SILLIMAN UNIVERSITY, PETITIONER, VS. NANILA FONTELO-PAALAN, RESPONDENT.

G.R. NO. 170948. June 26, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, filed by petitioner Silliman University seeking to reverse and set aside the Decision[1] of the Court of Appeals dated 19 January 2005, and its Resolution[2] dated 7 December 2005. The Court of Appeals, in its assailed Decision and Resolution, affirmed the Decision[3] of the National Labor Relations Commission (NLRC) dated 22 May 2002, and its Resolution[4] dated 18 December 2003, which upheld the validity of the retirement of respondent Nanila Fontelo-Paalan but ordered the petitioner to pay her the amount of P64,680.00, as additional retirement benefits. The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, premises considered, the Resolution dated December 18, 2003 of the National Labor Relations Commission, Fourth Division, Cebu City, in NLRC Case No. V-000960-2000 (RAB VII-05-0064-2000-D), is hereby AFFIRMED. No pronouncement as to costs.[5]

The present controversy stems from the following antecedent factual and procedural facts:

In 1962, respondent was employed by the petitioner and was assigned to the Medical Records Section of the Silliman University Medical Center. She was later promoted as the Head of the Medical Records Section, the position she held until her retirement on 31 May 1997 at the age of 57 years old.[6]

Respondent's retirement was pursuant to the provision of the petitioner's retirement plan, integrated into the employees' employment contract, providing that retirement shall be automatic for any member[7] after reaching the age of 65 or after 35 years of uninterrupted service to the university.[8] Accordingly, respondent, on 2 June 1997, received her retirement benefits in the sum of P102,410.00 and P46,219.25, as additional adjustment.[9]

Almost three years after she received her retirement benefits or on 19 May 2000, respondent filed with the NLRC a Complaint[10] for illegal dismissal against petitioner. Respondent averred in her Position Paper that the stipulation in the retirement program providing for compulsory retirement after rendering 35 years of uninterrupted service constitutes a violation of her constitutional right to security of tenure and is in contravention of the provision of Republic Act No. 7641[11] providing that the compulsory retirement age is 65 years old.

In arguing that its retirement program has a legal basis, petitioner cited the provision of Article 287 of the Labor Code, to wit:

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

> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Petitioner asserted that the compulsory retirement age of 65 years applies only in cases where there is no agreement between the employer and the employee embodied either in the employment contract or the Collective Bargaining Agreement. Thus, since it has an existing retirement program integrated in its employees' employment contract, the provisions of the said retirement program providing for compulsory retirement after rendering 35 years of uninterrupted service shall govern the retirement of its employees. In addition, petitioner advanced that the security of tenure clause in the Constitution presupposes that there is an existing and ongoing employment and not after the employment was already severed on account of a valid retirement and after the employee received retirement benefits on account of such retirement.

On 15 September 2000, the Labor Arbiter rendered a Decision[12] declaring the petitioner guilty of illegal dismissal and ordered the reinstatement of respondent. The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered declaring the [petitioner] guilty of illegal dismissal and is hereby ordered to reinstate [respondent] to her former position without loss of seniority rights and privileges and to pay the [respondent] her full backwages from the time of her dismissal until actual reinstatement computed as follows:
>
> Salary Received
>
> P6,809.00
>
> X 36 months
>
> ----------
>
> P 245,124.00
>
> Less: Retirement Received
> by Complainant
>
> 148,629.25
>
> ----------
>
> Total Backwages ---------
>
> P 96,494.75
>
> Ten percent (10%) attorney's fees is adjudicated from the total monetary award.[13]

On appeal, the NLRC reversed the ruling of the Labor Arbiter and directed that the complaint for illegal dismissal filed by the respondent be dismissed for lack of merit in a Decision[14] promulgated on 22 May 2002. In upholding the validity of the retirement plan, the NLRC declared that company policies and rules and regulations, which are of long standing and known to the employees, are considered agreed upon and part of the employment contract; and so long as they are not unreasonable and oppressive, they are bound to be respected. The decretal part of the NLRC Decision reads:

> WHEREFORE, in view of all the foregoing, this instant appeal of the [petitioner] is granted. The appealed Decision dated September 15, 2000 is REVERSED, SET ASIDE and VACATED, and the complaint is

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> dismissed for lack of merit.[15]

Aggrieved, respondent interposed a Motion for Reconsideration but was denied by the NLRC in a Resolution dated 18 December 2003. In the same resolution, however, the NLRC modified its decision by adjudging the petitioner liable for the amount of P64,680.00 as additional retirement benefits. The amount was arrived at based on Section 5, Rule II of the Rules Implementing the New Retirement Law.[16] Thus, the NLRC resolved as follows:

> WHEREFORE, premises considered, the decision under consideration is hereby AFFIRMED with a modification in that [petitioner] is hereby ordered to pay [respondent] the amount of Sixty Four Thousand Six Hundred Eighty Pesos (P64, 680.00) representing additional retirement benefits.[17]

Petitioner sought the reversal of the aforequoted resolution through a Motion for Reconsideration,[18] but before the NLRC could act on the same, respondent already raised the unfavorable NLRC Decision to the Court of Appeals.

On 19 April 2004, the NLRC resolved the Motion for Reconsideration filed by the petitioner by affirming the assailed Resolution finding no cogent reason to depart from its earlier findings. Thereafter, petitioner did not file a Petition for Certiorari before the Court of Appeals questioning the latest NLRC resolution. Instead, he merely filed a Supplemental Memorandum Ad Cautelam assailing the same.

On 19 January 2005, the Court of Appeals promulgated a Decision[19] affirming the Decision of the NLRC, both with respect to the validity of respondent's retirement and petitioner's liability for the balance of respondent's retirement benefits.

Only the respondent, however, filed a Motion for Reconsideration of the Court of Appeal's decision while the petitioner interjected an Opposition thereto with Manifestation Ad Cautelam posing its objection to respondent's Motion for Reconsideration and reiterating the arguments previously raised in its Supplemental Memorandum Ad Cautelam.[20]

Finding no matter which will compel the modification or reversal of its earlier Decision, the Court of Appeals denied respondent's Motion for Reconsideration in a Resolution[21] dated 7 December 2005.

Having lost her case in the appellate court, respondent opted to accept the adverse judgment and no longer questioned the same. Instead, it was the petitioner who now appeared unsatisfied with the findings of the NLRC, as affirmed by the Court of Appeals, that it was still liable for the balance of respondent's retirement benefits in the sum of P64,680.00. Hence, this instant Petition for Review on Certiorari, raising this sole issue:

> WHETHER OR NOT THE PETITIONER IS LIABLE FOR THE BALANCE OF RETIREMENT BENEFITS AS ADJUDGED BY THE NLRC AND AFFIRMED BY THE COURT OF APPEALS.

We are mindful that the petitioner had initially manifested its opposition to the NLRC ruling that it is still liable for the deficiency in retirement benefits due the respondent by timely interposing a Motion for Reconsideration thereof. Convincingly, however, when the NLRC denied its Motion for Reconsideration, petitioner obviously no longer objected to the award, as it did not take any further action thereon. Such was a serious procedural lapse warranting the dismissal of the instant case.

As admitted by the petitioner, it received a copy of the NLRC Resolution dated 19 April 2004 denying its Motion for Reconsideration on 13 July 2004.[22] It had, therefore, until 13 September 2004[23] to file a Petition for Certiorari before the Court of Appeals,[24] but failed to do so. Instead, it was the respondent who timely assailed the adverse decision before the appellate court.

In Industrial Management International Development Corporation v. National Labor Relations Commission,[25] we have ruled that:

> It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity. (Emphasis supplied.)

Irrefragably, the Resolution of the NLRC dated 19 April 2004, denying petitioner's Motion for Reconsideration of the earlier NLRC Resolution dated 18 December 2003, which ordered petitioner to pay respondent the balance of her retirement benefits, already became final and executory. By failing to file a Petition for Certiorari after the receipt of the 19 April 2004 Resolution, petitioner is deemed to have acquiesced to the adverse judgment. Further, it cannot be convincingly argued that the Petition for Certiorari filed by the respondent also inured to the benefit of the petitioner, for not only are their interests separate and distinct, but they are completely in conflict with each other.[26]

To further underscore the significance of timely assailing an adverse decision, we have thus ruled in Itogon-Suyoc Mines Inc. v. National Labor Relations Commission[27] that:

> The rule is well-settled that a party cannot impugn the correctness of a judgment not appealed from by him; and while he may make counter assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof, for in such case, he must appeal. (Emphasis supplied.)

Stated differently, a party who does not appeal[28] from a judgment can no longer seek modification or reversal of the same. He may oppose the appeal of the other party only on grounds consistent with the judgment. Since the petitioner in the case at bar failed to question the finding of the NLRC that it was still liable for the balance of respondent's retirement benefits, the same had therefore long become final and executory and it can no longer impugn the same in this action.

Considering that the judgment is already final and executory against the party who does not appeal,[29] then the winning party already acquired vested rights by virtue of said judgment. Time and again, we never fail to press the dictum that just as the losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.[30]

It also bears to emphasize that in respondent's Petition for Certiorari before the Court of Appeals, the issues extensively discussed by the parties were limited to whether respondent's retirement violated her security of tenure and thus amounted to illegal dismissal and whether the petitioner's retirement plan is valid and binding on the respondent. Petitioner only resurrected its objection to the Order of the NLRC for the payment of the balance of respondent's retirement benefits in an Opposition with Manifestation Ad Cautelam,[31] which cannot be deemed a substitute for a Petition for Certiorari.

Consequently, we are already without jurisdiction to take cognizance of the present Petition and resolve the substantive issues raised herein lest we transgress the well-established statutory and jurisprudential principles succinctly laid above. While in the review of cases, we relax procedural rules to serve substantial justice, we do so only based on exceptional grounds or under extraordinary circumstances.[32] Petitioner failed to establish any exceptional grounds or extraordinary circumstances that may warrant the relaxation of the procedural rules. Neither did petitioner even bother to explain its failure to question the adverse NLRC Resolution, a procedural

course of undiscounted significance, the omission of which throws the entire case into a travesty, as what happened in the case at bar.

Having resolved the instant Petition, we now proceed to address the Manifestation and Supplemental Memorandum, filed by respondent on 17 May 2007, calling our attention to the recent Decision of the First Division of this Court in Alpha C. Jaculbe v. Silliman University, [33] promulgated last 16 March 2007. Based on Jaculbe, respondent prays for the reversal of the NLRC and the Court of Appeals Decisions finding that he was not illegally dismissed by petitioner.

Indeed, both Jaculbe and herein respondent were retired by herein petitioner based on the same retirement plan, we however find that the ruling of the First Division of this Court in Jaculbe bears no significance to the case at bar since the factual and procedural circumstances attendant in herein petition are different and distinct from those in Jaculbe and to yield to respondent's plea for substantial justice would cause serious transgression of well-settled procedural principles.

Firstly, in the said case, Jaculbe timely raised the adverse decision of the Court of Appeals (which affirmed the finding of the NLRC that Jaculbe was not illegally dismissed by the university). In contrast, respondent in the case at bar no longer appealed the Court of Appeals Decision dated 19 January 2005, which ruled that he was not illegally dismissed by petitioner and merely ordered petitioner to pay the balance of respondent's retirement benefits. Instead, it was the petitioner which interposed the present Petition assailing the appellate court's finding that it still has to pay additional retirement benefits to the respondent.

Secondly, the issues raised in Jaculbe were different from the issue raised in the instant Petition. In that case, the following questions were posed to and squarely resolved by the First Division: (1) whether Jaculbe's separation from employment was illegal; and (2) whether the provision on the university's retirement plan providing for the employee's compulsory retirement after 35 years of uninterrupted service is valid. On the other hand, the sole issue presented for our resolution in the present petition is whether the petitioner is still liable for additional retirement benefits to the respondent as found by the NLRC and affirmed by the Court of Appeals.

Thirdly, no entry of judgment has yet been made in Jaculbe, thus, it has not yet become final and executory so as to serve as a jurisprudential precedent to the present case. Until and unless the same has become final and executory, the First Division still has jurisdiction to affirm, modify, or reverse its Decision in Jaculbe, depending on how it shall weigh and resolve the pending Motion for Reconsideration therein.

And finally, as we are denying the petitioner's prayer for the reversal of the Court of Appeals Decision (insofar as it holds petitioner liable for the balance of respondent's retirement benefits) on the ground of serious procedural defect, we are also constrained to disallow for the same reason the respondent's prayer in her Manifestation and Supplemental Memorandum to reverse the NLRC and the Court of Appeals Decisions (as regards their finding that respondent was not illegally dismissed).

In sum, the finding of the NLRC holding the petitioner liable for additional compensation benefits is binding on petitioner; in the same way that the finding of the Court of Appeals that respondent was not illegally dismissed is conclusive on respondent, both findings having become final and executory. By the petitioner and respondent's inaction and presumed acquiescence to the conclusions of the NLRC and the Court of Appeals, respectively, they had allowed the same to attain finality. Not having been timely appealed, these issues are already beyond our jurisdiction to resolve, and the findings of the NLRC and the Court of Appeals as to them can no longer be disturbed without violating the fundamental legal principle that, on the ground of public policy, final and executory judgment is immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, regardless of whether it will be made by

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the court that rendered it or by the highest court of the land.[34]

We cannot condone the practice of parties who, either by their own or their counsel's inadvertence, have allowed a judgment to become final and executory and, after the same had reached finality, seeks the shield of substantial justice to assail it. The finality of decision is a jurisdictional event which cannot be made to depend on the convenience of the party. To rule otherwise would completely negate the purpose of the rule on completeness of service, which is to place the date of receipt of pleadings, judgment and processes beyond the power of the party to determine at his pleasure.[35]

WHEREFORE, IN VIEW OF THE FOREGOING, the instant Petition is DENIED. The Decision dated 19 January 2005, and the Resolution dated 7 December 2005, rendered by the Court of Appeals in CA-G.R. SP No. 84023, are hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Ynarez-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Pampio A. Abarintos and Vicente L. Yap, concurring.

[2] Rollo, pp. 212-213.

[3] Id. at 93-97.

[4] Id. at 107-112.

[5] Id. at 188.

[6] Id. at 56-87.

[7] Article IX – Retirement Policies, Rule II – Definition of Terms. Member – shall mean any eligibile faculty or staff member of the University covered by the Plan in accordance with Rule III.

[8] Rollo, p. 70.

[9] Id. at 181.

[10] NLRC Records, p. 1.

[11] Republic Act No. 7641 otherwise known as an Act amending Article 287 of Presidential decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, by providing for retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment.

[12] Rollo, pp. 76-80.

[13] Id. at 80.

[14] Id. at 107-113.

[15] Id. at 96.

[16] Sec. 5. Retirement Benefits

> 5.1 In the absence of an applicable agreement or retirement plan, an employee who retires pursuant to the Act shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a

fraction of at least six (6) months being considered as one whole year.

5.2 Components of One-half (1/2) Month Salary. – For the purpose of determining the minimum retirement pay due and employee under this Rule, the term "one-half month salary" shall include all of the following:

(a) Fifteen (15) days salary of the employee based on his latest salary rate. As used herein, the term "salary" includes all remunerations paid by an employer to his employees for services rendered during normal working days and hours, whether such payments are fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of food, lodging or other facilities customarily furnished by the employer to his employees. x x x

(b) The cash equivalent of not more than five (5) days of service incentive leave.

(c) One-twelfth of the 13th month pay due the employee.

(d) All other benefits that the employer and employee may agree upon that should be included in the computation of the employee's retirement pay.

[17] Rollo, p. 112.

[18] Id. at 113-116.

[19] Id. at 180-188.

[20] Id. at 205-207.

[21] Id. at 212-213.

[22] Id. at 6.

[23] Rule 65. CERTIORARI, PROHIBITION AND MANDAMUS

SECTION 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

x x x x

SEC. 4. When and where position filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction or in the Sandiganbayan, if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall

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be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

[24] Purefoods Corporation v. National Labor Relations Commission, G.R. No. 78591, 21 March 1989, 171 SCRA 415, 424; St. Martin Funeral Homes v. National Labor Relations Commission, 356 Phil. 811, 824 (1998).

[25] 387 Phil. 659, 667 (2000).

[26] Firestone Tire and Rubber Company of the Philippines v. Tempongko, No. L-24399, 28 March 1969, 27 SCRA 418, 424.

[27] 202 Phil. 850, 854-855 (1982).

[28] Although supporting jurisprudence refers to an appeal, the same principle applies herein since an NLRC Decision may only be assailed before the Court of Appeals via a Petition for Certiorari under Rule 65 and not by an ordinary appeal.

[29] Portes, Sr. v. Alcala, G.R. No. 145264, 30 August 2005, 468 SCRA 343, 352.

[30] National Power Corporation v. Degamo, G.R. No. 164602, 28 February 2005, 452 SCRA 634, 641-642.

[31] Rollo, pp. 205-207.

[32] Republic of the Philippines v. Court of Appeals, 379 Phil. 92, 98 (2000).

[33] G.R. No. 156934.

[34] Sacdalan v. Court of Appeals, G.R. No. 128697, 20 May 2004, 428 SCRA 586, 599.

[35] Aguilar v. Court of Appeals, 369 Phil. 655, 665, (1999).

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