

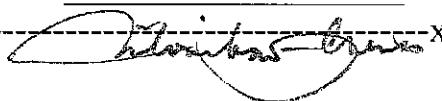
EN BANC

G.R. No. 228357 (C.P. REYES HOSPITAL/ANGELINE M. REYES,
Petitioner, v. GERALDINE M. BARBOSA, Respondent.)

Promulgated:

April 16, 2024

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CONCURRENCE AND DISSENT

LAZARO-JAVIER, J.:

The *ponencia* declared that respondent Geraldine M. Barbosa (Barbosa) was illegally dismissed by petitioner C.P. Reyes Hospital and awarded her backwages computed from January 1, 2014, i.e., the actual date her compensation was withheld, up to the finality of the Decision, subject to legal interest at the rate of 6% per annum from finality of the Decision until fully payment.

In so ruling, the *ponencia* acknowledged the conflicting state of current jurisprudence on the correct reckoning period in the computation of backwages of illegally dismissed probationary employees, i.e., *Lopez v. Javier*,¹ *Cebu Marine Beach Resort v. NLRC*,² and *SHS Perforated Materials v. Diaz*,³ which reckoned the same from the time compensation was withheld up to the finality of the Decision, while *Robinsons Galleria v. Ranchez*,⁴ *Woodridge School v. Pe Benito and Balaguer*,⁵ and *Magis Young Achievers' Learning Center and Cariño v. Manalo*,⁶ computed the same only up to the end of the probationary period. The *ponencia* upheld the ruling in *Lopez*, *Cebu Marine*, and *SHS Perforated Materials*, with the following *ratio*:⁷

In the face of this jurisprudential conflict, the Court deems it necessary to state explicitly that illegally dismissed probationary employees, like regular employees, are entitled to backwages up to their actual reinstatement. In case reinstatement is proven to be infeasible due to strained relations between the employer and the employee and other analogous cases, backwages shall be computed from the time compensation was withheld up to the finality of the decision.

¹ 322 Phil. 70 (1996) [Per J. Romero, Second Division].

² 460 Phil. 301 (2003) [Per J. Sandoval-Gutierrez, Third Division].

³ 647 Phil. 580 (2010) [Per J. Mendoza, Second Division].

⁴ 655 Phil. 133 (2011) [Per J. Nachura, Second Division].

⁵ 591 Phil. 154 (2008) [Per J. Nachura, Third Division].

⁶ 598 Phil. 886 (2009) Per J. Nachura, Third Division].

⁷ *Ponencia*, pp. 19–20.

The ruling is more in keeping with constitutional and statutory guarantees in favor of labor. As the Court held in *Lopez*, the Constitution did not distinguish between regular and probationary employees in guaranteeing the right to security of tenure. Similarly, the Labor Code as amended by [Republic Act No.] 6715 made no such distinction in providing that an illegally dismissed employee is entitled to “reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.” As the Constitution and the law did not distinguish, the Court should not as well.

Further, contrary to the finding in *Robinsons Galleria*, the lapse of the probationary contract without an appointment as regular employee does not necessarily sever the employer-employee relationship. In fact, a probationary employee who is allowed to work beyond the probationary period is, by force of law, considered a regular employee. In one case, the Court has held that absent any grounds to terminate a probationary employee, there is no reason to sever the employment and, consequently, the employee is entitled to continued employment “even beyond the probationary period.” (Emphases and italics in the original, citations omitted)

With due respect, while I fully agree that Barbosa was illegally dismissed, I disagree with the reckoning period used by the *ponencia* in computing her backwages. I submit that the same ought to have been reckoned from the actual date her compensation was withheld, i.e., January 1, 2014, but only up to the end of her probationary period, i.e., March 4, 2014, since, as a probationary employee, she enjoyed security of tenure only during the limited period of her probation.

Award of Backwages, When Proper

Article 294 of the Labor Code clearly provides:

ART. 294. [279] Security of Tenure. – x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis supplied)

The purpose of the award of backwages is to compensate the worker for what he or she has lost because of his or her dismissal, and to set the price or penalty on the employer for illegally dismissing the employee.⁸

⁸ *United Coconut Chemicals, Inc. v. Valmores*, 813 Phil. 685, 698 (2017) [Per J. Bersamin, Third Division].

Backwages may be awarded only corresponding to the life of the employment relationship

As regards the reckoning period in computing backwages, Article 294 categorically states that the same is reckoned *from* the time compensation was withheld *up to* the time of actual reinstatement. This is because backwages are awarded concomitant to a violation of *an employee's right to security of tenure*. Consequently, backwages may properly accrue only for the duration of the tenure of the employee.

As the learned Justice Ramon Paul L. Hernando stated in *Angono Medics Hospital, Inc. v. Agabin*,⁹ “we may also view the proper computation of backwages (whether based on reinstatement or an order of separation pay) in terms of the *life of the employment relationship* itself.”

To illustrate:

Where the illegally dismissed employee is a permanent and regular employee whose employment does not cease on a certain date but continues until validly terminated, backwages continue to accrue until he or she is reinstated.

Where, however, reinstatement is no longer possible, the Court shall award separation pay in lieu of reinstatement, and backwages shall be computed from the time compensation was withheld until the finality of the decision ordering the payment of separation pay. In *Dumapis v. Lepanto Consolidated Mining Co.*,¹⁰ the Court explained the rationale for this rule, *viz.*:

In *CICM Mission Seminaries, et al. v. Perez* citing *Bani Rural Bank, Inc. v. De Guzman*, the Court through the Second Division laid down the rule that the award of separation pay and backwages for illegally dismissed employees should be computed from the time they got illegally dismissed until the finality of the decision ordering payment of their separation pay, in lieu of reinstatement, thus:

The reason for this was explained in *Bani Rural Bank, Inc. v. De Guzman*. **When there is an order of separation pay** (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), **the employment relationship is terminated only upon the finality of the decision ordering the separation pay**. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other. **Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay because the employee**

⁹ 892 Phil. 89, 104 (2020) [Per J. Hernando, Third Division].

¹⁰ 884 Phil. 156 (2020) [Per J. Lazaro-Javier, *En Banc*].

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is no longer entitled to any compensation from the employer by reason of the severance of his employment. One cannot, therefore, attribute patent error on the part of the CA when it merely affirmed the NLRC's conclusion, which was clearly based on jurisprudence.¹¹ (Emphases supplied, citations omitted)

In fine, an illegally dismissed regular employee is entitled to backwages computed up to the finality of the decision when reinstatement is no longer feasible because his or her employment continues until the same is severed by the decision.

This logic underlying the computation of backwages and separation pay in lieu of reinstatement has been consistently applied by the Court in various cases. Consider:

For project employees whose employment has been *fixed* for a specified project or undertaking,¹² their backwages are computed from the date of the termination of employment until the actual completion of the work.¹³ For fixed-term employees, their backwages are computed only corresponding to the unexpired portion of their fixed-term employment contract.¹⁴

In both instances, the underlying principle is that illegally dismissed workers are entitled to the payment of their salaries corresponding to the *unexpired portion* of their employment *where the employment is for a definite period*.¹⁵

Meanwhile, in case the illegally dismissed employee has reached the compulsory retirement age, his or her backwages should only cover the time when he or she was illegally dismissed up to the time when the employee reached the compulsory age of retirement,¹⁶ for it is only up to such age when employment could continue.

Similarly, where the employer had already ceased operations, full backwages are computed only up to the date of the closure of the business.¹⁷ In case of the employee's death during the pendency of the case, backwages are reckoned only up until his or her death.¹⁸

¹¹ *Id.* at 167–168.

¹² *Inocentes et al. v. R. Syjuco, Construction, Inc., et al.*, 858 Phil. 393, 404 (2019) [Per J. Inting, Third Division].

¹³ *Carpio v. Modair Manila*, G.R. No. 239622, June 21, 2021 [Per J. J. Lopez, Third Division].

¹⁴ *Philippine-Singapore Transport Services, Inc. v. NLRC*, 343 Phil. 284 (1997) [Per J. Torres, Jr., Second Division].

¹⁵ *Aro et al. v. NLRC*, 683 Phil. 605, 617 (2012) [Per J. Peralta, Third Division].

¹⁶ *Jaculbe v. Siliman University*, 547 Phil. 352, 359 (2007) [Per J. Corona, First Division].

¹⁷ *Price, et al. v. Innodata Phils. Inc./Innodata Corp., et al.*, 588 Phil. 568 (2008) [Per J. Chico-Nazario, Third Division].

¹⁸ *Maxi Security and Detective Agency v. NLRC*, 514 Phil. 563 (2005) [Per J. Ynares-Santiago, First Division].

Taking these rules into consideration, I am thus unable to subscribe to the view of the *ponencia* that Article 294, as it stands, prescribes only one fixed reckoning timeline for the computation of backwages owing to illegally dismissed employees, whether regular or probationary, i.e., starting from the time they were deprived of compensation until they are actually reinstated. This position seems to negate the true meaning of “actual reinstatement” which ought to happen only for the duration of the “life of the employment relationship” such that backwages accumulate only while the employment relationship may validly last.

Probationary employees only enjoy limited tenure, i.e., the probationary period; their backwages may be reckoned only up to the end of said period

Going now to probationary employees like Barbosa, I humbly submit that their full backwages accrue only during the period corresponding to their limited tenure, i.e., the probationary period. For to construe otherwise would unjustifiably convert their status from probationary to regular.

I elucidate.

A probationary employee is one who, for a given period of time not exceeding six months, is being observed and evaluated to determine whether he or she is qualified for permanent employment. The word probationary, *as used to describe the period of employment*, implies the purpose of the term or period.¹⁹

Vis-à-vis regular employees, the Court acknowledged that while a probationary employee enjoys security of tenure, *it is not on the same plane as that of a permanent employee.*²⁰ This is because a probationary employee’s employment status is merely *temporary* and his or her right to security of tenure covers only such limited period,²¹ which may not exceed six months.

Verily, since the award of backwages prescinds from the right of security of tenure, probationary employees would be entitled to the amount of backwages corresponding only to the period covered by their right to security of tenure, which is the probationary period.

¹⁹ *Enchanted Kingdom, Inc. v. Verzo*, 775 Phil. 388, 401 (2015) [Per J. Mendoza, Second Division].

²⁰ *Moral v. Momentum Properties Management Corp.*, 848 Phil. 621, 635 (2019) [Per J. Caguioa, Second Division].

²¹ *Tamson’s Enterprises, Inc. et al. v. Court of Appeals*, 676 Phil. 384, 397 (2011) [Per J. Mendoza, Third Division] and *Philippine Daily Inquirer, Inc. v. Magtibay, Jr.*, 555 Phil. 326, 334 (2007) [Per J. Garcia, First Division].

The *ponencia* nonetheless justifies computing backwages of probationary employees until the finality of decision by ratiocinating that they are not automatically terminated upon the end of the probationary period. In fact, probationary employees will be considered regular employees if *allowed* to work beyond the probationary period.²²

I focus on the word “allowed” as provided by Article 296 of the Labor Code. To be precise, the law states, “...a probationary employee who is *allowed to work* beyond the probationary period is, by force of law, considered a regular employee.” This is because if the employee was allowed to remain in employment beyond the probationary period, it could be for no other reason than that he or she demonstrated sufficient skill in terms of the ability to meet the standards set by the employer.²³

Again, the key word here is “allowed” which contemplates acquiescence by the employer to the continued service of the probationary employee. This requisite acquiescence, however, is *absent* where the employment of a probationary employee continued beyond the probationary period, not because the employer allowed it to, but because in the meantime there is an illegal dismissal case pending before the courts during which it has not yet been determined whether the employment relationship was validly severed.

When the Court thus ultimately rules, after the probationary period had already expired, that probationary employees were illegally dismissed and orders their reinstatement, the Court contemplates restoring said employee to their original status, i.e., as probationary employees. The Court does not reinstate them to a regular position which they, prior to their illegal dismissal, *never* held. For reinstatement means the *restoration* to a state or condition from which one had been removed or separated.²⁴ In effect, the probationary employee shall be reinstated to his or her position as such, but *subject to* regularization at the end of the probationary period.

Similarly, where reinstatement is no longer feasible, the illegal dismissal of probationary employees does not convert their status to that of regular employees. There is, thus, no basis to award them backwages corresponding to the period beyond his or her probationary employment.

²² *Ponencia*, p. 27.

²³ See *Villanueva v. NLRC*, 356 Phil. 638 (1998) [Per J. Davide, Jr., First Division].

²⁴ *Asian Terminals, Inc. v. Villanueva*, 538 Phil. 197 (2006) [Per J. Carpio, Third Division].

ALL TOLD, I concur in the finding that respondent Geraldine M. Barbosa was illegally dismissed, but dissent on the computation of backwages in reckoning it from the date compensation was actually withheld until the finality of the Decision.



AMY C. LAZARO-JAVIER
Associate Justice