



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

**SECOND DIVISION**

**COLEGIO SAN AGUSTIN-  
BACOLOD and/or FR.  
FREDERICK  
COMENDADOR,**

**G.R. No. 212333**

Present:

*Petitioners,*

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*  
HERNANDO,  
ZALAMEDA,  
ROSARIO, and  
MARQUEZ, JJ.

- versus -

**MELINDA M. MONTAÑO,**  
*Respondent.*

Promulgated:

**MAR 28 2022**

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**DECISION**

**HERNANDO, J.:**

This petition for review on *certiorari*<sup>1</sup> assails the July 10, 2013 Decision<sup>2</sup> and April 11, 2014 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP. No. 06330, which reversed the April 12, 2011 Decision<sup>4</sup> and June 28, 2011 Resolution<sup>5</sup> of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-01-000069-2011, and reinstated with modifications the

<sup>1</sup> *Rollo*, pp. 14-68.

<sup>2</sup> Id. at 113-122. Penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Marilyn B. Lagura-Yap.

<sup>3</sup> Id. at 123-124.

<sup>4</sup> Id. at 83-102. Penned by Commissioner Aurelio D. Menzon and concurred in by Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Julie C. Rendoque.

<sup>5</sup> Id. at 104-106.

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November 23, 2010 Decision<sup>6</sup> of the Labor Arbiter (LA) in NLRC RAB Case No. VI-02-10169-10.

**The Factual Antecedents:**

This case arose from a complaint<sup>7</sup> for illegal suspension, illegal dismissal, separation pay, diminution of benefits, moral and exemplary damages, and attorney's fees filed by respondent Dr. Melinda M. Montaña (respondent) against petitioners Colegio San Agustin-Bacolod (CSA-Bacolod) and its president, Fr. Frederick C. Comendador. CSA-Bacolod is an educational institution duly organized and existing under the laws of the Philippines.<sup>8</sup> CSA-Bacolod first employed respondent as a chemistry instructor in 1973.<sup>9</sup> In 2003, she was appointed school registrar; her appointment was renewed several times.<sup>10</sup>

Respondent alleged that in her reappointment letter for the 2009–2011 term, there was a diminution of her salary; her basic salary was reduced from ₱33,319.00 to ₱26,658.20.<sup>11</sup> She thus wrote to the Human Resource Director to seek an explanation.<sup>12</sup> It was the school president who responded, and he stated that her total gross pay did not change as the school merely opted to break down the amount to show the amount of honorarium.<sup>13</sup> Respondent claimed that this was the time when the president started to show his bias against her.<sup>14</sup> Thereafter, respondent was suspended, and her employment was eventually terminated due to complaints from two faculty members alleging that she allowed some students to attend the graduation ceremony despite not meeting the requirements.<sup>15</sup>

These events led to her filing of the complaint. Respondent admitted that she allowed certain students to join the March 2009 graduation ceremony in CSA-Bacolod even if they did not pass some of their subjects.<sup>16</sup> She claimed that she merely continued the practice of previous registrars; she even imposed

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<sup>6</sup> Id. at 70-81. Penned by Executive Labor Arbiter-Designate and Officer-in-Charge RAB VI Rene G. Eñano.

<sup>7</sup> Id. at 113-114.

<sup>8</sup> Id. at 70.

<sup>9</sup> Id. at 114.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 71 and 101.

<sup>14</sup> Id. at 114.

<sup>15</sup> Id.

<sup>16</sup> Id.

more stringent rules in determining when ineligible students may join the rites.<sup>17</sup> She added that she allowed these students to participate due to humanitarian reasons.<sup>18</sup>

Respondent did not issue special order numbers to these students; thus, they are not considered graduates.<sup>19</sup> She cited the Student's Manual, which provides that the inclusion of students' names in the list of candidates for graduation, their picture in the yearbook, and their participation in the commencement exercises do not make them full-fledged graduates unless all requirements were complied with and a Special Order Number has been issued by the Commission on Higher Education (CHED).<sup>20</sup>

Respondent claimed that management did not consider her explanation and she was instead served with a notice of charges on January 20, 2010.<sup>21</sup> She responded to the notice. She asserted that the basis of the notice was not really the letter complaints but mere letters seeking for clarification of the school's policy regarding graduation.<sup>22</sup> She also questioned the jurisdiction of the Disciplinary Committee created by the president. The matter should have been brought to the Vice President for Academic Affairs, and if not resolved, it may be elevated to the Grievance Committee.<sup>23</sup> She refused to attend the Disciplinary Committee meeting scheduled on January 26, 2010.<sup>24</sup>

CSA-Bacolod, for its defense, posited that respondent's suspension and eventual dismissal was due to gross misconduct resulting to loss of trust and confidence.<sup>25</sup> Respondent had been reminding the college deans that students with academic deficiencies should not be allowed to participate in the graduation exercises.<sup>26</sup> Two faculty members reacted to this because they knew of certain students that were allowed by respondent to participate despite non-compliance with the requirements.<sup>27</sup>

As a result, the president ordered that a report be submitted regarding the matter.<sup>28</sup> The concerned faculty members submitted reports naming four students who were allowed to participate despite failing in some of their

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<sup>17</sup> Id.

<sup>18</sup> Id. at 114 and 87.

<sup>19</sup> Id. at 114.

<sup>20</sup> Id.

<sup>21</sup> Id. at 115.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

subjects.<sup>29</sup> CSA-Bacolod's Administrative Manual provides that the School Registrar is tasked to: (a) conduct regular evaluation of subjects and credits earned by students and advise them on deficiencies; and (b) enforce graduation requirements, as well as preparation of the graduation list for approval and supervision of the ceremony itself.<sup>30</sup> The president thus created an Ad Hoc Committee to look into the case.

A notice of charges was issued to respondent for gross misconduct, tampering of school records, and willful breach of trust and confidence or gross negligence.<sup>31</sup> At the same time, she was placed under preventive suspension for 30 days.<sup>32</sup> Although, respondent submitted her response to the notice, she refused to attend the hearing of the Ad Hoc Committee. Another hearing was held and respondent attended this time.<sup>33</sup>

The Ad Hoc Committee deliberated and thereafter recommended the termination of respondent's employment for gross misconduct and willful breach of trust and confidence.<sup>34</sup> The president issued a notice of termination dated February 20, 2010.<sup>35</sup>

#### **Ruling of the Labor Arbiter:**

In its November 23, 2010 Decision,<sup>36</sup> the LA ruled in favor of respondent, finding her suspension and dismissal illegal. This resulted to the award of backwages, separation pay, damages, and attorney's fees. It also awarded salary differentials due to diminution of benefits.

In ruling that respondent's preventive suspension was illegal, the LA found that her continued presence in the school during the investigation would not have posed a serious and imminent threat to the life or property of the school and its employees.<sup>37</sup>

As to respondent's dismissal, the LA found that her act cannot be construed as gross or serious misconduct. Respondent had basis in allowing the ineligible students to attend the graduation rites: a long-standing practice as also

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<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id. at 71.

<sup>33</sup> Id. at 116.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id. at 70-81.

<sup>37</sup> Id. at 75-76.

observed by the previous registrars.<sup>38</sup> Also, the students concerned made written requests that were endorsed by their respective deans and consented to by their respective parents.<sup>39</sup> Further, there can be no loss of trust and confidence in her as respondent's act did not place the school in an uncompromising situation.<sup>40</sup> Indeed, there was a school directive that students who failed to comply with the requirements should not be allowed to march; this directive, however, as held by the LA, was not implemented up until this instance.<sup>41</sup> Respondent merely followed the accepted practice.<sup>42</sup>

The LA concluded that respondent's offense is just simple misconduct for which the penalty of dismissal is not commensurate.<sup>43</sup> In addition to backwages, the LA awarded separation pay in lieu of reinstating respondent because of the strained relations brought about by the incidents that led to this case.<sup>44</sup>

As to the claim of diminution of benefits, the LA found that the lower salary of ₱26,658.20 on her latest appointment as compared with the previous salary of ₱33,319.00 violated Article 100 of the Labor Code.<sup>45</sup> As respondent was already enjoying the higher salary for more or less six years, it is just and equitable that she continues receiving the same amount, therefore entitling her to differentials.<sup>46</sup>

The LA awarded moral damages as the school supposedly acted in bad faith in unjustly dismissing respondent, and exemplary damages so that similar acts may be suppressed and discouraged.<sup>47</sup> Attorney's fees were also awarded.<sup>48</sup>

The dispositive portion of the LA Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the suspension and dismissal of the complainant illegal. Respondent COLEGIO SAN AGUSTIN-BACOLOD/FATHER FREDERICK C. COMENDADOR-PRESIDENT is hereby ordered to pay the complainant DR. MELINDA M. MONTAÑO her backwages, salary differentials, separation pay, moral and exemplary damages[,] and attorney[']s fee[s] in the amount of TWO MILLION

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<sup>38</sup> Id. at 76-77.

<sup>39</sup> Id.

<sup>40</sup> Id. at 77-78.

<sup>41</sup> Id. at 78.

<sup>42</sup> Id.

<sup>43</sup> Id. at 79.

<sup>44</sup> Id.

<sup>45</sup> Id. Presidential Decree No. 442, The Labor Code of the Philippines, Art. 100 (1974), as amended and renumbered.

<sup>46</sup> Id. at 80.

<sup>47</sup> Id.

<sup>48</sup> Id.

ONE HUNDRED THREE THOUSAND SIXTY NINE PESOS and 55/100 centavos (P2,103,069.55) to be deposited with this Office within 10 days from receipt of this Decision.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.<sup>49</sup>

Aggrieved, CSA-Bacolod elevated the case to the NLRC.

### **Ruling of the National Labor Relations Commission:**

In its April 12, 2011 Decision,<sup>50</sup> the NLRC reversed the LA and ruled that respondent was validly dismissed. It also ruled that she is not entitled to salary differentials.

Respondent indeed committed serious misconduct and breach of trust and confidence reposed by the school in her. Despite being firm in reminding the deans and other officials about the policy on graduation, she herself allowed ineligible students to participate in the ceremony.<sup>51</sup> This act was in total violation of the school's policy.<sup>52</sup> It was a serious transgression related to the performance of her duty, rendering her unfit to continue working for the school.<sup>53</sup> Her act also breached the trust and confidence reposed by the school in her as she was occupying a fiduciary position being the school registrar.<sup>54</sup> Respondent's excuse of merely continuing an established practice does not excuse her from liability.<sup>55</sup> With the finding of just cause, there is no basis to award backwages, separation pay, moral and exemplary damages, and attorney's fees.<sup>56</sup>

As to the issue of preventive suspension, the NLRC found that its imposition was valid. Respondent's continued presence posed a serious and imminent threat to the school's property.<sup>57</sup> Being the school registrar, she had access to student records; there is a possibility that the records may be "stage-managed," in the words of the NLRC.<sup>58</sup>

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<sup>49</sup> Id. at 8.

<sup>50</sup> Id. at 83-102.

<sup>51</sup> Id. at 97.

<sup>52</sup> Id.

<sup>53</sup> Id. at 97-98.

<sup>54</sup> Id. at 98.

<sup>55</sup> Id. at 99.

<sup>56</sup> Id. at 100.

<sup>57</sup> Id.

<sup>58</sup> Id. at 100-101.

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With regard to the salary differentials, the NLRC ruled that respondent continued to receive the same gross pay of ₱33,319.00.<sup>59</sup> The school separated the amount of the basic pay from the honorarium, which still total to ₱33,319.00.<sup>60</sup> Prior to her 2009 reappointment, she was already receiving the same amount although the items were not broken down to basic pay and honorarium.<sup>61</sup> The school merely opted to inform respondent that she was receiving remuneration according to her academic position and additional honorarium for being appointed school registrar.<sup>62</sup>

The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby VACATED and SET ASIDE and a NEW ONE [is] ENTERED declaring that complainant was validly dismissed. Consequently, there is no basis for the award of separation pay in lieu of reinstatement, backwages, moral and exemplary damages[,] and attorney's fees. Complainant is likewise not entitled to salary differentials there being no diminution in pay.

SO ORDERED.<sup>63</sup>

Respondent moved for reconsideration, but it was denied by the NLRC in its June 28, 2011 Resolution,<sup>64</sup> prompting her to file a petition for *certiorari* with the CA.

### **Ruling of the Court of Appeals:**

In its July 10, 2013 Decision,<sup>65</sup> the CA reversed the NLRC Decision and reinstated the LA Decision with modification on the award of money claims.

The CA ruled that respondent's act was indeed an act of misconduct; however, it was not serious enough to warrant the penalty of dismissal.<sup>66</sup> There was no wrongful intent.<sup>67</sup> This was shown by respondent's arguments that she acted in accordance with a long-standing practice, that she was prompted by humanitarian reasons, and that the process of allowing the ineligible students was well documented by letter requests consented to by their parents and endorsed by the respective deans.<sup>68</sup>

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<sup>59</sup> Id. at 101.

<sup>60</sup> Id.

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Id. at 102.

<sup>64</sup> Id. at 104-106.

<sup>65</sup> Id. at 113-122.

<sup>66</sup> Id. at 118.

<sup>67</sup> Id.

<sup>68</sup> Id.

The CA, however, did not award moral damages as the finding of illegal dismissal does not automatically warrant moral damages—bad faith on the part of the employer was not proven.<sup>69</sup> Notably, the CA did not elaborate on the legality of the preventive suspension and award of salary differential.

The dispositive portion of the CA Decision reads:

WHEREFORE, the instant petition is hereby GRANTED. The Decision promulgated on April 12, 2011 in NLRC Case No. VAC-01-000069-2011 of the respondent National Labor Relations Commission (NLRC) as well as the Resolution promulgated on June 28, 2011 are hereby REVERSED and SET ASIDE.

The November 23, 2010 Decision of Labor Arbiter Rene G. Eñano in NLRC RAB Case No. VI-02-10169-10 declaring the illegal dismissal of petitioner Melinda M. Montañ[o] is hereby REINSTATED with MODIFICATION as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding the suspension and dismissal of the complainant illegal. Respondent COLEGIO SAN AGUSTIN – BACOLOD / FATHER FREDERICK C. COMMENDADOR [sic] (PRESIDENT) is hereby ordered to pay complainant, DR. MELINDA M. MONTAÑO (a) backwages reckoned from February 23, 2010 up to the finality of this Decision based on a salary of P33,319.00 a month; (b) salary differentials in the amount of P54,218.16; (c) the additional sum equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months considered as one whole year based on the period from June 4, 1973 (date of employment) until the finality of this Decision, as separation pay; (d) attorney's fees equivalent to 10% of the total award.

SO ORDERED.<sup>70</sup>

CSA-Bacolod moved for reconsideration, but this was denied by the CA in its April 11, 2014 Resolution.<sup>71</sup>

Hence, this petition. CSA-Bacolod starts by arguing that the preventive suspension was legal as respondent's continued presence posed a threat to the property of the school and may influence the outcome of the investigation.<sup>72</sup> Respondent's act is serious that warrants the penalty of dismissal.<sup>73</sup> Respondent had no authority to decide on her own who marches for graduation or not.<sup>74</sup> Her

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<sup>69</sup> Id. at 119-121.

<sup>70</sup> Id. at 121-122.

<sup>71</sup> Id. at 123-124.

<sup>72</sup> Id. at 37-39.

<sup>73</sup> Id. at 39.

<sup>74</sup> Id. at 41-43.

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act was also in violation of a school policy on graduation—that no student shall be allowed to march unless the student has fully complied with all the academic requirements.<sup>75</sup> She willfully transgressed a rule, which clearly shows that she acted with wrongful intent.<sup>76</sup> Respondent's act constitutes breach of trust and confidence.<sup>77</sup> Resultantly, there is no basis for the award of respondent's money claims.<sup>78</sup>

CSA-Bacolod further argues that the CA erred in ruling that respondent suffered diminution of benefits without looking into the evidence. The school simply broke down the items of respondent's pay and she continued to receive the same amount after her reappointment.<sup>79</sup>

Respondent, in her comment,<sup>80</sup> counters that her dismissal is illegal. She followed a long-standing practice that is known to the school.<sup>81</sup> Her act is not serious misconduct; she acted in good faith in allowing those students to march.<sup>82</sup> Her act also did not constitute breach of trust and confidence nor gross negligence.<sup>83</sup>

As to the issue of diminution of benefits, respondent maintains that by converting part of her salary to honorarium, even if the total amount is the same, all other benefits that are based on the monthly salary now have a lower basis.<sup>84</sup> Her retirement pay will be lower as the basis for its computation was lowered—the basis was lowered from ₱33,319.00 to ₱26,658.20.<sup>85</sup> This, according to respondent, is diminution of benefits. Lastly, she maintains that she is entitled to damages and attorney's fees.<sup>86</sup>

CSA-Bacolod filed a reply<sup>87</sup> and reiterated its arguments.

### Issues

The issues for the resolution of the Court are as follows:

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<sup>75</sup> Id. at 42.

<sup>76</sup> Id. at 47-59.

<sup>77</sup> Id. at 43-47.

<sup>78</sup> Id. at 60-61.

<sup>79</sup> Id. at 59-60.

<sup>80</sup> Id. at 398-420.

<sup>81</sup> Id. at 404-407.

<sup>82</sup> Id. at 407-413.

<sup>83</sup> Id. at 413-417.

<sup>84</sup> Id. at 417-418.

<sup>85</sup> Id. at 418.

<sup>86</sup> Id. at 418-419.

<sup>87</sup> Id. at 411-421 (Improperly paginated in the *rollo*).

1. Whether respondent was illegally dismissed from service; and
2. Whether respondent is entitled to a salary differential as a result of the alleged diminution of benefits[.]

### **Our Ruling**

The petition is partially meritorious. The Court finds that respondent was validly dismissed from employment. Resultantly, she is not entitled to backwages, separation pay, moral and exemplary damages, and attorney's fees. The Court, however, finds that respondent is entitled to salary differential as a result of diminution of benefits during her reappointment as school registrar.

#### **Respondent was validly dismissed from employment.**

For the dismissal from employment to be valid, substantive and procedural due process must be observed.<sup>88</sup> Substantive due process provides that the employee must not be dismissed without just or authorized cause as provided by law.<sup>89</sup> Procedural due process on the other hand provides for the employer's compliance with procedure set out by the Labor Code and related rules.<sup>90</sup>

In the instant case, there is no dispute with regard to procedural due process; the Court thus focuses on substantive due process.

The Labor Code provides for the just causes for the valid termination of employment:

Article 297. [282] *Termination by Employer.*— An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

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<sup>88</sup> *Slord Development Corp. v. Noya*, G.R. No. 232687, February 4, 2019.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

Absent a just cause, or broadly, failure to comply with substantive due process, an employer's dismissal of an employee becomes illegal and entitles the employee to reinstatement without loss of seniority rights and other privileges, full backwages inclusive of allowances, and to other benefits or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement.<sup>91</sup>

Here, CSA-Bacolod alleges that respondent committed serious misconduct and breach of trust and confidence in undisputedly allowing students with incomplete requirements to march in the graduation rites of the school.

Case law provides that misconduct is an improper or wrong conduct.<sup>92</sup> It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.<sup>93</sup> To constitute a valid cause for dismissal under the Labor Code, the employee's conduct must be serious—of such grave and aggravated character and not merely trivial or unimportant.<sup>94</sup> The misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer.<sup>95</sup> Further, the act or conduct must have been performed with wrongful intent.<sup>96</sup>

The Court agrees with the NLRC that respondent committed serious misconduct in allowing ineligible students to march. She violated an established school policy as espoused in a memorandum issued by the university.<sup>97</sup> The memorandum states that “[n]o student will be allowed to march for graduation unless he/she has fully complied with all the academic requirements of his/her course.”<sup>98</sup>

Circumstances show that respondent's act is clearly a conscious and willful transgression of the university's established rule regarding graduation rites. It is not a mere error in judgment or an inadvertent act. The rule is very clear that

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<sup>91</sup> LABOR CODE OF THE PHILIPPINES, Article 294 [279].

<sup>92</sup> See *Mesina v. S&T Leisure Worldwide, Inc.*, G.R. No. 252399, February 8, 2021.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> CSA-Bacolod Memorandum No. 016, series of 1998. See *rollo*, p. 42.

<sup>98</sup> *Id.*

students who did not comply with all the academic requirements shall not be allowed to march in the graduation rites. Respondent was consistent in reiterating this rule; she even reminded the deans to observe the policy. Yet, she herself made a conscious decision or choice to violate the established rule that she insisted to be followed in allowing the ineligible students to march. This also surely renders her unfit to continue working as school registrar because her act relates to her duties as such. Worth reiterating is a portion of the NLRC's discussion in finding that respondent committed serious misconduct:

We are convinced that complainant's improper behavior was serious, involving four students; was related to the performance of her duty as a school registrar; and has established her being unfit to continue working for her employer. Complainant's act cannot be considered as trivial or mere error in judgment. It was a conscious transgression ironically undertaken when complainant herself demanded strict compliance with academic requirements.<sup>99</sup>

The Court is not convinced of the excuses that respondent posits. The excuse that she merely followed the practice of allowing some ineligible students to march as observed by previous registrars is unacceptable. First, the existence of that practice is not proven. Respondent merely alleged that there is such practice that the previous registrars follow without showing proof thereof. Second, whether following a previous practice or not, respondent nonetheless committed a violation of a school rule. The practice itself, assuming that it is existing, is obviously violative of the school policy; respondent should not have continued performing it. In occupying a high position in CSA-Bacolod, she should have been a bastion of strict compliance with rules and policies. She should have initiated changes to counter that previous practice and the impression of leniency it brings.

Further, the letters signed by the students and their parents and indorsed by the deans do not absolve respondent from misconduct. She should not have acted by herself in allowing those ineligible students to march. Respondent should have raised the matter to the proper authorities in charge of determining who shall graduate and participate in the rites.

Likewise, the non-issuance of CHED special order numbers does not erase, nor even mitigate, respondent's commission of a violation. The fact that she allowed the ineligible students to march—to reiterate, a transgression of the rule—remains whether special order numbers were issued or not.

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<sup>99</sup> *Rollo*, p. 98.

Considering these, the Court holds that respondent committed serious misconduct that constitutes just cause for valid dismissal from employment.

The Court also finds that respondent's act constitutes a breach of trust and confidence.

There is loss of trust and confidence when an employee fraudulently and willfully committed acts or omission in breach of the trust reposed by the employer.<sup>100</sup> Two requisites must be complied with to justify this ground for termination. First, the employee must be holding a position of trust; and second, the employer shall sufficiently establish the employee's act that would justify loss of trust and confidence.<sup>101</sup> The act must be characterized as real wherein the facts that brought about the act were clearly established, and that the employee committed the same without any justifiable reason.<sup>102</sup>

There is no dispute that respondent as school registrar occupied a position of trust. She is in possession and custody of student records, which are vital for any educational institution. As to the second requisite, the Court holds that respondent's act justifies loss of trust and confidence. Respondent's conscious decision of allowing the ineligible students to march shows her willfulness to transgress the established rule. This willful transgression of a rule indeed results to the loss of the trust and confidence CSA-Bacolod has reposed on her.

In this regard, the Court adds that the length of time (30 years) respondent was employed with CSA-Bacolod cannot outweigh the seriousness of the violation she has committed, even if this is the first time she transgressed a rule. This is because once trust and confidence are betrayed, it will be difficult to restore the smooth relationship that had once been existing.

As to respondent's preventive suspension, the Court finds that CSA-Bacolod acted well within its right in doing so. The implementing rules of the Labor Code allows an employer to preventively suspend an employee if continued employment poses a serious and imminent threat to the life or property of the employer or co-workers.<sup>103</sup> In preventive suspension, the employer safeguards itself from further harm or loss that may further be caused by the erring employee.<sup>104</sup>

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<sup>100</sup> See *Lamadrid v. Cathay Pacific Airways Limited*, G.R. No. 200658, June 23, 2021.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> OMNIBUS RULES IMPLEMENTING THE LABOR CODE, Book V, Rule XXIII, sec. 8 (1989) (as amended in 1997). The provision states: Section 8. Preventive suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

<sup>104</sup> See *Lafuente v. Davao Central Warehouse Club, Inc.*, G.R. No. 247410, March 17, 2021.

CSA-Bacolod was well within its rights to preventively suspend respondent. The threat raised by the school was not unfounded as respondent was school registrar, whose functions include evaluation of subjects and credits earned by students and enforcement of graduation requirements.<sup>105</sup> Respondent's violation was indeed related to her functions as school registrar. With her continued presence during the investigation, it is not impossible that the school records under her custody may be tampered; it is also not impossible that the investigation may be influenced given the nature and ascendancy of her position.

With the finding that respondent is validly dismissed from employment, it follows that she is not entitled to backwages, separation pay, moral and exemplary damages, and attorney's fees.<sup>106</sup>

**Respondent is entitled to the salary differential as a result of diminution of benefits.**

The Court finds that respondent is entitled to the salary differential as a result of diminution of benefits.

There is diminution of benefits when the following are present: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer.<sup>107</sup> In addition to policy or company practice, the grant or benefit may also be founded on a written contract.<sup>108</sup> Consistent with the constitutional mandate of protecting the rights of workers and promoting their welfare, benefits enjoyed by employees cannot be reduced, diminished, discontinued or eliminated.<sup>109</sup>

In this case, respondent's remuneration as school registrar is founded on policy or contract. Respondent's appointment and reappointments indicated the monthly compensation for the position.<sup>110</sup> The amounts received by her were

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<sup>105</sup> *Rollo*, p. 115.

<sup>106</sup> See LABOR CODE OF THE PHILIPPINES, Article 294 [279]; see *Monsanto Philippines, Inc. v. National Labor Relations Commission*, G.R. Nos. 230609-10, August 27, 2020; see *National Power Corporation v. Cabanag*, G.R. No. 194529, August 6, 2019.

<sup>107</sup> *Kondo v. Toyota Boshoku (Phils.) Corp.*, G.R. No. 201396, September 11, 2019.

<sup>108</sup> *Home Credit Mutual Building and Loan Association v. Prudente*, G.R. No. 200010, August 27, 2020.

<sup>109</sup> *Id.*

<sup>110</sup> See *rollo*, pp. 70-71 and 80.

duly established. The total monthly pay she received for her latest appointment remained as her previous monthly pays. The issue, however, was on the amount of her basic pay. Respondent claims that there has been a reduction of basic pay. CSA-Bacolod on the other hand explains that the school just opted to separate the reporting of the basic pay from the honorarium in the computation slip.

In the Court's view, there was indeed a diminution of benefit. The explanation of the school that the amount was merely broken down fails to convince. It must be emphasized that there was no showing in these proceedings that respondent received honorarium prior to her 2009 reappointment as school registrar.<sup>111</sup> Her prior appointments stated that she was to receive compensation equivalent to a certain number of load or units pertaining to her academic rank; there was no mention of payment of honorarium then. Thus, it is but fair and just to conclude that the entire ₱33,319.00 that respondent had received prior to her 2009 reappointment is considered as her monthly basic pay. As it was established that respondent continued to receive the same amount of ₱33,319.00 despite the addition of honorarium for the 2009 reappointment, it can be concluded then that the basic pay indeed was reduced. This resulted to diminution of benefit that is expressly prohibited by the Labor Code.

The Court therefore awards salary differential due to diminution of benefits in the total amount of ₱54,218.16, as determined by the LA and the CA.<sup>112</sup> Further, the Court imposes legal interest of six percent (6%) per annum on this amount from the finality of this Decision to full payment thereof.<sup>113</sup>

**WHEREFORE**, the Petition is **PARTLY GRANTED**. The July 10, 2013 Decision and April 11, 2014 Resolution of the Court of Appeals in CA-G.R. SP. No. 06330 are **REVERSED** and **SET ASIDE**. The April 12, 2011 Decision and June 28, 2011 Resolution of the National Labor Relations Commission in NLRC Case No. VAC-01-000069-2011 are **REINSTATED** with **MODIFICATION** in that petitioners Colegio San Agustin-Bacolod and its President, Fr. Frederick C. Comendador are **ORDERED** to pay respondent Dr. Melinda M. Montaña salary differential in the amount of ₱54,218.16, which shall be subject to legal interest of six percent (6%) per annum from the finality of this Decision to full payment thereof.


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<sup>111</sup> Id. at 70-71, 80, 85-86 and 101.

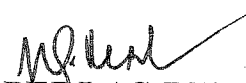
<sup>112</sup> Id. at 79-81, 121.

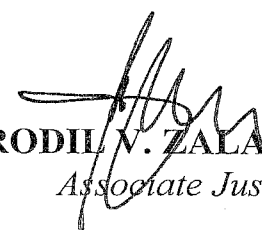
<sup>113</sup> See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

**SO ORDERED.**

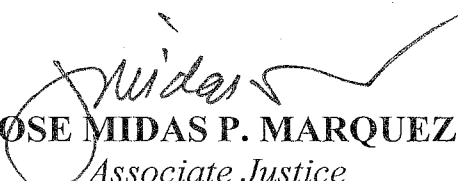
  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

  
**RODIL N. ZALAMEDA**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*



## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*