LOURDES A. CERCADO, PETITIONER, VS. UNIPROM, INC., RESPONDENT.

G.R. No. 188154. October 13, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Assailed in this Petition for Review on Certiorari[1] are the July 31, 2007 Decision[2] and the May 26, 2009 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 87508, declaring as valid the unilateral retirement of petitioner by respondent.

The Facts

Petitioner Lourdes A. Cercado (Cercado) started working for respondent UNIPROM, Inc. (UNIPROM) on December 15, 1978 as a ticket seller assigned at Fiesta Carnival, Araneta Center, Quezon City. Later on, she was promoted as cashier and then as clerk typist.

On April 1, 1980, UNIPROM instituted an Employees' Non-Contributory Retirement Plan[4] which provides that any participant with twenty (20) years of service, regardless of age, may be retired at his option or at the option of the company.

On January 1, 2001, UNIPROM amended the retirement plan in compliance with Republic Act (R.A.) No. 7641.[5] Under the revised retirement plan,[6] UNIPROM reserved the option to retire employees who were qualified to retire under the program.

Sometime in December 2000, UNIPROM implemented a company-wide early retirement program for its 41 employees, including herein petitioner, who, at that time, was 47 years old, with 22 years of continuous service to the company. She was offered an early retirement package amounting to P171,982.90, but she rejected the same.

UNIPROM exercised its option under the retirement plan, and decided to retire Cercado effective at the end of business hours on February 15, 2001. A check of even date in the amount of P100,811.70, representing her retirement benefits under the regular retirement package, was issued to her. Cercado refused to accept the check.

UNIPROM nonetheless pursued its decision and Cercado was no longer given any work assignment after February 15, 2001. This prompted Cercado to file a complaint for illegal dismissal before the Labor Arbiter (LA), alleging, among others, that UNIPROM did not have a bona fide retirement plan, and that even if there was, she did not consent thereto.

For its part, respondent UNIPROM averred that Cercado was automatically covered by the retirement plan when she agreed to the company's rules and regulations, and that her retirement from service was a valid exercise of a management prerogative.

After submission of the parties' position papers, the LA rendered a decision[7] finding petitioner to be illegally dismissed. Respondent company was ordered to reinstate her with payment of full backwages.

The National Labor Relations Commission (NLRC) affirmed the LA's decision, adding that there was no evidence that Cercado consented to the alleged retirement plan of UNIPROM or that she was notified thereof.[8]

On certiorari, the CA set aside the decisions of the LA and the NLRC. The decretal portion of the Decision reads:

> WHEREFORE, the petition is GRANTED. The Decision of the Labor Arbiter and the assailed Resolutions of the NLRC are NULLIFIED and SET ASIDE. Judgment is hereby rendered declaring respondent's retirement as valid and legal being in conformity with petitioners' Retirement Plan.[9]

The CA ruled that UNIPROM's retirement plan was consistent with Article 287 of the Labor Code, which provides that "any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract." The CA applied the doctrine laid down in Progressive Development Corporation v. NLRC[10] wherein the phrase "may be retired" in Article 287 of the Labor Code was interpreted to mean that an option is given to an employer to retire an employee, and such option is within the discretion of the employer to exercise.

The CA further noted that Cercado cannot feign ignorance of the retirement plan considering that she was already working with the company when it took effect in 1980.

Cercado moved for reconsideration, but the same was denied.[11] Hence, the instant recourse raising the following issues: 1) whether UNIPROM has a bona fide retirement plan; and 2) whether petitioner was validly retired pursuant thereto.

The petition is meritorious.

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.[12]

Article 287 of the Labor Code, as amended by R.A. No. 7641,[13] pegs the age for compulsory retirement at 65 years, while the minimum age for optional retirement is set at 60 years. An employer is, however, free to impose a retirement age earlier than the foregoing mandates. This has been upheld in numerous cases[14] as a valid exercise of management prerogative.

In this case, petitioner was retired by UNIPROM at the age of 47, after having served the company for 22 years, pursuant to UNIPROM's Employees' Non-Contributory Retirement Plan,[15] which provides that employees who have rendered at least 20 years of service may be retired at the option of the company. At first blush, respondent's retirement plan can be expediently stamped with validity and justified under the all encompassing phrase "management prerogative," which is what the CA did. But the attendant circumstances in this case, vis-à-vis the factual milieu of the string of jurisprudence on this matter, impel us to take a deeper look.

In Pantranco North Express, Inc. v. NLRC,[16] the Court upheld the retirement of private respondent pursuant to a Collective Bargaining Agreement (CBA) allowing Pantranco to compulsorily retire employees upon completing 25 years of service to the company. Interpreting Article 287, the Court ruled that the Labor Code permits employers and employees to fix the applicable retirement age lower than 60 years of age. The Court also held that there was no illegal dismissal involved, since it was the CBA itself that incorporated the agreement between the employer and the bargaining agent with respect to the terms and conditions of employment. Hence, when the private respondent ratified the CBA, he concurrently agreed to conform to and abide by its provisions. Thus, the Court stressed, "[p]roviding in a CBA for compulsory retirement of employees after twenty-five (25) years of service is legal and enforceable so long as the parties agree to be governed by such CBA."

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Similarly, in Philippine Airlines, Inc. (PAL) v. Airline Pilots Association of the Philippines (APAP),[17] the retirement plan contained in the CBA between PAL and APAP was declared valid. The Court explained that by their acceptance of the CBA, APAP and its members are obliged to abide by the commitments and limitations they had agreed to cede to management.

The foregoing pronouncements served as guiding principles in the recent Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU),[18] wherein the compulsory retirement of two teachers was upheld as valid and consistent with the CBA provision allowing an employee to be retired by the school even before reaching the age of 60, provided that he/she had rendered 20 years of service.

In Progressive Development Corporation v. NLRC,[19] although the retirement plan was not embodied in a CBA, its provisions were made known to the employees' union. The validity of the retirement plan was sustained on the basis of the finding of the Director of the Bureau of Working Conditions of the Department of Labor and Employment that it was expressly made known to the employees and accepted by them.

It is axiomatic that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be assented to and accepted by the latter, otherwise, its adhesive imposition will amount to a deprivation of property without due process of law.

In the above-discussed cases, the retirement plans in issue were the result of negotiations and eventual agreement between the employer and the employees. The plan was either embodied in a CBA, or established after consultations and negotiations with the employees' bargaining representative. The consent of the employees to be retired even before the statutory retirement age of 65 years was thus clear and unequivocal.

Unfortunately, no similar situation obtains in the present case. In fact, not even an iota of voluntary acquiescence to UNIPROM's early retirement age option is attributable to petitioner.

The assailed retirement plan of UNIPROM is not embodied in a CBA or in any employment contract or agreement assented to by petitioner and her co-employees. On the contrary, UNIPROM's Employees' Non-Contributory Retirement Plan was unilaterally and compulsorily imposed on them. This is evident in the following provisions of the 1980 retirement plan and its amended version in 2000:

> ARTICLE III
> ELIGIBILITY FOR PARTICIPATION
>
> Section 1. Any regular employee, as of the Effective Date, shall automatically become a Participant in the Plan, provided the Employee was hired below age 60.

Verily, petitioner was forced to participate in the plan, and the only way she could have rejected the same was to resign or lose her job. The assailed CA Decision did not really make a finding that petitioner actually accepted and consented to the plan. The CA simply declared that petitioner was deemed aware of the retirement plan on account of the length of her employment with respondent. Implied knowledge, regardless of duration, cannot equate to the voluntary acceptance required by law in granting an early retirement age option to an employer. The law demands more than a passive acquiescence on the part of employees, considering that an employer's early retirement age option involves a concession of the former's constitutional right to security of tenure.

We reiterate the well-established meaning of retirement in this jurisdiction: 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.[20]

Acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and

uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.

The following pronouncements in Jaculbe v. Silliman University[21] are elucidating:

> [A]n 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.

We disagree with the CA's conclusion that the retirement plan is part of petitioner's employment contract with respondent. It must be underscored that petitioner was hired in 1978 or 2 years before the institution of UNIPROM's retirement plan in 1980. Logically, her employment contract did not include the retirement plan, much less the early retirement age option contained therein.

We also cannot subscribe to respondent's submission that petitioner's consent to the retirement plan may be inferred from her signature in the personnel action forms[22] containing the phrase: "Employee hereby expressly acknowledges receipt of and undertakes to abide by the provisions of his/her Job Description, Company Code of Conduct and such other policies, guidelines, rules and regulations the company may prescribe."

It should be noted that the personnel action forms relate to the increase in petitioner's salary at various periodic intervals. To conclude that her acceptance of the salary increases was also, simultaneously, a concurrence to the retirement plan would be tantamount to compelling her to agree to the latter. Moreover, voluntary and equivocal acceptance by an employee of an early retirement age option in a retirement plan necessarily connotes that her consent specifically refers to the plan or that she has at least read the same when she affixed her conformity thereto.

Hence, consistent with the Court's ruling in Jaculbe,[23] having terminated petitioner merely on the basis of a provision in the retirement plan which was not freely assented to by her, UNIPROM is guilty of illegal dismissal. Petitioner is thus entitled to reinstatement without loss of seniority rights and to full backwages computed from the time of her illegal dismissal in February 16, 2001 until the actual date of her reinstatement. If reinstatement is no longer possible because the position that petitioner held no longer exists, UNIPROM shall pay backwages as computed above, plus, in lieu of reinstatement, separation pay equivalent to one-month pay for every year of service. This is consistent with the preponderance of jurisprudence[24] relative to the award of separation pay in case reinstatement is no longer feasible.

WHEREFORE, the petition is GRANTED. The July 31, 2007 Decision and the May 26, 2009 Resolution of the Court of Appeals in CA- G.R. SP No. 87508 are hereby REVERSED and SET ASIDE. The October 30, 2002 Decision of the Labor Arbiter is REINSTATED, with the MODIFICATION that the award of backwages shall be computed from the time of her illegal dismissal until the actual date of her reinstatement. If reinstatement is no longer possible because the position that petitioner held no longer exists, respondent UNIPROM shall pay backwages as computed above, plus, in lieu of reinstatement, separation pay equivalent to one-month pay for every year of service.

SO ORDERED.

Velasco, Jr., [*] Leonardo-De Castro,[***] Brion,[****] and Mendoza, JJ., concur.

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[*] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated Setember 28, 2010.

[**] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 date September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 905 dated October 5, 2010.

[****] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 904 dated October 5, 2010.

[1] RULES OF CIVIL PROCEDURE, Rule 45.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Lucas P. Bersamin (now a member of this Court) and Estela M. Perlas-Bernabe, concurring; rollo, pp. 59- 69.

[3] Id. at 71-75.

[4] Id. at 101-107.

[5] An Act Amending Art. 287 of the Labor Code by Providing for Retirement Pay to Qualified Private Sector Employees in the Absence of any Retirement Plan in the Establishment.

[6] Rollo, pp. 108-115.

[7] Penned by Labor Arbiter Fedriel S. Panganiban on October 30, 2002; id. at 156-163.

[8] Penned by Commissioner Tito F. Genilo, with Commissioners Lourdes C. Javier and Ernesto C. Verceles, concurring, dated July 2, 2004; id. at 195-208.

[9] Supra note 2, at 68.

[10] 398 Phil. 433 (2000).

[11] Supra note 3.

[12] Magdadaro v. Philippine National Bank, G.R. No. 166198, July 17, 2009, 593 SCRA 195, 199; Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda, G.R. No. 156644, July 28, 2008, 560 SCRA 115, 132; Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU), G.R. No. 151021, May 4, 2006, 489 SCRA 468, 482; Ariola v. Philex Mining Corporation, 503 Phil. 765, 783 (2005); Pantranco North Express, Inc. v. NLRC, 328 Phil. 470, 482 (1996).

[13] ART. 287. Retirement. ¾ 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 therein.

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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. (Emphasis ours.)

[14] Pantranco North Express, Inc. v. NLRC, supra note 12; Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU), supra note 12.

[15] Supra note 6.

[16] Supra note 12.

[17] 424 Phil. 356 (2002).

[18] Supra note 12.

[19] Supra note 10.

[20] Magdadaro v. Philippine National Bank, supra note 12; Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda, supra note 12, at 132; Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU), supra note 12, at 482; Ariola v. Philex Mining Corporation, supra note 12, at 169; Pantranco North Express, Inc. v. NLRC, supra note 12.

[21] G.R. No. 156934, March 16, 2007, 518 SCRA 445, 452.

[22] Rollo, pp. 132-134.

[23] Supra note 21.

[24] Phil. Tobacco Flue-Curing & Redrying Corp. v. NLRC, 360 Phil. 218 (1998); Gaco v. NLRC, G.R. No. 104690, February 23, 1994, 230 SCRA 260; Grolier International, Inc. v. Executive Labor Arbiter Amansec, 257 Phil. 1050 (1989).

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