

JANUARIA A. RIVERA, PETITIONER, VS. UNITED LABORATORIES, INC., RESPONDENT.*G.R. No. 155639. April 22, 2009*

Ponente: BRION, J.

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Before the Court is the case of a retired employee who continued working after her retirement, and who now claims retirement pay differential for the subsequent work she undertook. The retiree is Januaria A. Rivera (Rivera) now before the Court on a petition for review on certiorari under Rule 45 of the Rules of Court.[1] She seeks to set aside the decision of the Court of Appeals (CA)[2] and its subsequent resolution denying her motion for reconsideration.[3] The assailed CA decision set aside the decision of the National Labor Relations Commission (NLRC) decision dismissing Rivera's appeal,[4] and remanded the case to the Labor Arbiter for hearing on the merits.

The Factual Background

Rivera commenced employment with respondent United Laboratories, Inc. (UNILAB) on April 7, 1958 as senior manufacturing pharmacist. She later became Director of UNILAB's Manufacturing Division.

In 1959, UNILAB adopted a comprehensive retirement plan[5] (the plan or retirement plan) supported by a retirement fund, consisting of Trust Fund A where it would put in its contributions for the account of the member-employee (member) and Trust Fund B consisting of the contributions of the members themselves. The parties do not dispute that under the plan, a member is compulsorily retired upon reaching the normal retirement date which is the date when the member has reached age 60 or has completed 30 years of service, whichever comes first.

In 1988, Rivera completed 30 years of service and UNILAB retired her pursuant to the terms of the plan effective December 31, 1988. Based on her monthly salary of P28,000.00 at that time, and at one month's terminal basic salary for every year of service, Rivera's retirement benefits amounted to P860,473.12 from Trust Fund A and P186,858.21 from Trust Fund B, for a total of P1,047,331.33.[6]

Rivera's accrued retirement benefits under Trust Fund A and Trust Fund B were withdrawn from the retirement fund and deposited in Trust Fund C, a special account from which she could make withdrawals as she pleased. A manual computation prepared by the company showed that the full amount of Rivera's retirement pay was transferred to Trust Fund C.[7]

At Rivera's request, UNILAB allowed her to continue working for the company; she was even promoted to the position of Assistant Vice-President on January 1, 1989, with a basic monthly salary of P50,034.00, and a fixed monthly allowance of P8,900.00. She rendered service to the company in this capacity until the end of 1992, at which time, Rivera retired from employment with the company (as distinguished from retirement from the plan), as UNILAB put it and as evidenced by a personnel action notice dated February 19, 1993.[8]

From 1993 to 1994, Rivera served as a personal consultant under contract with the Active Research and Management Corporation (ARMCO) in 1993 and with Fil-Asia Business Consultants (Fil-Asia) in 1994. These are UNILAB's sister companies which assigned Rivera to render service involving UNILAB. Submitted in evidence were Rivera's contracts with the two corporations.[9]

On December 16, 1992, the company amended its retirement plan, providing, among others, for an increase in retirement benefits from one (1) month to one-and-a-half (1.5) months of terminal basic salary for every year of service.[10] The amendment also provides that "[T]he effective date of normal or mandatory retirement from the Plan is 30 days after an employee reaches his/her 60[th] birthday. The effective date applies to all rank and file as well as KPs." [11]

In a letter dated January 7, 1995 to UNILAB,[12] Rivera asked that her retirement benefits be increased in accordance with the amended retirement program based on her December 31, 1992 terminal basic salary, multiplied by her thirty four (34) years of service with the company. UNILAB did not reply to this letter and Rivera made two follow-up letters, one dated December 18, 1995[13] and the other, February 12, 1996,[14] reiterating her demand for additional retirement benefits.

UNILAB denied Rivera's request in a letter dated February 26, 1996.[15] The company explained that since the upgrade of the retirement benefit formula occurred in December 1992, the upgraded formula does not apply to her; what applied to her case is the formula that governed in 1988, the year she compulsory retired from the plan.

Rivera sought legal assistance and in a letter dated July 24, 1996,[16] lawyer Katz N. Tierra demanded a recomputation of Rivera's retirement pay under the plan and under the retirement law. UNILAB again rejected the demand in its letter dated August 5, 1996.[17]

On August 9, 1996, Rivera sought relief from the NLRC in an action against UNILAB for recovery of unpaid retirement pay differential. In defense, UNILAB argued that the complaint was filed out of time as it was filed only on August 9, 1996. UNILAB prayed for the dismissal of the complaint on the ground of prescription. Invoking Article 291 of the Labor Code,[18] it maintained that Rivera's cause of action accrued when the company's retirement plan was amended considering that the action was triggered by the additional benefit provided by the amendment to the retirement plan on December 16, 1992.

Rivera disagreed with UNILAB's position, arguing that the three-year period within which to file her complaint should be counted, not from December 16, 1992, but from February 26, 1996 when the company had "categorically" denied her letter demanding payment of the unpaid balance of her retirement benefits.

The Arbitration Rulings

Labor Arbiter Manuel R. Caday dismissed the complaint for lack of merit in an order dated November 7, 1997.[19] The Labor Arbiter found that Rivera's cause of action did not accrue only on February 26, 1996 when her third letter was answered by UNILAB; it accrued on January 15, 1993 when she received the company's check in payment of her retirement benefits after she was retired on December 31, 1992. According to the Arbiter, the company stood firm in its position that the amended retirement plan did not apply to Rivera and the company had not wavered in this stand; UNILAB's reply to Rivera's third letter was nothing but a reiteration of its denial of Rivera's demand that she be covered by the amended retirement plan.

Arbiter Caday rejected Rivera's contention that under Article 1155 of the Civil Code, "written extrajudicial demand," like letters, effectively interrupted the running of the three-year prescriptive period. He pointed out that while it is true that Article 1155 of the Civil Code was mentioned in *Manuel L. Quezon University Association v.*

Manuel L. Quezon Educational Institution Inc.,[20] the Court did not categorically state that it superseded Article 291 because the said demand letter amounted to nothing, the cause of action having already prescribed.

Separately from the prescription issue, the Labor Arbiter found that Rivera was not entitled to the upgraded benefits under the company's amended retirement plan because she was compulsorily retired on April 7, 1988. Thus, her retirement benefits should be computed based on her last monthly basic pay in April 1988 and not in December 1992.

Rivera appealed to the NLRC. In a decision promulgated on August 18, 1998,[21] the NLRC denied the appeal for lack of merit, thereby affirming the Labor Arbiter's order of November 7, 1997. Rivera moved for the reconsideration of the decision, but the NLRC denied the motion in a resolution promulgated on January 29, 1997.[22]

Rivera elevated the case to the CA by way of a petition for certiorari under Rule 65 of the Rules of Court,[23] questioning the NLRC's ruling that her claims for additional retirement benefits had prescribed.

The CA ruled in favor of Rivera. In a decision promulgated on December 21, 2001,[24] it set aside the assailed decision and resolution of the NLRC, but remanded the case to the Labor Arbiter for hearing on the merits. It found that Rivera's claim for retirement had not yet prescribed at the time of its filing on August 9, 1996.

The appellate court held that even assuming that Rivera's cause of action did arise on January 15, 1993, when she received her retirement pay check from the company, the running of the three-year prescriptive period was effectively interrupted by Rivera's first letter to UNILAB on January 7, 1995, when she demanded additional retirement benefits under the 1992 amended retirement plan.

In upholding Rivera's claim, the CA relied on *De Guzman v. Court of Appeals*[25] where the Court ruled that based on Article 1155 of the Civil Code, the three-year prescriptive period for money claims in labor cases can be interrupted by a claim filed with the proper judicial or quasi-judicial forum, by an extrajudicial demand on the employer, or by the employer's acknowledgment of its debt or obligation. *De Guzman* cited the *Manuel L. Quezon University* ruling.[26]

To the CA, the running of the prescriptive period (that began on January 15, 1993) stopped when Rivera made the extrajudicial demand on UNILAB through her January 7, 1995 letter,[27] leaving her with one year and eight days more of the three-year period, or up to about March 5, 1997, within which to file her claim. Thus, when Rivera brought her case to the NLRC on August 9, 1996, it was well within the prescriptive period.

The CA however avoided ruling on the merits of the case by reason of what it recognized as "an existing controversy as to the crucial fact of when precisely petitioner retired from respondent company for purposes of determining whether or not she is covered by respondent's amended retirement plan so as to fix the amount of retirement benefits."

UNILAB moved for a reconsideration of the CA decision on grounds that the CA erred: in entertaining the petition which was filed beyond the 60-day period allowed by the Rules of Court; and, in ruling that Rivera's cause of action had not prescribed. On the other hand, Rivera filed a partial motion for reconsideration of the decision asking the CA to resolve the remaining issues raised in the petition.

On October 16, 2002, the CA promulgated its resolution denying both motions for lack of merit. [28] Hence, the present petition.

The Petition

The petition asks the Court to exercise its power of review over the questioned decision and resolution of the CA on the following grounds:

- They are not in accord with applicable decisions of the Court;
- They contravene the provisions of the Constitution on the promotion of "social justice" and "protection to labor"; and
- The CA and NLRC records of the case are sufficient to resolve the entire controversy.

The petition then proceeds to show that Rivera's claim for unpaid retirement benefits differential should have been disposed of by the CA on the basis of the records before it, considering that the appellate court made specific factual findings culled from the parties' respective submissions in resolving the prescription issue.

Rivera contends that: the CA's factual findings based on UNILAB's admissions show that she continued in the employ and service of the company from April 7, 1958 until December 31, 1994; her so-called first and second "retirements" in 1988 and 1992, as well as "consultancy" up to the end of 1994, "were a brilliant but a devious scheme" by UNILAB to deprive her of benefits due her; she lost millions of pesos in benefits when she was made to retire a second time on December 31, 1992, and to immediately assume thereafter a "consultancy" that lasted until December 31, 1994, but was given retirement benefits based only on her 1988 pay scale and under the old retirement plan.

Rivera further contends that even without UNILAB's admissions, the factual findings of the CA are borne out by the records which unequivocally established that there was no break in her employment with the company. Even prior to Rivera's so-called retirement on December 31, 1992, her services were already subject of a consultancy contract dated October 15, 1992 with ARMCO,[29] which UNILAB used to maintain her services under a purported "contract of hire"; Rivera's compensation package exposed ARMCO's consultancy contract with her as a "monumental sham."

Rivera submits that a cursory examination of the corporate records of UNILAB and ARMCO on file with the Securities and Exchange Commission (SEC)[30] discloses that ARMCO and UNILAB have six (6) common directors, a common chairman of the board, a common corporate secretary, a common treasurer and two (2) other common officers. UNILAB continued to use Rivera's services for the period January to December 1994 through another conduit, FIL-ASIA, pursuant to a letter-agreement dated January 3, 1994.[31] Comparing FIL-ASIA's corporate records with those of ARMCO and UNILAB, Rivera points out that the three (3) corporations have a common president, a common corporate secretary, and a common assistant secretary. Moreover, FIL-ASIA has three (3) common directors with UNILAB and also three (3) common directors with ARMCO, with which it has likewise two (2) common officers; both FIL-ASIA and ARMCO have the same business address and telephone numbers.[32]

Rivera posits that in the light of these incontrovertible facts, UNILAB, ARMCO and FIL-ASIA are one and the same corporation. She opines that the "veil of corporate fiction may be pierced when the same is made as a shield to confuse the legitimate issues." She maintains that when her "agreement" with FIL-ASIA expired on December 31, 1994, she had completed thirty six (36) years, eight (8) months and twenty four (24) days of continuous service with UNILAB.

Rivera considers the check for P1,175,666.22[33] that she received on January 15, 1993 as retirement benefits falls short of the correct amount due her; the amount paid was computed on the basis of her 1988 salary scale, not on her last salary as of December 31, 1994. She adds that there were modifications and changes to the retirement plan prior to January 15, 1993, but were formally made known only in a memorandum dated June 1, 1993;[34]

thus, the January 15, 1993 check did not include the modifications and changes in the benefits mentioned in the memorandum.

Rivera submits that the provisions of the retirement plan on compulsory retirement age and maximum years of service were deemed waived, when UNILAB continued to employ the services of Rivera for six (6) more years after 1988, or until December 31, 1994. Under these facts, Rivera contends, the "monthly basic pay" that should serve as basis in computing her retirement benefits should be the prevailing pay in December 1994, not that of April 1988, as waiver of the provisions of the retirement plan had intervened.

Rivera explains that in December 1994, her aggregate monthly compensation was already P78,460.60 and her aggregate annual compensation package was equivalent to fourteen (14) months.[35] Thus, her average monthly compensation in 1994 was ninety-one thousand five hundred thirty-six pesos and sixty-seven centavos (P91,536.67), arrived at by multiplying the aggregate monthly compensation of P78,460.00 by 14 months and dividing the product by 12. By multiplying her aggregate monthly compensation by 1.5 (the salary benefit per year of service) and by her 36.67 years of service, she arrived at a total of Five Million Thirty Four Thousand Nine Hundred Seventy Four Pesos and thirty centavos (P5,034,974.30), from which is deducted P1,175,666.22 [the retirement benefits paid earlier by UNILAB]. This computation leaves a balance or differential of Three Million Eight Hundred Fifty Nine Thousand Three Hundred Eight Pesos and eight centavos (P3,859,308.08) as retirement benefits still due her.

In the alternative, Rivera contends that in the absence of any company retirement plan applicable to her after April 7, 1988, the "New Retirement Law" (R.A. No. 7641) that took effect on January 7, 1993 should apply to her, since she was actually separated from the service only on December 31, 1994. She claims she is still entitled to additional retirement benefits at least under R.A. No. 7641 for her services to UNILAB from April 8, 1988 to December 31, 1994, or a period of six (6) years and eight (8) months.

Rivera prays that judgment be rendered: (1) ordering UNILAB to pay her retirement benefits differential of P3,859,308.08 with 12% interest per annum from the time of filing of the complaint on August 9, 1996; (2) ordering UNILAB to pay her 10% attorney's fees; and (3) in the alternative, ordering UNILAB to pay her retirement benefits under the law on retirement, R.A. No. 7641, for a period of six (6) years and eight (8) months based on her last average aggregate monthly compensation of P91,536.67.

The Case for UNILAB

In a memorandum dated June 18, 2003,[36] UNILAB defines the issues raised by the petition to be: (1) whether the CA committed grave or reversible error, or decided questions not in accord with law or the applicable decision of the Court, in remanding the case to the Labor Arbiter for hearing on the merits and reception of evidence; and (2) whether the instant petition should be dismissed because it raises questions of fact, and not solely questions of law as required under Rule 45 of the Rules of Court.

UNILAB contends that the CA properly remanded the case to the Labor Arbiter; a decision from this Court is premature as a decision on the merits now from this Court would disregard and violate the doctrine of judicial hierarchy. It argues that the present case involves a dispute over a benefit arising from employment that under Article 217 of the Labor Code, falls within the original and exclusive jurisdiction of Labor Arbiters to hear and decide to the exclusion of all other courts, quasi-judicial bodies or tribunals; Labor Arbiters, by reason of their training, experience and background are in a better position to resolve labor controversies, citing *Alejandro v. CA*[37] in support of its position.

UNILAB vehemently opposes Rivera's plea that the Court decide the present case on the merits, arguing that her

cited ruling - *First Asian Transport and Shipping Agency v. Ople*[38] - does not apply. It argues that in *First Asian*, the parties were heard and evidence were presented before the Director of the National Seamen Board made his factual findings; only then was the petition filed before this Court who, at that point, had findings from below as basis for its ruling on the merits.

UNILAB further argues that the records of the case are not complete for a determination of the factual issues, for it did not have the opportunity to present its evidence on Rivera's factual allegations. It submits that deciding the case at this point would result in a denial of due process to the company.

On the second issue, UNILAB contends that Rivera comes to the Court through a petition for certiorari under Rule 45 of the Rules of Court that only allows questions of law. It maintains that an examination of the petition would show that Rivera did not distinctly raise questions of law but, in fact, raised questions of fact. The petition, UNILAB posits, "is beyond the Office of the Court" as it is not a trier of facts.

While it admits that the Court has laid down several exceptions to the rule that only questions of law shall be raised in an appeal by certiorari under Rule 45,[39] the exceptions, however, presuppose that findings of fact have been made by the CA, the trial courts or the administrative agencies. UNILAB points out that in this case, the Labor Arbiter, the NLRC and the CA have not made any findings of fact on the matters alleged by Rivera. UNILAB prays that the petition be denied for lack of merit and the decision dated January 29, 1999, be affirmed.

On the prescription question, UNILAB disputes the CA findings that the running of the prescriptive period on Rivera's claim for retirement benefits differential was interrupted by her extra-judicial demand.[40] It insists that Rivera's claim had already prescribed, having been paid on January 15, 1993 the exact amount of her retirement benefits as evidenced by a voucher for P1,175,666.22.[41] It submits that the benefit is not paid unless the employee is excluded from the retirement plan; this exclusion from the coverage of the retirement plan is something that Rivera was very much aware of when she voluntarily received the amount representing her retirement benefits on January 15, 1993. It concludes that if Rivera had any cause of action, it accrued on January 15, 1993, not on January 7, 1995 when she wrote the company demanding for additional retirement benefits.

The Submitted Issues

The submissions of the parties present the following issues for resolution.

- Whether the petition is in compliance with the requirement of Section 1, Rule 45 of the Rules of Court, that it shall raise only questions of law;
- Whether the CA erred in ruling that petitioner's claim for additional retirement benefits had not prescribed; and
- Whether the CA erred in remanding the case to the Labor Arbiter for hearing on the merits.

The Court's Ruling

We deny the petition for lack of merit.

The Threshold Issue.

The threshold issue of whether the petition raises only questions of law appropriate for a petition for review on certiorari is not a novel question for the Court. In *Traverse Development Corporation v. DBP*,[42] reflecting our rulings in a number of cases, we definitively stated that a "question of law" exists when the doubt or difference arises as to what the law is on a certain state of facts, and does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, a "question of fact" exists when the doubt or

controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of the correctness of the conclusion drawn the given facts, is a question of law."

Simple as it may seem, determining the true nature and extent of the distinction is not always easy. In a case involving a "question of law" the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Once it is clear that the issue invites a review of the probative value of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.

The petition asks for a review of the CA's assailed ruling remanding the case to the Labor Arbiter for hearing on the merits. This necessarily requires a determination of whether the parties' submissions sufficiently provide a basis for the appellate court to decide the case on the merits. In order to resolve this issue, as we held in *Cucueco v. Court of Appeals*,^[43] we only need to look into the pleadings and the parties' submissions without necessarily going into the truth or falsity of the allegations and submissions made.

Again in *Cucueco*, we stated that the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the question; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, question for resolution is one of law; otherwise, the issue involves a question of fact.

In the present case, we find that the issue raised by the petition - whether the CA erred in remanding the case to the Labor Arbiter for hearing on the merits - can be resolved by the Court without having to review or evaluate the evidence presented. We do not need to evaluate the evidence as they are largely undisputed as will be shown below. We thus conclude that the petition is not procedurally nor substantively defective under the terms of Rule 45 of the Rules of Court. If we rule on issues of fact at all, our ruling is by way of exception as discussed below.

The Prescription Issue.

We agree with the CA's conclusion that Rivera's cause of action had not prescribed when she filed her claim with the Labor Arbiter on August 9, 1996. As UNILAB contended, Rivera's claim for retirement pay differential only accrued on January 15, 1993 when she received her retirement pay check. It could not have accrued on December 31, 1988 as what was clearly due her then was her retirement pay up to that date, a matter that is not disputed. On the other hand, the first opportunity for her to claim her retirement pay differential corresponding to her claimed continuous work up to December 31, 1992 came only on January 15, 1993 when she received her final pay that did not include her service after December 31, 1988. However, the running of the prescriptive period was effectively interrupted by her first letter to the respondent on January 7, 1995 when she demanded additional retirement benefits under the 1992 amended retirement plan.^[44]

It should be noted in this regard that Articles 1139 to 1155 of the Civil Code provide the general law on prescription of actions. Under Article 1139, actions prescribe by the mere lapse of time prescribed by law. That law may either be the Civil Code or special laws as specifically mandated by Article 1148. In labor cases, the special law on prescription is Article 291 of the Labor Code which provides:

Article 291. Money Claims. - All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever.

The Labor Code has no specific provision on when a monetary claim accrues. Thus, again the general law on prescription applies. Article 1150 of the Civil Code provides that -

Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

The day the action may be brought is the day a claim started as a legal possibility.[45] For the petitioner in the present case, this date came when she learned that she was being paid on the basis of her December 31, 1988 retirement computations for the retirement that she claimed to have occurred on December 31, 1992.

How prescription operates is another matter that the general law, rather than the Labor Code, governs since the Labor Code is silent on the matter. Under Article 1155 -

The prescription of actions is interrupted when they are filed with the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

In the present case, the earliest incident covered by Article 1155 is the extrajudicial demand which came on January 7, 1995. As the CA correctly computed, the period for prescription started to run on January 15, 1993, and was interrupted on January 7, 1995. UNILAB only answered the petitioner's January 7, 1995 letter on February 26, 1996, with a categorical denial of the petitioner's demand; the running of the prescription period re-started on the date of this denial, but again stopped again on August 9, 1996, when the complaint before the NLRC was filed. Adding all the running periods yields a total of less than three (3) years; hence, the petitioner seasonably filed her monetary claim when she filed her complaint before the NLRC.

In ruling on the prescription issue, the CA cited *De Guzman v. Court of Appeals*[46] where we ruled that based on Article 1155, the three-year prescriptive period can be interrupted by a claim filed at the proper judicial or quasi-judicial forum, an extra-judicial demand on the employer or the employer's acknowledgment of its debt or obligation. *De Guzman*, in turn, cited the case of *Manuel L. Quezon University Association v. Manuel L. Quezon Educational Institution (MLQU)*[47] which UNILAB argues to be a mere obiter dictum. Whether or not the MLQU decision controls is a non-issue as the above discussion of the applicable laws shows and as confirmed by the CA in *De Guzman*: [48]

Thus, contrary to respondent's contention that such a pronouncement in the MLQU case was merely an obiter dictum, this judicial declaration that the prescriptive period for labor-related money claims can be interrupted by an extra-judicial demand on the employer is indeed a controlling principle as confirmed in the aforesaid *De Guzman* case.

Therefore, when petitioner made that extra-judicial demand upon respondent via her January 7, 1995 letter. The running of the filing period was stopped until February 26, 1996 when answered petitioner's demand such that she was left with one year and eight days more of the three-year period of up to about March 5, 1997 within which to file her claim.

When petitioner then brought her case to the NLRC on August 9, 1996 it was well within the prescriptive period.

To Remand or not to Remand?

In the assailed ruling, the appellate court withheld action on the substantive aspect of the case because, "there is an existing controversy as to the crucial fact of when precisely petitioner retired from respondent company for purposes of determining whether or not she is covered by respondent's amended retirement plan so as to fix the amount of her retirement benefits." [49]

Pleading old age, Rivera fervently asks the Court for a decision on the merits of the case. She submits that "the appellate court and the NLRC records of the case are sufficient to resolve the entire controversy." [50] She adds that the appellate court, in resolving the issue of whether Rivera's claim for unpaid differential in retirement

benefits has prescribed, made specific factual findings culled from the parties' respective submissions.

UNILAB, on the other hand, sees nothing improper in the remand of the case to the Labor Arbiter. It contends that deciding the case now would disregard the doctrine of judicial hierarchy,[51] invoking Article 217 of the Labor Code of the Philippines[52] which grants labor arbiters "original and exclusive jurisdiction to hear and decide x x x all other claims arising from employer-employee relations x x x."

Further, UNILAB submits that the records of the case are not complete for a determination of the factual issues because the company had no opportunity to respond and present its evidence on Rivera's factual allegations; deciding the case at this stage would result in a denial of the company's right to due process.

We note that this case is now almost thirteen (13) years old as Rivera's complaint was filed on August 9, 1996. Given this stark reality and the fact that Rivera is around 78 years old at this time (she was 72 years old when the petition was filed in December 2002),[53] we can understand why she entreats the Court not to send the case back to the Labor Arbiter. In fact, we find her reason a compelling one, provided that there are enough undisputed facts that we can consider in arriving at a decision on the merits.

Our examination of the records of the case tells us that the parties have freely made factual allegations in the course of the dispute without any major dispute on any material factual issue. Thus, contrary to the CA's ruling, we hold that we are in the position to completely rule on the case. If the full facts are not before us as UNILAB contends, whatever gaps there are either not material to a ruling on the merits or can be deduced from the undisputed facts, as the discussions below will show.

While this Court is indeed not a trier of facts, the examination of facts at our level is not without precedent. In a ruling of the Court made in *Quisumbing v. Court of Appeals*,[54] we held:

It may rightly be said that to fully ventilate the question as to whether or not private respondent was repurchasing the land not to preserve the same for himself and his but for speculation and profit, the natural cause of action to take would be to remand this case to the trial court for it to conduct further proceedings in order to enable petitioner to present evidence to sustain their aforesaid contention. A close examination of the records of this case, however, convinced us that such a time-consuming procedure may be properly dispensed with for being unnecessary to resolve the issue at hand. We encounter several facts of record, none of which is denied by the private respondent which by themselves, sufficiently support the allegation of the petitioner that the private respondent is repurchasing the land in question merely for speculative and profit purposes and not to uphold the policy of the State regarding the grant of homesteads.

Also, in *Velasco v. Court of Appeals*,[55] the Court declared -

x x x going over the extended pleadings of both parties, the Court immediately was impressed that substantial justice may not be timely achieved, if we should decide the case upon such a technical ground alone. We have carefully read all the allegations and arguments of the parties, very ably and comprehensively expounded by evidently knowledgeable and unusually competent counsel, and we feel we can better serve the interests of justice by broadening the scope of our inquiry, for as the record before Us stands, We see that there is enough basis for us to end the basic controversy between the parties here and now x x x.

To the same effect is the ruling in *Ortigas and Company, Limited Partnership v. Ruiz*[56] where we held that it will resolve a case on the merits to prevent delays even if the petition was brought to the Court only on a procedural incident.

Also, the argument that we will be violating the doctrine of the hierarchy of courts if we act on the case is misplaced. The case had gone through the labor tribunals and the CA who had all the opportunity to rule on the substantive aspect of the case, yet they failed to do so, or were sidetracked by the issue of prescription. In this

already lengthy process, the parties presented their respective factual positions, all of which are now before us for ready examination. Under the circumstances, we shall not serve the ends of justice if we go back to square one and start all over again. As we already stated, the material facts on record necessary for a definitive ruling are sufficient. For clarity and convenience, we enumerate these facts hereunder.

1. Rivera completed 30 years of service with the company in 1988. The company compulsorily retired her on December 31, 1988, under the company's pre-1992 retirement plan whose Section 1, Article IV provided that:

Any member (manager or non-manager) shall be retired on December 31 of the year during which he attained age 60 or has rendered 30 years of service, whichever comes first and shall be entitled to the full normal retirement benefits as provided for in the succeeding Article V of the retirement plan document x x x .

The plan is supported by a retirement fund with the following components:

(a) Trust Fund A which consists of contributions made exclusively by the company for the account of each member based on actuarial estimates, and

(b) Trust Fund B which consists of contributions from the members themselves.

When Rivera retired, her accrued retirement benefits under Trust Fund A and Trust Fund B were withdrawn from the retirement Fund and deposited in Trust Fund C, a special investment account from which she could make withdrawals as she pleased. Rivera made withdrawals from Trust Fund C, specifically P50,000.00 and P40,000.00 in May and October 1991, respectively,[57] and P200,000.00 in June 1992.[58]

2. Rivera continued to work for UNILAB until the end of 1992 and was made Assistant Vice-President in January 1989. Effective December 31, 1992, UNILAB declared her retired from employment and gave her the balance of what remained at Trust Fund C with accrued interests.

3. In December 1992, the retirement plan was amended which provided the following terms:

- The retirement benefit has been increased from 1 month to 1.5 months of Terminal Basic Salary per year of service.

- The effective date of normal or mandatory retirement from the Plan is 30 days after an employee reaches his/her 60[th] birthday. This effective date applies to all rank and file as well as KPs'.

The Plan provides for full vesting of benefits to all employees who leave the company after reaching the age of 55, regardless of the number of service years.

4. As of December 31, 1992, Rivera's retirement benefits in Trust Fund C amounted to P1,175,666.22 including interests net of Rivera's withdrawals of P650,000.00. On January 15, 1993, Rivera received her retirement pay check in the amount of P1,175,666.22.

5. From 1993 to 1994, Rivera continued to work as a personal consultant at ARMCO in 1993 and at FIL-ASIA in 1994. These companies have interlocking directorates and common facilities with UNILAB. The work she was assigned still pertained to UNILAB.

Under these facts, we deem it undisputed that Rivera did retire from the company on December 31, 1988 after thirty (30) of service pursuant to the terms of the company's retirement plan. This was a mandatory retirement and she had no claim relating to the completeness of the retirement pay she received as of that date.

That Rivera continued working with UNILAB is another undisputed matter. What is uncertain is whether this was at her request as UNILAB alleges, but the source of initiative that gave rise to this renewed employment does not

materially affect our consideration. What we find material is the undisputed fact that Rivera had no objection to her renewed employment after her December 31, 1988 retirement. Of utmost materiality, too, is a clear understanding of what her December 31, 1988 retirement signified - a conclusion of law drawn from the given facts.

Retirement in its ordinary signification is the termination of an employee's service upon reaching retirement age.[59] Prior to the Retirement Pay Law (R.A. 7641),[60] Article 287 of the Labor Code simply provided that -

Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract;... the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining or other agreement.

Section 13 of the Rules to Implement the Labor Code, on the other hand, provided that -

In the absence of any collective bargaining agreement or other applicable agreement concerning terms and conditions of employment which provides for retirement at an older age, an employee may be retired upon reaching the age of sixty (60) years.

These were the governing laws at the end of 1988 when the petitioner compulsorily retired under the UNILAB retirement plan. Thus, her retirement was governed by the applicable agreement which was the UNILAB retirement plan. Under the terms of this pre-1992 plan (as quoted above), her retirement was mandatory as she had reached 30 years of service,[61] a characterization that we do not find to be disputed by the parties. In fact, we note nowhere in her submissions before the Labor Arbiter, the NLRC, the CA and even before the Court, did Rivera categorically dispute the claim of UNILAB that she completed her 30[th] year of service with the company and was declared retired from the plan on this basis effective December 31, 1988.

"Retirement" as a fact carries with it certain legal effects, one of which is the retired employee's termination of the services with the company as of the retirement date, in this case December 31, 1988.[62] With this retirement, her coverage by the UNILAB retirement plan ceased based on the express terms of the plan. As a consequence, Rivera's retirement pay was computed; her accrued retirement benefits under Trust Fund A and Trust Fund B of the plan were withdrawn, and deposited in Trust Fund C from which she could make withdrawals. In fact, Rivera did make withdrawals from Trust Fund C - P50,000.00 in May and P400,000.00 in October 1991[63] and P200,000.00 in June 1992.[64] Thus, there is no question that Rivera accepted her retirement and its benefits in 1988.

A twist in Rivera's case is that she continued working beyond the compulsory separation from service that resulted from her retirement. Whether she could or could not resume working with the company is, as a rule, a consensual matter for the parties to agree upon, limited only by company policies and the applicable terms of the retirement plan. To be sure, there is no limitation by law that barred her from continuing her work with UNILAB; even the above-quoted Implementing Rules, in setting the retirement age at 60, deferred to the parties' agreement. Her employment terms under this renewed employment are based on what she and the company agreed upon. Whether these terms included renewed coverage in the retirement plan is an evidentiary gap that could have been conclusively shown by evidence of deductions of contributions to the plan after 1988. Two indicators, however, tell us that no such coverage took place. The first is that the terms of the retirement plan, before and after its 1992 amendment, continued to exclude those who have rendered 30 years of service or have reached 60 years of age. Therefore, the plan could not have covered her. The second is the absence of evidence of, or of any demand for, any reimbursement of what Rivera would have paid as contributions to the plan had her coverage and deductions continued after 1988. Thus, we conclude that her renewed service did not have the benefit of any retirement plan coverage.

Could she have availed of retirement benefits under the Retirement Pay Law that was signed by President Ramos on December 9, 1992 and became effective on December 31 of that year? Unfortunately for her, the answer is still in the negative as she did not qualify under the terms of that law when she was retired effective December 31, 1992. At that point, she was not covered by any applicable retirement plan, as heretofore discussed. In the absence of a plan, the Retirement Pay Law requires that an employee must have served for at least five (5) years to be entitled to coverage.^[65] As of December 31, 2002, her service without any retirement plan coverage was only four (4) years, i.e. from January 1, 1989 to December 31, 1992.

In considering her renewed employment period, we have not included the years 1993-1994 for three reasons.

First, based on Rivera's extra-judicial demand for the balance of her retirement pay, especially the first two letters,^[66] she counted thirty four (34) years of service with UNILAB starting April 7, 1958 up to December 31, 1992, thereby excluding the years 1993 to 1994 from her service record. The evidence on record shows that Rivera herself conceded these last two years as periods when she worked as a consultant.^[67] Given this concession and in the absence of evidence showing that her principals controlled her as to the means, manner and the results of her work, we cannot conclude that an employment relationship existed.

Second, that indeed there was no employer-employee relationship in her service with ARMCO in 1993 and with FIL-ASIA Business Consultants, Inc. in 1994 is supported, not only by the records we referred to in the above reason, but by the consultancy contracts Rivera herself marked as Exhibits "J" and "P" in her appeal to the NLRC.

Third, we cannot accept the Rivera's theory that her employment service with UNILAB extended to 1994 because her last two years with ARMCO and FIL-ASIA were in fact services rendered to UNILAB as consultant. To achieve this result, Rivera asks us to pierce the veil of the separate corporate identities of UNILAB and its affiliate corporations. On this point, the case of *John F. McLeod v. NLRC*, G.R. No. 146667. January 23, 2007, instructively tells that:

While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

As in this cited case, we see no basis in the present case to conclude that UNILAB committed any fraud or illegality in employing a retired employee whose knowledge, experience and expertise the company recognized, as an employee or as a consultant. We note that Rivera had already been an Assistant Vice President with UNILAB - an "old timer" in a senior position based on the responsibilities she carried - when she entered into the consultancy contracts. What UNILAB did, in itself, is not an illegality; on the contrary, it is a recognized practice in this country, a fact we take judicial notice of, for companies to continue to avail of the expertise and experience of their retired employees by retaining them either as employees or as consultants. Nor can Rivera claim she had been shortchanged, or in any manner prejudiced by her consultancy services and her relationship with her principals, or placed in a disadvantaged position that would merit special consideration from this Court. From the totality of the evidence presented, she appears to have openly embraced the consultancy services she was assigned, knowing fully well the conditions under which she was serving, and receiving benefits that cannot be described as negligible. Under these circumstances, we find it too late in the day for her to complain that she was

given a run-around as ARMCO and FIL-ASIA were simply conduits of UNILAB, and we see no need to engage in piercing the veil of these corporate entities that she advocates.[68]

Thus, by the strict standards of law, we cannot grant Rivera's petition. Interestingly, the same conclusion obtains if the case were to be viewed solely from the ordinary norms of fairness. We go out of our way to say this in light of what Rivera stated in her demand letter of January 7, 1995 to UNILAB; she felt aggrieved because the retirement benefits she received were less than what other employees - with less years of service, with lower rates of pay, or with lower rank - received.[69] Apparently, Rivera failed to realize that she cannot compare herself with these other employees because she and they were not in the same situation; these other employees retired later and under retirement plan terms that, by then and for various reasons not attributable to any company wrongdoing, had been enhanced. Both in law and under the common concept of fairness, there is inequitable treatment only if persons under the same situation or circumstances are treated differently. Rivera was not so treated by UNILAB; rather, she was given her just due under the specific rules that applied to her. Hence, we cannot likewise recognize the validity of Rivera's claim even from the point of view of justice administered according to ordinary norms of fairness.

WHEREFORE, premises considered, we hereby DENY the petition and DISMISS the claim of Januaria A. Rivera for unpaid retirement pay differential for lack of merit. Costs against the petitioner.

SO ORDERED.

[***]Tinga, Velasco, Jr.,[****]Nachura, and[*****]De Castro, JJ., concur.

Quisumbing, (Chairperson), J., on official leave.

[**] Carpio Morales, J., no part.

** No part; ponente of the assailed Decision.

[***] Designated Acting Chairperson for this case only.

[****]Justice Antonio Eduardo B. Nachura, designated additional Member of the Second Division for this case only.

[*****] Justice Teresita J. Leonardo-De Castro designated additional Member of the Second Division per Special Order No. 619 dated April 14, 2009.

[1] Rollo, pp. 10-33, Rule 45 of the Rules of Court.

[2] Id., pp. 37-41, promulgated on December 21, 2001; penned by Associate Justice Conchita Carpio Morales (now a member of this Court), and concurred in by Associate Justice Martin Villarama and Associate Justice Sergio Pestaño.

[3] Id., pp. 42-46, promulgated on October 16, 2002.

[4] Dated August 19, 1998.

[5] Id., p. 148.

[6] Id., p. 158.

[7] Id., p. 159.

[8] Id., p. 160.

[9] Id., Annexes "4" and "5".

[10] Id., Memorandum dated June 1, 1993 issued by C.C. Ejercito of UNILAB.

[11] Rollo, p. 122.

[12] Id., p. 138.

[13] Id., p. 140.

[14] Id., p. 141.

[15] Id., p. 142.

[16] Id., p. 144.

[17] Id., pp. 56-62.

[18] Money claims.- All money claims arising from employer-employee relations accruing during the effectivity of this Code, shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

[19] Rollo, p. 47.

[20] G.R. No. 82312, April 19, 1989 172 SCRA 597.

[21] Rollo, pp. 47-55.

[22] Id., pp. 211-212.

[23] Id., pp. 63-87.

[24] Id., pp. 37-41.

[25] G.R. No. 132257, October 12, 1998, 297 SCRA 743.

[26] Supra note 18, p. 6.

[27] Supra note 10, p. 4.

[28] Rollo, pp. 42-46.

[29] Supra note 8, p. 3.

[30] Rollo, pp. 129-133.

[31] Id., pp. 134-136.

[32] Id., pp. 128-134.

[33] Id., p. 123.

[34] Supra note 10, p. 3.

[35] Rollo, p. 29; petition, p. 20, par. 3.

[36] Rollo, pp. 361-373.

[37] G.R. Nos. 84572-73, November 27, 1990, 191 SCRA 700.

- [38] G. R. No. L-65545, July 9, 1986, 142 SCRA 542.
- [39] *Aclon v. CA*, G.R. No. 106880, August 20, 2002, 387 SCRA 415.
- [40] See: Comment dated February 20, 2003; rollo, pp. 310-328.
- [41] *Supra* note 32, p. 10.
- [42] G.R. No. 150888, September 24, 2004, 439 SCRA 83.
- [43] G.R. No. 139278, October 25, 2004, 441 SCRA 290.
- [44] *Supra* note 10, p. 3.
- [45] Paras, CIVIL CODE OF THE PHILIPPINES, 14[th] Ed., Vol. IV, p. 60.
- [46] G.R. No. 132257, October 12, 1998; 297 SCRA 743.
- [47] *Supra* note 18, p. 6.
- [48] Rollo, p. 40; Decision in CA- G.R. SP No. 52215.
- [49] *Id.*, p. 41; CA Decision in CA G.R. SP No. 52215.
- [50] *Id.*, p. 42; Petition, p. 13, paragraph c.
- [51] *Id.*, p. 363; Respondent UNILAB's Memorandum, p. 3 (Arguments).
- [52] Jurisdiction of Labor Arbiters and the Commission.
- [53] Rollo, p. 11; Petition, p. 2, last paragraph.
- [54] G.R. No. L-60364, June 23, 1983, 122 SCRA 703.
- [55] G.R. No. L-47544, January 28, 1980, 95 SCRA 616.
- [56] G.R. No. L-33952, March 9, 1987, 148 SCRA 326.
- [57] Rollo, p. 169.
- [58] *Id.*, p. 170.
- [59] See: Black's Law Dictionary, 6[th] Ed., at p. 1316.
- [60] Passed by Congress on October 29, 1992 and approved by President Fidel V. Ramos on December 9, 1992.
- [61] As indicated by the word "shall" when the plan provided that "Any member (manager or non-manager) shall be retired on December 31, of the year. . ."
- [62] *UST Faculty Union v. NLRC*, G.R. No. 89885, August 6, 1990.
- [63] *Supra* note 56, p. 21.
- [64] *Supra* note 57, p. 21.
- [65] Article 287, as amended by R.A. 7641, par. 3.
- [66] Rollo, pp. 172-173, letter dated January 7, 1995 and p. 174, letter dated December 18, 1995.
- [67] See: (1) her letter of January 7, 1995 to UNILAB stating that "I served the company as a regular employee

for 34 years and as a full-time consultant for additional two years, from 1993-1994 (rollo, pp. 172-173; Annex "11" of Annex "C" to the Petition); (2) her "conforme" to the letter to her by the Vice-President of ARMCO dated June 2, 1993, and, another "conforme" to the letter to her dated January 3, 1994 by Fil-Asia, both letters referring to her consultancy services to UNILAB; (3) her follow-up letter dated December 18, 1995^[67] to Dr. Delfin Samson, Jr., UNILAB's President and CEO, where she mentioned "34 years of service with UNILAB with utmost dedication and loyalty." "I became a consultant only the following year of 1993 x x x" and, the letter dated July 24, 1996 of lawyer Katz N. Tierra, whose services Rivera engaged at that time referring to "all the 34 years that she was your employee."

[68] Id., pp. 27-28; Petition, last paragraph.

[69] See: January 7, 1995 letter of Rivera to UNILAB.

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