

ALPHA C. JACULBE, PETITIONER, V.S. SILLIMAN UNIVERSITY, RESPONDENT.

G.R. No. 156934. March 16, 2007

Ponente: CORONA, J.

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CORONA, J.:

Petitioner comes to us via this petition for review on certiorari[1] to challenge a decision [2] of the Court of Appeals (CA) and the resolution[3] affirming it.

Sometime in 1958, petitioner began working for respondent's university medical center as a nurse.[4]

In a letter dated December 3, 1992,[5] respondent, through its Human Resources Development Office, informed petitioner that she was approaching her 35[th]year of service with the university and was due for automatic retirement on November 18, 1993, at which time she would be 57 years old. This was pursuant to respondent's retirement plan for its employees which provided that its members could be automatically retired "upon reaching the age of 65 or after 35 years of uninterrupted service to the university." [6] Respondent required certain documents in connection with petitioner's impending retirement.

A brief exchange of letters[7] between petitioner and respondent followed. Petitioner emphatically insisted that the compulsory retirement under the plan was tantamount to a dismissal and pleaded with respondent to be allowed to work until the age of 60 because this was the minimum age at which she could qualify for SSS [8] pension. But respondent stood pat on its decision to retire her, citing "company policy."

On November 15, 1993, petitioner filed a complaint in the National Labor Relations Commission (NLRC) for "termination of service with preliminary injunction and/or restraining order." [9] On November 18, 1993, respondent compulsorily retired petitioner.

After the parties submitted their position papers, the labor arbiter rendered a decision finding respondent guilty of illegal dismissal and ordered that petitioner be reinstated and paid full backwages.[10] On appeal, however, the NLRC reversed the labor arbiter's decision and dismissed the complaint for lack of merit. [11] The NLRC likewise denied petitioner's motion for reconsideration.[12] In the assailed decision and resolution, the CA affirmed the NLRC.

Hence, this petition.

The issues for our consideration are:

1)

did respondent's retirement plan imposing automatic retirement after 35 years of service contravene the security of tenure clause in the 1987 Constitution and the Labor Code?

2)

did respondent commit illegal dismissal by retiring petitioner solely by reason of such provision in its retirement plan?

Retirement plans allowing employers to retire employees who are less than the compulsory retirement age of 65 are not per se repugnant to the constitutional guaranty of security of tenure. Article 287 of the Labor Code provides:

ART. 287. Retirement - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract. xxx

By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at below 60 years.[13]

However, after reviewing the assailed decision together with the rules and regulations of respondent's retirement plan, we find that the plan runs afoul of the constitutional guaranty of security of tenure contained in Article XIII, also known as the provision on Social Justice and Human Rights.

The CA, in ruling against petitioner, premised its decision to uphold the retirement plan on her voluntary participation therein:

The petitioner in this case may, however, argue that the Pantranco case is not applicable in the case at bar as the controversy in the said case involves a compulsory retirement on the basis of the length of service rendered by the employee as agreed in an existing CBA, whereas in the present case, the private respondent compulsorily retired the petitioner not based on a CBA but on the retirement scheme provided for in the private respondent's retirement plan. Nonetheless, this argument must fail. The contract fixing for retirement age as allowed under Article 287 of the Labor Code does not exclusively refer to CBA which provides for an agreed retirement age. The said provision explicitly allows, as well, other applicable employment contract to fix retirement age.

The records disclose that the private respondent's Retirement Plan has been in effect for more than 30 years. The said plan is deemed integrated into the employment contract between private respondent and its employees as evidenced by the latter's voluntary contribution through monthly salary deductions. Previous retirees have already enjoyed the benefits of the retirement plan, and ever since the said plan was effected, no questions or disagreement have been raised, until the same was made to apply to the petitioner. xxx[14](emphasis ours)

The problem with this line of reasoning is that a perusal of the rules and regulations of the plan shows that participation therein was not voluntary at all.

Rule III of the plan, on membership, stated:

SECTION 1 - MEMBERSHIP

All full-time Filipino employees of the University will automatically become members of the Plan, provided, however, that those who have retired from the University, even if rehired, are no longer eligible for membership in the Plan. A member who continues to serve the University cannot withdraw from the Plan.

xxx xxx xxx

SECTION 2 - EFFECTIVITY OF MEMBERSHIP

Membership in the Plan starts on the day a person is hired on a full-time basis by the University.

SECTION 3 - TERMINATION OF MEMBERSHIP

Termination of membership in the Plan shall be upon the death of the member, resignation or termination of employee's contract by the University, or retirement from the University.[15] (emphasis ours).

Rule IV, on contributions, stated:

The Plan is contributory. The University shall set aside an amount equivalent to 3½% of the basic salaries of the faculty and staff. To this shall be added a 5% deduction from the basic salaries of the faculty and staff.

A member on leave with the University approval shall continue paying, based on his pay while on leave, his leave without pay should pay his contributions to the Plan. However, a member, who has been on leave without pay should pay his contributions based on his salary plus the University's contributions while on leave or the full amount within one month immediately after the date of his reinstatement. Provided[,] further that if a member has no sufficient source of income while on leave may pay within six months after his reinstatement.[16]

From the language of the foregoing retirement plan rules, the compulsory nature of both membership in and contribution to the plan debunked the CA's theory that petitioner's "voluntary contributions" were evidence of her willing participation therein. It was through no voluntary act of her own that petitioner became a member of the plan. In fact, the only way she could have ceased to be a member thereof was if she stopped working for respondent altogether. Furthermore, in the rule on contributions, the repeated use of the word "shall" ineluctably pointed to the conclusion that employees had no choice but to contribute to the plan (even when they were on leave).

According to the assailed decision, respondent's retirement plan "ha(d) been in effect for more than 30 years." [17] What was not pointed out, however, was that the retirement plan came into being in 1970 [18] or 12 years after petitioner started working for respondent. In short, it was not part of the terms of employment to which petitioner agreed when she started working for respondent. Neither did it become part of those terms shortly thereafter, as the CA would have us believe.

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. [19] In *Pantranco North Express, Inc. v. NLRC*, [20] to which both the CA and respondent refer, the imposition of a retirement age below the compulsory age of 65 was deemed acceptable because this was part of the CBA between the employer and the employees. The consent of the employees, as represented by their bargaining unit, to be retired even before the statutory retirement age of 65 was laid out clearly in black and white and was therefore in accord with Article 287.

In this case, neither the CA nor the respondent cited any agreement, collective or otherwise, to justify the latter's imposition of the early retirement age in its retirement plan, opting instead to harp on petitioner's alleged "voluntary" contributions to the plan, which was simply untrue. The truth was that petitioner had no choice but to participate in the plan, given that the only way she could refrain from doing so was to resign or lose her job. It is axiomatic that employer and employee do not stand on equal footing, [21] a situation which often causes an employee to act out of need instead of any genuine acquiescence to the employer. This was clearly just such an instance.

Not only was petitioner still a good eight years away from the compulsory retirement age but she was also still fully capable of discharging her duties as shown by the fact that respondent's board of trustees seriously considered rehiring her after the effectivity of her "compulsory retirement." [22]

As already stated, an 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. Thus, having terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by her,

respondent was guilty of illegal dismissal.

At this point, reinstatement is out of the question. Petitioner is now 71 years old and therefore well over the statutory compulsory retirement age. For this reason, we grant her separation pay in lieu of reinstatement. It is also for this reason that we modify the award of backwages in her favor, to be computed from the time of her illegal dismissal on November 18, 1993 up to her compulsory retirement age.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 50445 is REVERSED and SET ASIDE. The October 25, 1994 decision of the labor arbiter finding respondent guilty of illegal dismissal is REINSTATED, with the MODIFICATION that, in lieu of reinstatement, petitioner is awarded separation pay, the award of backwages to be computed from the time of her illegal dismissal up to her compulsory retirement age.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia., JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Dated July 11, 2002 in CA-G.R. SP No. 50445, penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ruben T. Reyes (now Presiding Justice) and Renato C. Dacudao of the Eighth Division of the Court of Appeals; rollo, pp. 149-158.

[3] Dated January 20, 2003 in CA-G.R. SP No. 50445, penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ruben T. Reyes (now Presiding Justice) and Renato C. Dacudao of the Eighth Division of the Court of Appeals; id., p. 197.

[4] Id., p. 15.

[5] Id., pp. 60-61.

[6] Id., p. 135.

[7] Id., pp. 62-70.

[8] Social Security System.

[9] Rollo, pp. 55-59.

[10] Id., pp. 88-97.

[11] Id., pp. 116-120.

[12] Id., pp. 129-132.

[13] *Pantranco North Express, Inc. v. NLRC*, 328 Phil. 470 (1996).

[14] *Supra* note 2, at 155-156.

[15] Rollo, p. 134.

[16] Id., p. 135.

[17] *Supra* note 2, at 156.

[18] Rollo, p. 133.

[19] Soberano v. Clave, G.R. Nos. L-43753-56 & L-50991, 29 August 1980, 99 SCRA 549.

[20] Id.

[21] Mercury Drug Co., Inc. v. CIR, 155 Phil. 636 (1974).

[22] Id., pp. 79-80.

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