

MARILYN ODCHIMAR GERLACH, PETITIONER, VS. REUTERS LIMITED, PHILS., RESPONDENT.

G.R. NO. 148542. January 17, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] of the Court of Appeals dated September 29, 2000 and its Resolution[2] dated June 21, 2001 in CA-G.R. SP No. 51495.

On February 15, 1982, respondent Reuters Limited, Phils. (Reuters), a company engaged in news dissemination with offices worldwide, hired Marilyn Odchimar Gerlach, petitioner, as its local correspondent.

On October 1, 1983, respondent Reuters implemented a local Retirement Benefit Plan[3] (Plan) for its Philippine-hired employees. The Plan is funded by the company, but an employee-participant may volunteer to contribute a percentage of his basic monthly salary to the fund. Petitioner was automatically covered by the Plan by reason of her age and length of service. However, she opted not to contribute to the fund. She worked in Reuters Philippines up to December 23, 1983.

On January 23, 1984, respondent assigned petitioner as a journalist to Reuters Singapore. Before leaving, Rachel Addison, Reuters' Eastern Region Staff Manager, apprised her of the details of her forthcoming assignment, specifically that her home base will always be the Philippines, thus:

"I am writing formally to confirm various details about your forthcoming training assignment as a Journalist in Singapore. In this appointment you will report to Mr. Francis Daniel, News Editor, ASEAN.

x x x

From 16 January your Philippine salary will cease and you will receive a Singapore salary of Singapore Dollars 3,500 per month, paid 13 times a year. In addition, the company will provide you with furnished accommodation x x x.

x x x

I confirm that your home base will continue to be Manila and should you return there at the end of this assignment or following subsequent assignments your terms and conditions of employment would revert to those of local staff.

x x x"[4]

Again, on December 7, 1983, Addison wrote petitioner regarding her social security and pension funds during her stay in Singapore, thus:

"It has been agreed that it would not be appropriate for you to join the Singaporean Central Provident Fund since Singapore is not your home base and the duration of your assignment is expected to be one year. You

should therefore join the Retirement Benefit Plan which is being introduced in the Philippines with effect from 1 October 1983. It is a non-contributory fund. For the purpose of calculating the Company contribution to the retirement plan, you will retain a notional Philippine salary of Peso 5,980 per month payable 13 times a year. Your notional salary will be reviewed on 1 October in line with other Manila office staff.”[5]

Petitioner stayed in Singapore up to December 1985. In a letter of April 15, 1985, Addison informed her of the corresponding increases in her actual and notional salaries, thus:

“Following your Singapore salary increase in January, I am writing to confirm that your notional Peso salary has been increased to 6,900 per month and pension contributions will be adjusted accordingly.”[6]

On March 26 to June 4, 1986, petitioner was assigned to Reuters Hongkong. Thereafter, or in July, 1986, she was appointed correspondent in Sri Lanka and that her peso salary was increased to P12,600.00 per month, thus:

“x x x

With immediate effect, you are appointed Correspondent, Sri Lanka reporting to Mr. Dalton de Silva.

From 1 October 1986, you will be paid a salary of Rupees 212,000 per annum which will be drawn locally and which will be subject to Sri Lankan income tax from the same date.

x x x

Your home base will continue to be the Philippines and should you return there at the end of this assignment or any subsequent assignment your terms and conditions of employment would be those of national staff. You will remain a member of the pension plan for Philippines-based and contributions to be based on your notional peso salary. I am pleased to confirm that from 1 October 1986 your Peso salary has been increased to Pesos 12,600 per month.

x x x”[7]

While in Sri Lanka, petitioner’s notional peso salary was increased twice.

On October 12, 1988, she was directed to return to Manila and resume her post by December 15, 1988. However, she requested to be assigned to the Reuters Office either in Bonn, West Germany or in London. But due to the worldwide reduction of personnel, respondent denied her request. She then applied for a 14-month study leave to take up economic subjects at Bonn University. Respondent approved her request for a 14-month leave without pay from January 1, 1989 up to March 1, 1990.

On May 20, 1990, petitioner resigned from Reuters.

On March 1, 1991, petitioner received her retirement benefits under the Plan in the amount of P79,228.04, which amount was determined by the trustee bank (Bank of the Philippine Island) in accordance with the provisions of the Plan. The computation was based on her notional salary. However, she questioned the amount she received as well as her entitlement to a disturbance grant, contending that her retirement benefits must be computed on the basis of her actual salary abroad, not on her notional salary.

On October 25, 1991, respondent, through its Manila Office Manager, Roberto Moreno, replied with the following explanation:

“Mr. Burns in Hong Kong and we in Manila have thoroughly reviewed the issues you raised and have reached the following conclusions:

a) My initial reply to you on your benefits which the bank computed is only for six years. But the final amount you got was computed at seven years as corrected by the bank after your recomputation request. Bank

computation attached.

b) We appreciate your views about the notional salary issue, but cannot agree with them since the concept of a notional salary is standard practice globally and the notional salary is routinely mentioned in assignment and salary increase letters including letters to you.

c) P Burns and V Berger do however believe there is a good case for increasing the final salary on which your retirement payment is computed. The figure has been raised from Pesos 305,000 to Pesos 350,750 – an increase of 15 per cent to take account of likely salary rises up to your final departure date. I have asked the bank to compute the difference based on this higher final salary and we will pay you the extra when this has been done.

d) Though the history of your assignments/movements was complicated, P Burns has ruled that you definitely are entitled to a resettlement allowance. At the time this stood at STG 1,750 but he has recommended we pay you the present rate of STG 2,050 in peso equivalent. We can send the cheque to you in Bonn, but please advise if you prefer another payment method.”[8]

Eventually, petitioner filed with the Office of the Labor Arbiter, NCR, a money claim against respondent, docketed as NLRC NCR Case No. 00-09-05002-92.

On March 28, 1994, the Labor Arbiter rendered its first Decision ordering respondent to pay petitioner additional retirement benefits in the sum of P436,000.00, which amount was based on her actual salary abroad, not on her notional salary; a disturbance grant in the sum of Stg 1,750 or its equivalent in pesos; and attorney’s fees.[9]

On appeal, the National Labor Relations Commission (NLRC), rendered its Decision dated August 31, 1994 setting aside the appealed Decision and remanding the case to the Labor Arbiter for trial on the merits.[10]

On July 31, 1996, the Labor Arbiter issued a second Decision awarding exactly the same amounts stated in the first Decision.[11]

Respondent appealed. On May 30, 1997, the NLRC reversed the Decision of the Labor Arbiter and dismissed petitioner’s complaint for lack of merit, thus:

“WHEREFORE, for the reasons aforesaid, the decision appealed from is hereby REVERSED and the complaint DISMISSED for lack of merit.

SO ORDERED.”[12]

Forthwith, petitioner filed her motion for reconsideration which was granted by the NLRC. In its Decision/Resolution dated August 29, 1997, it dismissed respondent Reuters’ appeal.[13] Respondent filed a motion for reconsideration but it was denied in an Order dated January 15, 1998.[14]

Hence, respondent filed with this Court a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended. Pursuant to our Decision in *St. Martin Funeral Homes vs. NLRC*,[15] we referred the petition to the Court of Appeals.

On September 29, 2000, the Appellate Court rendered its Decision reversing the Resolutions of the NLRC dated August 29, 1997 and January 9, 1998 and reinstating the NLRC Decision dated May 30, 1997 dismissing petitioner’s complaint, with the modification that petitioner be paid her disturbance and resettlement grant, thus:[16]

“WHEREFORE, IN VIEW OF THE FOREGOING, this petition is hereby GRANTED. The Resolutions of the National Labor Relations Commission (Second Division) dated August 29, 1997 and January 09, 1998 are REVERSED and SET ASIDE. The Commission’s Decision of May 30, 1997 is REINSTATED with the

modification that private respondent be paid her disturbance and resettlement grant. No pronouncement as to costs.

SO ORDERED.”[17]

In finding for respondent Reuters, the Court of Appeals ratiocinated as follows:

“In this case, petitioner, on its own volition, established a retirement plan for its Philippine-hired employees. The rules governing the plan are denominated as ‘The Reuters Limited, Philippines Retirement Benefit Plan’ (Annex ‘1’, *ibid.*). The plan is totally funded by the company but employee-participants thereof are given the option to contribute thereto if they wish to. (Private respondent opted not to contribute to the fund.) The company’s contribution to the fund of the plan is ten percent (10%) of the Basic Monthly Salary of each participant starting October 1, 1983 (Section 2[a][1], Article VI, The Reuters Limited, Philippines Retirement Benefit Plan; Annex ‘1’, p. 37, *ibid.*). The rules, however, are not clear as to the computation of the company’s contribution to the fund with respect to participants assigned overseas.

If the rules were solely to be considered, there is reason to uphold private respondent’s claim that the computation of her retirement benefits must be based on her basic annual salary while stationed abroad which was much higher than the notional salary imposed on her. However, considering the surrounding circumstances of this case, We are inclined to agree with petitioner when it insists that the computation of said benefits must be based on private respondent’s notional Philippine salary.

We recall that from the very start of her first assignment overseas, private respondent was apprised of a notional Philippine salary upon which the company’s contribution to her retirement fund would be based (Letter dated December 7, 1983; Annex ‘3’, p. 47, *ibid.*). And the records are clear that private respondent was always informed of said notional Philippine salary whenever she was to be transferred to her next overseas assignment or when there were increases in her salary, both actual and notional (Annexes ‘4’ to ‘7’, pp. 47-52, *ibid.*). It has also been established that this notional salary upon which is based the company’s contribution to the retirement plan of a local employee detailed abroad is a practice of Reuters worldwide (pp. 85-92, *ibid.*) and that private respondent was not being discriminated against when such was applied to her case. From these attendant factors, it can be gleaned that imputing a notional salary is actually a company policy which should be deemed incorporated in the rules governing petitioner’s Retirement Plan.

Further, that it is the notional salary and not the actual salary upon which private respondent’s retirement benefit should be based is also justified by the application of the rules on construction. Petitioner’s retirement plan is that agreement between the employer and employee mentioned in the law in force at that time on employer-initiated retirement benefits (Article 287, Labor Code, prior to its amendment by RA No. 7641). Since only the company is obliged to contribute to the fund of the retirement plan, the agreement is a gratuitous contract between the petitioner and the employees qualified thereto. As such, it should be construed in a manner that the least transmission of rights and interests shall prevail (Article 1378, New Civil Code). Considering that the application of the notional Philippine salary will result in the least transmission of rights and interests between the parties, it is that interpretation that is best in accord with the law.

x x x

With respect to private respondent’s claim for resettlement and disturbance grant, it is Our opinion that she is entitled to it and that the same has not yet prescribed. x x x”[18]

Petitioner’s motion for reconsideration was denied by the Appellate Court in a Resolution dated June 21, 2001.[19]

Hence, the present recourse, petitioner ascribing to the Court of Appeals the following assignments of error:

“I

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REINSTATING THE EARLIER DECISION OF THE NLRC WHICH REVERSED THE FINDINGS OF THE LABOR ARBITER BELOW.

II

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE FINDING OF THE NLRC WHICH DISMISSED PRIVATE RESPONDENT'S APPEAL FOR HAVING BEEN FILED OUT OF TIME.

III

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO HER CLAIM FOR ADDITIONAL COMPENSATION UNDER THE COMPANY'S RETIREMENT PLAN.”[20]

Respondent maintains that petitioner fails to raise any question of law, hence, the petition should be dismissed.

At the outset, it bears stressing that in a petition for review on certiorari, the scope of this Court's judicial review of decisions of the Court of Appeals is generally confined only to errors of law,[21] questions of fact are not entertained.[22] Thus, only questions of law may be brought by the parties and passed upon by this Court in the exercise of its power to review.[23] Also, judicial review by this Court does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination.[24]

Evidently, the issues in this case are factual in nature and would require a thorough reevaluation of the sufficiency of evidence. Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor cases.[25] In this case, the factual issues have already been determined by the Court of Appeals. Such findings are accorded respect, even finality, and will not be disturbed especially that such findings are supported by substantial evidence.[26] One of the exceptions, however, is when there is a variance between the findings of the NLRC and the Court of Appeals, as in this case.

There are three kinds of retirement schemes. The first type is compulsory and contributory in character. The second type is one set up by agreement between the employer and the employees in collective bargaining agreements or other agreements between them.[27] The third type is one that is voluntarily given by the employer, expressly as in an announced company policy or impliedly as in a failure to contest the employee's claim for retirement benefits.[28] It is this third type of retirement scheme which covers respondent's Plan.

Article 287 of the Labor Code reads:

"Article 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." (Emphasis supplied)

The first paragraph of the above provisions deals with the retirement age of an employee established in (a) a collective bargaining agreement or (b) other applicable employment contract.

The second paragraph deals with the retirement benefits to be received by a retiring employee which he may have earned under (a) an existing law, (b) a collective bargaining or (c) other agreements.

In *Llora Motors, Inc. vs. Drilon*,[29] we held that Article 287, does not in itself purport to impose any obligation upon employers to set up a retirement scheme for their employees over and above that already established under

existing laws, like the Social Security Act.

Nonetheless, Section 14(a), Rule 1 of the Rules and Regulations Implementing Book VI of the Labor Code, provides

"Sec. 14. Retirement benefits. – (a) An employee who is retired pursuant to a bona fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein . . ."

Thus, in the instant case, respondent based petitioner's retirement benefits on its Plan and established policy, which is in accord with the above provision. Consequently, petitioner's theory that the computation of her retirement benefits should be based on her basic annual salary while stationed abroad is untenable.

We agree with the Court of Appeals that petitioner's retirement benefits must be based on her notional Philippine salary. It is very clear that from the very start of her first assignment overseas, respondent apprised her that the company's contribution to the Plan is based on her notional Philippine salary.[30] In fact, under the Plan, the company's contribution to the fund is 10% of the basic monthly salary of each participant. Respondent also informed petitioner of the amount of her notional Philippine salary whenever she was transferred to her next overseas assignment or when there were increases in her salary, both actual and notional.[31] Significantly, respondent was able to prove that it has been its practice worldwide that the notional salary of an employee is its basis in computing its contribution to the retirement plan for a local employee detailed abroad. It follows that the amount of retirement benefits of a retiring employee assigned abroad is based on his notional salary.

Besides, it is a basic rule in evidence that the burden of proof is on the part of the party who makes the allegations[32] – *ei incumbit probatio, qui dicit, non qui negat*. [33]

WHEREFORE, the petition is hereby DENIED. The assailed Decision of the Court of Appeals is AFFIRMED. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Penned by Associate Justice Fermin A. Martin, Jr. and concurred in by Associates Justices Oswaldo Agcaoili and Wenceslao I. Agnir, Jr. All had retired.

[2] Penned by Associate Justice Wenceslao I. Agnir, Jr. (retired).

[3] Rollo at 180-191.

[4] Id. at 66.

[5] Id. at 67.

[6] Id. at 67-68.

[7] Id. at 68.

[8] Id. at 73-74.

[9] Id. at 96.

[10] Id.

[11] Id. at 96-112.

[12] Id. at 114-121.

[13] Annex “H” of the instant petition, Rollo at 124-125.

[14] Id. at 77.

[15] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[16] Rollo at 84.

[17] Id. at 84.

[18] Id. at 78-84.

[19] Id. at 87-88.

[20] Id. at 49-50.

[21] *Viloria vs. Court of Appeals*, G.R. No. 119974, June 30, 1999, 309 SCRA 529.

[22] *Cebu Shipyard and Engineering Works, Inc. vs. William Lines, Inc.*, 306 SCRA 762, May 5, 1999; *Villarico vs. Court of Appeals*, G.R. No. 105912, June 28, 1999, 309 SCRA 193.

[23] *Alipoon vs. Court of Appeals*, G.R. No. 127523, March 22, 1999, 305 SCRA 118; *Baguio vs. Republic*, G.R. No. 119682, January 21, 1999, 301 SCRA 450.

[24] *Social Security System Employees Association vs. Bathan-Velasco*, G.R. No. 108765, August 27, 1999, 313 SCRA 250.

[25] *Ropali Trading Corporation vs. NLRC*, G.R. No. 122409, September 25, 1998, 296 SCRA 309.

[26] *Belaunzaran vs. NLRC*, G.R. No. 120038, December 23, 1996, 265 SCRA 800; See also *Oscar Ledesma and Company vs. NLRC*, 246 SCRA 471 (1995) and *Ala Mode Garments, Inc. vs. NLRC*, G.R. No. 122165, February 17, 1997, 268 SCRA 497.

[27] *Llora Motors, Inc. vs. Drilon*, G.R. No. 82895, November 7, 1989, 179 SCRA 175.

[28] *Allied Investigation Bureau, Inc. vs. Ople*, No. L-49678, June 29, 1979, 91 SCRA 265.

[29] *Llora Motors, Inc. vs. Drilon*, *supra*.

[30] Letter dated December 7, 1983; Annex ‘3’, Rollo at 195.

[31] Annexes ‘4’ – ‘7’, Rollo at 196-200.

[32] *Stolt-Nielsen Marine Services, Inc. vs. NLRC*, G.R. No. 128395, December 29, 1998, 300 SCRA 713, 719; *Jimenez vs. NLRC*, G.R. No. 116960, April 2, 1996, 256 SCRA 84, 89.

[33] The proof lies upon him who affirms, not upon him who denies. (BLACK'S LAW DICTIONARY 516 [1991], 6th ed.)

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