

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**SAN FELIPE NERI SCHOOL OF
MANDALUYONG, INC., ROSA A.
SALAZAR, FAUSTINO F. BONIFACIO,
JR., DOMINGO ANGELES, FR.
ANASTACIO GAPAC, MARIANO DE
LEON, AND MAGDALENA ANGELES,
*Petitioners,***

-versus-

**G.R. No. 78350
September 11, 1991**

**NATIONAL LABOR RELATIONS
COMMISSION, ROMAN CATHOLIC
ARCHBISHOP OF MANILA,
GORGONIA MARAMAG, LILY LIM,
ALICIA YANGCO, DELIA CRUZ,
JOSEFINA SAGER, ERLINDA MURIEL,
MARILYN O. VILLORENTE, LOURDES
SANTOS, ELENITA DALMAN, PACHO
AQUINO, RUDENCIA ANGOCO,
GLORIA GREGORIO, NARCISO
ALFONSO, LEONILA BANAG,
VIRGILIO BANAG, EMY LARINGAY,
ERLINDA SEBASTIAN, JULIETA**

**MABOLO, ANABELLE ARCEGA, c/o
ATTY. PEDRO T. MOLO,**
Respondents.

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DECISION

PARAS, J.:

This is a Petition for *Certiorari* to review and set aside the Resolutions of the National Labor Relations Commission (NLRC), Second Division,^[*] dated February 12, 1987 and April 7, 1987, both affirming the decision of Labor Arbiter Reynaldo M. Maraan in NLRC Case No. AB-9-676-81, entitled “Gorgonia Maramag, et al. vs. San Felipe Neri School of Mandaluyong, Inc. and or Faustino F. Bonifacio, et al.”, adjudging herein petitioners solidarily liable for the payment of separation pay in favor of herein private respondents.

The antecedent facts of the case as gathered from the records are as follows:

Petitioners were the incorporators, stockholders and/or trustees of a corporation known as the San Felipe Neri School of Mandaluyong, Inc., which owned and operated petitioner school. Private respondents were formerly teacher employees of the aforesaid institution.

Sometime on April 18, 1981, petitioner-school and the Roman Catholic Archbishop of Manila (RCAM for brevity) executed a Deed of Absolute Sale of Real and Personal Properties, the pertinent portions of which provide that:

“(1) The SELLER is the owner of a two (2) storey reinforced concrete building and other buildings, structures or

improvements erected on land belonging to the BUYER, situated in the grounds of San Felipe Neri Parish Church and presently used by the SELLER in the operation of the San Felipe School.

- (2) The SELLER is also the owner of library books, school equipment, tables, desks, chairs, blackboards and other personal properties found therein and itemized in the inventory hereto attached as ANNEX 'A' and made an integral part of this Deed of Absolute Sale of Real and Personal Properties.
- (3) For and in consideration of the sum of FOUR HUNDRED THOUSAND PESOS (P400,000.00) Philippine Currency, payable at the office of the BUYER on April 30, 1981, the SELLER has sold, transferred and conveyed, as it, by these presents, does SELL, TRANSFER, AND CONVEY, absolutely and in perpetuity unto the BUYER, its successors or assigns, the real and personal properties described in paragraphs 1 and 2 above.” (Rollo, p. 5 and p. 60).

Private respondents (former teachers of petitioner school) upon reporting for work sometime in May of the same year for the opening of the school year 1981-82, were surprised to learn from school authorities that the school was already under new ownership and management. They (private respondents) had never been previously notified nor informed of the sale or transfer of the school to the RCAM (Rollo, p. 34 and pp. 145-146).

The new owner and administrator (RCAM), in turn, required said respondent teachers to apply as new employees subject to the usual probation (Rollo, p. 34). Demoted to probationary status and their past services not recognized by the new employer, said teachers inquired about their rights from the former school owners (herein petitioners), but to no avail. Instead, they were referred to the new owners of the school, supposedly as the proper party who should answer for and adjust private respondents' demand and grievances (Rollo, p. 146).

Respondent teachers then filed a complaint before the Labor Arbiter against all the petitioners, including the RCAM, the vendee or transferee, as alternative defendant for separation pay, differential pay and other claims (Rollo, pp. 22-25). After submitting their respective position papers and there being no amicable settlement reached between the parties despite sufficient time allowed for such purpose, hearing ensued at which both complainants (herein private respondents) and respondents (herein petitioners, including RCAM), presented testimonial and documentary evidence (Rollo, p. 35).

On March 26, 1984, the Labor Arbiter rendered judgment in favor of private respondents, ordering petitioners to pay the latter their separation pay. The decretal portion of the contested order of the Labor Arbiter reads:

“WHEREFORE, judgment is hereby rendered ordering the respondent San Felipe Neri School of Mandaluyong, Inc., Faustino F. Bonifacio, Jr., Domingo P. Angeles, Rosa A. Salazar, Father Anastacio B. Gapac, Mariano de Leon, and Magdalena I. Angeles, jointly and severally to pay the complainants separation pay equivalent to one (1) months pay or at least one-half (1/2) month pay for every year of service whichever is higher, plus 12% interest thereon from the filing of the amended complaint until full satisfaction thereof. The complaint against the Roman Catholic Archbishop of Manila is hereby dismissed. Likewise, the claims for separation pay of complainants N. Parada and R. Aviles who are admittedly part time employees of the school are hereby dismissed. Further, the claim for underpayment of salaries and allowances and non-payment of summer vacation pay is hereby dismissed for lack of merit.” (Rollo, p. 39).

Petitioners, on April 23, 1984, appealed to the National Labor Relations Commission (NLRC) contesting the aforequoted order as having been issued contrary to law and jurisprudence, and that the Commission has no jurisdiction over them, alleging that no employer-employee relationship exists between said individual petitioners and private respondents, the latter being considered the employees of the school corporation and not by said petitioners themselves in conformance with the principle or doctrine that a corporation has a

personality separate and distinct from those persons composing it (Rollo, pp. 41-46).

On February 12, 1987, the Second Division of the NLRC in its Resolution, affirmed the findings and decision of the Labor Arbiter and dismissed the appeal for lack of merit, ruling that there was in fact a closure of the establishment when the same was sold to the transferee, the RCAM, and that the award of separation pay to herein private respondents was in accordance with the law (Rollo, pp. 62-63).

Petitioners filed their Motion for Reconsideration on March 13, 1987 (Rollo, pp. 64-69), but the same was denied by the Commission in its Resolution dated April 7, 1987 (Rollo, p. 70).

Hence, this petition.

The main issue in this case is whether or not respondent teachers' employment was terminated by the sale and transfer of San Felipe Neri School of Mandaluyong, Inc. to the Archbishop of Manila that would entitle them to separation pay.

Petitioner argue that they cannot be held accountable to private respondent's claim for separation pay since there was no cessation of employment insofar as individual respondents are concerned. The Roman Catholic Archbishop of Manila (RCAM) which assumed the ownership and control of the school continued with its business operations and hired the said private respondents. Only the ownership of the school has changed. There was no interpretation in the employment of private respondents who were school teachers, hence there is no basis for payment to them of separation pay (Rollo, p. 18). Relying on two (2) NLRC cases (the GENBANK and TARELCO cases), petitioners assume that the security of tenure of employees of the transferor is not affected by the change of ownership of the establishment and since there was no termination to speak of, it was error for the NLRC to award separation pay to private respondents (Rollo, pp. 14-19).

Moreover, petitioners maintain that the Commission had no jurisdiction over them since they are not the employers of the private respondents but the petitioner school as a corporation (Rollo, p. 19).

The petition is devoid of merit.

It is not disputed that San Felipe Neri School of Mandaluyong, Inc. sold its properties and assets to RCAM on April 18, 1981; but RCAM did not buy the school nor assumed its liabilities. Immediately thereafter, RCAM, as the transferee-purchaser, continued the operation of the school, but applied for a new permit to operate the same (Rollo, pp. 91-93). In short, there was a change of ownership or management of the school properties and assets.

Change of ownership or management of an establishment or company, however, is not one of the just causes provided by law for the termination of employment (Junio, et al. vs. NLRC, et al., 127 SCRA 390 [1984]). There can be no controversy, however, for it is a principle well-recognized, that it is within the employer's legitimate sphere of management control of the business to adopt economic policies or make some changes or adjustments in their organization or operations that would insure profit to itself or protect the investment of its stockholders. As in the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties which may bring about the dismissal or termination of its employees in the process. Such dismissal or termination should not, however, be interpreted in such a manner as to insulate the employer or selling corporation (petitioner school) from its obligation to its employees, particularly the payment of separation pay. Such situation is not envisioned in the law. It strikes at the very concept of social justice (Insular Lumber Co. vs. CA, 29 SCRA 371 [1969]) (Emphasis supplied).

A close scrutiny of the pertinent Deed of Sale dated April 18, 1981 reveals no express stipulation whatsoever relative to the continued employment by the transferee, RCAM, of the employees (herein private respondents) of the erstwhile employer (petitioner). On the contrary, records show that RCAM expressly manifested its unwillingness to absorb the petitioner school's employees or to

recognize their prior service. As correctly found by the Labor Arbiter and the NLRC, respondent-teachers' employment has been effectively terminated and there was in effect a closure (Rollo, pp. 37 and 62). Obviously, therefore, the fate of private respondents under the new owner (RCAM) appeared unprovided for. And there is no law which requires the purchaser to absorb the employees of the selling corporation (MDII Supervisors and Confidential Employees Association (FFW) vs. Presidential Assistant on Legal Affairs, 79 SCRA 40 [1977]).

As there is no such law, the most that the purchasing company may do, for purposes of public policy and social justice, is to give preference to the qualified separated employees of the selling company, who in their judgment are necessary in the continued operation of the business establishment (Ibid.). This, RCAM, did. It required private respondents to re-apply as new employees as a condition for rehiring, subject to the usual probationary status, the latter's past services with the petitioners-transferors not recognized (Rollo, pp. 60 and 99).

Records further reveal that the negotiations for the sale of the assets and properties of petitioner school were held behind the back of the private respondents who were taken by surprise when they reported for work finding a new owner of the school. As mentioned at the outset they were not formally notified of the sale or transfer to RCAM and its attendant consequences with respect to their continued employment status under the new owners. As such, the recognition of their past services as teachers remains uncertain. Worse, they were not at all given the required notice of their termination.

On all fours with the instant case is the ruling in *Central Azucarera del Danao vs. Court of Appeals*, 137 SCRA 295, 306 [1985], pertinent portions of which read:

“The records further reveal that the negotiations for the sale of the assets and properties of Central Danao to Dadeco were held behind the back of the employees who were taken by surprise upon the consummation of the sale. They were not formally notified of the impending sell-out to Dadeco and its attendant consequences with respect to their continued employment

status under the purchasing company. As such, they were uncertain of being retained, hired, or absorbed by the new owner and its management. Technically then, the employees were actually terminated and or separated from the service on the date of the sale, or on July 7, 1961. Worse, they were not at all given the required notice of their termination. Inasmuch as there was no notice of termination whatsoever given to the employees of Central Danao coupled with the fact that no efforts were exerted by Central Danao to apprise its employees of the consequences of the sale or disposition of its assets to Dadeco, justice and equity dictate that private respondents be entitled to their termination or separation pay corresponding to the number of years of service with Central Danao until June 7, 1961.”

In the earlier case of *Philippine Refining Company vs. Garcia*, 18 SCRA 107 [1966], this Court, speaking thru Justice J.B.L. Reyes, stated:

“Except where other applicable statutes provide differently, it is not the cause for the dismissal but the employer's failure to serve notice upon the employee that renders the employer answerable to the employee for termination pay.”

Hence, petitioners' contention that private respondents are not entitled to separation pay on the ground that there was no termination of the latter's employment but a mere change of ownership in the assets and properties of the school is untenable. Neither can the flimsy excuse that at the time of their alleged termination, there was no employer-employee relationship between them (private respondents) and petitioners, be sustained.

Finally, this Honorable Court took the occasion to remind employers to exercise caution and care in dealing with their employees to prevent suspicion that the adoption of certain corporate combinations such as merger or consolidation, or outright sale or disposition of assets is but a scheme to evade payment of termination pay to their employees (*Central Azucarera del Danao, supra*).

With the resolution of the main issue, there appears to be no necessity to go into the other issues, except to say that only petitioner San Felipe Neri School of Mandaluyong is liable to the private respondents, the other petitioners not being the employers of the teachers.

WHEREFORE, as herein above **MODIFIED**, the appealed Decision and Resolution are hereby **AFFIRMED**, the school having a separate and distinct personality from the other petitioners.

SO ORDERED.

Melencio-Herrera and Regalado, JJ., concur.
Padilla, J., took no part.
Sarmiento, J., is on leave.

[*] Penned by Commissioner Domingo Zapanta and concurred in by Presiding Commissioner Daniel M. Lucas, Jr. and Commissioner Oscar N. Abella.