

VICTORIA M. ROMA, PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION AND BUREAU OF PUBLIC SCHOOLS, RESPONDENTS.

G.R. No. L-43675. October 28, 1977

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This case of claimant-petitioner Victoria M. Roma can out-right be disposed of and the decision under review set aside under the recent ruling of this Court in *Tomas U. Soliven vs. Workmen's Compensation Commission and Republic of the Philippines (Bureau of Public Schools)*, L-44763, June 30, 1977, penned by Justice Claudio Teehankee to the effect that a decision of the Workmen's Compensation Commission reversing that of the hearing referee is null and void when it is rendered after the referee's decision had already become final and executory for failure of the employer to appeal the same and to file a petition for relief from judgment with-in the reglementary period.

The record shows that acting referee Vivencio E. Escarcha, Regional Office No. 4 of the Workmen's Compensation Unit, Manila, rendered a decision on petitioner's claim for disability benefits to this effect:

xxx xxx xxx

"1) To pay, thru this Office and in lump sum, claimant the disability compensation in the sum of TWO THOUSAND FOUR HUNDRED NINETY-TWO PESOS AND 75/100 (P2,492.75) as of October 15, 1975, plus a weekly compensa-tion thereafter in the sum of FORTY-THREE PESOS AND 75/100 (P43.75) which when added to the lump sum payment shall not however exceed the sum of P6,000.00 nor shall this weekly payment be extended beyond the date her disabling ailment shall have been pronounced cured or arrested nor shall it be extended beyond the date she will reach the age of 65 years.

"2.) Her counsel the partial payment of Attorney's fee in the sum of ONE HUNDRED TWENTY-FOUR PESOS AND 63/100 (P124.63).

"3.) To pay this Office the partial fee of TWENTY-FIVE PESOS (P25.00) pursuant to Section 55 of the Act, as amended.

"SO ORDERED." (pp. 19-20, rollo)

Copy of the above was received by respondent Republic of the Philippines (Bureau of Public Schools) through the Office of the Solicitor General on October 27, 1975. No motion for reconsidera-tion was filed, however, on November 28, 1975, respondent-employer filed its "Petition to elevate records for relief from judg-ment", which was two days beyond the 30-day period prescribed by the Rules of the Workmen's Compensation Commission for the filing of a petition for relief. By then, respondent commission had lost jurisdiction of the case considering that the referee's decision had become final and executory.

As emphatically stressed in *Soliven*, Section 3 of Rule 22 of the 1973 Rules of the Workmen's Compensation

Commission, provides that a petition to elevate records for relief from an order of a hearing officer must be filed within 30 days after the petitioner learns of the decision, award or other proceedings sought to be set aside and not more than three months after such decision or award was entered or such proceedings were taken, and that, citing the case of Luzon Stevedoring Corporation vs. Reyes, June 30, 1976, (71 SCRA 655), the grace period is to be taken as "absolutely fixed, inextendible, never interrupted and cannot be subjected to any condition or contingency", so that failure to avail of such last chance within the grace period is fatal.

The Court's ruling in Soliven was reiterated in Lourdes Quintos and other petitioners vs. Republic of the Philippines, et al., August 31, 1977, L-46249-52, wherein the respective decisions of the Workmen's Compensation Commission reversing the referee's award of disability benefits to the petitioners therein were set aside by this Court on the fundamental ground that the Commission lost jurisdiction and authority to act considering that the respective awards had become final and executory for lapse of the required period for appeal and for relief from judgment.

For purposes of seeking relief from an adverse judgment, two periods are given in Section 3, Rule 22, 1973 Rules of the Workmen's Compensation Commission, viz: (a) 30 days after notice and (b) three months after judgment or award is entered or proceedings taken. The two periods must concur; it is not one or the other. Hence, respondent-employer's assertions in its comment on this petition for review that the filing of its petition for relief within three months from the date of the decision is not to be considered against it and that the commission may disregard technicalities of procedure, are without merit. Although said respondent's petition for relief was filed within three months from the date of the decision, nonetheless it was filed beyond 30 days from notice of said decision, and such delay is fatal to its cause.

Prescinding from the issue of the nullity of respondent commission's decision, the latter suffers from a legal infirmity, it being contrary to existing jurisprudence that a disability caused by a disease or injury incurred or aggravated in the course of employment is compensable.

Claimant Victoria Roma was employed by respondent Bureau of Public Schools as a classroom teacher on October 1, 1949 and served, as such up to June 2, 1975 when she retired at the age of 44 having been found by her physician, Dr. Jesus Panergo, suffering from "pulmonary tuberculosis, chronic laryngitis, probably Koch's" resulting in her loss of voice and inability to teach.

Victoria Roma filed on March 25, 1975 her claim for compensation under the Workmen's Compensation Act with Regional Labor Office No. 4, Department of Labor, Manila, for "the loss of her voice and/or difficulty in talking to her class which is the result of the nature of her employment as classroom teacher", alleging that her ailment commenced in 1966 and worsened in November of 1973. (p. 28, original record) The claim was supported by (1) a medical report of Dr. Jesus Panergo of Calbayog City General Hospital, certifying that the patient's pulmonary tuberculosis and laryngitis are probable consequences of the nature of her employment and that she has become incapacitated for a teaching job due to her loss of voice (p. 18, *ibid.*); and (2) claimant's service record which shows that beginning February of 1974 she was granted a sick leave of absence first with pay but later without pay, that her sick leave was extended on and on until she retired on June 2, 1975, at the age of 44, after twenty-six years of service in the government.

In a litany of decisions this Court upholds the right of an employee to be compensated for total or partial disability, be it temporary or permanent in nature, arising from an injury or disease sustained or aggravated in the course of employment under the presumption established by the law that such claim for disability is compensable when not rebutted by substantial evidence to the contrary.[1]

Respondent commission asserts in its decision that inasmuch as petitioner filed her claim for an alleged "loss of

voice" which caused her to stop working in June of 1974 she cannot now claim that she was suffering from pulmonary tuberculosis at the time she retired on June 2, 1975. (p. 51, rollo) The commission overlooked the fact that claimant's loss of voice or chronic laryngitis was "Koch's" in origin or nature, meaning, it was attributable to tuberculous bacilli. Thus there exists an intimate connection between claimant's loss of voice and her pulmonary tuberculosis, the latter causing the former, so that any proof on the existence of pulmonary tuberculosis would be material to petitioner's claim for compensation.

It is significant that petitioner retired from her teaching job at 44 even before reaching the age of retirement due to loss of voice which necessarily incapacitated her from teaching. In *Hernandez vs. Workmen's Compensation Commission* this Court held that when an employee is forced to ask for retirement ahead of schedule not because of old age but primarily because of his weakened bodily condition due to illness contracted in the course of his employment he is to be given compensation for his inability to work during the remaining days before his scheduled compulsory retirement, aside from the retirement benefits due him.[2]

And in the recent case of *Leonida Romero vs. Workmen's Compensation Commission and the Bureau of Public Schools*, the Court through Justice Felix Makasiar stressed that with the approval of the employee's optional retirement at the age of 52, the fact of said employee's disability is placed beyond question of doubt considering that under C.A. 186 as amended by R.A. 1616 and R.A. 4968 in conjunction with Memorandum Circular No. 133 of the Office of the President, October 19, 1967, optional retirement before reaching the compulsory age of 65 is authorized only when the employee "is physically incapacitated to render sound and efficient service".[3]

Finally, respondent employer failed to controvert petitioner's claim for compensation as required by Section 45 of the Workmen's Compensation Act as amended, and this Court ruled time and again that such failure constitutes a renunciation of all non-jurisdictional defenses and is an ultimate admission of compensability.[4]

WHEREFORE, We set aside the decision of respondent Commission and reinstate the award of the acting referee rendered in this case which as stated above is final and enforceable. This decision is accordingly ordered immediately executory.

So Ordered.

Teehankee, (Chairman), Makasiar, Martin, Fernandez, and Guerrero, JJ., concur.

[1] *A.D. Santos vs. De Sapon, et al.*, 16 SCRA 79, citing *Naira vs. WCC, et al.*, 6 SCRA 361; *Justiniano vs. WCC, et al.*, 18 SCRA 677; *Ma. Cristina Fertilizer Corp. vs. WCC, et al.*, 60 SCRA 228; *Central Azucarera Don Pedro vs. Agno, et al.*, 12 SCRA 178; *Valencia vs. WCC, et al.*, 72 SCRA 242; *Manila Railroad Co. vs. WCC, et al.*, 21 SCRA 98; *Ruelan vs. Republic, et al.*, 1976, 70 SCRA 615. See also: *Talip vs. WCC, et al.*, 1976, 71 SCRA 218; *Mercado vs. WCC, et al.*, 1976, 72 SCRA 260; *Cabinta vs. WCC, et al.*, 1976, 72 SCRA 266; *Jacob vs. WCC, et al.*, 1976, 72 SCRA 575; *Vda. de Laron vs. WCC, et al.*, 1976, 73 SCRA 84; *Pros vs. WCC, et al.*, 1976, 73 SCRA 92; *Caparas vs. WCC, et al.*, 1976, 73 SCRA 221; *Vda. de Leorna vs. WCC, et al.*, 1976, 73 SCRA 228; *Ayuso vs. WCC, et al.*, 1976, 73 SCRA 233; *Camarillo vs. WCC, et al.*, 1976, 73 SCRA 497; *Vallo vs. WCC, et al.*, 1976, 73 SCRA 623; *Arzadon vs. WCC, et al.*, 1976, 74 SCRA 238; *Legason vs. WCC, et al.*, 1977, 75 SCRA 213; *Gomez vs. WCC, et al.*, 1977, 75 SCRA 395; *Baterna vs. WCC, et al.*, 1977, 75 SCRA 409.

[2] May 31, 1965, 14 SCRA 219

[3] L-42617, June 30, 1977; see also *Evangelista vs. WCC and Bureau of Public Schools*, L-43572, June 30, 1977

[4] *Dometita vs. WCC, et al.*, 1976, 74 SCRA 217; *Delgado Bros., Inc. vs. WCC, et al.*, 1977, 75 SCRA 343; see

also cases in footnote 1.

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