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WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated May 23, 2013 of the Regional Trial Court of Tuao, Cagayan, Branch 11 and the Resolutions dated September 3, 2013 and December 6, 2013 rendered by the Court of Appeals in CA-G.R. S.P. No. 131269 are hereby **ANNULLED** and **SET ASIDE**. Consequently, the petition of private respondent Ludyson C. Catubag to have his wife, Shanaviv G. Alvarez-Catubag, declared presumptively dead is **DENIED**.

SO ORDERED.

*Carpio, * Acting C. J. (Chairperson), Peralta, Perlas-Bernabe, and Caguioa, JJ., concur.*

FIRST DIVISION

[G.R. No. 211273. April 18, 2018]

RAYMOND A. SON, RAYMOND S. ANTIOLA, and WILFREDO E. POLLARCO, petitioners, vs. UNIVERSITY OF SANTO TOMAS, FR. ROLANDO DELA ROSA, DR. CLARITA CARILLO, DR. CYNTHIA LOZA, FR. EDGARDO ALAURIN, and the COLLEGE OF FINE ARTS AND DESIGN FACULTY COUNCIL, respondents.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DECS ORDER 92, SERIES OF 1992 OR THE REVISED MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS; CHED MEMORANDUM ORDER NO. 40-08; COLLEGE FACULTY

* Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

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MEMBERS MUST HAVE A MASTER'S DEGREE IN THEIR FIELD OF INSTRUCTION AS A MINIMUM QUALIFICATION FOR TEACHING IN A PRIVATE EDUCATIONAL INSTITUTION AND ACQUIRING REGULAR STATUS THEREIN; THE TENURE BY DEFAULT PROVISION IN THE COLLECTIVE BARGAINING AGREEMENT IS NULL AND VOID, AND HAS NO EFFECT AS BETWEEN THE PARTIES AS THE SAME IS CONTRARY TO, AND VIOLATIVE OF THE 1992 REVISED MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS. — As early as in 1992, the requirement of a Master's degree in the undergraduate program professor's field of instruction has been in place, through DECS Order 92 (series of 1992, August 10, 1992) or the Revised Manual of Regulations for Private Schools. Article IX, Section 44, paragraph 1 (a) thereof provides that college faculty members must have a master's degree in their field of instruction as a minimum qualification for teaching in a private educational institution and acquiring regular status therein. DECS Order 92, Series of 1992 was promulgated by the DECS in the exercise of its rule-making power as provided for under Section 70 of Batas Pambansa Blg. 232, otherwise known as the Education Act of 1982. As such, it has the force and effect of law. In *University of the East v. Pepanio*, the requirement of a masteral degree for tertiary education teachers was held to be not unreasonable but rather in accord with the public interest. Thus, when the CBA was executed between the parties in 2006, they had no right to include therein the provision relative to the acquisition of tenure by default, because it is contrary to, and thus violative of, the 1992 Revised Manual of Regulations for Private Schools that was in effect at the time. As such, said CBA provision is null and void, and can have no effect as between the parties. "A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation." Under the Civil Code, Art. 1409. The following contracts are inexistent and void from the beginning: (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy; x x x.

- 2. ID.; ID.; ID.; ID.; ID.; DISMISSAL OF PETITIONERS AFFIRMED, AS FACULTY MEMBERS OF UNDERGRADUATE PROGRAMS WHO DO NOT POSSESS THE MANDATED MASTER'S DEGREE CANNOT INSIST TO BE EMPLOYED**

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BY EDUCATIONAL INSTITUTIONS, AND THE FACT THAT EDUCATIONAL INSTITUTIONS CONTINUE TO HIRE AND MAINTAIN PROFESSORS WITHOUT THE NECESSARY MASTER'S DEGREE IS NOT A GROUND FOR CLAIMING ILLEGAL DISMISSAL.— When CHED Memorandum Order No. 40-08 came out, it merely carried over the requirement of a masteral degree for faculty members of undergraduate programs contained in the 1992 Revised Manual of Regulations for Private Schools. It cannot therefore be said that the requirement of a master's degree was retroactively applied in petitioners' case, because it was already the prevailing rule with the issuance of the 1992 Revised Manual of Regulations for Private Schools. Thus, going by the requirements of law, it is plain to see that petitioners are not qualified to teach in the undergraduate programs of UST. And while they were given ample time and opportunity to satisfy the requirements by obtaining their respective master's degrees, they failed in the endeavor. Petitioners knew this - that they cannot continue to teach for failure to secure their master's degrees - and needed no reminding of this fact; "those who are seeking to be educators are presumed to know these mandated qualifications." From a strict legal viewpoint, the parties are both in violation of the law: respondents, for maintaining professors without the mandated masteral degrees, and for petitioners, agreeing to be employed despite knowledge of their lack of the necessary qualifications. Petitioners cannot therefore insist to be employed by UST since they still do not possess the required master's degrees; the fact that UST continues to hire and maintain professors without the necessary master's degrees is not a ground for claiming illegal dismissal, or even reinstatement.

- 3. ID.; ID.; ID.; ID.; PETITIONERS AND RESPONDENTS ARE IN *PARI DELICTO* FOR VIOLATING DECS ORDER 92, SERIES OF 1992; *PARI DELICTO* DOCTRINE, EXPLAINED.**— As far as the law is concerned, respondents are in violation of the CHED regulations for continuing the practice of hiring unqualified teaching personnel; but the law cannot come to the aid of petitioners on this sole ground. As between the parties herein, they are in *pari delicto*. Latin for 'in equal fault,' *pari delicto* connotes that two or more people are at fault or are guilty of a crime. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement

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has been made, and both parties stand in *pari delicto*. Under the *pari delicto* doctrine, the parties to a controversy are equally culpable or guilty, they shall have no action against each other, and it shall leave the parties where it finds them. This doctrine finds expression in the maxims “*ex dolo malo non oritur actio*” and “*in pari delicto potior est conditio defendentis.*” x x x. The minimum requirement of a master’s degree in the undergraduate teacher’s field of instruction has been cemented in DECS Order 92, Series of 1992. Both petitioners and respondents have been violating it. The fact that government has not cracked down on violators, or that it chose not to strictly implement the provision, does not erase the violations committed by erring educational institutions, including the parties herein; it simply means that government will not punish these violations for the meantime. The parties cannot escape its concomitant effects, nonetheless. And if respondents knew the overwhelming importance of the said provision and the public interest involved -as they now fiercely advocate to their favor - they should have complied with the same as soon as it was promulgated.

4. **ID.; ID.; ID.; ID.; AGREEMENT TO THE TENURE BY DEFAULT PROVISION IN THE CBA NEITHER CONSTITUTES ESTOPPEL NOR DEEMED A WAIVER OF THE APPLICATION OF THE REQUIREMENT OF A MASTER’S DEGREE FOR FACULTY MEMBERS IN THE UNDERGRADUATE PROGRAMS UNDER CHED MEMORANDUM ORDER NO. 40-08, AS A WAIVER THEREOF IS CONTRARY TO LAW, AND THERE COULD BE NO ACQUIESCENCE - AMOUNTING TO ESTOPPEL - WITH RESPECT TO ACTS WHICH CONSTITUTE A VIOLATION OF LAW.**— It cannot be said either that by agreeing to the tenure by default provision in the CBA, respondents are deemed to be in estoppel or have waived the application of the requirement under CHED Memorandum Order No. 40-08. Such a waiver is precisely contrary to law. Moreover, a waiver would prejudice the rights of the students and the public, who have a right to expect that UST is acting within the bounds of the law, and provides quality education by hiring only qualified teaching personnel. Under Article 6 of the Civil Code, “[r]ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.”

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On the other hand, there could be no acquiescence - amounting to estoppel - with respect to acts which constitute a violation of law. "The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*." "[N]o estoppel can be predicated on an illegal act."

APPEARANCES OF COUNSEL

Delos Reyes Irog Braga and Associates for petitioners.
Divina Law for respondents.

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*¹ seeks to set aside the September 27, 2013 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 128666 setting aside the August 10, 2011 Decision³ and October 30, 2012 Decision⁴ and January 22, 2013 Resolution⁵ of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 04-001131-11 and reinstating the March 26, 2012 Decision⁶ of the NLRC, as well as the CA's January 29, 2014 Resolution⁷ denying petitioners' Motion for Reconsideration.⁸

¹ *Rollo*, Vol. I, pp. 14-37.

² *Id.* at 39-50; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.

³ *Id.* at 315-323; penned by Commissioner Angelo Ang Palaña and concurred in by Commissioner Numeriano D. Villena.

⁴ *Id.* at 381-390; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Pablo C. Espiritu, Jr.

⁵ *Rollo*, Vol. II, pp. 805-807.

⁶ *Rollo*, Vol. I, pp. 354-362; penned by Commissioner Napoleon M. Menese and concurred in by Commissioner Gregorio O. Bilog.

⁷ *Id.* at 52-53; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.

⁸ *Id.* at 108-117.

Factual Antecedents

Respondent University of Santo Tomas (UST) is an educational institution operating under the authority of the Commission on Higher Education (CHED). The rest of the herein respondents are impleaded as officers and administrators of the school.

Petitioners Raymond A. Son (Son), Raymond S. Antiola (Antiola), and Wilfredo E. Pollarco (Pollarco) are full time professors of the UST Colleges of Fine Arts and Design and Philosophy, and are members of the UST Faculty Union, with which UST at the time had a Collective Bargaining Agreement (CBA).

Son and Antiola were hired in June, 2005, while Pollarco was employed earlier, or in June, 2004. Under their respective appointment papers, petitioners were designated as “faculty member[s] on PROBATIONARY status,” whose “accession to tenure status is conditioned by [sic] your meeting all the requirements provided under existing University rules and regulations and other applicable laws including, among others, possession of the [prerequisite] graduate degree before the expiration of the probationary period and by your satisfactory performance of the duties and responsibilities set forth in the job description hereto attached.”⁹

The UST-UST Faculty Union CBA provided that –

ARTICLE XV
TENURE

Section 1 .Tenured Faculty Member. - He is:

- a. Teaching Faculty member, given a tenure track appointment upon hiring who has rendered six (6) consecutive semesters of satisfactory service on a full-time basis, carrying fifteen-unit load (15) or more. Although a master’s degree is an entry requirement, a faculty member admitted to serve the University without a master’s degree shall finish his master’s degree in five (5) semesters. If he does not finish his degree

⁹ *Id.* at 437.

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in five (5) semesters, he shall be separated from service at the end of the fifth semester; however, if he is made to serve the University further, in spite of the lack of a master's degree, he shall be deemed to have attained tenure.¹⁰

The CBA provision relative to the requirement of a Master's degree in the faculty member's field of instruction is in line with the requirement laid down in the 1992 Revised Manual of Regulations for Private Schools issued by then Department of Education, Culture, and Sports (DECS), and the CHED's Memorandum Order No. 40-08 - or Manual of Regulations for Private Higher Education of 2008 - stating that:

Section 35. **Minimum Faculty Qualifications.** - The minimum qualifications of a faculty in a higher education institution shall be as follows:

1. **For undergraduate program**

- a. Holder of a master's degree; to teach mainly in his major field and where applicable, a holder of appropriate professional license requiring at least a bachelor's degree for the professional courses. However, in specific fields where there is dearth of holders of Master's degree, or a holder of a professional license requiring at least a bachelor's degree may be qualified to teach. Any deviation from this requirement will be subject to regulation by the Commission.

Petitioners did not possess the required Master's degree, but were nonetheless hired by UST on the condition that they fulfill the requirement within the prescribed period. Petitioners enrolled in the Master's program, but were unable to finish the same. In spite of their failure to obtain the required Master's degree, they continued to teach even beyond the period given for completion thereof.

On March 3, 2010, then CHED Chairman Emmanuel Angeles issued a Memorandum¹¹ addressed to the Presidents of public

¹⁰ *Id.* at 518.

¹¹ *Id.* at 473.

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and private higher education institutions, directing the strict implementation of the minimum qualification for faculty members of undergraduate programs, particularly the Master's degree and licensure requirements, as mandated by Memorandum Order No. 40-08, "to ensure the highest qualification of their faculty."

Acting on the March 3, 2010 Memorandum, UST wrote the petitioners and other affected faculty members, informing them of the university's decision to cease re-appointment of those who failed to complete their Master's degrees, but allow a written appeal from the concerned faculty members who are due for thesis defense/completion of their Master's degrees.¹²

Petitioners did not make a written appeal, operating under the belief that they have been vested tenure under the CBA for their continued employment despite failure to obtain the required Master's degree.¹³

On June 11, 2010, petitioners received termination/thank you letters¹⁴ signed by respondent Dr. Cynthia Loza, Dean of the College of Fine Arts and Design. The reason given for non-renewal of their appointments is their failure to obtain the required Master's degree.

Ruling of the Labor Arbiter

Petitioners filed a labor case against the respondents for unfair labor practice, illegal dismissal, and recovery of money claims. In their joint Position Paper and other pleadings,¹⁵ petitioners claimed that since they have already acquired tenure by default pursuant to the tenure provision in the CBA, they could not be dismissed for failure to complete their respective Master's degrees; that the UST-UST Faculty Union CBA is the law between the parties, and its provisions should be observed; that in spite of the CBA provision on tenure, respondents illegally

¹² *Id.* at 477-482.

¹³ *Id.* at 17.

¹⁴ *Id.* at 520-523.

¹⁵ *Id.* at 505-517, 554-560, 575-581.

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terminated their employment; that they were illegally terminated for their refusal to send the prescribed appeal letter, which is tantamount to an undue waiver and unlawful surrender of their tenurial rights, and is against the law and public policy; that in terminating their employment, respondents did not comply with the required “twin-notice rule”; that respondents are guilty of bad faith and unfair labor practice on account of their violation of the CBA; that respondents are guilty of bad faith when they re-hired the other professors even when they did not possess the required Master’s degree, while they (petitioners) were discriminated against and terminated from work just because they did not file the prescribed appeal letter; and that they should be paid backwages and other money claims. Thus, petitioners prayed for reinstatement with full backwages, allowances and other benefits; moral and exemplary damages; and attorney’s fees and costs of suit.

In their joint Position Paper and other pleadings¹⁶ respondents countered that there is no unfair labor practice committed, because the CBA provision adverted to is not an economic provision; that the implementation of Memorandum Order No. 40-08 takes legal precedence over the parties’ CBA; that the CBA provision granting tenure by default may no longer be enforced on account of the requirement under Memorandum Order No. 40-08, an administrative regulation that is equivalent to law and has the effect of abrogating the tenure provision of the CBA; that Memorandum Order No. 40-08 is a police power measure for the protection and promotion of quality education, and as such, the CBA should yield to the same and to the broader interests of the State; that petitioners could not have acquired tenure since they did not possess the minimum qualification - a Master’s degree - prescribed under Memorandum Order No. 40-08; that the CBA provision on tenure by default has become illegal as it is contrary to law, and for this reason, it may not be enforced; that said CBA provision, being contrary to law, cannot be the object of estoppel, and produces no effect whatsoever and need

¹⁶ *Id.* at 486-504, 527-544, 562-574.

not be set aside nor declared ineffective by judicial action; that in not renewing petitioners' probationary appointments, respondents observed due process and the provisions of the Labor Code, particularly Article 281, which provides that a probationary employee may be terminated from work "when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement"; that petitioners are not entitled to monetary awards as they were dismissed for cause, paid their correct salaries, and are not entitled to damages and attorney's fees; and that the case against the individual respondents should be dismissed as well, as they were acting within their official capacities. Thus, they prayed for the dismissal of petitioners' complaint.

On March 17, 2011, Labor Arbiter Joel S. Lustria rendered his Decision¹⁷ in NLRC Case Nos. NCR-07-09179-10, 07-09180-10, and 07-09181-10, finding for petitioners and declaring respondents guilty of illegal dismissal and unfair labor practice, as well as malice and bad faith in illegally dismissing the former. The Labor Arbiter upheld the CBA provision granting tenure by default to petitioners, and declared that petitioners were not accorded due process prior to dismissal. Thus, petitioners were awarded money claims, damages, and attorney's fees.

Ruling of the National Labor Relations Commission

Respondents appealed before the NLRC. On August 10, 2011, the NLRC issued its Decision dismissing the appeal for lack of merit and affirming the Labor Arbiter's Decision. It held that the UST-UST Faculty Union CBA took precedence over CHED Memorandum Order No. 40-08; that by said CBA provision, petitioners acquired tenure by default; that UST continued to hire faculty members without the required Master's degree in their field of instruction even after petitioners were dismissed from work; and that the only cause for petitioners' dismissal was their refusal to submit a written appeal, which

¹⁷ *Id.* at 585-598.

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is not a valid ground for dismissal or non-renewal of their appointment.

Respondents moved for reconsideration. The case was re-opened as the handling Commissioners inhibited themselves from the case.

On March 26, 2012, the Special Division of the NLRC issued a new Decision which set aside the earlier August 10, 2011 Decision and dismissed petitioners' labor case. It held that CHED Memorandum Order No. 40-08 took precedence over the parties' CBA; that the CBA should conform to the said Memorandum, which had the force and effect of law; and that since the CBA provision on tenure by default did not conform to the CHED Memorandum, it is null and void.

Petitioners moved to reconsider.¹⁸ Meanwhile, the case was re-assigned to the Second Division of the NLRC which, on October 30, 2012, promulgated a Decision granting petitioners' motion for reconsideration. It set aside the March 26, 2012 Decision of the Special Division and reinstated the Labor Arbiter's Decision. It held that the CBA superseded the CHED Memorandum; that CHED Memorandum Order No. 40-08 requiring a Master's degree of professors in the undergraduate programs is merely directory, and did not provide that the lack of a Master's degree was a ground to terminate the professor's services; that CHED Memorandum Order No. 40-08 was issued only in 2008, while the CBA was concluded in 2006 - thus, it may not be retroactively applied in the absence of a specific provision authorizing retroactivity; and consequently, petitioners acquired tenure.

Respondents filed their Motion for Reconsideration,¹⁹ but in a January 22, 2013 Resolution,²⁰ the NLRC denied the motion for lack of merit.

¹⁸ *Rollo*, Vol. II, pp. 745-761.

¹⁹ *Id.* at 770-804.

²⁰ *Id.* at 805-807.

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Ruling of the Court of Appeals

In a Petition for *Certiorari*²¹ before the CA, respondents questioned the adverse NLRC dispositions and prayed for dismissal of the labor case or NLRC Case Nos. NCR-07-09179-10, 07-09180-10 and 07-09181-10.

On September 27, 2013, the CA rendered the assailed Decision granting the Petition, decreeing thus:

Private respondents²² contend that they already attained tenureship by reason of their continuous employment service on a probationary status to petitioner University, invoking the provision of the 2006-2011 Faculty Collective Bargaining Agreement (CBA), particularly Article XV, Section 1 thereof, which was signed on July 18, 2008. According to them, when the petitioner University and the UST Faculty Union of which private respondents are members agreed to the terms and conditions set forth in the UST Faculty CBA, the former explicitly and unequivocally intended to vest tenure to those professors without master's degrees who served for at least six (6) semesters.

Private respondents' reliance on the collective bargaining agreement is not tenable. While every individual has autonomy to enter into any contract, the contractual stipulations, however, must not be contrary to law, morals, good customs, public order, or public policy. In a case involving the observance of a collective bargaining agreement, the Supreme Court, in *Lakas ng Manggagawang Makabayan (LMM) vs. Abiera*, had the occasion to pronounce:

'It is a fundamental postulate that however broad the freedom of contracting parties may be, it does not go so far as to countenance disrespect for or failure to observe a legal prescription. The statute takes precedence; a stipulation in a collective bargaining agreement must yield to it. That is to adhere to the rule of law.'

The above principle was likewise reiterated in *Escorpizo, et al. vs. University of Baguio, et al.*, from which We quote:

²¹ *Id.* at 808-861.

²² Herein petitioners.

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“...Indeed, provisions of a CBA must be respected since its terms and conditions constitute the law between the contracting parties. Those who are entitled to its benefits can invoke its provisions. And in the event that an obligation therein imposed is not fulfilled, the aggrieved party has the right to go to court for redress. xxx xxx xxx

...Nevertheless, the aforesaid CBA provision must be read in conjunction with statutory and administrative regulations governing faculty qualifications. It is settled that an existing law enters into and forms part of a valid contract without the need for the parties expressly making reference to it. Further, while contracting parties may establish such stipulations, clauses, terms and conditions as they may see fit, such right to contract is subject to limitation that the agreement must not be contrary to law or public policy.”

It should be borne in mind that the operation of educational institutions involves public interest. The government has a right to ensure that only qualified persons, in possession of sufficient academic knowledge and teaching skills, are allowed to teach in such institutions. Government regulation in this field of human activity is desirable for protecting, not only the students, but the public as well from ill-prepared teachers, who are lacking in the required scientific or technical knowledge. They may be required to take an examination or to possess postgraduate degrees as prerequisite to employment.

In the instant case, there is no doubt that private respondents failed to meet the standards for regular employment provided under Memorandum Order No. 040-08 issued by CHED. The termination of their contract was based on their failure to obtain [a] master’s degree and cannot, therefore, be regarded as illegal. In fact, the services of an employee hired on probationary basis may be terminated when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. There is nothing that would hinder the employer from extending a regular or permanent appointment to an employee once the employer finds that the employee is qualified for a regular employment even before the expiration of the probationary period. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground. Here, no vested right to tenureship had yet accrued in private

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respondents' favor since they had not complied, during their probation, with the prerequisites necessary for the acquisition of permanent status. It must be stressed that herein private respondents were given more than ample opportunities to obtain their respective master's degree since their first appointment in 2004 or 2005 as a prerequisite to tenure status. But they did not take advantage of such opportunities. Justice, fairness, and due process demand that an employer should not be penalized for situations where it had little or no participation or control.

In addition, the petitioner University as an educational institution enjoys academic freedom - a guarantee that enjoys protection from the Constitution. Section 5(2), Article XIV of the 1987 Constitution guarantees all institutions of higher learning academic freedom. This institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. Indeed, the Constitution allows merely the State's regulation and supervision of educational institutions, and not the deprivation of their rights.

The essential freedoms subsumed in the term 'academic freedom' encompasses the freedom to determine for itself on academic grounds: (1) Who may teach, (2) What may be taught, (3) How it shall be taught, and (4) Who may be admitted to study. Undeniably, the school's prerogative to provide standards for its teachers and to determine whether or not these standards have been met is in accordance with academic freedom that gives the educational institution the right to choose who should teach. In *Peña v. National Labor Relations Commission*, the Supreme Court emphasized:

'It is the prerogative of the school to set high standards of efficiency for its teachers since quality education is a mandate of the Constitution. As long as the standards fixed are reasonable and not arbitrary, courts are not at liberty to set them aside.'

The authority to choose whom to hire is likewise covered and protected by its management prerogative - the right of an employer to regulate all aspects of employment, such as hiring, the freedom to prescribe work assignments, working methods, process to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers. This Court was more emphatic in holding that in protecting the rights

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of the laborer, it cannot authorize the oppression or self-destruction of the employer.

All told, We are satisfied that private respondents' termination from employment was valid and legal.

WHEREFORE, the petition is GRANTED. The Decisions dated August 10, 2011 and October 30, 2012 as well as the Resolution dated January 22, 2013 of the National Labor Relations Commission (NLRC) in NLRC-LAC Case No. 04-001131-11 are REVERSED and SET ASIDE. Consequently, the Decision dated March 26, 2012 that dismissed the complaints of herein private respondents is hereby REINSTATED.

SO ORDERED.²³ (Citations omitted)

Petitioners filed a Motion for Reconsideration, but the CA denied the same *via* its January 29, 2014 Resolution. Hence, the instant Petition.

In a February 3, 2016 Resolution,²⁴ the Court resolved to give due course to the Petition.

Issue

Petitioners claim simply that the CA erred in ruling that they were not illegally dismissed.

Petitioners' Arguments

In their Petition and Reply²⁵ seeking reversal of the assailed CA dispositions and, in lieu thereof, the reinstatement of the August 10, 2011 and October 30, 2012 NLRC Decisions and the January 22, 2013 NLRC Resolution, petitioners insist that they were illegally dismissed; that the CBA and its provision on tenure by default prevail over CHED Memorandum Order No. 40-08, as they constitute the law between the parties; that since they acquired tenure by application of the CBA provision, they may not be removed except for cause; that contrary to the provisions of said CHED Memorandum, respondents were

²³ *Rollo*, Vol. I, pp. 46-50.

²⁴ *Rollo*, Vol. II, pp. 952-953.

²⁵ *Id.* at 939-950.

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never prohibited from maintaining faculty members without a master's degree, as in fact they continued to hire such faculty even after they were separated from UST; that respondents' continued hiring of non-Master's degree holders constitutes estoppel - respondents are estopped from claiming that they (petitioners) are not qualified to teach in UST, and so should not have been dismissed therefrom; that instead of treating their respective cases with harshness, respondents should have instead allowed them to finish their Master's degrees, since the only requirement missing is their thesis defense; that the true reason for their removal is their obstinate refusal to make the required appeal letter in waiver of their acquired tenure, which manifestly indicates respondents' malice and bad faith in dealing with petitioners - especially considering that they (petitioners) were the only professors whose appointments were not renewed out of the 70 faculty members without Master's degrees who were notified of the strict implementation of CHED Memorandum Order No. 40-08 and required to file a written appeal; that respondents violated the twin-notice rule as petitioners were not given notice and an opportunity to be heard prior to their separation; that the right of academic freedom does not give respondents the unbridled right to undermine petitioners' right to security of tenure; and finally, that the CHED itself did not direct the removal of faculty members without Master's degrees, but only the strict implementation of the schools' faculty development programs.

Respondents' Arguments

In their joint Comment²⁶ to the Petition, respondents argue that a Master's degree in the undergraduate program professor's field of instruction is a mandatory requirement that may not be the subject of agreement between the school and the professor, citing *Herrera-Manaois v. St. Scholastica's College*,²⁷ where the Court held that full-time faculty status may be extended

²⁶ *Rollo*, Vol. I, pp. 401-436.

²⁷ 723 Phil. 495 (2013).

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only to those who possess, among others, a master's degree in the field of instruction, and this is neither subject to the prerogative of the school nor the agreement of the parties, and this requirement is deemed impliedly written in the employment contracts between private educational institutions and prospective faculty members; that the *Herrera-Manaois* doctrine was reiterated in *University of the East v. Pepanio*,²⁸ where it was held that government had a right to ensure that only qualified individuals with sufficient academic knowledge and teaching skills are allowed to teach in educational institutions, whose operation involves public interest; that the CBA provision on tenure by default has been superseded by CHED Memorandum Order No. 40-08, which for all intents and purposes is deemed law to which the CBA must yield as it conflicts with the former; that the non-impairment clause of the Constitution must yield to the loftier purposes of government, as into every contract is read the provisions of existing law; that the operation of educational institutions involves public interest, and to this end, these institutions have the obligation to the public to ensure that only those individuals who possess the required academic knowledge, training, and qualifications may teach; that CHED Memorandum Order No. 40-08 is a police power measure which may impair the CBA provision on tenure by default for the protection of the public; that the strict implementation of CHED Memorandum Order No. 40-08 is not subject to compromise or leniency, contrary to what petitioners believe - in claiming that they should be allowed to finish their master's degrees even while the Memorandum is already in effect, which places UST in a precarious position of active violation of law; that petitioners cannot claim tenure as they remained probationary teachers even if their appointments/contracts were repeatedly renewed - so long as they do not obtain their master's degrees, they continue to remain probationary employees of the university; that petitioners were given ample opportunity to finish their master's degrees, but they did not do so; and that UST's decision not to renew petitioner's appointments is a valid exercise of academic freedom and management prerogative. Thus, respondents pray for denial of the instant Petition.

²⁸ 702 Phil. 191 (2013).

Our Ruling

The Court denies the Petition.

As early as in 1992, the requirement of a Master's degree in the undergraduate program professor's field of instruction has been in place, through DECS Order 92 (series of 1992, August 10, 1992) or the Revised Manual of Regulations for Private Schools. Article IX, Section 44, paragraph 1 (a) thereof provides that college faculty members must have a master's degree in their field of instruction as a minimum qualification for teaching in a private educational institution and acquiring regular status therein.

DECS Order 92, Series of 1992 was promulgated by the DECS in the exercise of its rule-making power as provided for under Section 70 of Batas Pambansa Blg. 232, otherwise known as the Education Act of 1982.²⁹ As such, it has the force and effect of law.³⁰ In *University of the East v. Pepanio*,³¹ the requirement of a masteral degree for tertiary education teachers was held to be not unreasonable but rather in accord with the public interest.

Thus, when the CBA was executed between the parties in 2006, they had no right to include therein the provision relative to the acquisition of tenure by default, because it is contrary to, and thus violative of, the 1992 Revised Manual of Regulations for Private Schools that was in effect at the time. As such, said CBA provision is null and void, and can have no effect as between the parties. "A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation."³² Under the Civil Code,

²⁹ SEC. 70. *Rule-making Authority.* - The Minister of Education, Culture and Sports charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations.

³⁰ See *Aklan College, Inc. v. Guarino*, 556 Phil. 693 (2007).

³¹ *Supra* note 28.

³² *Borromeo v. Mina*, 710 Phil. 454, 464 (2013).

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Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

x x x

x x x

x x x

When CHED Memorandum Order No. 40-08 came out, it merely carried over the requirement of a masteral degree for faculty members of undergraduate programs contained in the 1992 Revised Manual of Regulations for Private Schools. It cannot therefore be said that the requirement of a master's degree was retroactively applied in petitioners' case, because it was already the prevailing rule with the issuance of the 1992 Revised Manual of Regulations for Private Schools.

Thus, going by the requirements of law, it is plain to see that petitioners are not qualified to teach in the undergraduate programs of UST. And while they were given ample time and opportunity to satisfy the requirements by obtaining their respective master's degrees, they failed in the endeavor. Petitioners knew this - that they cannot continue to teach for failure to secure their master's degrees - and needed no reminding of this fact; "those who are seeking to be educators are presumed to know these mandated qualifications."³³

From a strict legal viewpoint, the parties are both in violation of the law: respondents, for maintaining professors without the mandated masteral degrees, and for petitioners, agreeing to be employed despite knowledge of their lack of the necessary qualifications. Petitioners cannot therefore insist to be employed by UST since they still do not possess the required master's degrees; the fact that UST continues to hire and maintain professors without the necessary master's degrees is not a ground for claiming illegal dismissal, or even reinstatement. As far as the law is concerned, respondents are in violation of the CHED regulations for continuing the practice of hiring

³³ *Herrera-Manaois v. St. Scholastica's College*, *supra* note 27 at 513.

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unqualified teaching personnel; but the law cannot come to the aid of petitioners on this sole ground. As between the parties herein, they are in *pari delicto*.

Latin for ‘in equal fault,’ in *pari delicto* connotes that two or more people are at fault or are guilty of a crime. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement has been made, and both parties stand in *pari delicto*. Under the *pari delicto* doctrine, the parties to a controversy are equally culpable or guilty, they shall have no action against each other, and it shall leave the parties where it finds them. This doctrine finds expression in the maxims “*ex dolo malo non oritur actio*” and “*in pari delicto potior est conditio defendentis*.”

x x x

x x x

x x x

As a doctrine in civil law, the rule on *pari delicto* is principally governed by Articles 1411 and 1412 of the Civil Code, which state that:

Article 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted.

x x x

x x x

x x x

Article 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

x x x

x x x

x x x

1. When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other’s undertaking;

x x x

x x x

x x x.³⁴ (Citations omitted)

The minimum requirement of a master’s degree in the undergraduate teacher’s field of instruction has been cemented in DECS Order 92, Series of 1992. Both petitioners and

³⁴ *Constantino v. Heirs of Pedro Constantino, Jr.*, 718 Phil. 575, 584-586 (2013).

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respondents have been violating it. The fact that government has not cracked down on violators, or that it chose not to strictly implement the provision, does not erase the violations committed by erring educational institutions, including the parties herein; it simply means that government will not punish these violations for the meantime. The parties cannot escape its concomitant effects, nonetheless. And if respondents knew the overwhelming importance of the said provision and the public interest involved - as they now fiercely advocate to their favor - they should have complied with the same as soon as it was promulgated.

It cannot be said either that by agreeing to the tenure by default provision in the CBA, respondents are deemed to be in estoppel or have waived the application of the requirement under CHED Memorandum Order No. 40-08. Such a waiver is precisely contrary to law. Moreover, a waiver would prejudice the rights of the students and the public, who have a right to expect that UST is acting within the bounds of the law, and provides quality education by hiring only qualified teaching personnel. Under Article 6 of the Civil Code, “[r]ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.” On the other hand, there could be no acquiescence - amounting to estoppel - with respect to acts which constitute a violation of law. “The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*.”³⁵ “[N]o estoppel can be predicated on an illegal act.”³⁶

It cannot be said either that in requiring petitioners to file a written appeal, respondents are guilty of bad faith and malice for practically forcing the former to renounce their tenure. There is no tenure to speak of in the first place.

³⁵ *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 978 (2000).

³⁶ *Eugenio v. Perdido*, 97 Phil. 41, 44 (1955).

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Just the same, as correctly argued by the respondents, the crucial issues in this case have been settled. In the case of *University of the East v. Pepanio*,³⁷ the Court held that –

Three. Respondents argue that UE hired them in 1997 and 2000, when what was in force was the 1994 CBA between UE and the faculty union. Since that CBA did not yet require a master’s degree for acquiring a regular status and since respondents had already complied with the three requirements of the CBA, namely, (a) that they served full-time; (b) that they rendered three consecutive years of service; and (c) that their services were satisfactory, they should be regarded as having attained permanent or regular status.

But the policy requiring postgraduate degrees of college teachers was provided in the Manual of Regulations as early as 1992. Indeed, recognizing this, the 1994 CBA provided even then that UE was to extend only semester-to-semester appointments to college faculty staffs, like respondents, who did not possess the minimum qualifications for their positions.

Besides, as the Court held in *Escorpizo v. University of Baguio*, a school CBA must be read in conjunction with statutory and administrative regulations governing faculty qualifications. Such regulations form part of a valid CBA without need for the parties to make express reference to it. While the contracting parties may establish such stipulations, clauses, terms and conditions, as they may see fit, the right to contract is still subject to the limitation that the agreement must not be contrary to law or public policy.

The State through Batas Pambansa Bilang 232 (The Education Act of 1982) delegated the administration of the education system and the supervision and regulation of educational institutions to the Ministry of Education, Culture and Sports (now Department of Education). Accordingly, in promulgating the Manual of Regulations, DECS was exercising its power of regulation over educational institutions, which includes prescribing the minimum academic qualifications for teaching personnel.

In 1994 the legislature transferred the power to prescribe such qualifications to the Commission on Higher Education (CHED). CHED’s charter authorized it to set minimum standards for programs and

³⁷ *Supra* note 28.

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institutions of higher learning. The Manual of Regulations continued to apply to colleges and universities and suppletorily the Joint Order until 2010 when CHED issued a Revised Manual of Regulations which specifically applies only to institutions involved in tertiary education.

The requirement of a masteral degree for tertiary education teachers is not unreasonable. The operation of educational institutions involves public interest. The government has a right to ensure that only qualified persons, in possession of sufficient academic knowledge and teaching skills, are allowed to teach in such institutions. Government regulation in this field of human activity is desirable for protecting, not only the students, but the public as well from ill-prepared teachers, who are lacking in the required scientific or technical knowledge. They may be required to take an examination or to possess postgraduate degrees as prerequisite to employment.

Respondents were each given only semester-to-semester appointments from the beginning of their employment with UE precisely because they lacked the required master's degree. It was only when UE and the faculty union signed their 2001 CBA that the school extended petitioners a conditional probationary status subject to their obtaining a master's degree within their probationary period. It is clear, therefore, that the parties intended to subject respondents' permanent status appointments to the standards set by the law and the university.

Here, UE gave respondents Bueno and Pepanio more than ample opportunities to acquire the postgraduate degree required of them. But they did not take advantage of such opportunities. Justice, fairness, and due process demand that an employer should not be penalized for situations where it had little or no participation or control. (Citations omitted)³⁸

In addition, the Court already held in *Herrera-Manaois v. St. Scholastica's College*³⁹ that –

Notwithstanding the existence of the SSC Faculty Manual, Manaois still cannot legally acquire a permanent status of employment. Private educational institutions must still supplementarily refer to the prevailing standards, qualifications, and conditions set by the

³⁸ *Id.* at 200-202.

³⁹ *Supra* note 27.

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appropriate government agencies (presently the Department of Education, the Commission on Higher Education, and the Technical Education and Skills Development Authority). This limitation on the right of private schools, colleges, and universities to select and determine the employment status of their academic personnel has been imposed by the state in view of the public interest nature of educational institutions, so as to ensure the quality and competency of our schools and educators.

The applicable guidebook at the time petitioner was engaged as a probationary full-time instructor for the school year 2000 to 2003 is the 1992 Manual of Regulations for Private Schools (1992 Manual). It provides the following conditions of a probationary employment:

Section 89. Conditions of Employment. Every private school shall promote the improvement of the economic, social and professional status of all its personnel.

In recognition of their special employment status and their special role in the advancement of knowledge, the employment of teaching and non-teaching academic personnel shall be governed by such rules as may from time to time be promulgated, in coordination with one another, by the Department of Education, Culture and Sports and the Department of Labor and Employment.

Conditions of employment of non-academic non-teaching school personnel, including compensation, hours of work, security of tenure and labor relations, shall be governed by the appropriate labor laws and regulations.

Section 92. Probationary Period. Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.

Section 93. Regular or Permanent Status. Those who have served the probationary period shall be made regular or permanent. Fulltime teachers who have satisfactorily completed

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For all intents and purposes, this qualification must be deemed impliedly written in the employment contracts between private educational institutions and prospective faculty members. The issue of whether probationers were informed of this academic requirement before they were engaged as probationary employees is thus no longer material, as those who are seeking to be educators are presumed to know these mandated qualifications. Thus, all those who fail to meet the criteria under the 1992 Manual cannot legally attain the status of permanent full-time faculty members, even if they have completed three years of satisfactory service.

In the light of the failure of Manaois to satisfy the academic requirements for the position, she may only be considered as a part-time instructor pursuant to Section 45 of the 1992 Manual. In turn, as we have enunciated in a line of cases, a part-time member of the academic personnel cannot acquire permanence of employment and security of tenure under the Manual of Regulations in relation to the Labor Code. (Citations omitted)

WHEREFORE, the Petition is **DENIED**. The September 27, 2013 Decision and January 29, 2014 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 128666 are **AFFIRMED in toto**.

SO ORDERED.

*Leonardo-de Castro** (Acting Chairperson), *Jardeleza*, and *Tijam, JJ.*, concur.

Sereno, C.J., on leave.

* Designated Acting Chairperson per Special Order No. 2540 dated February 28, 2018.