

ERMIDIA A. MARIANO PLAINTIFF-APPELLEE, VS. THE ROYAL INTEROCEAN LINES (KONINKIJKE JAVA-CHINA-FAKITVAART LIJNEN N. V. AMSTERDAM) AND J. V. KAMERLING, DEFENDANTS-APPELLANTS. R E S...

G.R. No. L-12429. July 21, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

This is a motion for reconsideration of the judgment rendered by this Court in this case on 27 February 1961.

On 23 October 1953, the date of the appellee's dismissal from the appellant's service, the new Civil Code, that took effect on 30 August 1950, [1] had repealed article 302 of the Code of Commerce, which authorized the dismissal of an employee, with or without cause, whose service had been engaged not for a definite or fixed period of time, upon 30 days notice or payment of one month salary (*mesada*). It was only on 12 June 1954 when Republic Act No. 1052[2] was enacted into law that this right of the employee was revived. Hence on 23 October 1953, the appellee, who had been employed by the appellant company not for a definite or fixed period of time could be dismissed even without cause and would not be entitled to 30 days previous notice or payment of one month salary (*mesada*).[3]

In her motion for reconsideration the appellee contends that the provisions of the regulations regarding allowance to the "Local Staff" of the appellant company (Annex H-Stipulation, pp. 62-75, rec. on app.), which had been made known to all its employees including her, formed part of their contract and she was entitled to the benefits thereof. Even if this Court were inclined to adopt the appellee's view that the "Local Staff Allowances" (Annex H-Stipulation) amounted to, constituted or converted her employment into one of fixed period of time, or that she could not be deprived of the benefit granted by appellant and earned by her, still this Court could not take such view because the trial court found and held that it "can not grant plaintiff's (appellee's) claim for retirement and old age allowance for the reason that she has not complied with one of the conditions thereof, to wit, she has not completed ten successive years in permanent service from March 1, 1948 up to her retirement on August 21, 1955." From this finding and pronouncement she attempted to appeal but failed because her record on appeal was filed beyond the reglementary period. Twice on 18 July 1957 and 22 November 1957 in this Court the appellee sought to compel the trial court to allow the record on appeal but both petitions for mandamus were dismissed for lack of merit (G. R. Nos. L-12557 and L-13160). Such being the case that part of the judgment from which the appellee attempted to appeal but failed is final insofar as it concerns her. She cannot be allowed to raise it again for it is *res judicata*.

The motion for reconsideration is, therefore, denied.

Bengzon, Labrador, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

Barrera, J., took no part.

Bautista Angelo, J., voted to deny the appellee's motion for reconsideration.

[1]Lara vs. del Rosario, 50 Off. Gaz. 1975; Casabar vs. Cruz, G. R. No. L-6882, 29 December 1954; Velayo vs. Shell Co. of P.I. Ltd., 54 Off. Gaz. 63; Estayo vs. de Guzman, 55 Off. Gaz. 7653; Altomonte vs. Philippine-American Drug Co., G.R. Nos. L-11872 & L-14922, 31 August 1959; Sison vs. Maza, G. R. No. L-14219, 29 December 1960.

[2] Amended by Republic Act No. 1787 on 21 June 1957.

[3] Gutierrez vs. Bachrach Motor Co., Inc., G. R. Nos. L-11298, L-11586 and L-11603, 19 January 1959.

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