

CONCORDIA COLLEGE/SR. LOTA ESPIRITU, D.C./ALEXANDER PABLO/SR. MA. CORAZON P. MANALO, D.C., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, MAURO BALUCOS, RESPONDENTS.

Ponente: REYES-CARPIO, A., J.

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REYES-CARPIO, A., J.:

Before the Court is an Amended Petition for Certiorari[1] which seeks to annul and set aside the Decision dated November 23, 2012[2] and Resolution dated April 19, 2013[3] of the National Labor Relations Commission (hereinafter referred to as the NLRC). The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. The Decision appealed from is AFFIRMED.

SO ORDERED.[4]

The facts are not disputed.

Petitioner Concordia College, being a member of the Catholic Educators' Association of the Philippines (hereinafter referred to as CEAP), adheres to the retirement plan of the said Association. Under the CEAP Retirement Plan, the retirement pay is computed as follows:

½ of the last Monthly Salary plus

1/12 of the Thirteenth Month Pay plus

1/12 of 5 days of Service Incentive Leave EQUALS

TOTAL RETIREMENT PAY

Private respondent was hired as janitor and worked for Concordia College for a total of 43 years from 1968 until his retirement in January 2011, with a monthly salary of P14,417.80

The dispute arose since, following the CEAP Retirement Plan, Concordia College pegged his retirement pay to P373,411.39(including his proportionate 13[th] month pay).[5] On the other hand, private respondent claims that the computation should be based on 22.5 days for every year of service, and thus, P536,507.78 should be given to him as retirement pay.

Since the parties cannot settle amicably, private respondent filed a Complaint for underpayment of retirement benefits and attorney's fees. The Labor Arbiter, in his Decision dated December 28, 2011,[6] agreed with private respondent, and computed his retirement pay to P536,508.51.

Unperturbed, petitioners appealed to the NLRC, which dismissed the appeal for lack of merit. The NLRC ratiocinated:

In the computation of appellee's retirement pay, the labor arbiter did not commit grave abuse of discretion when he based his computation on 22.5 days for every year of service. The said computation was pursuant to the provisions of R.A. 7641 and prevailing jurisprudence on the matter. It is settled that for the purpose of computing retirement pay, "one-half month salary" shall include all of the following:

1. 15 days salary based on the latest salary rate;
2. cash equivalent of 5 days of service incentive leave (or vacation leave);
3. 1/12 of the 13th month pay;
4. other benefits as may be agreed upon by employer and employee for inclusion.

But, it shall not include the following:

1. cost of living allowance;
2. profit-sharing payments; and
3. other monetary benefits which are not considered as part of or integrated into the regular salary of the employees.

In an earlier case,[7] the court declared that "one-half month salary" is equivalent to 22.5 days. Thus, the computation of appellee's retirement pay made by the appellants based on their retirement plan (CEAP), which appears to be lower than 22.5 days per year of service is contrary to law.

As held in the case of Alberto Oxales vs. United Laboratories, Inc., R.A. No. 7641, otherwise known as "The Retirement Pay Law," only applies in a situation where (1) there is no collective bargaining agreement or other applicable employment contract providing for retirement benefits for an employee, or (2) there is a collective bargaining agreement or other applicable employment contract providing for retirement benefits for an employee, but it is below the requirements set for by law. The reason for the first situation is to prevent the absurd situation where an employee, who is otherwise deserving, is denied retirement benefits by the nefarious scheme of employers in not providing for retirement benefits for their employees. The reason for the second situation is expressed in the latin maxim *pacta privata juri publico derogare non possunt*. Private contracts cannot derogate from the public law.[8]

Petitioners filed a Motion for Reconsideration,[9] but the same was denied by the NLRC in its Resolution dated April 19, 2013. Hence, this Petition.

Petitioners assigned the following issues for Our Resolution:

A. WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION BY COMPUTING, FOR THE PURPOSE OF RETIREMENT PAY, THE HALF-MONTH SALARY AS 22.5 DAYS DESPITE PETITIONERS' DETAILED EXPLANATION AS TO WHY THE PROPER COMPUTATION SHOULD BE 17.5 DAYS AS THE LAW PROPERLY PROVIDES.

B. WHETHER OR NOT PETITIONERS ARE ENTITLED TO THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER.[10]

In Our Resolution dated October 23, 2013, We directed, among other things, private respondent to comment on the petition.[11] In his letter dated July 30, 2014,[12] private respondent manifested that he is not filing any comment to the petition and prayed that the petition would be resolved at the "earliest possible period."

Thus, in Our Resolution dated September 4, 2014,[13] We directed the parties to submit their respective Memoranda within fifteen days from notice. Only petitioners complied.[14] Thus, in Our Resolution dated February 3, 2015, We considered the case submitted for decision.[15]

We now resolve.

Considering that this Decision already disposes the main cases, the issue of whether a temporary restraining order or a writ of preliminary injunction should be granted or not is deemed mooted, thereby leaving only one issue of whether the NLRC committed grave abuse of discretion in affirming the Decision of the Labor Arbiter.

In the process, We are called to rule on whether “one-month salary” for purposes of retirement means 22.5 days (as held by the NLRC and the Labor Arbiter) or 17.5 days as argued by petitioners.

Petitioners argue that the pronouncement made by the Supreme Court in *Capitol Wireless, Inc. v. Confesor*,^[16] which holds that “one-month salary” is equivalent to 22.5 days is a mere obiter dictum. Petitioners want Us to consider instead the opinions rendered by the NLRC in the case of *Alita v. Dominican School*,^[17] and which discussions were reiterated *Mendoza v. Saint Paul University* and *Jurado v. Saint Paul University*,^[18] *Lavandera v. Grace Christian High School*,^[19] *Vizcarra v. Aklan College*,^[20] and *Guevarra v. Colegio de Sta. Isabel*.^[21]

Moreover, petitioners invite Our attention to the discussions made by the Bicameral Conference Committee on October 20, 1992,^[22] and the plenary presentation of the Conference Committee Report on October 29, 1992.^[23]

This Court is not yet prepared to side with petitioners.

In *Caram Resources Corp. v. Contreras*,^[24] the Supreme Court affirmed that by tradition and in our system of judicial administration, it has the last word on what the law is, and that its decisions applying or interpreting the Constitution and laws form part of this country's legal system. All other courts should then be guided by the decisions of this Court. As the highest tribunal of the land, all roads of relief and legal remedies lead to an end.^[25]

After the case of *Capitol Wireless, Inc.*, the Supreme Court in succeeding cases^[26] have computed the retirement benefits using 22.5 days.

In *Elegir v. Philippine Airlines, Inc.*,^[27] the Supreme Court used 22.5 days to point out that the therein commercial pilot shall be receiving more benefits under the Retirement Plans of PAL. Said the Supreme Court:

As stated in the records, the petitioner already received the amount due to him under the PAL Pilots' Retirement Benefit Plan. As much as we would like to demonstrate with specificity the amount of the petitioner's entitlement under said plan, we are precluded from doing so because there is no record of the petitioner's salary, including increments thereto, attached to the records of this case. To reiterate, the benefit under the PAL Pilots' Retirement Benefit Plan pertains to the totality of PAL's monthly contribution for every pilot, which amounts to 20% of the actual monthly salary. Necessarily, the computation of this benefit requires a record of the petitioner's salary, which was unfortunately not submitted by either of the parties. At any rate, the petitioner did not dispute the fact that he already received his entitlement under the PAL Pilots' Retirement Benefit Plan nor did he question the propriety of the amount tendered. Thus, we can reasonably assume that he received the rightful amount of his entitlement under the plan.

On the other hand, under Article 287 of the Labor Code, the petitioner would only be receiving a retirement pay equivalent to at least one-half (1/2) of his monthly salary for every year of service, a fraction of at least six (6) months being considered as one whole year. To stress, one-half (1/2) month salary means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay and the remaining 5 days for service incentive leave.

Comparing the benefits under the two (2) retirement schemes, it can readily be perceived that the 22.5 days worth of salary for every year of service provided under Article 287 of the Labor Code cannot match the 240% of salary or almost two and a half worth of monthly salary per year of service provided under the PAL Pilots' Retirement Benefit Plan, which will be further added to the P125,000.00 to which the petitioner is entitled

under the PAL-ALPAP Retirement Plan. Clearly then, it is to the petitioner's advantage that PAL's retirement plans were applied in the computation of his retirement benefits.

It is also noteworthy that the Lavandera case which petitioners cited was decided already by the Supreme Court very recently in G.R. No. 177845, in a Decision promulgated on August 20, 2014. Speaking for the Supreme Court, Justice Perlas-Bernabe stressed:

RA 7641, which was enacted on December 9, 1992, amended Article 287 of the Labor Code, providing for the rules on retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment. The said law states that "an employee's retirement benefits under any collective bargaining [agreement (CBA)] and other agreements shall not be less than those provided" under the same — that is, at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year — and that "[u]nless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves."

The foregoing provision is applicable where (a) there is no CBA or other applicable agreement providing for retirement benefits to employees, or (b) there is a CBA or other applicable agreement providing for retirement benefits but it is below the requirement set by law. Verily, the determining factor in choosing which retirement scheme to apply is still superiority in terms of benefits provided.

In the present case, GCHS has a retirement plan for its faculty and non-faculty members, which gives it the option to retire a teacher who has rendered at least 20 years of service, regardless of age, with a retirement pay of one-half (1/2) month for every year of service. Considering, however, that GCHS computed Filipinas' retirement pay without including one-twelfth (1/12) of her 13th month pay and the cash equivalent of her five (5) days SIL, both the NLRC and the CA correctly ruled that Filipinas' retirement benefits should be computed in accordance with Article 287 of the Labor Code, as amended by RA 7641, being the more beneficent retirement scheme. They differ, however, in the resulting benefit differentials due to divergent interpretations of the term "one-half (1/2) month salary" as used under the law.

The Court, in the case of *Elegir v. Philippine Airlines, Inc.*, 35 has recently affirmed that "one-half (1/2) month salary means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay and the remaining 5 days for [SIL]." The Court sees no reason to depart from this interpretation. GCHS' argument therefore that the 5 days SIL should be likewise pro-rated to their 1/12 equivalent must fail.

Section 5.2, Rule II 38 of the Implementing Rules of Book VI of the Labor Code, as amended, promulgated to implement RA 7641, further clarifies what comprises the "1/2 month salary" due a retiring employee, to wit:

RULE II

Retirement Benefits

xxx xxx xxx

SEC. 5. Retirement Benefits. —

xxx xxx xxx

5.2 Components of One-half (1/2) Month Salary. — For the purpose of determining the minimum retirement pay due an employee under this Rule, the term "one-half month salary" shall include all the following: (a) Fifteen (15) days salary of the employee based on his latest salary rate. As used herein, the term "salary" includes all remunerations paid by an employer to his employees for services rendered during normal working days and hours, whether such payments are fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of food, lodging or other facilities customarily furnished by the employer to his employees. The term does not include cost of living allowance, profit-sharing payments and other monetary benefits which are not considered as part of or integrated into the regular salary of the employees.

- (b) The cash equivalent of not more than five (5) days of service incentive leave;
- (c) One-twelfth of the 13th month pay due the employee.
- (d) All other benefits that the employer and employee may agree upon that should be included in the computation of the employee's retirement pay.

xxx xxx xxx

The foregoing rules are, thus, clear that the whole 5 days of SIL are included in the computation of a retiring employees' pay, as correctly ruled by the CA. (Emphasis and underscoring Ours)

We simply cannot rely "as jurisprudential basis" the Decisions rendered by the NLRC. In *Filinvest Development Corporation v. Commissioner of Internal Revenue*,^[28] the Supreme Court faulted the Court of Appeals for relying on the decisions of the Court of Tax Appeals:

The CA, likewise, erred in relying on CTA decisions as jurisprudential basis for its decision. As this Court has held in the past:

[B]y tradition and in our system of judicial administration this Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution form part of the legal system of the country, all other courts should take their bearings from the decisions of this Court, ever mindful of what this Court said fifty-seven years ago in *People vs. Vera* that "[a] becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation".

The principle of *stare decisis et non quieta movere*, as embodied in Article 8 of the Civil Code of the Philippines, enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.

On the other hand, a reading of the almost unreadable copy of the deliberations of the Bicameral Conference Committee on October 20, 1992,^[29] and the plenary presentation of the Conference Committee Report on October 29, 1992^[30] likewise fail to convince Us. We find nothing in them which suggest that the computation should be 17.5 days instead of 22.5 days.

Retirement laws are social legislation. In general, retirement laws provide security to the elderly who have given their prime years in employment whether in the private sector or in government. These laws ensure the welfare of individuals who are approaching their twilight years and have limited opportunities for productive employment that give them a steady income stream.^[31]

IN FINE, We find that the NLRC did not commit grave abuse of discretion, which is committed when an act is done contrary to the Constitution, the law or jurisprudence; or when it is executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.^[32]

WHEREFORE, the Petition is DISMISSED. The Decision dated November 23, 2012 and Resolution dated April 19, 2013 of the National Labor Relations Commission, are AFFIRMED.

SO ORDERED.

Carandang, R.D., Chairperson, and Barza, R.F., JJ., concur.

[1] Rollo, pp. 146-165. The Petition was amended in order to implead the National Labor Relations Commission

pursuant to Our Resolution dated August 5, 2013 (see rollo, p. 142)

[2] Rollo, pp. 30-36

[3] Rollo, pp. 37-39

[4] Rollo, p. 35

[5] The computation is as follows:

DATE EMPLOYED: January 1, 1968

RETIREMENT DATE: January 20, 2011

BASIC PAY: Php 14,417.80

LENGTH OF SERVICE:

Jan 1968 – December 2010 43 years

January 2011 1 mos. (sic)

Computation:

$1/2$ Basic Salary $14,417.80 \times \frac{1}{2} = 7,208.90$

$1/12$ 13[th] mo. $14,417.80 \times \frac{12}{12} =$

12 days 1, 201.48

$1/12$ of incentive $14,417.80 \times 12 \times \frac{5}{12} = 229.58$

314 days 8,639.97

Multiply by 43 years & 1 mos (sic) 43.08 372,209.91

Retirement Benefits

CC mgt deposit from CEAP 274,461.00

Additional from CC 97,748.91

13[th] Month Pay 1,201.48

Total 373,411.39

(Rollo, p. 73)

[6] Rollo, pp. 82-88

[7] Referring to the case of Capitol Wireless , Inc. v. Confessor, G.R. No. 117174, November 13, 1996

[8] Rollo, pp. 34-35

[9] Rollo, pp. 107-116

[10] Rollo, p. 148

[11] Rollo, p. 210

[12] Rollo, p. 217

[13] Rollo, p. 219

[14] Rollo, pp. 220-245

[15] Rollo, p. 249

[16] Supra note 7

[17] NLRC NCR CA No. 009555-95, promulgated on August 29, 1996. It was penned by Presiding Commissioner Bartolome S. Carale, with the concurrence of then Commissioner (later Associate Justice of this Court, now retired) Vicente S.E. Veloso, and Commissioner Alberto R. Quimpo. (Rollo, pp. 117-124)

[18] NLRC NCR CA No. 026613-00 and NLRC NCR CA No. 029102-01. It was penned by Commissioner (later Associate Justice of this Court, now retired) Vicente S.E. Veloso, with the concurrence of Presiding Commissioner Roy V. Seneres and Romeo L. Go. (rollo, pp. 125-135)

[19] NLRC NCR CA No. 031739-02, August 30, 2002

[20] NLRC Case No. V-000394-99, July 30, 2003

[21] NLRC NCR CA No. 031354-02.

[22] Rollo, pp. 54-57

[23] Rollo, pp. 58-62

[24] A.M. No. MTJ-93-849. October 26, 1994

[25] People v. Bocar, G.R. No. L-9050. July 30, 1955

[26] See for instance Sta. Catalina College v. National Labor Relations Commission, G.R. No. 144483, November 19, 2003; Serrano v. Severino Santos Transit, G.R. No. 187698. August 9, 2010

[27] G.R. No. 181995, July 16, 2012

[28] G.R. No. 146941, August 9, 2007

[29] Rollo, pp. 54-57

[30] Rollo, pp. 58-62

[31] In re: Gruba, A.M. No. 14155-Ret, November 19, 2013

[32] Information Technology Foundation of the Philippines v. COMELEC, G.R. No. 159139, January 13, 2004

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