

**PHILIPPINE BLOOMING MILLS CO., INC. (AS EMPLOYER), AND
FRANCISCO TONG (AS ASSISTANT GENERAL MANAGER AND
ATTORNEY-IN-FACT OF SUSUMU SONODA, SENJI TANAKA,
TAKASHIKO KUMAMOTO, HITO...**

G.R. No. L-21229. August 31, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

The facts of this case are not disputed:

The Philippine Blooming Mills Co., Inc., a domestic corporation, since the start of its operations in 1957, has been employing Japanese technicians under a pre-arranged contract of employment, the minimum period of which employment is 6 months and the maximum is 24 months.

From April 28, 1957, to October 26, 1958, the corporation had in its employ 6 Japanese technicians. In connection with the employment of these aliens, it sent an inquiry to the Social Security System (SSS) whether these employees are subject to compulsory coverage under the System, which inquiry was answered by the First Deputy Administrator of the SSS, under date of August 29, 1957, as follows:

"SIR:

With reference to your letter of August 24, 1957, hereunder are our answers to your queries:

"Aliens employed in the Philippines:

"Aliens who are employed in the Philippines shall also be compulsorily covered. But aliens who are employed temporarily shall, upon their departure from the Philippines, be entitled to a rebate of a proportionate amount of their contributions; their employers shall be entitled to the same proportionate rebate of their contributions in behalf of said aliens employed by them. (Rule I, Sec. 3[d], Rules and Regulations.)"

Starting September, 1957, and until the aforementioned Japanese employees left the Philippines on October 26, 1958, the corresponding premium contributions of the employer and the employees on the latter's memberships in the SSS were as follows:

SS

Monthly

Amount of Premiums

Contributed

Name

Number

Salary

2.5%

3.5%

(Employee)

(Employer)

Total

Susumu Sonoda

03-075177

P520.00

P175.00

P245.00

P420.00

Senji Tanaka

03-075178

520.00

175.00

245.00

420.00

Kahei Tanaka

03-075179

500.00

175.00

245.00

420.00

Takashiko Kumamoto

03-075180

500.00

175.00

245.00

420.00

03-075181

500.00

175.00

245.00

420.00

Hitoshi Nakamura

03-075182

500.00

175.00

245.00

420.00

Tetsuo Kudo

Total -

P1,050.00**P1,470.00****P2,520.00**

On October 7, 1958, the Assistant General Manager of the corporation, on its behalf and as attorney-in-fact of the Japanese technicians, filed a claim with the SSS for the refund of the premiums paid to the System, on the ground of termination of the members' employment. As this claim was denied, they filed a petition with the Social Security Commission for the return or refund of the premiums, in the total sum of P2,520.00, paid by the employer corporation and the 6 Japanese employees, plus attorneys' fees. This claim was controverted by the SSS, alleging that Rule IX of the Rules and Regulations of the System, as amended, requires membership in the System for at least 2 years before a separated or resigned employee may be allowed a return of his personal contributions. Under the same rule, the employer is not also entitled to a refund of the premium-contributions it had paid.

After hearing, the Commission denied the petition for the reason that, although under the original provisions of Section 3(d) of Rule I of the Rules and Regulations of the SSS, alien-employees (who are employed temporarily) and their employees are entitled to a rebate of a proportionate amount of their respective contributions upon the employees' departure from the Philippines, said rule was amended by eliminating that portion granting a return of the premium-contributions. This amendment became effective on January 14, 1958, or before the employment of the subject-aliens terminated. The rights of covered employees who are separated from employment, under the present Rules, are covered by Rule IX which allows a return of the premiums only if they have been members for at least 2 years.

It is this resolution of the Commission that is the subject of the present appeal, appellants contending that the amendment of the Rules and Regulations of the SSS, insofar as it eliminates the provision on the return of premium-contributions, originally embodied in Section 3(d) of Rule I, constituted an impairment of obligations of

contract. It is claimed, in effect, that when appellants-employees became members in September, 1957, and paid the corresponding premiums to the System, it [1] is subject to the condition that upon their departure from the Philippines, these employees, as well as their employer, are entitled to a rebate of a proportionate amount of their respective contributions.

The contention cannot be sustained. Appellants' argument is based on the theory that the employees' membership in the System established contractual relationship between the members and the System, in the sense contemplated and protected by the constitutional prohibition against its impairment by law. But, membership in this institution is not the result of a bilateral, consensual agreement where the rights and obligations of the parties are defined by and subject to their will. Republic Act 1161 requires compulsory coverage of employers and employees under the System. It is actually a legal imposition, on said employers and employees, designed to provide social security to the workingmen. Membership in the SSS is, therefore, in compliance with a lawful exercise of the police power of the State, to which the principle of non-impairment of the obligation of contract is not a proper defense.

As pointed out by the Solicitor General, the issue that should be determined in this case is whether, in implementing the SSS law and denying appellants' claim for refund of their premium-contributions, due process was observed.

The Rules and Regulations promulgated by the SSS, pursuant to the rule-making authority granted in Section 4(a) of Republic Act 1161, was duly approved by the President on July 18, 1957, and published in the Official Gazette on September 15, 1957. [2] These rules and regulations, among others, provide:

"I

"DETERMINATION OF COMPULSORY COVERAGE

"3. The determination of whether an employer or an employee shall be compulsorily covered shall be vested in the Commission. The following general principles shall guide the Commission in deciding each case:

x x x

"(d) Aliens who are employed in the Philippines shall also be compulsorily covered. But aliens who are employed temporarily and whose visas are only for fixed terms shall, upon their departure from the Philippines, be entitled to a rebate of a proportionate amount of their contributions; their employers shall be entitled to the same proportionate rebate of their contributions in behalf of said aliens employed by them."

"XI

"AMENDMENTS AND EFFECTIVITY

"1. The Commission may, by appropriate resolution, amend, repeal, revise and/or modify all or any part or parts of these Rules and Regulations, as well as adopt any additional rule or rules, whenever the need therefor should arise. Any amendment and/or additional rule, however, shall not take effect until and after the corresponding resolution of the Commission has been submitted to and approved by the President of the Philippines.

"2. These Rules and Regulations, any amendment thereof, or any additional rule or rules subsequently adopted by the Commission, shall take effect on the date they are approved by the President of the Philippines."

Rule I, Section 3(d) and Rule IX, however, were later amended, which amendment was approved by the President on January 14, 1958, to read as follows:

"(d) Aliens who are employed in the Philippines shall also be compulsorily covered." (Sec. 3, Rule I).

"EFFECT OF SEPARATION FROM EMPLOYMENT

"When an employee under compulsory coverage is separated from employment, his employer's contribution on his account shall cease at the end of the month of separation; but such employee may continue his membership in the System and receive the benefits of the Act, as amended, in accordance with these rules, if he continues paying the 6 per cent monthly premiums representing his as well as the employer's contribution, based on his monthly salary at the time of his separation; but if at the time of his separation the covered employee has been a member of the System for at least two years, he shall have the option to choose any one of the following adjustments of his membership in the System:

"1. A refund of an amount equivalent to his total contributions of two and one half per centum plus interests at the rate of three per centum per annum, compounded annually;

x x x." (Rule IX)

These amended Rules were published in the November 10, 1958 issue of the Official Gazette. [3]

It is not here disputed that the Rules and Regulations of the SSS, having been promulgated in implementation of a law, have the force and effect of a statute;[4] that the amendment thereto, although approved by the President on January 14, 1958, was published in the Official Gazette in November, 1958, or after the employment of the Japanese technicians had ceased and the corresponding claim for the refund of the premium-contributions was filed with the System. The question pertinent to this case now is whether or not appellants are bound by the amended Rules requiring membership for two years before a refund of the premium-contributions may be allowed.

These rules and regulations were promulgated to provide guidelines to be observed in the enforcement of the law. As a matter of fact, Section 3 of Rule I is merely an enumeration of the "general principles to (shall) guide the Commission" in the determination of the extent or scope of the compulsory coverage of the law. One of these guiding principles is paragraph (d) relied upon by appellants, on the coverage of temporarily-employed aliens. It is not here pretended, that the amendment of this Section 3(d) of Rule I, as to eliminate the provision granting to these aliens the right to a refund of part of their premium-contributions upon their departure from the Philippines, is not in implementation of the law or beyond the authority of the Commission to do.

It may be argued, however, that while the amendment to the Rules may have been lawfully made by the Commission and duly approved by the President on January, 14, 1958, such amendment was only published in the November 1958 issue of the Official Gazette, and after appellants' employment had already ceased. Suffice it to say, in this regard, that under Article 2 of the Civil Code, [5] the date of publication of laws in the Official Gazette is material for the purpose of determining their effectivity, only if the statutes themselves do not so provide.

In the present case, the original Rules and Regulations of the SSS specifically provide that any amendment thereto subsequently adopted by the Commission, shall take effect on the date of its approval by the President. Consequently, the delayed publication of the amended rules in the Official Gazette did not affect the date of their effectivity, which is January 14, 1958, when they were approved by the President. It follows that when the Japanese technicians were separated from employment in October, 1958, the rule governing refund of premiums is Rule IX of the amended Rules and Regulations, which requires membership for 2 years before such refund of premiums may be allowed.

WHEREFORE, finding no error in the resolution of the Commission appealed from, the same is hereby affirmed, with costs against the appellants.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Reyes, J.B.L., J., reserve vote.

Regala, J., on leave, no part.

[1] Appellants must be referring to their obligation to pay the premium-contributions and retain membership in the System.

[2] Vol. 53, No. 17, p. 5588.

[3] V91. 54, No. 31, p. 7388.

[4] U. S. v. Tupasi Molina, 29 Phil. 119, cited in People v. Que Po Lay, G.R. No. L-6791, March 29, 1954.

[5] "ART. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. x x x."

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