

**PHILIPPINE SCHOOL OF BUSINESS ADMINISTRATION, INC. –
QUEZON CITY/ATTY. BENJAMIN PAULINO/DR. JUAN LIM,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
(SIXTH DIVISION) AND L...**

Ponente: CORALES, J.

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CORALES, J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court with application for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) against the December 17, 2012 Decision[2] and the February 13, 2013 Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-002221-12. The assailed decision affirmed the June 27, 2012 Decision[4] of the Labor Arbiter ordering petitioners Philippine School of Business Administration-Quezon City (PSBA-QC) and Atty. Benjamin Paulino and Dr. Juan S. Lim, its President and Vice-President of Finance, respectively, to pay private respondent Leticia Q. Perez (Perez) the amount of P1,312,118.34 as retirement benefits. The challenged resolution denied petitioners' subsequent motion for reconsideration.

The Antecedents

Perez was an academic faculty member in PSBA-QC from November 1985 until her retirement on July 4, 2011. Pursuant to Section 3, Article XXI of the 2005-2010 Collective Bargaining Agreement (CBA) between PSBA-QC and PSBA Faculty Association, Quezon City, Inc., which provides that the one-half month pay is equivalent to annual basic salary/12 months divided by 2, the school computed Perez' retirement benefits, 13[th] month pay, and service award as follows:

Retirement Notice Received : July 4, 2011

Last Attendance : End of Summer, AY 2010-2011 (May 25, 2011)

Date Hired : Second Semester, AY 1985-1986 (November, 1985)

x x x

Status : Regular Full-Time

x x x

Number of Years in Service : 25 yrs. & 1 mo. (301 months as per Service Record) or 25 years. (117.5%) Art. XXI, Sec. 3.d. Of 2005-2010 CBA

Schedule I - Annual Basic Salary - June, 2010 to May, 2011 P453,936.26

x x x

Actual School Calendar Days Per Year

1st Semester

108 days

2nd Semester 108 “

Summer 36

Total 252 days

Divisor 247 days

Average Daily Salary = Annual Basic Salary

247 days

$P453,936.26 = P1,837.80/\text{day}$

247 days

Average Monthly Salary = Annual Basic Salary

12 months

$P453,936.26 = P37,828.02/\text{mo.}$

12 months

Components of one-half ($\frac{1}{2}$) month salary

a. One-half ($\frac{1}{2}$) month salary

$P37,828.02 = 15 \text{ days}$

$P18,914.01$

2

b. Cash Equivalent of five (5) days of Service Incentive Leave

$P1,837.80 \times 5 \text{ days } 9,189.00$

c. One-twelfth ($\frac{1}{12}$) of the 13th Month Pay

Annual Basic Salary less Summer pay $\times 110\%/9 \text{ mos.}/12 \text{ mos.}$

$(P436,007.23 \times 110\%/9 \text{ mos.}/12 \text{ mos. } 2.5 \text{ days } 4,440.81$

TOTAL 22.5 days $P32,543.82$

Add: 17.5% premium $5,695.17$

One-half ($\frac{1}{2}$) month salary equivalent $P38,238.99$

Multiply by number of years in service 25 yrs

Total Retirement Pay P955,974.75

Less Withholding tax 257,957.56

Net Amount Due P698,017.19

x x x

Schedule 4 – Computation of 13th Month Pay – Y2011

Basic Salary – November, 2010 to March, 2011 x 110%/9 mos.

P148,341.18 x 110% / 9 mos. P 18,130.59

Schedule 5 – Service Award Y2011

25 years of service P 8,000.00[5]

Perez disputed PSBA-QC's computation. She also refused to accept the checks for her retirement benefits and sign the quitclaim which PSBA-QC required as condition for the release of benefits. She insisted that her one-half month pay should be computed using the formula “average daily salary x 15 days” used by PSBA-QC in computing the retirement benefits of Pacifica Camba (Camba), an academic faculty member who retired on June 21, 2010, instead of the formula “annual basic salary/12 months divided by 2”. She further claimed that she had been employed by PSBA-QC for 25 years and seven (7) months or 26 years thereby entitling her to a 22.5% premium and a retirement benefit of P1,312,118.34 computed as follows:

a. Average Daily Salary = Annual Basic Salary/247 days
= P453,936.26/247 days
= P1,837.80

COMPUTATION OF ONE HALF (½) MONTH SALARY:

a. Average Daily Salary x 15 days
= P1,837.80 x 15 days
= P27,567.00

x x x

b. Cash Equivalent of Five (5) days of Service Incentive Leave

= P1,837.80 x 5 days

= P9,189.00

c. One-twelfth (1/12) of the 13th Month Pay (2.5 days)

= Annual Basic Salary less Summer pay x 110%/9 mos/12 mos

= (P436,007.23 x 110%/ 9/ 12)

= P4,440.81

TOTAL (a+b+c) = 22.5 days

P27,567.00 + P9,189.00 + P4,440.81

= P41,196.81

Add: 22.5% premium

P41,196.81 x 22.5%

= P9,269.28

TOTAL RETIREMENT PAY

P41,196.81 + P9,269.28 = P50,466.09 x 26 years

= P1,312,118.34[6]

PSBA-QC maintained its computation and insisted on the application of the CBA's formula in computing one-half month pay.[7]

Unconvinced, Perez filed before the Labor Arbiter a complaint for non-payment of 13[th]month pay, retirement benefits, and service award against PSBA-QC, its President and Vice-President.

The Rulings of the Labor Arbiter and the NLRC

In the June 27, 2012 Decision,[8] the Labor Arbiter upheld Perez' computation using the average daily salary rate for one-half month pay. It was stressed that the application of the daily salary rate in computing Camba's retirement benefits equally applies to Perez to avoid undue discrimination. The Labor Arbiter noted PSBA-QC's tacit admission in its position paper that Perez “was hired a member of the SCHOOL'S academic faculty in November 1985[;] she went on leave after the summer term of AY 2010-2011 and then submitted a written notice of retirement on 04 July 2011 x x x”; and concluded that Perez was employed for a total of 26 years and 7 months. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents to pay complainant the sum of P1,312,118.34 as retirement benefits.

SO ORDERED.

On appeal,[9] the NLRC, through its December 17, 2012 Decision,[10] sustained the findings of the Labor Arbiter. It found no reasonable distinction between Camba and Perez which would warrant the application of different formulas in computing their retirement benefits. It further held that the retirement benefits provided in the CBA is less than that provided by Article 287 (now Article 293) of the Labor Code, as amended by Republic Act (R.A) No. 7641, otherwise known as the Retirement Pay Law; hence, the latter should be applied.

Anent Perez' length of service in PSBA-QC, the NLRC ruled that Perez is a regular employee for 25 years and 7 months. It did not give credence to PSBA-QC's contention that Perez was employed for only 25 years and 1 month because she did not teach for the summer terms of 1986, 1988, and 1989. It stressed that a regular employee's years of service must be reckoned from the time she was hired until the date of retirement. It disposed the case in this wise:

WHEREFORE, premises considered, the appeal is DENIED for lack of merit and the June 27, 2012 Decision is hereby AFFIRMED.

SO ORDERED.

In its February 13, 2013 Resolution,[11] the NLRC denied herein petitioners' motion for reconsideration.

Hence, this petition for certiorari anchored on the following grounds:[12]

Did PUBLIC RESPONDENT act arbitrarily, despotically and with grave abuse of discretion amounting to lack or excess of jurisdiction when it upheld the award of retirement benefits computed based on a formula that is inconsistent with the agreement in contract between the parties to the 2005-2010 Collective Bargaining Agreement?

Did PUBLIC RESPONDENT act arbitrarily, despotically and with grave abuse of discretion amounting to lack or excess of jurisdiction when it upheld the finding that RESPONDENT PEREZ's length of service is 26 years notwithstanding evidence which shows that she served for only 25 years and 1 month? (Underscoring appears in the original text of the petition)

Petitioners impute grave abuse of discretion on the NLRC for its failure to apply the CBA despite prevailing jurisprudence that the same is the law between the parties. They harp on the management prerogative to grant additional benefits to some of its employees and insist that the NLRC has no reason to substitute its own judgment based only on perceived discrimination unsupported by evidence on records. They insist that the grant of additional benefits to Camba neither ripened to an obligation nor created a demandable right on the part of Perez. Lastly, they reiterate the argument in their appeal that Perez taught in PSBA-QC for only 301 months or 25 years and 1 month because she was on leave for the summer terms of 1986, 1988, and 1989.[13]

Required to comment, Perez argues that a summer term is not part of PSBA-QC's regular semester, thus, a faculty member should not be considered on leave if not teaching on summer. She adds that there is nothing in the Education Act or in the Labor Code that considers a faculty member absent if she does not avail of the teaching load during summer.[14]

This Court's Ruling

The petition lacks merit.

A petition for certiorari does not normally include an inquiry into the correctness of the NLRC's evaluation of evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari which is merely confined to issues of jurisdiction or grave abuse of discretion.[15] Thus,

the instant petition would prosper only if there is a clear showing of grave abuse of discretion on the part of the public respondent. It is therefore imperative for the petitioners to prove that the power of discretion is being exercised in an arbitrary or despotic manner by reason of passion or personal hostility so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of law.[16] They must satisfactorily establish that the NLRC capriciously, whimsically, or arbitrarily disregarded evidence which is material to or decisive of the controversy.[17]

Petitioners failed to discharge this burden. There is nothing in the instant petition which shows that the NLRC's issuance of the December 17, 2012 Decision and February 13, 2013 Resolution was patent and gross that would warrant their striking down through a petition for certiorari. On the contrary, the findings of fact made by the Labor Arbiter and affirmed by the NLRC are supported by the evidence on records, thus, entitled to great respect and considered final. Further, in arriving in its assailed decision, the NLRC reviewed the rationale of the Labor Arbiter and applied the proper case law.[18] We find no compelling reason to rule otherwise.

CBA Retirement Benefits Below the Requirements Set by Law

Although a contract is the law between the parties, the provisions of positive law which regulate contracts are deemed written therein and shall limit and govern the relations between the parties.[19] Accordingly, the stipulations on retirement benefits embodied in PSBA-QC's CBA are subject to the provisions of R.A. No. 7641, amending Article 293 of the Labor Code, viz.:

ART. 293. 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 agreement 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.

Unless 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. (Emphasis supplied)

In *Grace Christian High School v. Lavandera*,^[20] the Supreme Court explained that 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 applies is the superiority in terms of benefits provided. It was further settled in the said case that one-half (½) 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 (SIL).

Following the CBA in this case, PSBA computed Perez' one-half month pay by averaging her salary from June 2010 to May 2011 and dividing it by 2 and then adding the 5 days SIL based on the average daily rate as well as the 1/12 of the 13th month pay. Such computation would yield to a lesser retirement benefit as compared to the formula under Article 293 of the Labor Code wherein the average daily rate should be multiplied by 22.5 days.

Considering the law is more beneficial than the CBA, the formula therein should be applied in the computation of Perez' retirement benefits.

Perez Worked for 26 Years in PSBA-QC

We also concur with the NLRC's rationale that it would be absurd if Perez' length of service would be computed by months rather than by years. A teacher continues to be employed by the school even during summer terms where she has no teaching load. As aptly held by the NLRC, to rule otherwise would result in a situation wherein the teacher was not considered an employee during summer term even though the employment has not been terminated by any valid or just cause. Thus, considering that Perez began her employment in PSBA-QC in November 1985 and retired on July 4, 2011, she had been employed for a period of 25 years and 8 months. Pursuant to the second paragraph of R.A. No. 7641, a fraction of at least six (6) months is considered a whole year, therefore, Perez' total years of service is 26 years as correctly ruled by the NLRC.

WHEREFORE, the instant petition for certiorari is DENIED. The assailed December 17, 2012 Decision and the February 13, 2013 Resolution of the National Labor Relations Commission in NLRC LAC No. 08-002221-12 are AFFIRMED.

SO ORDERED.

Villon, J., Chairperson and Zalameda, JJ., concur.

[1] Rollo, pages 3-13.

[2] Penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred by Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro, *ibid.*, pages 16-23.

[3] *Ibid.*, pages 25-26.

[4] Penned by Labor Arbiter Jose G. De Vera, *ibid.*, pages 111-116.

[5] See PSBA's Computation of Retirement Benefits Due to Mrs. Leticia Q. Perez, *ibid.*, pages 105-106.

[6] See Perez' Position Paper, *ibid.*, pages 84-90.

[7] See PSBA-QC's Position Paper, *ibid.*, pages 28-34.

[8] *Supra*, at note 4.

[9] See Memorandum of Appeal, rollo, pages 117-129.

[10] *Supra*, at note 2.

[11] *Supra*, at note 3.

[12] See pages 6-7 of the Petition, *supra*, at note 1.

[13] See Petitioner's Memorandum, rollo, pages 231-239.

[14] See Respondent's Comment, *ibid.*, pages 199-211.

[15] See *Leonis Navigation Co., Inc. v. Villamater*, G.R. No. 179169. March 3, 2010.

[16] See *Fernandez v. Comelec*, G.R. No. 171821. October 9, 2006.

[17] *Odango v. NLRC*, G.R. No. 147420. June 10, 2004.

[18] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306. August 28, 2013.

[19] *See Heirs of Severina San Miguel v. Court of Appeals*, G.R. No. 136054. September 5, 2001.

[20] G.R. No. 177845. August 20, 2014 .

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