EN BANC

G.R. No. 228357 – C.P. REYES HOSPITAL / ANGELINE REYES, Petitioners, **v. GERALDINE M. BARBOSA,** Respondent.

Promulgated:
April 16, 2024

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SEPARATE OPINION

LEONEN, *J.*:

I join the *ponencia* in holding that respondent Geraldine M. Barbosa was illegally dismissed. However, I write separately to concur with Justice Antonio T. Kho, Jr.'s earlier position in his initial draft where he wrote that the two-notice rule applied in dismissal cases for just cause should also be applied in the dismissal case of a probationary employee when they fail to qualify to be a regular employee. The earlier draft of Justice Kho, Jr.'s *ponencia* reads:

> The records show that C.P. Reyes Hospital served only one notice of termination to Barbosa regarding her alleged failure to meet the hospital's standards for regularization.
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> The implementing rules and regulations of the Labor Code, as amended by Department of Labor and Employment (DOLE) Department Order No. 010-97 states:
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> > ARTICLE III. Section 2, Rule I, Book VI of the Implementing Rules is hereby amended, to read as follows:
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> > "SEC 2. *Security of tenure*. (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.
> >
> > "(b) The foregoing shall also apply in cases of probationary employment; provided, however, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment.
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> > "x x x x

> "If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination."

In *Philippine Daily Inquirer vs. Magtibay, Jr., (Magtibay),* the Court upheld the dismissal of the probationary employee through a single notice, ruling that due process in probationary employment lies in "apprising [the employee] of the standards against which [their] performance shall be continuously assessed, and not in notice and hearing as in the case of [just causes for dismissal]."

In *Abbott Laboratories, Philippines v. Alcaraz (Abbott Laboratories)*[86] the Court ruled the probationary employee's dismissal through a single letter as procedurally valid, noting that the two-notice rule does not apply to probationary employees. Finally, echoing the ruling in *Abbott Laboratories*, the Court, in *Moral v. Momentum Properties Management Corp.*, held that the two-notice rule does not govern in cases of probationary employment.

In its Comment, the Office of the Solicitor General also argued that the one-notice rule in case of failure to meet the standards of regularization is valid, and that imposing the two-notice rule in this case would "render inutile the employer's right or prerogative to choose who will be hired and who will be denied employment." Further, the one-notice rule does not, according to the Solicitor General, violate the guarantee of equal protection of the laws as there is a substantial distinction between a regular and a probationary employee. Finally, the Solicitor General pointed out that a probationary employee, under the current rules, is served two notices that are akin to the notices served on regular employees; the first notice being the communication of standards and the second one being the notice of failure to meet the standards and dismissal.

However, as will be explained below, a careful study of relevant constitutional provisions, statutes, and legal principles constrains the Court to hold that this one-notice rule on probationary employees runs counter to the policies enshrined in the Constitution protecting labor and is thus *ultra vires* and **should now be abandoned**. Particularly, the Court sees no reason that the "two-notice rule," which is applied in case of just causes for dismissal, should not likewise be applied to dismissal due to failure of a probationary employee to qualify for regularization.

It should be noted that the Labor Code itself does not provide for these rules on notice of termination, delegating the authority instead to the DOLE to promulgate rules and regulations implementing the statute.[92] Thus, both the one-notice and the two-notice rules are set out in the implementing rules and regulations (IRR) of the Labor Code. As instances of delegated legislative power, they must conform to and be consistent with the provisions of the enabling statute. They may not amend the law by abridging or expanding its scope.

Relevantly, the State's policy of affording full protection to labor is enshrined in the Constitution and the Labor Code. The Constitution declares that the State "affirms labor as a primary social economic force" and it "shall protect the rights of workers and promote their welfare."[95] Its

article on social justice and human rights[96] devotes a section specific to labor, *viz:*

Labor

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of 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.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

The Labor Code also declares the State's basic policy as follows:

> Art. 3. Declaration of Basic Policy. — The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

Indeed, jurisprudence has also recognized the right of persons vis-à-vis their chosen occupation, recognizing that "[o]ne's employment, profession, trade or calling is a property right within the protection of the constitutional guaranty of due process of law."

Also among the primary labor rights that are protected by the State is the right of workers to security of tenure. "Security of tenure" refers to the right of workers not to be dismissed except for just cause provided by law and after due process.

In *Telus International Philippines, Inc. v. de Guzman*, the Court explained that security of tenure enables workers to "have a reasonable expectation that they are secured in their work and that management prerogative, although unilaterally wielded, will not harm them. Employees are guaranteed that they can only be terminated from service for a just and valid cause and when supported by substantial evidence after due process." Clear from this definition are the following aspects of security of tenure: **first**, that the cause of a worker's dismissal must be just and valid; **second**, the cause for dismissal must be based on substantial evidence; and **third**, that due process must be observed.

Notwithstanding the Labor Code's provision on security of tenure, which defines the right "in cases of regular employment," jurisprudence has consistently and uniformly held that probationary employees similarly enjoy security of tenure. In *Lopez v. Javier (Lopez)*,[103] the Court emphasized that the Constitution, in according the protection of security of tenure, "does not distinguish as to the kind of worker who is entitled to be protected in this right."

Clear to the Court is the fact that security of tenure is available to employees regardless of whether they are regular or probationary. Thus, the Court finds that the due process requirement in probationary employment lies **not only** in apprising the employee of the reasonable standards for regularization at the time of his employment, **but also, in proper cases, in informing an employee of their failure to qualify and in them being allowed the opportunity to be heard thereon *prior to termination.*** In this manner, the Court holds that the ground of failure to qualify to the standards of regularization **is akin** to a just cause to dismiss an employee.

The similarity between these grounds is evident. In both these cases, the "fault" as it were lies with the employee, such as, in just causes: (*a*) serious misconduct or willful disobedience; (*b*) gross and habitual neglect; (*c*) fraud or willful breach of trust; (*d*) commission of a crime against the employer or an immediate member of their family; and (*e*) other analogous causes. In probationary employment, the failure to meet the employer's reasonable standards is obviously attributed to the probationary employee.

In just causes, the employee is given the opportunity to be heard on the charges against them; charges that, if ultimately resolved against them, results in the termination of their employment and in the deprivation of their property right. The same is exactly true for probationary employees, who enjoy the same security of tenure as regular employees. When faced with a circumstance that could potentially deprive them of their property right, such as their alleged failure to qualify for regular employment based on standards unilaterally set by their employer, **they then should be entitled to the same right to be heard as regular employees**. The right of employees to their employment, even in cases of probationary employment, is still a right that needs to be protected. As the Court said in *Lopez,* the Constitution does not distinguish between the kind of employment when it extends its protective mantle to employees. The Court must not hold otherwise.

As it stands, the administrative rules implementing the due process requirements for dismissal of probationary employees who fail to qualify for regularization (or the "one-notice rule") do not reflect the constitutional guaranty of security of tenure. This is clearly prejudicial to the rights of probationary employees. In *Chartered Bank Employees Association vs. Ople,* the Court, through Justice Hugo Gutierrez, Jr., held that an administrative interpretation which diminishes the benefits of labor more than what the statute delimits or withholds is obviously *ultra vires* and must be struck down. Here, the one-notice rule exposes probationary employees to an unjust situation where, at the end of the probationary period, their performance is graded poorly and they are perforce dismissed and deprived of their employment without an opportunity to explain their side and be heard by the employer. Requiring the same two-notice rule for probationary employment would be more in keeping with constitutional and statutory policies affording protection to labor.

In *King of Kings Transport, Inc. v. Mamac*, the Court laid out the following procedural considerations in terminating *regular employees*, *viz.*:

> (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
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> (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
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> (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

These considerations must be taken into account in dismissing probationary employees as well. *First*, the employer must inform the probationary employee in writing of the fact that based on their evaluation of the latter's performance thus far, they will not qualify for regularization. *Second*, the probationary employee must be given a reasonable opportunity to be heard on any possible defenses they may have as regards their performance. *Third*, the probationary employment may be terminated through a second notice informing the probationary employee that, after considering the explanation or defenses laid out, their failure to qualify for regularization is justified.

A *fourth consideration* must also be kept in mind, which is that the termination must be done before the lapse of the probationary period of

employment. For if the probationary employee is allowed to work after the lapse of the probationary period, they will be considered a regular employee. The specifics as regards timing this procedure are left to the prerogative of management, so long as the above are taken into consideration.

Finally, the Court is mindful of the fact that, on appeal, the parties did not raise as an issue the validity of the *procedural aspect* of Barbosa's dismissal on the ground of her alleged failure to qualify for regularization. Further, before the Court, neither of the parties specifically assailed the validity of the one-notice rule as set out in DOLE Department Order No. 09-097. The Court recognizes that, considering the specialized knowledge and technical expertise involved in their issuance, administrative rules and regulations are accorded great respect. These issuances have in their favor a presumption of legality, and when their validity is not put in issue, courts have no option but to apply the same.

The rule, however, admits exceptions. Though not raised as errors or issues by the parties, the Court has held in *Comilang v. Burcena* that an appellate court is clothed with ample authority to review in the following instances: (*a*) grounds not assigned as errors but affecting jurisdiction over the subject matter; (*b*) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (*c*) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (*d*) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (*e*) matters not assigned as errors on appeal but closely related to an error assigned; and (*f*) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.

In *Unduran, et al. vs. Aberasturi,* the Court, through then Justice Diosdado Peralta, declared as null and void Rule IX, Section 1 of the implementing rules and regulations of Indigenous Peoples' Rights Act (RA 8371), as well as Rule III, Section 5 and Rule IV, Sections 13 and 14 of the rules of the National Commission on Indigenous Peoples (NCIP) for being contrary to the provisions of their enabling law. In that case, the administrative issuances expanded the jurisdiction of the NCIP beyond what is provided in the statute. While neither of the parties in that case directly assailed the validity of the administrative issuances, the Court nonetheless resolved it because they touch on the issue of who between the Regional Trial Court (RTC) and the NCIP had jurisdiction over the dispute.

Similarly, while neither of the parties in *Perez and Doria vs. Philippine Telegraph and Telephone Company* mounted a direct attack on the rules implementing the Labor Code, the Court, speaking through the late Chief Justice Renato Corona, nonetheless saw it fit to discuss whether Section 2 (d), Rule I of the Implementing Rules of Book VI of the Labor Code, on the requirement of a hearing in cases of termination, is in line with Article 277 (b) of the Labor Code, its enabling statute. While the Court stopped short of invalidating the administrative issuance, it found that the administrative requirement of an "actual hearing or conference" is not synonymous with and is in fact stricter than the requirement of the law for an "ample opportunity to be heard." Accordingly, it laid down guiding principles to govern the hearing requirement that is in line with the law itself.

> Thus, it is to arrive at a complete and just resolution of this case and to serve the interests of justice that the Court is mandated to review, not only the substantive due process aspect of a probationary employee's dismissal, but also its procedural due process aspect. In doing so, the Court follows the rule set out in *Tamson's Enterprises, Inc.* that the power to terminate probationary employment must not be unlawfully discriminatory. Here, as explained above, the Court finds that the one-notice rule discriminates against probationary employees in such a manner that runs counter to enshrined constitutional principles protecting labor and security of tenure. To emphasize, these policies are applied to all employees, regardless of whether they are regular or probationary.
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> Further, before the labor tribunals, the parties raised the issue of whether her dismissal was done in accord with procedural due process. Though this was not raised on appeal, the Court finds that the issue of compliance with due process indeed bears on the issues raised by the parties on appeal, and as such, needs to be resolved here." (Emphasis and underscoring in the original, citations omitted).

I concur with the *ponencia's* position in its initial draft.

The policy of the Constitution is to give the utmost protection to the working class as enshrined in Article XIII:

> SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
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> 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.
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> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
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> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.[1]

Article III of the Labor Code reiterates the State's basic policy on labor:

> Declaration of *Basic Policy*. — The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization,

[1] CONST., art. 13, sec. 3.

collective bargaining, security of tenure, and just and humane conditions of work.[2]

Clearly, our Constitution and labor laws want employees to have a reasonable expectation of security in their work.[3] In *Telus International Philippines, Inc., v. De Guzman*,[4] the Court emphasized that "employees are guaranteed that they can only be terminated from service for a just and valid cause and when supported by substantial evidence after due process."[5]

This Court is fully committed to that policy and has always been quick to rise in defense of the rights of labor.[6] While employers do not possess inherent power and right to exploit employees, several factors may create an imbalance in the employer-employee relationship, which could potentially lead to exploitation of employees. The Court must remain vigilant in these cases.

Probationary employees should receive strong protection from employer exploitation considering their increased susceptibility to mistreatment and abuse by management.[7]

I submit that when a probationary employee fails to meet the reasonable standards for regular employment, it is equivalent to having a justifiable reason to terminate a regular employee. In these cases, the fault lies with the employee.

The grounds for dismissal of just cause lie in the serious misconduct or willful disobedience, gross and habitual neglect, fraud or willful breach of trust, commission of a crime against the employer or an immediate member of their family, and other analogous causes.[8] In probationary employment, the employee can be legally terminated either: (1) for a just cause; or (2) for failure to meet reasonable standards set by the employer made known to him at the start of employment.[9] Such failure is attributed to the probationary employee.

Article 292 [277] of the Labor Code requires that an employee be furnished with a written *notice* containing the cause for termination and that the employer must give the employee an *opportunity to be heard.*[10] A

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2 LABOR CODE, as amended by Presidential Decree No. 442 (2015), art. 3.

3 *Telus International Philippines, Inc., et al. v. De Guzman,* 867 Phil. 274, 287 (2019) [Per J. Hernando, Second Division].

4 *Id.* at 274.

5 *Id.* at 287.

6 *Holiday Inn Manila v. National Labor Relations Commission,* G.R. No. 109114, September 14, 1993 [Per J, Cruz, First Division].

7 *Cebu Marine Beach Resort v. NLRC,* G.R. No. 143252, October 23, 2003 [Per J. Sandoval-Guiterrez, Third Division].

8 LABOR CODE, as amended by Presidential Decree No. 442 (2015), art. 297 [282].

9 LABOR CODE, as amended by Presidential Decree No. 442 (2015), art. 296 [281].

10 LABOR CODE, as amended by Presidential Decree No. 442 (2015), art. 292 [277] (b).

subsequent notice must be given to inform the employee of the employer's decision to dismiss him.[11]

Employees terminated for any just cause are afforded the chance to defend themselves against charges that, if found to be true, could lead to their dismissal and the loss of their property rights. The same rule must apply for probationary employees.

The due process requirement in probationary employment is fulfilled when at the time of employment, the employer informs the probationary employee of the reasonable standards of employment regularization and of the grounds of failure to qualify. A probationary employee is deemed to have been informed by the employer of the standards for regular employment when the employer has exerted reasonable efforts to apprise the employee of what he or she is expected to do or accomplish during the trial period of probation.[12]

In terminating the employment of a probationary employee, the employer must inform the employee in writing that they did not qualify to be a regular employee based on their evaluation of their performance. Afterwards, the probationary employee must be given a reasonable opportunity to be heard and to articulate their defense. After evaluation of defenses and based on reasonable standards, termination is justified. However, it must be done before the end of the probationary period of employment. It must also be noted that a probationary employee who is allowed to work after the lapse of the probationary period shall be considered a regular employee.[13]

The requisites of the two-notice rule are basic requirements of due process in labor law. These meet the constitutional requirement of procedural due process that "contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property"[14] and the constitutional guarantee of security of tenure.

As amended by the Department of Labor and Employment (DOLE) Department Order No. 010-9783, the implementing rules and regulations on security of tenure provide:

> SEC 2. *Security of tenure*. (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

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11 *Montinola v. Philippine Airlines*, 742 Phil. 491, 506–507 (2014) [Per J. Leonen, Second Division], *citing Voyeur Visage Studio v. Court of Appeals*, 493 Phil. 831, 840 (2005) [Per J. Garcia, Third Division]. The need for 1) a notice apprising the acts and omissions of the employee for which discipline is sought; 2) a notice informing the penalty of the employer, is referred to as the 'twin notice requirement' in labor law.

12 *Jaso v. Metrobank & Trust Co.*, 903 Phil. 213 (2021) [Per J. Inting, Third Division].

13 LABOR CODE, as amended by Presidential Decree No. 442 (2015), art. 296 [281].

14 *Lopez v. Director of Lands*, 47 Phil. 23–37 (1924) [Per J. Johnson, *En Banc*].

> (b) The foregoing shall also apply in cases of probationary employment; provided, however, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment.
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> If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served to the employee within a reasonable time from the effective date of termination.[15]

In *Montinola v. Philippine Airlines*,[16] this Court emphasized that the right of workers to security of tenure is a constitutional and statutory protected labor right not to be dismissed without just or valid cause and in the absence of due process:

> Security of tenure of workers is not only statutorily protected, but also a constitutionally guaranteed right. Thus, any deprivation of this right must be attended to by due process of law. This means that any disciplinary action that affects employment must pass due process scrutiny in both its substantive and procedural aspects.
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> The constitutional protection for workers elevates their work to the status of a vested right. It is a vested right protected not only against state action but against the arbitrary acts of the employers as well. This court in *Philippine Movie Pictures Workers' Association v. Premier Productions, Inc.* categorically stated that "[t]he right of a person to his labor is deemed to be property within the meaning of constitutional guarantees." Moreover, it is of that species of vested constitutional right that also affects an employee's liberty and quality of life. Work not only contributes to defining the individual, it also assists in determining one's purpose. Work provides for the material basis of human dignity.[17]

In *Lopez v. Javier*,[18] this Court held that in ensuring the protection of security of tenure, the Constitution "does not distinguish as to the kind of worker who is entitled to be protected in this right."[19] It accords security of tenure to all employees, whether regular or probationary.

While the employer observes the fitness, propriety, and efficiency of a probationer to ascertain fitness for permanent employment, the probationer at

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15 DOLE Department Order No. 010-9783 (1997). Amending Rules Implementing Books III and VI of the Labor Code.

16 742 Phil. 491 (2014) [Per J. Leonen, Second Division].

17 *Id.* at 501.

18 322 Phil. 73–83 (1996) [Per J. Romero. Second Division].

19 *Id.*

the same time seeks to prove to the employer that they have the qualifications to meet the reasonable standards for permanent employment.[20]

Employees who are on probation enjoy security of tenure.[21] During their probationary employment, they cannot be dismissed except for a cause.

In *Holiday Inn Manila v. NLRC*,[22] this Court stressed that the employer holds complete discretion in selecting employees based on their standards of competence and integrity, exercising their prerogative in the hiring process. However, once employed, workers are entitled to legal protection. This legal protection extends to both probationary and regular employees of the workforce.[23] It is also important to note that the employer's freedom in hiring employees does not equate to their freedom in terminating employment.[24]

Furthermore, the differing application of due process between a regular and probationary employee appears arbitrary. This rule places probationary employees in an unfair position where they can be dismissed and deprived of employment regularization without the opportunity to explain and be heard at the end of the probationary period.

In *Central Negros Electric Cooperative, Inc v. NLRC*,[25] this Court emphasized the need for probationary employees' protection:

> Rightly so, for if there is any group of employees that needs robust protection from the exploitation of employers, it is the casuals and probationaries. Usually the lowliest of the lowly, they are most vulnerable to abuses of management for they would rather suffer in silence than risk losing their jobs.[26]

With utmost respect to my colleagues, I stand with the *ponencia's* initial position that the one-notice rule on probationary employees runs counter to the constitutional guarantee of affording full protection to labor and security of tenure. To require the application of the two-notice rule for probationary employment is consistent with our state policy on protecting labor.

To emphasize, we noted the transcendental role of labor in *Globe-Mackay Cable v. NLRC*:[27]

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20 *Escorpizo v. University of Baguio*, G.R. No. 121962, April 30, 1999 [Per J. Quisumbing. Second Division].

21 *Dajao v. University of San Carlos, et. al.*, G.R. No. 264418, March 1, 2023 [Notice, Third Division].

22 G.R. No. 109114, September 14, 1993 [Per J. Cruz. First Division].

23 *Id.*

24 *Id.*

25 306 Phil. 118–125 (1994) [Per J. Puno. Second Division].

26 *Id.*

27 283 Phil. 652–664 (1992) [Per J. Romero. *En Banc*].

> [C]onstitution has gone further than then 1973 Charter in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Given the pro-poor orientation of several articulate Commissioners of the Constitutional Commission of 1986, it was not surprising that a whole new Article emerged on Social Justice and Human Rights designed, among other things, to "protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good."[28]

The right of probationary employees to employment is a right that needs to be protected. In situations where probationary employees are confronted with circumstances that may jeopardize their property rights, such as being deemed ineligible for employment regularization based on reasonable standards unilaterally established by their employer, they must be afforded the same opportunity to be heard and to present their case, akin to that provided to regular employees. A probationary employee, like a regular employee, enjoys security of tenure.[29]

When the Constitution makes no distinction between the kind of employment in extending its protection to employees, the Court must refrain from making one.

To repeat, the *ponencia* in its initial draft ruled on the applicability of the two-notice rule to all employees, both regular and probationary, as a prerequisite to a valid dismissal due to the security of tenure they enjoy. However, the *ponencia* has had to strike out its entire discussion on that issue in deference to the *En Banc*'s decision to wait for a proper case that directly touches on the constitutionality of the one-notice rule for termination of probationary employees, instead of laying down what would merely be an *obiter dictum* in the present case for entitlement to backwages. Hence, while we wait for the proper case to ripen for resolution, I leave this here for my colleagues to consider when the issue is directly raised to this Court in the future.

ACCORDINGLY, I vote that the Petition be **DENIED**.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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[28] *Id. See also* CONST., art. 13, sec. 1, par. 1.

[29] *Abbott Laboratories v. Alcaraz*, G.R. No. 192571, July 23, 2013 [Per J. Perlas-Bernabe, *En Banc*].