

GRACE CHRISTIAN HIGH SCHOOL, REPRESENTED BY ITS PRINCIPAL, DR. JAMES TAN, PETITIONER, VS. FILIPINAS A. LAVANDERA, RESPONDENT.

G.R. No. 177845. August 20, 2014

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition for review on certiorari[1] is the Decision[2] dated April 30, 2007 of the Court of Appeals (CA) in CA-G.R. SP. No. 75958 which affirmed with modification the Decision[3] dated August 30, 2002 of the National Labor Relations Commission (NLRC) in NLRC CA No. 031739-02, applying the 22.5-day multiplier in computing respondent Filipinas A. Lavandera's (Filipinas) retirement benefits differential, with legal interest reckoned from the filing date of the latter's illegal dismissal complaint.

The Facts

Filipinas was employed by petitioner Grace Christian High School (GCHS) as high school teacher since June 1977, with a monthly salary of P18,662.00 as of May 31, 2001.[4]

On August 30, 2001,[5] Filipinas filed a complaint for illegal (constructive) dismissal, non-payment of service incentive leave (SIL) pay, separation pay, service allowance, damages, and attorney's fees against GCHS[6] and/or its principal,[7] Dr. James Tan. She alleged that on May 11, 2001, she was informed that her services were to be terminated effective May 31, 2001, pursuant to GCHS' retirement plan which gives the school the option to retire a teacher who has rendered at least 20 years of service, regardless of age, with a retirement pay of one-half (½) month for every year of service. At that time, Filipinas was only 58 years old and still physically fit to work. She pleaded with GCHS to allow her to continue teaching but her services were terminated,[8] contrary to the provisions of Republic Act No. (RA) 7641,[9] otherwise known as the "Retirement Pay Law."

For their part, GCHS denied that they illegally dismissed Filipinas. They asserted that the latter was considered retired on May 31, 1997 after having rendered 20 years of service pursuant to GCHS' retirement plan and that she was duly advised that her retirement benefits in the amount of P136,210.00 based on her salary at the time of retirement, i.e., P13,621.00, had been deposited to the trustee-bank in her name. Nonetheless, her services were retained on a yearly basis until May 11, 2001 when she was informed that her year-to-year contract would no longer be renewed.[10]

The LA Ruling

In a Decision[11] dated March 26, 2002, the Labor Arbiter (LA) dismissed the illegal dismissal complaint for lack of merit.

The LA found that GCHS has a retirement plan for its faculty and non-faculty members which pertinently provides:

ARTICLE X

RETIREMENT DATES[12]

Section 1. Normal Retirement Date – For qualified members of the Plans, the normal retirement date shall be the last day of the month during which he attains age sixty (60) regardless of length of service or upon completion of 20 years of service unless extended at the option of the School. Such extension is subject to the approval of the School on a case to case and year to year basis. The School reserves the right to require an employee before it approves his application for an extension of service beyond the normal retirement date, to have a licensed physician appointed by the School, certify that the employee concerned has no physical and/or mental impediments which will prevent the employee from performing the duties in the School.[13] (Emphasis supplied)

Consequently, the LA ruled that Filipinas was not terminated from employment but was considered retired[14] as of May 31, 1997 after rendering 20 years of service[15] and was only allowed by GCHS to continue teaching on a year-to-year basis (until May 31, 2001) in the exercise of its option to do so under the aforementioned retirement plan until she was informed that her contract would not be renewed.[16]

Nonetheless, the LA found the retirement benefits payable under GCHS retirement plan to be deficient vis-à-vis those provided under RA 7641,[17] and, accordingly, awarded Filipinas retirement pay differentials based on her latest salary as follows:

$P18,662.00/30 = P622.06/\text{day}$

$P622.06 \times 22.5 = P13,996.35 \times 20$

$P279,927.00$

$_ - P136,210.00$

$P143,717.00[18]$

The LA, however, denied Filipinas' claims for service allowance, salary increase, and damages for lack of sufficient bases, but awarded her attorney's fees equivalent to five percent (5%) of the total award, or the amount of P7,185.85.[19]

Dissatisfied, GCHS filed an appeal before the NLRC.

The NLRC Ruling

In a Decision[20] dated August 30, 2002 (August 30, 2002 Decision), the NLRC set aside the LA's award, and ruled that Filipinas' retirement pay should be computed based on her monthly salary at the time of her retirement on May 31, 1997, i.e., P13,621.00. Moreover, it held that under Article 287 of the Labor Code, as amended by RA 7641, the retirement package consists of 15 days salary, plus 13[th] month pay and SIL pay pro-rated to their one-twelfth (1/12) equivalent.[21]

In view of the foregoing, the NLRC awarded Filipinas retirement pay differentials in the amount of P27,057.20 consisting of one-twelfth (1/12) of the 13th month pay and SIL pay based on her salary at the time of her retirement on May 31, 1997, or P13,621.00 multiplied by 20 years. It, however, deleted the award of attorney's fees for failure of Filipinas to show that GCHS had unreasonably and in bad faith refused to pay her retirement benefits.[22]

Aggrieved, Filipinas filed a petition for certiorari before the CA.

The CA Ruling

In a Decision[23] dated April 30, 2007, the CA affirmed with modification the NLRC's Decision. It held that the Court, in the case of Capitol Wireless, Inc. v. Sec. Confesor,[24] has simplified the computation of "one-half month salary" by equating it to "22.5 days" which is "arrived at after adding 15 days plus 2.5 days representing one-twelfth of the 13th month pay, plus 5 days of [SIL]."[25] Accordingly, it computed Filipinas' retirement benefits differential as follows:

Monthly salary

P 13,624.00[26]

÷ 30 days

÷ 30 days

Daily rate

P 454.13[27]

x 22.5 days

x 22.5 days

½ month salary[28]

P 10,218.00

x 20 years

x 20 years

Total amount of retirement benefits

P204,360.00

- Amount deposited in trust

136,210.00

Retirement benefits differential

P68,150.00[29]

The CA further imposed legal interest at the rate of six percent (6%) per annum on the award reckoned from the date of the filing of the illegal dismissal complaint until actual payment[30] pursuant to the Court's Decision in Manuel L. Quezon University v. NLRC (MLQU v. NLRC).[31]

Unperturbed, GCHS filed the instant petition.

The Issue before the Court

The essential issue in this case is whether or not the CA committed reversible error in using the multiplier "22.5 days" in computing the retirement pay differentials of Filipinas.

The Court's Ruling

The petition is bereft of merit.

RA 7641, which was enacted on December 9, 1992, amended Article 287 of the Labor Code, providing for the rules on retirement pay to qualified private sector employees in the absence of any retirement plan in the

establishment. The said law[32] states that “an employee’s retirement benefits under any collective bargaining [agreement (CBA)] and other agreements shall not be less than those provided” under the same – that is, at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year – and that “[u]nless the parties provide for broader inclusions, the term one-half (½) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13[th] month pay and the cash equivalent of not more than five (5) days of service incentive leaves.”

The foregoing provision is applicable where (a) there is no CBA or other applicable agreement providing for retirement benefits to employees, or (b) there is a CBA or other applicable agreement providing for retirement benefits but it is below the requirement set by law.[33] Verily, the determining factor in choosing which retirement scheme to apply is still superiority in terms of benefits provided.[34]

In the present case, GCHS has a retirement plan for its faculty and non-faculty members, which gives it the option to retire a teacher who has rendered at least 20 years of service, regardless of age, with a retirement pay of one-half (½) month for every year of service. Considering, however, that GCHS computed Filipinas’ retirement pay without including one-twelfth (1/12) of her 13[th] month pay and the cash equivalent of her five (5) days SIL, both the NLRC and the CA correctly ruled that Filipinas’ retirement benefits should be computed in accordance with Article 287 of the Labor Code, as amended by RA 7641, being the more beneficent retirement scheme. They differ, however, in the resulting benefit differentials due to divergent interpretations of the term “one-half (½) month salary” as used under the law.

The Court, in the case of *Elegir v. Philippine Airlines, Inc.*,[35] has recently affirmed that “one-half (½) month salary means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay and the remaining 5 days for [SIL].”[36] The Court sees no reason to depart from this interpretation. GCHS’ argument[37] therefore that the 5 days SIL should be likewise pro-rated to their 1/12 equivalent must fail.

Section 5.2, Rule II[38] of the Implementing Rules of Book VI of the Labor Code, as amended, promulgated to implement RA 7641, further clarifies what comprises the “½ month salary” due a retiring employee, to wit:

RULE II

Retirement Benefits

x x x x

SEC. 5. Retirement Benefits.

x x x x

5.2 Components of One-half (½) Month Salary. — For the purpose of determining the minimum retirement pay due an employee under this Rule, the term “one-half month salary” shall include all 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. The term does not include cost of living allowance, profit-sharing payments and other monetary benefits which are not considered as part of or integrated into the regular salary of the employees.

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

(c) One-twelfth of the 13[th] 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.

x x x x (Emphases supplied)

The foregoing rules are, thus, clear that the whole 5 days of SIL are included in the computation of a retiring employees' pay,[39] as correctly ruled by the CA.

Nonetheless, the Court finds that the award of legal interest at the rate of 6% per annum on the amount of P68,150.00 representing the retirement pay differentials due Filipinas should be reckoned from the rendition of the LA's Decision on March 26, 2002 and not from the filing of the illegal dismissal complaint as ordered by the CA,[40] in accordance with the ruling in *Eastern Shipping Lines, Inc. v. CA*[41] (*Eastern Shipping*). Unlike in *MLQU v. NLRC*, where the retired teachers sued for the payment of the deficiency in their retirement benefits, Filipinas' complaint was for illegal (constructive) dismissal, and the obligation to provide retirement pay was only determined upon the rendition of the LA's Decision, which also found the same to be deficient vis-à-vis those provided under RA 7641. As such, it is only from the date of the LA's Decision that GCHS' obligation to pay Filipinas her retirement pay differentials may be deemed to have been reasonably ascertained and its payment legally adjudged to be due, although the actual base for the computation of legal interest shall be on the amount finally adjudged. As held in the *Eastern Shipping* case:[42]

When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged. (Emphases supplied)

WHEREFORE, the petition is DENIED. The Decision dated April 30, 2007 of the Court of Appeals in CA-G.R. SP. No. 75958 is hereby AFFIRMED with MODIFICATION that the legal interest at the rate of six percent (6%) per annum on the amount of P68,150.00 representing the retirement pay differentials payable by petitioner Grace Christian High School to respondent Filipinas A. Lavandera shall be reckoned from the promulgation of the Labor Arbiter's Decision on March 26, 2002 until full payment.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,[*] Del Castillo, and Perez, JJ., concur.

[*] Designated Additional Member per Special Order No. 1757 dated August 20, 2014.

[1] Rollo, pp. 11-31. Erroneously titled as "Petition for Certiorari under Rule 45 of the Rules of Court."

[2] Id. at 38-50. Penned by Associate Justice Enrico A. Lanzas, with Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente, concurring.

[3] Id. at 98-105. Penned by Commissioner Ireneo B. Bernardo, with Commissioners Lourdes C. Javier and Tito F. Genilo, concurring.

[4] Id. at 40.

[5] Id. at 15.

[6] Id. at 40.

[7] Id. at 12-13.

[8] Id. at 54.

[9] Entitled “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.”

[10] Rollo, p. 41.

[11] Id. at 53-61. Docketed as NLRC NCR Case Nos. 00-08-04570-01 and 00-09-05159-01 and penned by LA Fatima Jambaro-Franco.

[12] Id. at 54-55.

[13] Id. at 57.

[14] Id. at 59.

[15] Id. at 58.

[16] Id. at 59.

[17] Id. at 59-60.

[18] Id. at 60.

[19] Id.

[20] Id. at 98-105.

[21] Id. at 103.

[22] Id. at 104.

[23] Id. at 38-50.

[24] 332 Phil. 78 (1996).

[25] Id. at 89. See also rollo, p. 47.

[26] Should be P621.00.

[27] Should be P454.03.

[28] Based on Article 287 of the Labor Code, as amended; rollo, p. 48.

[29] Id. at 48-49.

[30] Id. at 49.

[31] 419 Phil. 776 (2001).

[32] Section 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of

the Philippines, is hereby amended to read as follows:

Art. 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: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

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.

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

x x x x (Emphases and underscoring supplied)

[33] *Elegir v. Philippine Airlines, Inc.*, G.R. No. 181995, July 16, 2012, 676 SCRA 463, 475.

[34] *Id.* at 476.

[35] *Id.*

[36] *Id.* at 478; emphasis and underscoring supplied.

[37] *Rollo*, p. 22.

[38] Rule II took effect on January 7, 1993 when RA 7641 went into force.

[39] *Enriquez Security Services, Inc. v. Cabotaje*, 528 Phil. 603, 608 (2006).

[40] *Rollo*, p. 49.

[41] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96-97.

[42] *Id.* at 96.

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