

CHARITO SOCO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 7TH DIVISION AND CITY SAVINGS BANK, RESPONDENTS.

Ponente: DIY, J.

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DIY, J.:

Petitioner, by way of the instant petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, assails public respondent's May 31, 2010 Decision[1] declaring petitioner's termination from employment as legal, as well as its July 30, 2010 Resolution[2] denying petitioner's motion for reconsideration.[3]

The factual antecedents as culled from the records are as follows:

Petitioner was hired by private respondent City Savings Bank sometime in July 1977.

While she was still employed, petitioner was the Vice-President of the National Union of Bank Employees-City Savings Bank Chapter (NUBE-CSB, for brevity), the bargaining representative of private respondent's rank-and-file employees. Private respondent then had an existing Collective Bargaining Agreement (CBA) with NUBE-CSB covering a five-year period from January 1, 2005 to December 31, 2009.

In 2007, when the subsisting CBA was on its last two years of effectivity, private respondent and NUBE-CSB entered into negotiations anent the provisions of said CBA. Included among the matters for negotiation was private respondent's proposal to include a provision on compulsory retirement of the rank-and-file employees upon attaining the age of sixty (60) years old or upon completion of thirty (30) years of service, whichever comes first. The negotiations unfortunately ended in deadlock. On December 20, 2008, the union filed a Notice of Preventive Mediation with the National Conciliation and Mediation Board (NCMB). The notice was subsequently converted into a Notice of Strike on April 25, 2008 on the ground of deadlock in collective bargaining. On June 6, 2008, the Office of the Secretary of Labor and Employment assumed jurisdiction over the CBA deadlock.

On November 20, 2008, petitioner was served with a notice informing her that she would be compulsorily retired effective December 31, 2008 for having rendered thirty (30) years of service. Petitioner was then 52 years old.[4] The union wrote to private respondent in petitioner's behalf requesting that the forced retirement be halted. The union argued that the early retirement was not justified since the existing CBA does not provide for it and in fact, the matter was among the unresolved issues due to the deadlock in the CBA negotiations. The union added that in the absence of any CBA provision to such effect, it is Article 287 of the Labor Code, as amended by Republic Act No. 7641, setting the retirement age at sixty-five (65) years that should apply. Under such provisions, petitioner cannot as yet be retired.[5]

In a letter-reply dated December 23, 2008,[6] private respondent denied the union's request and proceeded with the compulsory retirement of petitioner. At the time of the severance of petitioner's employment, she was occupying the position of Loan Staff and was receiving a monthly salary of P21,510.00.

On June 3, 2009, petitioner filed a complaint for Illegal Dismissal[7] with the Regional Arbitration Branch No.

VII of Cebu City praying for reinstatement with payment of backwages, damages, and attorney's fees.

Private respondent for its part justified petitioner's early retirement based on the City Savings Bank Employees Retirement Plan (ERP, for brevity), which was allegedly formulated by its Board of Directors. Said ERP has allegedly been observed and implemented since January 1, 1974. The retirement plan provided for the retirement of an employee of City Savings Bank upon reaching the age of sixty (60) or rendition of thirty (30) years of service, whichever comes first. Private respondent claimed that its representatives had informed petitioner of such policy and that she was already up for compulsory retirement on account of having rendered service for thirty (30) years. Private respondent likewise admitted having received the union's letter requesting that petitioner's early retirement be halted and notwithstanding the same, private respondent nevertheless proceeded with petitioner's retirement. Private respondent further disclosed that it was under the impression that petitioner and the union would no longer contest the company policy as they appeared to have acquiesced to the implementation of the ERP. According to private respondent, petitioner further assented to her compulsory retirement since she accepted her last pay and retirement benefits, and executed two quitclaims, waivers, and releases. Private respondent further pointed out that it was even petitioner who caused the preparation of the quitclaims, and personally brought the same to the Notary Public.

On December 7, 2009, Executive Labor Arbiter Jose G. Gutierrez rendered a decision declaring petitioner's termination from employment as constitutive of illegal dismissal the same having been effected in the guise of early retirement. It then directed private respondent to reinstate petitioner without loss of seniority rights and privileges and to pay petitioner her backwages, less the amount petitioner already received.[8]

Private respondent elevated the matter before public respondent. On May 31, 2010, public respondent rendered the appealed decision reversing the decision of the Executive Labor Arbiter. It held that the Labor Code sanctions the early retirement of employees not only on the basis of the provisions of an existing CBA but upon any applicable employment contract as well. Public respondent thus relied on the ERP and held that petitioner's compulsory retirement was justified. Petitioner moved for reconsideration but the same proved unavailing. Hence, the instant petition anchored on the following –

VII. GROUND FOR THE ALLOWANCE OF THE PETITION

Public respondent gravely abused its discretion and committed reversible error in reversing the decision of the Executive Labor Arbiter and declaring that the compulsory retirement of petitioner, who was only 52 years of age, was valid.[9]

Petitioner contends that public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed the decision of the Executive Labor Arbiter and ruled that petitioner's compulsory retirement was justified under the ERP. Petitioner asseverates that the retirement of private respondent's rank-and-file employees should be governed by the provisions of its existing CBA. Since the existing CBA does not provide for the retirement of the rank-and-file employees and the provisions of the ERP affecting retirement have likewise not been incorporated or made part of the CBA, petitioner argues that it is Article 287 of the Labor Code, as amended by Republic Act No. 7641, which should apply. Petitioner further explains that the legally mandated compulsory retirement is set at sixty-five (65) years of age while the minimum age for optional retirement is sixty (60) years of age. The prerogative of optional retirement furthermore rests with the employee. Consequently, petitioner importunes that retiring her at the age of fifty-two (52) notwithstanding rendition of thirty (30) years of service to private respondent was without legal basis. Petitioner further avers that her acceptance of benefits for which quitclaims had been executed does not preclude her from questioning the legality of her dismissal.

We reverse.

Retirement 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 to sever his or her employment with the former.[10]

In *Universal Robina Sugar Milling Corporation, et al. v. Caballada, et al.*,[11] the Supreme Court added:

The age of retirement is primarily determined by the existing agreement between the employer and the employees. However, in the absence of such agreement, the retirement age shall be fixed by law. Under Art. 287 of the Labor Code as amended, the legally mandated age for compulsory retirement is 65 years, while the set minimum age for optional retirement is 60 years.

(Emphasis supplied)

An employer is, however, free to impose a retirement age earlier than what the law mandates. A catena of cases has upheld such privilege as a valid exercise of management prerogative.[12] It is stressed that the employees' retirement benefits under any CBA and other agreements should not be less than those provided by law.[13]

In *Cercado v. UNIPROM, Inc.*,[14] the Supreme Court, however, elucidated that in the cases upholding the right of the employer to retire its employees below the ages provided by law, the retirement plans were the result of negotiations and eventual agreement between the employer and the employees. The retirement plans in these cases were either embodied in a CBA, or established after consultations and negotiations with the employees' bargaining representative. Cercado thus highlighted that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be clearly and unequivocally assented to and accepted by the employees, otherwise, the plan's adhesive imposition will amount to a deprivation of property without due process of law. According to Cercado:

Acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.

The following pronouncements in *Jaculbe v. Silliman University* are elucidating:

[A]n employer is free to impose a retirement age less than 65 for as long as it has the employees' consent. Stated conversely, employees are free to accept the employer's offer to lower the retirement age if they feel they can get a better deal with the retirement plan presented by the employer.

Cercado further stressed:

Moreover, voluntary and equivocal acceptance by an employee of an early retirement age option in a retirement plan necessarily connotes that her consent specifically refers to the plan or that she has at least read the same when she affixed her conformity thereto.

In fine, company retirement plans must not only comply with the standards set by existing labor laws, they should also be accepted by the employees.[15]

In the case under consideration, private respondent's right to retire petitioner below the age provided for by law cannot be gainsaid. What needs to be determined, however, is whether there was consent of the employees to such retirement plan as to uphold the validity of such retirement plan.

Private respondent claimed that petitioner had consented to the provisions of the ERP. Private respondent pointed out that the ERP had been observed and implemented since it was formulated by its Board of Directors since January 1, 1974. In short, the ERP was in effect for three (3) years already prior to petitioner's employment with private respondent. Private respondent further alleged that the provisions of the ERP are included in the Personnel Policies and Procedures copies of which had been furnished to permanent employees. Private respondent likewise asserted that it had conducted orientation and re-orientation seminars on the company's personnel policies and procedures which included the provisions of the ERP to which petitioner and the other employees, as well as the other officers of the union, had participated in. Hence, the employees, including petitioner, were duly apprised of the effects of the ERP. Private respondent likewise contended that petitioner, being an officer of the union, had all the opportunity to contest the ERP. She and the other officers of the union could have ventilated their concerns and objections to the ERP but they never did. Petitioner further accepted her retirement benefits and executed quitclaims therefor. All these, according to private respondent, amounted to petitioner's consent to the application of the company's ERP.

We are unconvinced.

While the foregoing allegations may constitute petitioner's knowledge and cognizance of the provisions of the ERP, they do not, however, amount to an explicit and voluntary acceptance of the provisions of the ERP. As held in *Cercado*:

Implied knowledge, regardless of duration, cannot equate to the voluntary acceptance required by law in granting an early retirement age option to an employer. The law demands more than passive acquiescence on the part of the employees, considering that an employer's early retirement age option involves a concession of the former's constitutional right to security of tenure.

(Emphasis Ours)

We likewise reiterate that the consent required in order to validate a retirement plan pegging the retirement age lower than that fixed by law should be explicit, voluntary, free and uncompelled. Petitioner's perceived inaction and acquiescence, as pointed out by private respondent, fall short of the consent required by jurisprudence.

Private respondent cannot likewise rely on *Obusan v. Philippine National Bank*[16] to bolster its position. The factual milieu of *Obusan* differs from that of the instant case. Indeed, there was dissemination of the provisions of the retirement plan in *Obusan*. The High Court furthermore precluded petitioner therein from questioning the application of the retirement plan to her, citing her indifference and acquiescence thereto and the fact that she was likewise an officer of the union, which circumstances are likewise obtaining in the instant case. What differentiates *Obusan* is the fact that the provisions of the retirement plan therein had been recognized by the subsisting exclusive collective bargaining agent and incorporated in their CBA. Conversely, the petition in the case at bench states at the outset that the retirement provision had not been included in the CBA and the CBA does not provide for any retirement provisions. In contrast, the consent in *Obusan* had been clearly established.

We likewise cannot agree with private respondent's submission that by accepting her retirement benefits and executing quitclaims therefor, petitioner had assented to the validity of the termination of her employment. As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel.[17] Further, considering Our ruling that there was no consent on the part petitioner anent the application of the ERP provisions to her, which is required under the circumstances, her acceptance of her retirement benefits should not preclude her from contesting the legality of the severance of her employment.

Grave abuse of discretion is defined as capricious and whimsical exercise of judgment that is equivalent to lack of

jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal a version amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.[18] Such is correctible by a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.[19] However, the sole office of a writ of certiorari is the correction of errors of jurisdiction, including the commission of grave abuse of discretion amounting to lack of jurisdiction, and does not include a review of the court's evaluation of the evidence and the factual findings based thereon.[20] Courts are, as a general rule, proscribed from undertaking a re-assessment of the evidence presented in a case.[21] This rule, however, admits of an exception. In *Norkis Trading Corporation v. Buenavista, et al.*,[22] the Supreme Court declared:

The CA can then grant a petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence. It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.

It may likewise be well to point out that the findings of the Labor Arbiter contradict the findings of public respondent. Such instance is one of the exceptions to the rule that courts may not delve into factual matters in a case for certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure.

As already discussed, public respondent's reversal of the challenged decision was unsupported by substantial evidence. The ascription of grave abuse of discretion amounting to lack or excess of jurisdiction thus obtains and We rule to grant the instant petition.

WHEREFORE, premises foregoing, the petition for certiorari is hereby GRANTED. The May 31, 2010 Decision and July 30, 2010 Resolution are hereby NULLIFIED and SET ASIDE. The December 7, 2009 Decision of the Executive Labor Arbiter ordering the reinstatement of petitioner and payment of her backwages and other benefits, less the amount already received by petitioner, is REINSTATED.

SO ORDERED.

Delos Santos, E.L., (Chairperson) and Maxino, P.A.A. JJ., concur.

[1] Rollo, pp. 16-26.

[2] *Ibid.*, pp. 27-29.

[3] *Ibid.*, pp. 317-323.

[4] *Ibid.*, p. 98.

[5] *Ibid.*, pp. 99-100.

[6] *Ibid.*, pp. 101-102.

[7] *Ibid.*, p. 30.

[8] *Ibid.*, pp. 203-212.

[9] *Ibid.*, p. 9.

[10] *Cercado v. UNIPROM, Inc.*, G.R. No. 188154, October 13, 2010.

[11] G.R. No. 156644, July 28, 2008.

[12] Cercado v. UNIPROM, Inc., supra.

[13] Obusan v. Philippine National Bank, G.R. No. 181178, July 26, 2010.

[14] Cercado v. UNIPROM, Inc., supra.

[15] Obusan v. Philippine National Bank, supra.

[16] G.R. No. 181178, July 26, 2010.

[17] Rondina v. Court of Appeals, et al., G.R. No. 172212, July 9, 2009.

[18] Sy v. Autobus Transport System, Inc., et al. G.R. No. 176898, December 3, 2012.

[19] Buntag v. Paña, et al., G.R. No. 145564, March 24, 2006.

[20] People of the Philippines v. Grano, et al., G.R. No. 167710, June 5, 2009.

[21] Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC- East Zone Union, et al. v. Manila Water Co., Inc., G.R. No. 174179, November 16, 2011.

[22] G.R. No. 182018, October 10, 2012.

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