

IN THE SUPREME COURT OF GUAM

ALINE A. YAMASHITA, PH.D.

Plaintiff-Appellant,

vs.

**CARL T.C. GUTIERREZ, in his capacity as the Governor of
Guam, and the DEPARTMENT OF EDUCATION, an agency
of the Government of Guam,**

Defendants-Appellees.

OPINION

Supreme Court Case No. CVA01-009

Superior Court Case No. CV0688-00

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Appeal from the Superior Court of Guam
Argued and submitted on December 6, 2001
Hagåtña, Guam

Attorney for Plaintiff-Appellant:
Vincent Leon Guerrero, Esq.
Leon Guerrero & Calvo, LLC
220 T.S. Tanaka Bldg.
Suite 201, Route 4
Hagåtña, Guam 96932

Attorney from Defendants-Appellees:
J. Patrick Mason, Deputy Attorney General
Office of the Attorney General
Suite 2-200E Judicial Center
120 O'Brien Drive
Hagåtña, Guam 96910

BEFORE: PETER C. SIGUENZA, JR. Chief Justice, RICHARD H. BENSON, and SETH FORMAN, Justices *Pro Tempore*.

SIGUENZA, CJ:

[1] In 1999, the Board of Education (“Board”), was eliminated by the Guam Legislature and administration over the Department of Education (“Department”) was returned to the Governor of Guam. The Governor promptly dismissed the Department’s deputy director, Aline A. Yamashita (“Yamashita”), who then filed suit for wrongful termination and breach of contract.¹ Yamashita sought payment of the balance due on the five year term of employment pursuant to the so-called “memorializing contract” entered by her and the Board. The trial court held in favor of the Governor and the Department. Upon review of the facts and applicable law, we affirm the trial court’s judgment.

I.

[2] In 1993, Public Law 22-42 created the Territorial Board of Education (“Board”), consisting of twelve members, seven of whom were to be elected. The law authorized the Board to administer the Department and hire a director and deputy director. In November of 1994, the Board members were elected. A legal challenge to the Board resulted in a Superior Court ruling in October of 1996 requiring newly drawn districts and a new election. *Tainatongo v. Board of Education*, SP114-95 (Super. Ct. Guam Oct. 9, 1996). That ruling allowed the Board to remain in place until the next regularly scheduled election. However, no new districts were ever drawn and no election was ever held pursuant to P.L. 22-42. In November of 1996, Yamashita was hired by the Board as deputy director. On February 27, 1998,

¹ Former Director Roland Taimanglo was also terminated and he joined in Yamashita’s suit against the Governor. The former Director, however, did not appeal the trial court’s judgment and he is not a party in this appeal.

the Board of Education law was amended by Public Law 24-142 and four school districts were created, each to have its own elected District Board of Education. The law provided that the existing Board would serve in an interim capacity until the four District Boards were elected. The interim Board's responsibilities were to extend only one year after the enactment of P.L. 24-142. On March 10, 1999, P.L. 24-142 was struck down by the Superior Court of Guam in *Nelson v. Diaz*, SP254-98 (Super. Ct. Guam Mar. 10, 1999).

[3] On March 25, 1999, Public Law 25-03 was enacted. It eliminated the Board and reverted the administration of the Department to the Governor. Two days before P.L. 25-03 was enacted, the Board and Yamashita entered the disputed memorializing contract which was allegedly intended to memorialize and ratify the 1996 hiring of Yamashita as deputy director. This contract provided Yamashita with an employment term of five years retroactive to when she was initially appointed in 1996. The contract also contained a provision allowing payment for the full five year term to Yamashita if the contract were rescinded. On March 31, 1999, Yamashita was fired by the Governor.

[4] On April 26, 2000, Yamashita filed the underlying Complaint alleging wrongful termination and breach of contract, and seeking lost wages. After a bench trial, the trial court held in favor of the Governor and Department, and dismissed the complaint. This appeal followed.

II.

[5] This court has jurisdiction over an appeal from a final judgment of the Superior Court of Guam. Title 7 GCA § 3107 (1994).

III.

[6] Yamashita alleges on appeal that the Governor's termination of her employment was without cause and therefore illegal. Yamashita does not seek reinstatement to the position of deputy director. Instead, she seeks back pay from the time of termination to the date her statutory term as deputy director was to end. Yamashita seeks to enforce a provision within the memorializing contract entered in 1999, only days before her termination. This provision provides that if Yamashita is removed for any reason other than

clear and completely documented evidence that she has acted in a manner that indicates that she has clearly abandoned the official duties of that particular office, engaged in specific instances of conduct that amount to intentional dereliction of duties associated with that particular office, or that she has wilfully, knowingly, and voluntarily engaged in acts that constitute felonious conduct . . . [she] shall be entitled to and shall receive the total balance of the amount due under this agreement.

Appellant's Excerpts of Record, p. A11 (Employment Contract Agreement, Mar. 23, 1999). The Governor argues that the Board had no authority to enter a contract with Yamashita, an unclassified employee.

[7] The trial court found that the memorializing contract entered on March 23, 1999 was not a legal contract because the Chairperson of the Board, who executed it, was no longer a member of the Board on that date. Appellant's Excerpts of Record p. C26 (*Disision Yan Otden*, Mar. 23, 2001). The trial court also found that pursuant to law, the Board had no authority to enter a contract with Yamashita. Appellant's Excerpts of Record p. C33 (*Yamashita v. Gutierrez*, CVO688-00 (Super. Ct. Guam Mar. 23, 2001)).

[8] We begin by determining whether the Board had the statutory authority to contract with Yamashita. Issues of statutory interpretation are reviewed de novo. *People v. Quichocho*, 1997 Guam 13 ¶ 3.

A. Whether Yamashita was a Contractual Employee.

[9] The parties here do not dispute that Yamashita, as deputy director, was an unclassified employee.

Two statutes generally prohibit the government from entering employment contracts with unclassified employees. The first provides in part:

No contract of employment shall be entered into between the government of Guam and any employee or officer in the unclassified service within the government of Guam unless such employment contract is specifically permitted by law or is for a physician or dentist. Such employment shall be effected through the standard form of personnel action. This Section shall not affect the ability of the government of Guam to contract for temporary services or for specific contracts not involving an employment relationship with the government of Guam, but shall apply to a contract which is essentially a contract for full-time personal services

Title 4 GCA § 2103.16 (1994). The second provides:

No contract of employment shall be entered into between any employee, in the unclassified service within the government of Guam unless such employment contract is specifically permitted by law. Such employment shall be effected through the standard form of personnel action. This Section shall not affect the ability of the Government to contract for temporary services or for specific contracts not involving an employment relationship with the Government.

Title 4 GCA § 2107 (1994). Both statutes prohibit contractual hiring of an employee unless “specifically permitted by law.” Thus, the relevant inquiry is whether P.L. 22-42, which authorized the Board to hire Yamashita, “specifically permitted” a contract. The term “specific” has been defined as “[p]recisely formulated or restricted . . . definite . . . explicit.” *People v. Thomas*, 156 P.2d 7, 17, 25 Cal. 2d 880, 898 (1945).

[10] Public Law 22-42 provides: “the Territorial Board of Education . . . shall be the governing and policy-making body of the Department . . . [and] shall [e]stablish the criteria for the qualifications of, select and hire a Director and Deputy Director of Education, [and] set their respective salaries. . . .” P.L. 22-

42:2. “In cases involving statutory construction, the plain language of a statute must be the starting point.” *Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 23. We must note that the plain language of the P.L. 22-42 does not contain the word “contract.” On its face, P.L. 22-42 does not definitely or explicitly authorize a contract; thus, it does not specifically permit the Board to enter a contract. *See Thomas*, 156 P.2d at 17, 25 Cal. 2d at 898.

[11] A review of other statutes affecting different government agencies shows that the legislature has specifically authorized the contractual hiring of agency heads. Section 7106 of Title 12 Guam Code Annotated authorizes the Guam Telephone Authority Board of Directors to “appoint and fix the compensation of a General Manager who shall be its chief executive officer and who shall serve at its pleasure or for the term and under the conditions set forth in a **contract**.” Title 12 GCA § 7106(a) (1993) (emphasis added). The Guam Community College Board of Trustees is authorized to appoint a president, Title 17 GCA § 31110(a) (1996), “who shall serve the College on a **contractual** basis. . . .” Title 17 GCA § 31113(a) (1996) (emphasis added). The University of Guam Board of Regents is authorized to “appoint the President of the University for a specified **contractual** term.” Title 17 GCA § 16110(a) (1996) (emphasis added).

[12] Thus, had the legislature desired to authorize the contractual hiring of a deputy director of the Department, it would have stated so in P.L. 22-42 as it had done in each of the aforementioned statutes. We cannot interpret P.L. 22-42 to exempt the hiring of a deputy director from the effects of 4 GCA §§ 2103.16 and 2107. Thus, contrary to Yamashita’s argument, the notification of personnel action used to hire Yamashita was not an employment contract. *See* 4 GCA § 2107 (prohibiting employment contracts with unclassified employees and stating “[s]uch employment shall be effected through the standard form of

personnel action.”).

[13] Yamashita argues that *Tainatongo v. Territorial Board of Education*, SP114-95 (Super. Ct. Guam Oct. 9, 1996), held that P.L. 22-42 permitted the Board to contractually hire the deputy director. However, based upon the discussion above, we are unpersuaded by the *Tainatongo* decision. We also note the case of *Blaz v. Cruz*, Civ. Appeal No. 84-0014A, 1985 WL 56592 (D. Guam App. Div. April 29, 1985), cited by Yamashita. This case is distinguishable and inapplicable. The issue there was whether Blaz was an employee entitled to grievance procedures. *Blaz*, 1985 WL 56592, at *4. The *Blaz* court stated “Defendants have given no reason why [the notification of personnel action] does not represent a contractual commitment and found that Blaz was an employee.” *Id.* In the instant case, there is no dispute that Yamashita was an employee. Moreover, Blaz was a University of Guam instructor, and Yamashita does not allege whether such instructors are classified or unclassified employees or that instructors can be contractually hired. Thus, Yamashita fails to show that the Department’s deputy director position is similar to that of a University of Guam instructor so that the personnel actions of each may be considered contracts. We conclude that the Board had no authority to contract with Yamashita.

B. The Memorializing Contract

[14] Because we hold that the Board had no authority to contract with Yamashita when she was hired in 1996 and that the notification of personnel action was not a contract, the Board also did not have authority to enter the memorializing contract with Yamashita in 1999. Thus, the memorializing contract was void *ab initio* and no terms therein are enforceable.

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[15] As noted previously, the trial court found that pursuant to statute the Chairperson was not a member of the Board when the memorializing contract was entered. This issue involves a mixed question of law and fact and our review is *de novo*. *Town House Dept. Store v. Ahn*, 2000 Guam 29, ¶ 6.

[16] Public Law 22-42 created the Board, seven members of which were elected in 1994. In October 1996, the *Tainatongo* court decision ordered newly drawn districts and a new election. That ruling allowed the Board to remain in place until the next regularly scheduled elections (November 1996 for three Board members and November 1988 for the remaining four). However, no new districts were ever drawn and no election was ever held pursuant to the dates for new elections in P.L. 22-42. Under this law, the elected members of the Board were permitted to serve only until January of 1999:

The members of the Board shall be elected by district at the General Election to be held in November of 1994. The terms of office of Board members elected pursuant to this section shall commence at 12 o'clock noon on the date of their certification of election by the Election Commission. **The four (4) Board members receiving the highest number of votes shall serve until 12 o'clock noon on the first Monday of January, 1999. The remaining three (3) Board members shall serve until 12 o'clock noon on the first Monday of January, 1997.**

P.L. 22-42:10 (emphasis added). Thus, as of January 1999, the Board should have been completely dissolved.

[17] On February 27, 1998, through P.L. 24-142, the legislature reorganized the Department and created separate District Boards, but provided that the existing Board would serve in an interim capacity until the four Boards were elected. We note, that the interim Board's responsibilities were to extend only one year after the enactment of P.L. 24-142. Thus, under P.L. 24-142, the interim Board would have served only until February 27, 1999. On March 10, 1999, P.L. 24-142 was struck down in the *Nelson* decision.

[18] Under either of the aforementioned statutes, the Board was not duly authorized to enter any contract on March 23, 1999. Thus, the memorializing contract signed on that date was not valid.

C. Severance Pay

[19] The trial court found that the provision of the memorializing contract awarding Yamashita pay for the balance of an unexpired term of employment contravened the statutory prohibition against severance pay. Issues of statutory interpretation are reviewed *de novo*. *Quichocho*, 1997 Guam 13 at ¶ 3.

[20] There is no specific provision in P.L. 22-42 or in the notice of personnel action which permits payment to Yamashita for the balance of the unexpired term of employment if she were removed. Thus, even if the notice of personnel action was a valid contract, it would not provide Yamashita with any relief.

[21] Moreover, severance pay is prohibited by statute. “No person occupying positions in the unclassified service as defined in § 4102 of this Title and whose services are terminated shall be paid severance pay or meritorious pay or both. This Section shall apply to all government instrumentalities in the government of Guam, including autonomous agencies.” Title 4 GCA § 4202(e) (1996).²

[22] In *Mace v. Conde Nast Publ’ns Inc.*, 237 A.2d 360 (Conn. 1967), severance pay was defined as “a form of compensation for the termination of the employment relation, for reasons other than the displaced employees’ misconduct, primarily to alleviate the consequent need for economic readjustment but also recompense him for certain losses attributable to the dismissal.” *Id.* at 683 (citation omitted). In her Complaint, Yamashita sought only the salary and benefits due on the five year employment term, arguing that the termination was without cause. Under the definition in *Mace*, the damages sought by

² Section 4102 defines classified and unclassified positions within the government of Guam and specifically provides that “heads of agencies and instrumentalities” are within the unclassified service. Title 4 GCA § 4102(a)(4)(1996).

Yamashita may be categorized as severance pay which is expressly prohibited by 4 GCA § 4202(e).

[23] Yamashita cites *Scott v. Gulf Oil Corp.*, 754 F.2d 1499 (9th Cir. 1985) to support her argument that she merely seeks wages, not severance pay. However, Yamashita fails to discuss how *Scott* helps her case. As the Governor points out, *Scott* involved an employee seeking to classify severance pay as a “payroll practice” under the Employee Retirement Income Security Act, rather than an employee welfare benefit. *Id.* at 1502. The Ninth Circuit held that payroll practices do not cover severance pay. *Id.* at 1503. As it may relate to the instant case, *Scott* states:

There is good reason for distinguishing severance pay from the designated payroll practices. The practices described in the regulations require disbursements of funds easily analogized to ordinary wages, and the payments involved invariably take place during the term of employment. Severance pay, in contrast, requires an extra disbursement of funds, above and beyond ordinary wages, at or after the termination of employment.

Id. Yamashita apparently uses *Scott* to distinguish between lost wages, as a payroll practice, and severance pay. Such distinction is irrelevant to the issues in the instant case.

[24] In fact, *Scott* undermines Yamashita’s argument. It is undisputed that Yamashita does not seek re-employment as deputy director. She does not argue that she was entitled to continuous employment and the salaried payments due during that employment. Yamashita argues instead that she was fired without cause and thereby entitled to the balance of salary due on the five year term. Thus, it appears that Yamashita seeks back pay while not actually contesting a right to continuous employment. By seeking a “disbursement of funds, above and beyond ordinary wages, . . . after the termination of employment,” Yamashita seeks severance pay. *Scott*, 745 F.2d at 1503. (emphasis added); cf. *Haeuser v. Dep’t. of Law*, 1999 Guam 12 (challenging termination from employment, seeking reinstatement and back pay of wages he would have earned if employment had been continuous). As previously stated, severance pay

is prohibited by law. Thus, contract awarding it is void.³

IV.

[25] The contractual hiring of an unclassified employee is prohibited unless specifically permitted by law. The law authorizing the hiring of the Department's deputy director did not specifically permit a contractual hiring. Additionally, the memorializing contract awarded severance pay which is specifically prohibited by law. The judgment of the trial court is **AFFIRMED**.

SETH FORMAN
Justice *Pro Tempore*

RICHARD H. BENSON
Justice *Pro Tempore*

PETER C. SIGUENZA, JR.
Chief Justice

³ Because we hold that Yamashita was not contractually hired and that severance pay is prohibited by law, we need not reach the merits of her claim that the Governor had no cause for her termination from employment.