

RHODA R. SAN SEBASTIAN, PETITIONER, VS. IMMACULATE HEART OF MARY COLLEGE-PARAÑAQUE/SR. ALMA IMMACOLATA S. MANGAHAS, RESPONDENTS.

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Before the Court is a petition for certiorari filed under Rule 65 of the Rules of Court assailing the Decision dated August 30, 2013 and Resolution dated November 13, 2013 of the National Labor Relations Commission (NLRC) in LAC No. 06-001824-13, NCR-07-10983-12 which dismissed petitioner's appeal and motion for reconsideration, respectively.

On September 17, 2012, Rhoda R. San Sebastian (hereafter “petitioner”) filed a complaint before the NLRC for illegal dismissal, underpayment of salary, separation pay, damages and attorney's fees against the Immaculate Heart of Mary College-Parañaque / Sr. Alma Immacolata S. Mangahas (hereafter “respondents”) (Rollo, pp. 49-50).

Petitioner started working for respondent-school in 1992 where she worked continuously as a teacher, without interruption, until May 18, 2012. On April 16, 2012, at the age of 40, she received a Termination Letter from respondents. (See Rollo, p. 81). She claimed that she was dismissed without due process and without any valid ground. (Rollo, p. 106).

Respondents claimed on the other hand that in 1986, before petitioner was hired, they obtained a retirement plan from Insular Life for their employees. In 2005, they upgraded their plan into a Comprehensive Group Insurance Plan to maximize the coverage, adding total and permanent disability, death and accidental benefits to the basic retirement plan. The school solely paid for the retirement benefits as shown in the Faculty Manual. The respondents further averred that on April 13, 2012, they formally informed petitioner of her retirement. She received the total amount of P330,912.06, representing ½ month salary for every year of service. Having retired at her behest and having received her retirement pay, petitioner ceased to be a regular employee of the school. She was also informed that if she wanted to be rehired, a one year gap would be observed and would be subject to the terms of the new engagement. (Rollo, p. 107).

Petitioner in her Reply asserted that she never signed the alleged retirement plan thus she was not bound by it. There was no approved agreement between the teachers and the respondents. The retirement scheme was also contrary to the spirit of Article 287 of the Labor Code regarding retirement benefits. Neither was there a CBA nor an applicable employment contract validly entered into between the parties to reduce and apply a retirement of 20 years of service. The retirement she received from Insular Life came from her premium contributions and salaries from the 70% of the teachers' share in tuition fee increases. (Rollo, p. 107).

The respondents in their Reply and Rejoinder reiterated that the retirement plan was solely funded by the school. The Retirement Plan was incorporated to the Faculty Manual and was already in place when petitioner was hired in 1992. When she applied for and was accepted to work in 1992, the plan formed part of the terms and conditions

of her employment. The benefits were explained to the employees during development seminars thus petitioner cannot feign ignorance of the provisions of the plan. The Labor Code permits employers and employees to fix the retirement age at 60 or below, provided that the employees' retirement benefits under any CBA and other agreements should not be less than those provided by law. (Rollo, p. 108).

On April 15, 2013, Executive Labor Arbiter Fatima Jambaro-Franco rendered her Decision dismissing petitioner's complaint for lack of merit. (Rollo, p. 111).

ELA Franco held that petitioner was not illegally dismissed as she was effectively retired from her employment.

“[complainant/petitioner] can no longer assail the validity of the retirement plan after applying for and accepting the proceeds of her retirement benefit without reservation. At the time, she never raised the validity of the Retirement Plan. Thus, she can no longer raise the issues that she never signed the retirement plan or that the agreement was not approved by the teachers. Moreover, as presented above, it is not contrary to the spirit of Article 287 of the Labor Code.” (Rollo, pp. 110).

The Employees Retirement Plan of respondent school provides:

“Section III RETIREMENT DATES

- The normal Retirement Date shall be the first day of the month coinciding with or next following participant's 55th birthday, or when he/she has rendered twenty (20) years of continuous service, whichever comes first.
- A participant may defer his retirement beyond the normal retirement age of 55 or 20 year of credited service with the consent of the school, but not beyond age 60.”...(Rollo, p. 109).

Petitioner appealed the case to the NLRC which rendered its Decision on April 15, 2013 affirming the Exec. Labor Arbiter. (Rollo, p. 132).

It held that:

“Under [Art. 287 of the Labor Code], employers and employees are not prohibited from fixing the retirement age and retirement benefits of employees. The only limitation is that the retirement benefits should not be less than that provided by said law. Along this line, the compulsory and optional retirement of 65 and 60, respectively, as mandated by the said law applies only in absence of any retirement plan or agreement providing for retirement benefits of employees.

In this case, the school has a retirement plan for its employees through Insular Life's Comprehensive Group Plan. Under this plan, it imposed an earlier retirement age of fifty five [55] or when the employee has rendered twenty [20] years of continuous service, whichever comes first....

...

We cannot uphold the Complainant's argument that she should not be bound by the school's retirement plan because there was no CBA or any contract authorizing a retirement after twenty years in service....

...

... the retirement plan of the school, which was adopted in 1986 or several years before the Complainant was hired in 1992, became part and parcel of the terms and conditions of Complainant's employment contract. Furthermore, the school's retirement plan was integrated not only in the Faculty Manual but in the Appointment Letters as well which she was required to sign every year. Thus, the Complainant cannot feign ignorance of the retirement plan of the school. Equally revealing is that the Complainant received the proceeds of her retirement benefits. Hence, the Labor Arbiter is correct when he declared that the Complainant who enjoyed the benefits under the retirement plan is already estopped from assailing its validity.

... It is [also] settled that private educational institution has the discretion on the disposition of the 70% incremental tuition fee increase. The only restriction is that it should be used for increases in the salaries or wages, allowances and fringe benefits of Faculty and other staff, including accruals to cost of living allowance, 13[th] month pay, social security, medicare and retirement contribution and increases as may be provided in mandated wage orders, collective bargaining agreements or voluntary employer practices.

... We [likewise] affirm the Labor Arbiter's conclusion that the Complainant was not underpaid her wages, considering that she was receiving a monthly salary of Php19,503.24. The Complainant also failed to present any tinge of evidence that she was underpaid. While it becomes the employer's burden to prove that the money claims of the employee had been paid, since the general rule is that the burden rests on the employer to prove payment, rather than on the employees to prove non-payment, the employee must establish his entitlement to such benefit, otherwise the same should not be allowed." (Rollo, pp. 128-131)

Petitioner filed a Motion for Reconsideration which was denied by the NLRC on November 13, 2013. (Rollo, pp. 115-116).

Hence the present action where petitioner is raising the issues of:

"Whether or not the Honorable NLRC committed grave abuse of discretion amounting to lack of jurisdiction when the NLRC did not consider the illegal termination of Petitioner.

Whether or not [the] Honorable NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it did not consider that the Petitioner is a PERMANENT EMPLOYEE.

Whether or not [the] Honorable NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it did not consider the money claims and damages being legally claimed by Petitioner

Whether or not [the] Honorable NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it did not consider the admitted facts and evidences which proved that the Petitioner is a permanent employee and Petitioner was illegally terminated without due process of law." (Rollo, p. 6).

Petitioner asserts that she was illegally dismissed by respondents. She was terminated without any valid hearing neither was there any legal ground to terminate her services. She also claims that her retirement was not voluntary but a complete imposition on the part of respondent. There was no valid retirement policy. She never signed any employment contract and she signed her quitclaim under protest. Assuming *arguendo* that she signed a contract, still such contract would be invalid as it is contrary to Art. 287 of the Labor Code and the security of tenure provisions of the Constitution. There is no CBA agreement in this case and the reduction of the retirement age is patently unlawful. (Rollo, pp. 8, 12).

The respondents in their Comment meanwhile assert that there was no illegal dismissal but a valid termination of employment through a valid and subsisting employee retirement package. (Rollo, p. 152).

The Court finds NO MERIT in the petition.

Petitioner claims that she was illegally dismissed by respondents as she was terminated without due process and just cause.

Retirement is a different specie of termination of employment from dismissal for just or authorized causes as specified under Articles 282 and 283 of the Labor Code. While in all three cases, the employee to be terminated may be unwilling to part from service, there are eminently higher standards to be met by the employer who is validly exercising the prerogative to dismiss for just or authorized causes. In these instances, it is indispensable that the employer establish the existence of just or authorized causes for dismissal as spelled out in the Labor Code. Retirement, meanwhile, is the result of a bilateral act of the parties, a voluntary agreement between the

employer and the employee whereby the latter, after reaching a certain age, agrees and/or consents to sever his employment with the former. (*Cainta Catholic School v. Cainta Catholic School Employees Union*, 489 SCRA 468, 482 [2006]).

Article 287 of the Labor Code, as amended by R.A. No. 7641 pegs the age for compulsory retirement at 65 years, while the minimum age for optional retirement is set at 60 years. To quote:

"Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

"In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

"In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to 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.

..."

From this provision, it is clear that the age of retirement is primarily determined by the existing agreement between the employer and employees. (*Universal Robina Sugar Milling Corp. v. Caballada*, 560 SCRA 115, 132 [2008]). Article 287 of the Labor Code, according to the Supreme Court, permits employers and employees to fix the applicable retirement age at below 60 years. (*Pantranco North Express, Inc. v. NLRC*, 259 SCRA 161, 171 [1996]). Indeed, an employer is free to impose a retirement age earlier than the mandated ages in the exercise of its management prerogative. (*Cercado v. UNIPROM*, 633 SCRA 281, 286 [2010]). It is in the absence of such agreement that the retirement age shall be fixed by law. (*Universal Robina Sugar Milling Corp. v. Caballada*, *supra*, p. 132).

The fact that the retirement age in this case was below the age pegged by the Labor Code is of no moment as jurisprudence is replete with pronouncements declaring such retirement programs to be valid.

In *Pantranco North Express, Inc. v. NLRC* (*supra*), which case was cited in later cases (See *Cainta Catholic School v. Cainta Catholic School Employees Union*, *supra*, p. 483; *Cercado v. UNIPROM*, *supra*, p. 287), the CBA therein stipulated that an employee with twenty five (25) years of service, regardless of age, may be retired at his option or at the option of the company.

In upholding the validity of the retirement program of the employer, the Supreme Court explained:

"...Art. 287 of the Labor Code as worded permits employers and employees to fix the applicable retirement age at below 60 years. Moreover, providing for early retirement does not constitute diminution of benefits. In almost all countries today, early retirement, i.e., before age 60, is considered a reward for services rendered since it enables an employee to reap the fruits of his labor — particularly retirement benefits, whether lump-sum or otherwise — at an earlier age, when said employee, in presumably better physical and mental condition, can enjoy them better and longer. As a matter of fact, one of the advantages of early retirement is that the corresponding retirement benefits, usually consisting of a substantial cash windfall, can early on be put to productive and profitable uses by way of income-generating investments, thereby affording a more significant measure of financial security and independence for the retiree who, up till then, had to contend with life's vicissitudes within the parameters of his fortnightly or weekly wages. Thus we are now seeing many CBAs

with such early retirement provisions. And the same cannot be considered a diminution of employment benefits.” (Pantranco North Express, Inc. v. NLRC, supra, p. 171).

Petitioner next claims that she never signed any employment contract.

It is undisputed that respondents adopted their retirement program under Insular Life in 1986. At the time petitioner was employed in 1992, therefore, the retirement program she is now assailing, has already been in place. Twenty years has also passed from the time she started working until 2012, when respondents sent her a termination letter. She cannot feign ignorance therefore of the retirement program of the school.

As correctly held by the NLRC, the retirement plan of the school which was adopted several years before petitioner was hired became part and parcel of the terms and conditions of petitioner's employment contract. The school's retirement plan was integrated not only in the Faculty Manual but in the Appointment Letters as well which she was required to sign every year. (See Rollo, pp. 130-131).

Truly, twenty years is more than an ideal length of service an employee can render to one employer. Under ordinary contemplation, a CBA provision entitling an employee to retire after twenty (20) years of service and accordingly collect retirement benefits is reward for services rendered since it enables an employee to reap the fruits of his labor --- particularly retirement benefits --- at an earlier age, when said employee, in presumably better physical and mental condition, can enjoy them better and longer. (Cainta Catholic School v. Cainta Catholic School Employees Union, supra, p. 485).

The exercise by management of its retirement prerogative is less susceptible to dubitability as to the question whether an employee could be validly retired. The only factual matter to consider is whether the employee concerned had attained the requisite age or number of years in service pursuant to the CBA or employment agreement, or if none, pursuant to Article 287 of the Labor Code. (Cainta Catholic School v. Cainta Catholic School Employees Union, supra, pp. 483-488).

As a final note, the Court would like to emphasize that the present case is one of certiorari under the Rule 65 of the Rules of Court. To justify the grant of the extraordinary remedy of certiorari, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused its discretion, which connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered grave, the discretionary authority must be exercised in a despotic manner by reason of passion or personal hostility and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law. (Ramos v. BPI Family Savings Bank, Inc., G.R. No. 203186, December 4, 2013).

As no grave abuse of discretion on the part of the NLRC could be found in this case, the instant petition must fail.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated August 30, 2013 and Resolution dated November 13, 2013 of the National Labor Relations Commission in LAC No. 06-001824-13, NCR-07-10983-12 are hereby AFFIRMED.

SO ORDERED.

Lopez, and Cruz,[*] JJ., concur.

[*] Acting Junior Member vice J. S. B. Inting per Office Order No. 348-14-RSF dated August 4, 2014.

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