

JOSE PIVI H. GARRIDO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), SEVENTH DIVISION AND PHILIPPINE NATIONAL BANK, RESPONDENTS.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

The present petition seeks to nullify the February 26, 2010 Decision[1] issued by public respondent National Labor Relations Commission, Seventh Division (NLRC) in NLRC VAC-05-000628-09 for illegal dismissal and payment of monetary benefits.

THE ANTECEDENTS

Stripped of the unessentials, the relevant facts of this case are as follows:

Petitioner started working for respondent Philippine National Bank (PNB) on May 22, 1972. When PNB was privatized in 1997, petitioner was deemed retired from government service and received P254,317.82 as retirement gratuity.[2] Although deemed retired, petitioner continued to be an employee of the PNB after its privatization.

On May 21, 2007, at the age of 57, petitioner was made to retire pursuant to PNB's retirement plan[3] which took effect on May 2, 2001. He signed a prepared Exit Form,[4] Retirement Letter,[5] and a Deed of Waiver and Quitclaim.[6]

Claiming that he was forced to retire, petitioner filed the case a quo against PNB before the Labor Arbiter (LA).

On December 18, 2008, the LA issued the Decision,[7] the dispositive portion of which reads:

WHEREFORE, for want of jurisdiction, this case is hereby dismissed.

The LA ruled that the case is not a termination dispute but involves the interpretation of a company policy which must be referred to the grievance machinery or a voluntary arbitrator.

On appeal, the NLRC issued the assailed February 26, 2010 Decision, the dispositive portion of which reads:

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit. Accordingly, the appealed Decision of the Executive Labor Arbiter is AFFIRMED.

Hence, this petition.

ISSUE

WHETHER OR NOT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION DATED FEBRUARY 26, 2010.

Petitioner, citing *Pantranco North Express, Inc. v. NLRC*,[8] insists that the case is a termination dispute

cognizable by the LA, as the interpretation of the company policy is only corollary to the complaint for illegal dismissal.

PNB, on the other hand, points out that a petition for certiorari is available only when there is no other plain remedy. Respondent insists that the instant case must be dismissed because petitioner has another remedy, and that is to file a case before a voluntary arbitrator. It also argues, citing *Vicente San Jose v. NLRC, et al.*[9] and *Del Monte Philipines, et al. v. Saldivar, et al.*,[10] that the LA cannot pass upon money claims arising from the interpretation of the collective bargaining agreement (CBA), such as this case.

THE COURT'S RULING

The petition is MERITORIOUS.

At the outset, We clarify that the petitioner is asking Us to nullify the ruling of the NLRC dismissing his appeal. The function of a petition for certiorari under Rule 65 of the Revised Rules of Court is to correct errors of jurisdiction - lack of or excess of jurisdiction or grave abuse of discretion amounting to lack of jurisdiction - that courts or tribunals may have committed. Thus, Our inquiry is limited to the determination of whether the NLRC committed grave abuse of discretion or any jurisdictional error when it issued the assailed decision.

Grave abuse of discretion is committed when an act is done contrary to the Constitution, the law or jurisprudence, or executed whimsically or arbitrarily in a manner so patent and so gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined, as where the power is exercised in an arbitrary and despotic manner because of passion or personal hostility. An act of a court or tribunal may constitute grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction.[11]

We find that the NLRC committed grave abuse of discretion in the instant case. It failed to consider relevant jurisprudence, particularly, the *Pantranco* case which is substantially similar herein. Curiously, the NLRC failed to discuss it in the assailed decision despite the fact that it was the main thrust of petitioner's argument.[12] In said case, private respondent, *Urbano Suñiga*, filed a case for illegal dismissal against petitioner *Pantranco North Express, Inc., (Pantranco)* after *Suñiga* was made to retire pursuant to the CBA entered into between the latter and the former's union. The LA and the NLRC ruled that *Suñiga* was illegally dismissed. *Pantranco* filed a petition for certiorari before the Supreme Court contending that the LA had no jurisdiction because the dispute concerns a provision of the CBA and its interpretation. The Supreme Court, brushed aside the contention. It ruled:

In *Sanyo Philippines Workers Union - PSSLU vs. Cañizares*,[13] a case cited by the petitioner, this Court ruled:

"x x x Hence, only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators.

In the instant case, both the union and the company are united or have come to an agreement regarding the dismissal of private respondents. No grievance between them exists which could be brought to a grievance machinery. The problem or dispute in the present case is between the union and the company on the one hand and some union and non-union members who were dismissed, on the other hand. The dispute has to be settled before an impartial body. The grievance machinery with members designated by the union and the company cannot be expected to be impartial against the dismissed employees. Due process demands that the dismissed workers' grievances be ventilated before an impartial body. Since there has already been an actual termination, the matter falls within the jurisdiction of the Labor Arbiter."

Applying the same rationale to the case at bar, it cannot be said that the "dispute" is between the union and petitioner company because both have previously agreed upon the provision on "compulsory retirement" as

embodied in the CBA. Also, it was only private respondent on his own who questioned the compulsory retirement. Thus, the case is properly denominated as a "termination dispute" which comes under the jurisdiction of labor arbiters.

Verily, like in *Pantranco*, the LA have jurisdiction over the instant case, as the dispute in the case at bar is between petitioner and PNB. It does not involve the petitioner's union.

Moreover, PNB is estopped to question the jurisdiction of the LA owing to its participation in the proceedings below.[14] The active participation of the party against whom the action was brought, coupled with its failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction.[15]

PNB's contention that the instant petition for certiorari is unavailing because petitioner has another remedy which is to go to the grievance machinery or a voluntary arbitrator, cannot be given merit. Precisely, the instant petition was filed because petitioner believes that the said remedy is erroneous. Besides, a referral of the case to the grievance machinery and to the voluntary arbitrator would be futile because PNB had already terminated petitioner.[16]

PNB's reliance on *Del Monte* is equally without merit. True, the Supreme Court ruled therein that:

Thus, as the law indubitably precludes the Labor Arbiter from enforcing money claims arising from the implementation of the CBA, the CBA herein complementarily recognizes that it is the Voluntary Arbitrators which have jurisdiction to hear the claim. The Labor Arbiter correctly refused to exercise jurisdiction over *Del Monte's* cross-claim, and the Court of Appeals would have no basis had it acted differently. At the same time, even as we affirm the award of backwages against *Del Monte*, our ruling should not operate to prejudice in any way whatever causes of action *Del Monte* may have against ALU, in accordance with the CBA.

It should be emphasized, however, that the issue in *Del Monte* was the claim for reimbursement by an employer (*Del Monte*) against the employee's (private respondents therein) union (the Associated Labor Union). It is not applicable here because the issue in this case is between an employer and the employee, i.e. petitioner. Although petitioner is a member of a union, the union itself is not a party to this case.[17] Thus, referral to the grievance machinery or voluntary arbitration would be an improper remedy, following *Pantranco*.

PNB cannot find solace in *Vicente San Jose*. Therein the Supreme Court ruled that the LA had no jurisdiction over the case, because the case involved an issue "arising from the interpretation or implementation" of a CBA. It is noteworthy, however, that the case was a money claim; the concern of petitioner therein was the underpayment of his retirement benefits. He did not question his retirement or his "dismissal," from service. In this case, petitioner assails the validity of his retirement pursuant to the CBA. He says he was forced to retire. To Us, this is a termination dispute cognizable by the LA. It is not an ordinary case arising from the interpretation or implementation of a CBA that should be referred to grievance machinery or a voluntary arbitrator, pursuant to Section 1, Article XX (Grievance Machinery) of the CBA, which states:

Section 1. Definition. A grievance is any misunderstanding, dispute or controversy arising from the interpretation, meaning, application, and implementation of any provision of this Agreement between the Bank and the Union or any dispute or controversy between the Bank and any covered employee respecting any term or condition of employment, including that which may arise from the interpretation and enforcement of the Bank's personnel policies.

In *Viviero v. CA, et al.*, [18] the Supreme Court, citing *San Miguel Corp. v. National Labor Relations Commission*, [19] ruled that an express stipulation in the CBA is necessary before termination disputes originally

under the jurisdiction of the LA may be referred to the grievance machinery or voluntary arbitrator, thus:

x x x the phrase "all other labor disputes" may include termination disputes provided that the agreement between the Union and the Company states "in unequivocal language that [the parties] conform to the submission of termination disputes and unfair labor practices to voluntary arbitration." Ergo, it is not sufficient to merely say that parties to the CBA agree on the principle that "all disputes" should first be submitted to a Voluntary Arbitrator. There is a need for an express stipulation in the CBA that illegal termination disputes should be resolved by a Voluntary Arbitrator or Panel of Voluntary Arbitrators, since the same fall within a special class of disputes that are generally within the exclusive original jurisdiction of Labor Arbiters by express provision of law. Absent such express stipulation, the phrase "all disputes" should be construed as limited to the areas of conflict traditionally within the jurisdiction of Voluntary Arbitrators, i.e., disputes relating to contract-interpretation, contract-implementation, or interpretation or enforcement of company personnel policies. Illegal termination disputes - not falling within any of these categories - should then be considered as a special area of interest governed by a specific provision of law.

As can be gleaned above, Section 1, Article XX of CBA does not expressly state that termination dispute lies with the grievance machinery or a voluntary arbitrator, thus, it should remain with the LA.

WHEREFORE, the petition is GRANTED. The assailed February 26, 2010 Decision is SET ASIDE. The case is REMANDED to the LABOR ARBITER who is DIRECTED to RESOLVE the case with UTMOST DISPATCH.

SO ORDERED.

Ingles, (Chairperson) and Quijano-Padilla, JJ., concur.

[1] Rollo, p. 18

[2] See Rollo, p. 34; See also Rollo, p. 276, where PNB alleged that petitioner received the amount of P344,116.02.

[3] Rollo, p. 41.

[4] Rollo, p. 46.

[5] Rollo, p. 47.

[6] Rollo, p. 48.

[7] Rollo, p. 86.

[8] G.R. No. 95940, July 24, 1996.

[9] G.R. No. 121227, August 17, 1998.

[10] G.R. No. 158620, October 11, 2006.

[11] Pablo-Gualberto v. Gualberto, G.R. No. 154994, June 28, 2005; See also Freedom From Debt Coalition, et al. v. Energy Regulatory Commission, et al., G.R. No. 161113, June 15, 2004.

[12] Rollo, p. 99.

[13] 211 SCRA 361, 372-373 (July 8, 1992).

[14] Rollo, p. 14.

[15] Maneja v. NLRC, et al., G.R. No. 124013, June 05, 1998.

[16] See Halagueña, et al v. Philippine Airlines Incorporated, G.R. No. 172013, October 02, 2009.

[17] Rollo, p. 18.

[18] G.R. No. 138938, October 24, 2000.

[19] G.R. No. 108001, March 15, 1996.

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