

EDITHA M. CATOTOCAN, PETITIONER, V. LOURDES SCHOOL OF QUEZON CITY, INC./LOURDES SCHOOL, INC. AND REV. FR. CESAR F. ACUIN, OFM CAP, RECTOR, RESPONDENTS. DECISION

G.R. No. 213486. April 26, 2017

Ponente: PERALTA, J.

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PERALTA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated October 29, 2013 and Resolution[2] dated July 15, 2014 of the Court of Appeals in CA-G.R. SP No. 120117, which dismissed the Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed by Editha M. Catotocan, and affirmed the October 20, 2010[3] and May 13, 2011[4] Orders of the National Labor Relations Commission.

The facts, as culled from the records, are as follows:

In 1971, Editha Catotocan (Catotocan) started her employment in Lourdes School of Quezon City (LSQC) as music teacher with a monthly salary of Thirty Thousand and Eighty-One Philippine Pesos (Php30,081.00). By the school year 2005-2006, she had already served for thirty-five (35) years.

LSQC has a retirement plan providing for retirement at sixty (60) years old, or separation pay depending on the number of years of service.

On November 25, 2003, LSQC issued Administrative Order No. 2003-004 for all employees which is an addendum on its retirement policy. The portion on Normal Retirement reads, as follows:

x x x x

NORMAL RETIREMENT:

1. An employee may apply for retirement or be retired by the school when he /she reaches the age of sixty (60) years or when he/she completes thirty (30) years of service, whichever comes first;

x x x [5]

In a Letter[6] dated March 23, 2004, Catotocan and seven (7) other co-employees wrote to the Provincial Minister, Provincial Council on Education of LSQC and appealed for the deferment of the implementation of the November 25, 2003 Addendum to the retirement plan, particularly the provision that normal retirement will commence after completing "30 years of service" to the school. They, likewise, requested the priest of the Capuchin Order who were running the school to allow them to retire when they have reached 60 years of age instead so that they can "fully enjoy the fruits" of their labor.

In a Reply[7] to the Letter, dated April 25, 2004, LSQC Provincial Minister and Chairman of the Board of Trustees Fr. Troadio de los Santos informed them that the contested retirement age was the same as provided in

the retirement plans of other schools.

In a Letter[8] dated September 3, 2004, Catotocan, among other employees, wrote once more to the Provincial Minister and informed him that they have conducted a survey among other private schools' retirement plans and the retirement age is sixty years old regardless of the length of service. They believed that they do not deserve to be retired and be rehired when they are, in fact, very much capable of doing their duties and responsibilities.

On October 12, 2004, Fr. Troadio de los Santos informed them that since there is a pending case before the Arbitration Branch of the NLRC entitled "Tiongson v. Lourdes School, Quezon City, et al. " docketed as NLRC NCR Case No. 00-04-05164-04, it would be best if they just wait for the final determination of the case by the appropriate tribunal.

On October 26, 2004, Catotocan and her co-employees sought the intervention of the Department of Labor and Employment-National Capital Region (DOLE-NCR). Their concerns were referred to Atty. Jose Mari Villafior, Chief Public Assistance and Complaints Unit (PACU) Officer. A meeting between Catotocan and the teachers affected by the 30-year service retirement clause, and the school rector and treasurer ensued on November 22, 2004. During the said meeting, one of the complainants asked Atty. Villafior if the school can compel them to retire and Atty. Villafior advised that doing so will be tantamount to constructive dismissal. The meeting was re-scheduled to January 7, 2005, but the school officials no longer attended.

However, in a Letter[9] dated January 27, 2005, LSQC Rector Fr. Cesar Acuin (Fr. Acuin) notified Catotocan that she will be retired by the end of the school year for having served at least thirty (30) years with accompanying computation of her retirement pay in the total amount of One Million Fifty-Two Thousand Eight Hundred Thirty-Five Philippine Pesos (Php 1,052,835.00). At the time the said letter was served on Catotocan, she was fifty-six (56) years old.

On March 3, 2005, a dialogue with Fr. Luis Arrieta and the concerned employees took place wherein the latter expressed their objections to the 30-year service requirement for retirement.

LSQC retired Catotocan sometime in June 2006 after completing thirty-five (35) years of service. Full retirement benefits were given to her computed based on the latest salary multiplied by the total years of service. Under the school's retirement policy, sixty percent (60%) of her retirement benefit was paid in lump sum by the trustee bank, and the balance was to be paid in equal monthly pensions over the next three (3) years. The trustee bank holding the retirement portfolio of LSQC was Banco De Oro (BDO).

On May 20, 2006, LSQC Treasurer, Fr. Rolando Brines, sent to the Senior Manager of BDO a letter requesting the release of 60% of the retirement benefit to the retirees through their individual savings account on June 1, 2006. Catotocan was thus credited with thirty-five (35) years of service and her total retirement benefit amounted to One Million Fifty-Two Thousand Eight Hundred Thirty-Five Philippine Pesos (Php1,052,835.00). Sixty percent (60%) of that amount, or Five Hundred Seventy-One Thousand Seven Hundred and One Philippine Pesos (Php571,701.00) was credited to her savings account, which she opened in accordance with the school's retirement policy. The remaining forty percent (40%) in the amount of Four Hundred Twenty-One Thousand One Hundred and Thirty-Four Philippine Pesos (Php421,134.00) was divided into thirty-six (36) equal monthly installments of Eleven Thousand Six Hundred Ninety-Eight Philippine Peso and 17/100 (Php11,698.17) each and credited to Catotocan's savings account until June 2009.

Catotocan's retirement, effective June 2006, was communicated to her on January 27, 2006. In the same letter, Catotocan was told that if she desires, she may signify in writing her intent to continue serving the school on a contractual basis. She responded by submitting a "Letter of Intent" on February 14, 2006.[10]

On May 11, 2006, LSQC appointed Catotocan as a Grade School Guidance Counselor for the school year 2006-2007 under a contractual status effective June 1, 2006 until March 31, 2007.[11]

On August 16, 2006, Catotocan, together with other "retirees" who were re-hired, wrote the LSQC Rector to request that they be included in the Valucare Health Maintenance Plan of the school, under the scheme that they will shoulder the cost of the health plan through salary deduction.[12] The Rector, Fr. Acuin, granted the request.[13]

The following school year, Catotocan re-applied for the position of Guidance Counselor. This was granted by the LSQC Rector in his Letter dated March 23, 2007 wherein Catotocan was appointed as Grade School Guidance Counselor for Grades 5 and 6 effective June 1, 2007 until March 31, 2008.

Again, on February 15, 2008, Catotocan re-applied as Guidance Counselor for school year 2008-2009.[14] On April 9, 2008, LSQC appointed her to the same post effective May 12, 2008 until April 3, 2009.[15]

In a Letter[16] dated January 29, 2009, Catotocan re-applied for the position of GS Guidance Counselor, but LSQC no longer considered her application for the position.

On June 25, 2009, before the Labor Arbiter, Catotocan filed a complaint docketed as NLRC-NCR-Case No. 06-09340-2009 for illegal dismissal and monetary claims such as claim for step increment, moral and exemplary damages and attorney's fees.[17]

On March 26, 2010, in a Decision,[18] the Labor Arbiter dismissed Catotocan's complaint for lack of merit. The Labor Arbiter pointed out that, although there were exchanges of communications between her and respondents regarding her earlier opposition to the school's retirement policy, her subsequent actions, however, such as opening her own individual savings account where the retirement benefits were deposited and credited thereto, her subsequent withdrawals therefrom, her application for contractual employment after her retirement, constituted implied consent to the assailed addendum in LSQC's retirement policy and, in effect, abandoned her objection thereto.

On appeal, on October 20, 2010,[19] the NLRC affirmed the Labor Arbiter's decision. The NLRC held that Catotocan performed all the acts that a retired employee would do after retirement under the new school policy. These were voluntary acts and she cannot be considered to have been forced to retire or to have been illegally dismissed.

Catotocan moved for reconsideration, but the same was denied in a Resolution dated May 13, 2011.

Dissatisfied, Catotocan filed a petition for certiorari before the Court of Appeals.

In the disputed Decision[20] dated October 29, 2013, the Court of Appeals dismissed the petition for lack of merit. The NLRC Decision dated October 20, 2010 and Resolution dated May 13, 2011 were affirmed. The appellate court agreed that while Catotocan was initially opposed to the idea of her retirement at an age below 60 years, her subsequent actions, however, after her retirement are tantamount to consent to the addendum to the school's retirement policy of retiring from service upon serving the school for at least thirty (30) continuous years.

Hence, this appeal anchored on the following grounds:

I

WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT APPLYING THE PRINCIPLE OF STARE DECISIS, THERE BEING A PRIOR DECISION ALREADY ON SIMILAR CASE INVOLVING THE LOURDES SCHOOL

AND THE SAME ISSUE OF FORCED RETIREMENT BEFORE THE AGE OF SIXTY (60);

II

WHETHER THE COURT OF APPEALS' FINDING THAT PETITIONER RETIRED BY ACQUIESCENCE OR BY IMPLICATION, WHEN SHE OPENED A BANK ACCOUNT TO RECEIVE HER RETIREMENT BENEFITS AFTER 30 YEARS OF SERVICE BUT BEFORE AGE 60, AND ACCEPTING FOR 3 YEARS CONTRACTUAL EMPLOYMENT IS CONTRARY TO THE JACULBE CASE AND THE COURT DOCTRINE IN LOURDES A. CERCADO VS. UNIPROM, INC., WHERE IT WAS HELD THAT ASSENT TO EARLY RETIREMENT BEFORE THE AGE OF 60 IS VALID ONLY IF EXPRESSLY GIVEN AND NOT BY IMPLIED ACTS AS ACCEPTANCE OF RETIREMENT PAY, AND WILL NOT BAR TO THE PURSUIT OF AN ILLEGAL DISMISSAL CASE;

III

WHETHER ESTOPPEL WILL APPLY AFTER THE ACCEPTANCE OF RETIREMENT PAY AND WILL OPERATE TO WAIVE THEIR LEGAL RIGHT TO CONTEST HER ILLEGAL DISMISSAL.

In a nutshell, Catotocan asserts that her receipt of her retirement benefits will not stop her from pursuing an illegal dismissal complaint against LSQC.

We deny the petition.

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. Article 287 of the Labor Code is the primary provision which governs the age of retirement and states:

Art. 287. Retirement. x x x 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. (Emphasis Supplied)

Under this provision, the retirement age is primarily determined by the existing agreement or employment contract. Only in the absence of such an agreement shall the retirement age be fixed by law, which provides for a compulsory retirement age at 65 years, while the minimum age for optional retirement is set at 60 years.[21]

Jurisprudence is replete with cases discussing the employer's prerogative to lower the compulsory retirement age subject to the consent of its employees. In *Pantranco North Express, Inc. v. NLRC*, [22] the Court upheld the retirement of the private respondent therein pursuant to a CBA allowing the employer to compulsorily retire employees upon completing 25 years of service to the company. Interpreting Article 287, the Court held that the Labor Code permits employers and employees to fix the applicable retirement age lower than 60 years of age.[23]

Thus, retirement plans, as in LSQC's retirement plan, allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not per se repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less than those provided therein.[24]

Indeed, 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.[25] However, We already had the occasion to strike down the added requirement that an employer must first consult its employee prior to retiring him, as this requirement unduly constricts the exercise by management of its option to retire the said employee. Due process only requires that notice of the employer's decision to retire an employee be given to the employee.[26]

Here, the CA and the NLRC did not gravely abuse its discretion in finding that LSQC did not illegally dismiss Catotocan from service. While it may be true that Catotocan was initially opposed to the idea of her retirement at an age below 60 years, it must be stressed that Catotocan's subsequent actions after her "retirement" are actually tantamount to her consent to the addendum to the LSQC's retirement policy of retiring her from service upon serving the school for at least thirty (30) continuous years, to wit: (1) after being notified that she was being retired from service by LSQC, she opened a savings account with BDO, the trustee bank; (2) she accepted all the proceeds of her retirement package: the lump sum and all the monthly payments credited to her account until June 2009; (3) upon acceptance of the retirement benefits, there was no notation that she is accepting the retirement benefits under protest or without prejudice to the filing of an illegal dismissal case. We also did not find an iota of evidence showing that LSQC exerted undue influence against Catotocan to acquire her consent on the school's retirement policy. Suffice it to say that from the foregoing, Catotocan performed all the acts to ratify her retirement in accordance with LSQC's retirement policy.

We, likewise, quote the NLRC's finding that Catotocan's subsequent actions after LSQC implemented the retirement program as to negate her allegation of illegal dismissal. We quote:

As cleared during the dialogue with Father [Arieta], if an employee is retired against her/his will, the trustee bank would not allow the release of the trust fund to the employee. Clearly, appellant's retirement pay was released to her up to the last centavo. She opened a savings account with BDO for the purpose, withdrew the money, applied for re-appointment and received salaries therefore. In doing so, she performed all the acts that a retired employee would do after retirement under the new school policy. In view of her voluntary acts and enjoyment of the monetary benefits in accordance with the school's new retirement plan, We cannot consider her to have been forced to retire or illegally dismissed.

Although there was an exchange of communications about the retirees' objection to the new retirement policy years earlier, eventually, appellant assented thereto when she opened a savings account with BDO, withdrew the money for her personal use and applied again for a teaching job with the school.

While it is true that the acceptance of retirement pay and her eventual appointment as Guidance Counselor did not amount to a waiver to contest her alleged forced retirement or illegal dismissal, the voluntary nature of her acts from June 2006 up to June 2009 clearly belies her claim of illegal dismissal.

Obviously, appellant filed this complaint claiming illegal dismissal after she had benefited from the proceeds of her retirement in June 2006, and received salaries as Guidance Counselor of the appellee school for the subsequent three (3) years which ended in 2009. By her actuations, she is already estopped from questioning the legality of the new retirement policy.

x x x[27]

Indeed, the most telling detail indicative of Catotocan's voluntary assent to LSQC's retirement policy was her correspondence with the latter following her "retirement." In particular, in her Letter[28] dated January 27, 2005, Catotocan availed of the privilege of being re-hired after retirement by virtue of the "Contractual Employment of

Retired Employees" provision of LSQC's retirement policy. It must be emphasized that the re-hiring was exclusive only for those employees who has availed of the retirement benefits or who has been retired by the school but who has not yet reached 65 years of age. Thus, since Catotocan has availed of this contractual employment which is exclusively offered only to LSQC's qualified retirees for three (3) consecutive years following her retirement, she can no longer dispute that she has indeed legitimately retired from employment, and was not illegally dismissed.

Moreover, in the Letter dated August 6, 2006 addressed to Fr. Acuin, Catotocan, along with other co-employees, referred to themselves as "retirees" and even signed as "the retired employees." The context of the letter does not, in any way, show any animosity with LSQC which would otherwise indicate that they still harbor ill feelings towards LSQC due to their alleged illegal dismissal. Thus, We hold that Catotocan's filing of the illegal dismissal case was just an afterthought subsequent to LSQC's denial of her fourth re-application for the Guidance Counselor position.

Finally, the ruling in Cercado[29] and Jaculbe[30] cannot be applied to this case, simply because in those cases, there was no subsequent express acknowledgment of "retirement" which is present in this case. It must be stressed also that Catotocan's repeated application and availment of the re-hiring program of LSQC for qualified retirees for 3 consecutive years is a supervening event that would reveal that she has already voluntarily and freely signified her consent to the retirement policy despite her initial opposition to it. Moreover, in contrast, in the Cercado case, Cercado was consistent in not giving her consent to the retirement plan of her employer as in fact she refused the check representing her retirement benefits; in this case, however, not only did Catotocan received all of her retirement benefits but she also applied and availed the LSQC's re-hiring policy of retirees.

Although the Court has, more often than not, been inclined towards the plight of the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[31]

WHEREFORE, premises considered, the Decision dated October 29, 2013 and the Resolution dated July 15, 2014 of the Court of Appeals in CA-G.R. SP No. 120117 are hereby AFFIRMED.

SO ORDERED.

Carpio (Chairperson), Mendoza, Leonen, and Martires, JJ., concur.

June 8, 2017

NOTICE OF JUDGMENT

Sir/Madam:

Please take notice that on April 26, 2017 a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on June 8, 2017 at 9:32 a.m.

Very truly yours,

(SGD) MA. LOURDES C. PERFECTO
Division Clerk of Court

[1] Rollo, pp. 36-49; penned by Associate Justice Ramon A. Cruz, with the concurrence of Associate Justices Ricardo R. Rosario and Romeo F. Barza.

[2] Id. at 51-52.

[3] Id. at 54-62.

[4] CA rollo, pp. 47-50.

[5] Id. at 91.

[6] Id. at 93.

[7] Id. at 95.

[8] Id. at 96.

[9] Id. at 117-118.

[10] Id. at 119

[11] Id. at 120

[12] Id. at 121

[13] Id. at 122

[14] Id. at 123

[15] Id. at 126

[16] Id. at 127

[17] Id. at 63-65.

[18] Id. at 165-173.

[19] Id. at 54-61.

[20] Supra note

[21] Banco De Oro Unibank, Inc. v. Sagaysay, G.R. No. 214961, September 16, 2015, 771 SCRA 78.

[22] 328 Phil. 470 (1996).

[23] Pantranco North Express, Inc. v. NLRC, supra.

[24] Id.

[25] Id.

[26] PAL, Inc. v. Airline Pilots Association of the Philippines, 424 Phil. 356, 365 (2002).

[27] Rollo, pp. 59-60.

[28] Id. at 88-89.

[29] Cercado v. UNIPROM, 647 Phil. 603 (2010).

[30] *Jaculbe v. Silliman University*, 547 Phil. 352 (2007)

[31] *Philippine Transmarine Carriers, Inc. v. Legaspi*, 710 Phil. 838, 850 (2013).

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