SUPREME COURT
SECOND DIVISION

DELIA R. SIBAL,
***Petitioner*,**

-versus-

G.R. No. 75093
February 23, 1990

NOTRE DAME OF GREATER MANILA, NATIONAL LABOR RELATIONS COMMISSION,
***Respondents*.**
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D E C I S I O N

PARAS, *J.*:

In this Petition for *Certiorari*, petitioner Delia R. Sibal prays for the reversal of the decision dated April 11, 1986 of public respondent National Labor Relations Commission which affirmed the decision of the Labor Arbiter dated October 8, 1982 awarding to petitioner separation pay but denied her claim (1) for compensation for teaching Health subject to 19 sections; (2) for moral damages; and (3) negating the existence of unfair labor practice. The within petition further seeks the reinstatement of petitioner to her former position as school nurse in respondent school without loss of seniority rights with full backwages from the date of her illegal dismissal up to the time of actual reinstatement; and finally, seeks the desistance of private

respondent Notre Dame of Greater Manila from further committing unfair labor practice.

The prefatory facts and proceedings as aptly summed up by the Solicitor General and which stand undisputed are:

> "Petitioner Delia R. Sibal was employed as school nurse by private respondent Notre Dame of Greater Manila starting January 1973. Prior to school year 1976-1977, she was compensated on a 12-month basis, although she worked only during the ten-month period of classes. She was not required to report for work for the entire Christmas and summer vacations. However, on March 10, 1976, respondent's director, Fr. Enrique Gonzales, requested her to shorten her summer vacation, from two weeks after the last day of classes to two weeks before the first day of classes of the next school year. Petitioner acceded to the request (Rec. p. 246).
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> "Sometime in April 1980, Fr. Gonzales required petitioner to report during that summer to help in the library. In a letter dated April 11, 1980, petitioner contested the order, stating that it will necessitate a change in the terms and conditions of her employment and that library work is alien to her profession as nurse (Rec. p. 45). Fr. Gonzales relented.
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> "In November 1980, Fr. Gonzales was replaced by Fr. Pablo Garcia, an American, as new director. Fr. Garcia required petitioner to report for work during the summer before the beginning of school year 1981-1982. Petitioner informed him that her contract does not require her to report for work during the summer vacation. Fr. Garcia promised to verify her allegation. However, he failed to inform petitioner of his findings. Thus, in order that her failure to report for work may not be misinterpreted, petitioner filed leaves of absence extending from April 1, 1981 to June 14, 1981 (Rec. pp. 223-225). Petitioner failed to receive her vacation pay.
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> "During school year 1981-1982, petitioner was assigned to teach health subjects to 900 students spread out in nineteen (19) sections of the entire high school department. This situation

came about because the two (2) teachers of the health subjects had left the school. Petitioner, however, was not given compensation for teaching, notwithstanding the fact that other teachers were duly compensated for extra work done. During that school year petitioner tried to arrange for a meeting with Fr. Garcia regarding her vacation pay, but to no avail because Fr. Garcia was always busy. In October 1981, Fr. Garcia suffered a heart attack which necessitated his hospitalization. In December 1981, petitioner received her 13th month pay which was computed on the basis of a 10-month period only.

"On April 5, 1982, Fr. Garcia again required petitioner to work during that summer to update all the clinical records of the students (Rec. p. 242). In a letter dated April 7, 1982, petitioner objected to the order by reiterating that her contract does not require her to report for work during summer. In addition, she reminded Fr. Garcia that she had not received any compensation for teaching health subjects the past school year (Rec. p. 6). On the same day, Fr. Garcia replied in a letter to the effect that it was imperative for her to report for work during the summer because it is the best time to update the clinical records when no students could disturb her. Also, petitioner was not entitled to extra compensation for teaching because teaching was allegedly part of her regular working program as a school nurse (Rec. p. 221).

"On April 14, 1982, petitioner, apart from reiterating her objection to the order, called the attention of Fr. Garcia to the school's failure to pay her salary for the summer of 1981 and of the deficiency in her 13th month pay for that year (Rec. p. 8). The following day, Fr. Garcia adamantly refused to consider petitioner's demands and threatened to take drastic measures against her if she remains obstinate in her refusal to follow his order to report for work that summer (Rec. p. 243). This letter was followed the next day by a memorandum to the same effect (Rec. p. 244). In a letter dated April 19, 1982, petitioner, for the fourth time, informed Fr. Garcia that her contract does not require her to report for work during summer, and she does not intend to do so that summer of 1982 (Rec. p. 241).

"Failing to receive the compensation demanded, May 10, 1982, petitioner filed a complaint for non-payment of the following; (1) vacation pay for four (4) summer months; (2) compensation for teaching health subjects; and (3) deficiency in the 13th month pay for 1981 (Annexes A, B, petition). Summons was served on respondent school on the opening day of classes on June 14, 1982 (Rec. p. 19). That very day when petitioner reported for work, respondent school served petitioner her letter of termination effective immediately and it also submitted a copy of the termination paper to the Ministry of Labor and Employment (MOLE) (Rec. pp. 218-219). The following day, petitioner filed an amended complaint, adding two more charges: illegal dismissal and unfair labor practice (Annex C, D, petition). For the next four to five weeks, more than 20 teachers and personnel, backed up by the Faculty Association of respondent school, pressed for the ouster of Fr. Garcia with the Ministry of Education, Culture, and Sports (MECS) by virtue of PD 176 and the following charges: oppressive behavior, arrogance, contempt for Filipinos in general and Filipino teachers in particular; unfairness in dealing with personnel; dictatorial conduct; and use of abusive language (See Annexes A to F of Annex F, petition). Fr. Garcia was eventually replaced on September 8, 1983.

"In the meantime, respondent school filed its position paper on June 29, 1982, while petitioner filed hers on July 1, 1982 (Rec. pp. 22, 210). In the hearing of July 13, 1982, petitioner directed clarificatory questions to Miss Cristina Sison, corporate secretary of respondent school (Rec. pp. 57-141) On July 27, 1982, respondent filed its memorandum, while petitioner filed hers on August 2, 1982 (Rec. pp. 142, 162).

"On October 8, 1982, the Labor Arbiter rendered a decision. Petitioner filed a memorandum of partial appeal on November 11, 1982 (Annex F, petition). Respondent filed opposition to the appeal on January 5, 1983. On January 18, 1983, petitioner filed reply to the opposition. In an urgent ex parte manifestation dated September 20, 1983, petitioner informed the NLRC that Fr. Pablo Garcia had been replaced by Fr. Jose Arong, a Filipino, as new director effective September 8, 1983 (Annex G,

petition). On April 11, 1986, public respondent NLRC rendered the questioned decision which affirmed the decision of the Labor Arbiter." (Rollo, pp. 131-136).

Petitioner thus resorted to this petition which she filed on July 15, 1986.

Petitioner and both the Solicitor General and public respondent NLRC have narrowed down the issues for resolution to the following:

1. Whether or not the award of separation pay instead of reinstatement is the proper remedy under the circumstances;

2. Whether or not petitioner is entitled to compensation for teaching health subjects; and

3. Whether or not unfair labor practice existed which would entitle petitioner to moral damages.

For the affirmative resolution of the aforestated issues, petitioner alleges the following:

1. Respondent NLRC failed to give full respect to the constitutional mandate on security of tenure when the majority decision affirmed the decision of the Labor Arbiter separating and, in effect, dismissing petitioner on the basis of her perception that petitioner and the director could no longer work harmoniously. The award of separation pay would defeat and render nugatory the Constitutional guaranty of security of tenure.

2. Petitioner is entitled to compensation relative to her teaching job which is distinct and separate from her duties as school nurse.

3. Petitioner was, from the very start, subjected to harassment and fabricated charges. She had suffered and continues to suffer from the time of her dismissal on June 14, 1982 up to the present. She must be entitled to an award of moral damages.

Public respondent NLRC, however, submits the following:

1. The relationship between petitioner and respondent school had come to the point that reinstatement of petitioner would cause undue burden on both parties. It would affect petitioner's performance of her duties as school nurse and private respondent's business.

2. Teaching health subjects is allied to petitioner's job as school nurse, particularly so when the same is done within the official eight (8) working hour schedule.

3. Petitioner failed to prove her membership in a union. There was no union among the employees of the school in which case the instances where unfair labor practice may be committed, with the exception of one instance, and predicated on the existence of a union, would not apply. Private respondent has not been found guilty of unfair labor practice and it, therefore, follows that she is not entitled to moral damages.

This Court finds merit in the petition.

The Labor Arbiter herself had found that the termination of petitioner was not supported by any just cause or reason. Yet, she erroneously ordered separation pay instead of reinstatement with backwages based on the alleged reason that petitioner's working relations with the former director, Father Garcia, had become so strained and deteriorated that it became impossible for them to work harmoniously again. And the NLRC affirmed such finding which is untrue and merely speculative.

It should be noted that the alleged conflict between the petitioner and the director was strictly official in nature, the cause of which was the violation of the terms of employment by the latter. Petitioner's assertion of her right to unpaid salaries and bonus differential was not motivated by any personal consideration. Rather, she simply claimed benefits which, under the law, she was entitled to and legally due her. In her act of asserting these money claims, petitioner

observed utmost tact, courtesy and civility so as not to unduly offend the sensibilities of the director by waiting for his full recovery from his illness before sending her formal letter of demand; and only after the school refused to satisfy her money claims did she file the formal complaint with the proper NLRC branch. Ironically, however, the director gave her a downright shabby treatment by terminating her services without prior notice and without first filing a case against her wherein she could have defended herself. The school did not even give credit to her more than nine (9) years of continuous service. Petitioner's termination was a blatant disregard of due process and Constitutional guarantee of protection to labor.

Thus, in the case of Callanta vs. Carnation Philippines, Inc. (145 SCRA 268), this Court held that one's employment, profession, trade or calling is a "property right", and the wrongful interference therewith is an actionable wrong. The right is considered to be property within the protection of a constitutional guaranty of due process of law.

Significantly, about a month after petitioner's termination on June 14, 1982, more than twenty teachers and personnel of respondent school, backed by the Faculty Association, petitioned for the ouster of Director Fr. Garcia for serious charges under P.D. 176. Consequently, Fr. Garcia was replaced on September 8, 1983. Clearly, therefore, when the assailed NLRC decision was rendered on April 11, 1986, the alleged "strained relations" or "irritant factors" which the Labor Arbiter capitalized on had been totally eliminated. Respondent NLRC obviously failed to consider this and thus perpetuated the error committed by the Labor Arbiter in her prior decision. The eventual replacement of Fr. Garcia all the more confirmed the discriminatory and oppressive treatment which he gave petitioner.

The dissenting NLRC Commissioner aptly observed thus:

> "Moreover, it should be emphasized, that no strained relations should arise from a valid and legal act of asserting ones right, such as in the instant case, for otherwise, an employee who shall assert his/her right could be easily separated from the service by merely paying his/her separation pay on the pretext that

his/her relationship with his/her employer had already become strained."

"To Our mind, strained relations in order that it may justify the award of separation pay in lieu of reinstatement with backwages, should be such, that they are so compelling and so serious in character, that the continued employment of an employee is so obnoxious to the person or business of the employer, and that the continuation of such employment has become inconsistent with peace and tranquility which is an ideal atmosphere in every workplace." (pp. 98-99, Rollo).

The respondent NLRC erred is sustaining the Labor Arbiter's ruling that petitioner is not entitled to compensation for teaching health subjects allegedy because petitioner taught during her regular working hours; the subject Health is allied to her profession as nurse; and she and respondent school had no clear understanding regarding extra compensation.

The Solicitor General who normally and expectedly speaks for the NLRC has ably refuted the position taken by the latter. The Court thus finds valid and decisive the following submission of the Solicitor General:

"It is submitted, however, that petitioner is entitled to compensation for teaching health subjects. Although the subject taught is Health and allied to her profession, and is taught during regular working hours, petitioner's teaching the subject in the classroom and her administering to the health needs of students in the clinic involve two different and distinct jobs. They cannot be equated with each other for they refer to different functions. Teaching requires preparation of lesson plans, examinations and grades, while clinical work entails preparation of clinical records and treating illnesses of students in school. There can be no doubt that teaching health subjects is extra work for petitioner, and therefore necessitates extra compensation. After all it has been the practice of the school to pay extra compensation to teachers who were given extra load even during regular working hours (Annex G of Annex F, Petition). The fact that respondent school failed to produce the

> records of those teachers prove that they were paid for extra work. Hence, petitioner should likewise be paid compensation." (pp. 138-139, Rollo).

It must be noted that petitioner has established that in several precedents, non-teaching personnel of respondent school who were made to handle teaching jobs were actually paid actual compensation. Besides, justice and equity demand that since the principle of equal work has long been observed in this jurisdiction, then it should follow that an extra pay for extra work should also be applied.

Significantly, this Court has enunciated in the case of University of Pangasinan Faculty Union vs. University of Pangasinan (127 SCRA 691) that semestral breaks may be considered as "hours worked" under the Rules implementing the Labor Code and that regular professors and teachers are entitled to ECOLA during the semestral breaks, their "absence" from work not being of their own will.

The records show that when summons with attached complaint of petitioner for money claims was served on respondent school on June 14, 1982, said respondent, on the very day, gave petitioner her walking papers. Respondent did not waste any time in dismissing her in brazen violation of these provisions of the Labor Code, as amended:

> Art. 118 of the Labor Code provides:
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> > "Retaliatory measures.— It shall be unlawful for an employer to refuse to pay or reduce the wages and benefits, discharges or in any manner discriminate against any employee who has filed any complaint or instituted any proceeding under this Title or has testified or is about to testify in such proceedings." (Emphasis supplied).
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> Thus, too, Art. 249 (f) provides:
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> > "Art. 249. Unfair labor practice of employers. — It shall be unlawful for an employer to commit any of the following unfair labor practice.

x x x

(f) to dismiss, discharge, or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code,

x x x"

For the aforestated violations, respondent becomes liable under Arts. 289 and 290 of the same Code.

This Court has, time and again, condemned illegal termination of services of employees. In Remerco Garments Manufacturing vs. Minister of Labor and Employment (135 SCRA 167), it declared that while it is true that it is the sole prerogative of the management to dismiss or lay-off an employee, the exercise of such a prerogative, however, must be made without abuse of discretion, for what is at stake is not only private respondent's position (petitioner in this case) but also his means of livelihood.

In arguing for petitioner's entitlement to moral damages, the Solicitor General has aptly summed up her plight. The Solicitor General has submitted this valid justification for the award of moral damages under Art. 1701 of the Labor Code:

> "Petitioner had been the subject of discrimination for over a year before she was ultimately dismissed. When she justifiably refused to obey the order to report for work for two summers, she was not given her vacation pay for both occasions. Unlike her, the doctor and dentist who worked in the same clinic, were not required to report during summer and were given their respective vacation pay. Again, petitioner, unlike the teachers who accepted extra load, was not given extra compensation when she taught health subjects to 900 students for one year. By withholding such compensation, respondent school stood to gain at the expense of petitioner, the amount of the salary which it could have paid to two (2) health teachers. Petitioner's 13th month pay was likewise underpaid because the basis for

computation was only ten months, and not one year as in the case of other regular office personnel. Finally, petitioner's travails culminated in her unceremonious termination without due process at the beginning of the school year on June 14, 1982, by the service of her termination paper antedated June 11, 1982. Termination without due process is specifically prohibited by Rule XIV Section 1 under Section 8 of the Rules Implementing BP Blg. 130:

> 'Security of tenure and due process. — No worker shall be dismissed except for a just or authorized cause provided by law and after due process.'

"The series of discriminatory and oppressive acts of respondent school against petitioner invariably makes respondent liable for moral damages under Art. 1701, which prohibits acts of capital or labor against each other, and Art. 21 on human relations in relation to Art. 2219 No. 10 and Art. 2220, all of the Civil Code (Philippine Refining Co., Inc. vs. Garcia, 18 SCRA 107)." (Rollo, pp. 140-141)

WHEREFORE, the appealed decision of respondent NLRC is hereby **SET ASIDE**. Private respondent is hereby ordered to **REINSTATE** petitioner to her former position without loss of seniority rights and with backwages for three (3) years from the time of her illegal dismissal; to pay her the regular extra compensation relative to her teaching health subjects; and to pay her moral damages, the amount of which shall be determined by respondent NLRC. Let this case be remanded to the NLRC for the proper implementation of this decision.

SO ORDERED.

Melencio-Herrera, *J.*, *(Chairman)*, Sarmiento and Regalado, *JJ.*, concur.
Padilla, *J.*, took no part.