of complainant Pangan for failure of Adawliah to substantiate its claim of his unsatisfactory performance. General averments on Pangan's incompetence do not constitute just cause to warrant his termination.

Philman and Adawliah were thus ordered to pay in solidum, the equivalent in Philippine currency of US$11,550.00 representing Pangan's salary for the unexpired portion of his contract and attorney's fees amounting to five percent (5%) of said award. The POEA further ruled that in paying the above award in Philippine currency, the conversion rate to be used shall be that prevailing at the time of payment.

Philman and Adawliah sought a reversal of said POEA ruling by appealing before the National Labor Relations Commission (NLRC). As aforementioned, the NLRC affirmed, with modification, the POEA ruling appealed from, in its Resolution of March 4, 1991.

Philman and Adawliah moved for reconsideration of the Resolution of March 4, 1991 but were denied by the NLRC for lack of merit.

Consequently, the instant petition was filed by Philman and Adawliah claiming that:

"I

With grave abuse of discretion, the Honorable Commission (Second Division) together with POEA Administrator Jose N. Sarmiento brushed aside petitioners-appellants submission that complainant-appellee was lawfully dismissed in accordance with his contract of employment and in consonance with previous POEA and NLRC rulings applicable to the case at bar.

II

With grave abuse of discretion, the Honorable Commission (Second Division) disregarded appellant's contention based on Article 281 of the Labor Code of the Philippines, that workers on probation or trial acquire only transitional rights to the fulfillment of their employment contracts and therefore the complainant-appellee cannot lawfully be entitled to payment of salary for the period of 21 months after failing to qualify as a regular employee during his three months' trial period.

III

The Honorable Commission (Second Division) gravely erred in holding that appellee's dismissal is sustained by the Supreme Court ruling in Manila Hotel vs. NLRC, 141 SCRA 169.

IV

With grave abuse of discretion, the Honorable Commission (Second Division) affirmed the findings of the POEA Administrator to the effect that the dismissal of the complainant-appellee was capricious."[4]

Philman and Adawliah insist that during the probationary period, the employer is acting within his rights in dismissing his employee who failed to meet the qualification standard for continued employment. Moreover, they aver that Pangan's inability to satisfy the standards set by Adawliah amounts to incompetence which is a just cause for termination of his services pursuant to the first paragraph of the

contract of employment executed between Adawliah and Pangan, to wit:

> "If during the first three (3) months (probation period) of employment, the EMPLOYER find the EMPLOYEE to be incompetent or incapable of performing the type of work for which he was hired, then the EMPLOYER may discharge the EMPLOYEE for cause with no obligation on the part of the EMPLOYER except for payment of accrued pay up to the time of termination. The payment of economy class air transportation back to the point of hire shall be for the account of EMPLOYEE."[5]

On the basis of the foregoing, they argued that the determination of whether Pangan is capable of performing the duties of Data Entry Clerk Technician rests solely with Adawliah, his employer, who is in the best position to observe Pangan's performance during the probationary period. There is thus no necessity, contrary to the views of the POEA and NLRC, to cite specific incidents of Pangan's incompetence in order to prove the legality of the dismissal.

Philman and Adawliah further maintained that as a result of Pangan's failure to qualify as a regular employee, he did not acquire any rights whatsoever to work out the full term of his employment contract. According, they concluded that Pangan is not entitled to an award equivalent to the unexpired portion of his two-year employment contract.

In his Comment to the petition, the Solicitor General considers petitioners' arguments as untenable. He contends that, notwithstanding Pangan's probationary status, he nonetheless enjoys the constitutional protection on security of tenure unless just cause exists to justify his termination. He further stressed that the prerogative of management to dismiss Pangan must be exercised without abuse of discretion. The absence of sufficient evidence to substantiate Pangan's dismissal and the lack of specific acts or instances to show Pangan's lackluster performance negates the claim of Adawliah that the dismissal was a rightful exercise of such prerogative. Due to the gross violation of Pangan's security of tenure, the Solicitor General opined that he is entitled to an award equivalent

to his salary for the unexpired portion of his two-year employment contract.

The petition should be dismissed. Jurisprudence is rich in cases guaranteeing the security of tenure, limited though it may be, of probationary employees.[6] Except for just cause as provided by law or under the employment contract, a probationary employee cannot be terminated.[7] Petitioners do not view Pangan's termination as a violation of these legal precepts. Rather, they consider his incompetence as a just cause, sufficient to constitute the basis of his dismissal under the contract.

At first blush, petitioners' position may seem sound, it appearing that their contract, which is the law between them, contains a stipulation that the employer has the discretion to dismiss its employees for incompetence. However, where the dismissed employee, Pangan in this instance, challenges his dismissal as illegal, predicating his claim on the absence of a just cause, the correct issue is not so much Adawliah's discretion to terminate as the existence of Pangan's alleged incompetence as ground for his termination. Hence, the POEA and NLRC did not commit grave abuse of discretion in requiring petitioners to present proof of the alleged incompetence of Pangan. Thus, it has been held that:

> "It is a basic principle in the dismissal of employees that the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause, and failure to do so would necessarily mean that the dismissal is not justified [Polymedic General Hospital vs. NLRC, G.R. No. 64190, January 31, 1985, 134 SCRA 420; Asphalt and Cement Pavers, Inc. vs. Leogardo, et al., G.R. No. 74563, June 20, 1988.] Should the employer fail in discharging this duty, the dismissal of the employee cannot be sustained. This is consonant with the constitutional guarantee of security of tenure, as implemented in what is now Sec. 279 of the Labor Code, as amended."[8]

This same principle applies to probationary employees allegedly terminated without cause during their limited tenure. Thus in Euro-Linea Philippines Inc. vs. NLRC, et al.,[9] this Court dismissed the petition on the ground that:

> "Petitioner not only failed to present sufficient evidence to substantiate the cause of private respondent's dismissal, but likewise failed to cite particular acts or instances to show the latter's poor performance."

Similarly, no convincing proof establishing Pangan's alleged incompetence was presented. The POEA and NLRC, therefore, correctly declared the dismissal to be illegal. Pangan's dismissal without cause during the probationary period constitutes a violation of his Constitutional right to security of tenure. The Constitution, which is built into all contracts entered into in the Philippines and governed by Philippine law when it provides in Art. XIII, Sec. 3[10] that "they shall be entitled to security of tenure" did not distinguish between probationary and regular employees. Consequently, Pangan deserves the disputed award of the POEA, entitling him to an amount representing his salary for the unexpired portion of his employment contract. It was erroneous for petitioners to question the award as improper, theorizing that he is not entitled to a sum equivalent to his salary for the unexpired portion of the contract, he being merely a probationary employee who has not acquired a vested right to demand fulfillment of his employment contract.

Apparently, petitioners have misread the statutory grant of security of tenure to probationary employees. Under Article 281 of the Labor Code,[11] a probationary employee may be terminated on two grounds: (a) for just cause or (b) 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. Since as established in the case at bar, petitioners were unable to prove either ground as a basis for terminating Pangan's employment, no reason exists to sever the employment relationship between Adawliah and Pangan. Otherwise stated, absent the grounds for termination of a probationary employee, he is entitled to continued employment even beyond the probationary period. Accordingly, had not Pangan been compelled to return to the Philippines, he could have demanded enforcement of the employment contract. In the case of Skillworld Management and Marketing Corp., et al. vs. NLRC, et al.,[12] we similarly upheld a POEA ruling awarding private respondents therein $6,900.00 or its equivalent in Philippine currency at the time of

actual payment covering complainant's salary for the unexpired portion of twenty-three months due to unjust dismissal as a probationary employee.

In the case of Republic Resources and Development Corporation vs. Court of Appeals,[13] reiterating our decision in Kalalo vs. Luz,[14] with regard to obligations incurred after enactment of RA No. 529[15] on June 16, 1950, we also held that the rate of exchange to be applied should be that prevailing at the time of payment.

As a consequence of our affirmance of the POEA award, we find incorrect the NLRC Resolution of March 4, 1991 to the effect that the proper rate of exchange to be applied in converting the award of US$11,550.00 to its equivalent in Philippine currency is that prevailing at the time complainant's cause of action accrued and not at the time of actual payment as ruled by the POEA.

WHEREFORE, finding no grave abuse of discretion on the part of public respondents, the Petition is **DISMISSED**. The Decision of the POEA dated August 10, 1990 is hereby **AFFIRMED** in toto and the Resolution of the NLRC dated March 4, 1991 is **MODIFIED**, insofar as the proper rate of exchange to be applied in converting the award of US$11,550.00 in Philippine currency is that prevailing at the time of actual payment.

SO ORDERED.

Feliciano, Bidin, Romero and Melo, *JJ.*, concur.

SEPARATE OPINIONS

VITUG, J., concurring:

I fully concur with the opinion so well presented and written, once again, by Mme. Justice Flerida Ruth P. Romero. I cannot, however, let the opportunity pass without expressing my own views on the

conversion rate that should be used in the payment of foreign exchange obligations covered by the provisions of Republic Act No. 529, as amended by Republic Act No. 4100. Since the promulgation of the decision in Kalalo vs. Luz on 31 July 1970, other cases were decided by the Court. Lately, in General Insurance & Surety Corporation vs. Union Insurance Society of Canton, Ltd. (G.R. Nos. 30475-76, elaborated in San Buenaventura vs. Court of Appeals, 181 SCRA 197 [1990]), the Court, in sum held:

(a) If the obligation was incurred prior to the enactment of Republic Act No. 529 and required payment in a particular kind of coin or currency other than the Philippine currency, the same should be discharged in Philippine currency at the prevailing rate of exchange at the time the obligation was incurred, except in case of a loan made in a foreign currency in which event the rate of exchange, prevailing at the stipulated date of payment should prevail.

(b) If, however, the obligation is incurred after the enactment of Republic Act No. 529, the provision of the law which require payment at the prevailing rate of exchange when the obligation is incurred cannot be applied. Republic Act No. 529 does not provide for the payment of obligation after the enactment of the said Act. Logically, therefore, the rate of exchange shall be that prevailing at the time of payment rather than on the date of incurrence.

Concededly, Republic Act No. 529 has left some gaps on its proper application. While it did fail to provide for the payment of obligations incurred, after its effectivity, it indeed seems logical to conclude that the law meant to apply the rate of exchange prevailing at the time of payment but I believe, only to obligations incurred in, or based on, foreign currency. This view is just and fair in that it maintains and preserves the real value of the foreign exchange-incurred obligation to the date of its payment. When, however, the obligation is incurred in Philippine currency, there should be no need for the law to still make any reference to any rate of exchange or to a measure of value in foreign currency in its payment. The obligation should instead be then understood to be payable in the same amount of Philippine currency conformably with Article 1250 of the Civil Code. Under this

provision, an adjustment in value can only be made in the event of an extraordinary inflation or deflation and only if the parties did not stipulate against such adjustment. To assume otherwise would be to defeat the clear intendment of the law, for not only does Republic Act No. 529 prohibit a stipulation requiring payment in foreign currency or in gold but likewise a stipulation providing for payment in Philippine currency measured in its value in gold or in foreign currency.

To exemplify the measures of payment of obligations incurred after the effectivity of the law under this view —

(1) If incurred in Philippine currency, no adjustment is to be made (hence, if P10,000.00 is borrowed, payable in foreign currency, the same amount of P10,000.00 shall be due upon payment irrespective of any change in the rates of exchange prevailing at the time the obligation is constituted and the time it is paid) except to the extent that Article 1250 of the Civil Code on extraordinary inflation or deflation can apply; and

(2) If incurred in foreign currency or in Philippine currency but based on foreign exchange values, the payment shall be made in Philippine currency measured at the rate of exchange prevailing at the time of payment (hence, a $1-obligation, incurred at a time when the rate of exchange was $1:P10.00 and when payable the rate became $1:P20.00, should be paid in Philippine Currency at P20.00).

Nevertheless, I consider it more important to preserve the stability of, rather than to disturb, the now settled rule heretofore expressed by this Court in earlier cases. I, therefore, VOTE to concur in the opinion and to LEAVE the matter to Congress whether it would wish to consider any further need for remedial legislation.

Feliciano, Bidin, Romero and Melo, *JJ.*, concur.

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[1] Rollo, pp. 24-25.
[2] Rollo, p. 18.

[3] Rollo, p. 19.
[4] Rollo, pp. 5-9.
[5] Rollo, p. 3.
[6] Euro-Linea Phils. Inc. vs. National Labor Relations Commission, No. L-75782, December 1, 1987, 157 SCRA 78; Manila Hotel Corporation vs. National Labor Relations Commission and Renato L. Cruz, No. L-53453, January 22, 1986, 141 SCRA 169; A.M. Oreta & Co. Inc. vs. NLRC and Sixto Gnella Jr., G.R. No. 74004, August 10, 1989, 176 SCRA 218; Skillworld Management Corporation, et al. vs. National Labor Relations Commission, et al., G.R. No. 74412, June 15, 1990, 186 SCRA 465.
[7] A.M. Oreta & Co. Inc. vs. NLRC, et al., supra.
[8] Quezon Electric Cooperative vs. NLRC, et al., G.R. Nos. 79718-22, April 12, 1989, 172 SCRA 88, at 96-97.
[9] G.R. No. L-75782, December 1, 1987, 156 SCRA 78.
[10] Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane, conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
[11] ART. 281. 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 to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.
[12] G.R. No. 74412, June 30, 1990, 465.
[13] G.R. No. 33438, October 28, 1991, 203 SCRA 164.
[14] G.R. No. L-27782, July 31, 1970, 34 SCRA 337.
[15] Any Act To Assure Uniform Value To Philippine Coin and Currency.