

UST FACULTY UNION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND UNIVERSITY OF SANTO TOMAS, INC., RESPONDENTS.

G.R. No. 90445. October 02, 1990

Ponente: CORTES, J.

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CORTES, J.:

The controversy, from which the case arose, has to do with the payment of the 13th month pay.

An understanding of the incidents that led to the filing of the instant petition is necessary to resolve the basic issue raised.

To settle a labor dispute regarding the share of the faculty members in the increase in tuition fees under Presidential Decree No. 451, the University of Santo Tomas and the UST Faculty Union, represented by Dean (now Justice) Andres Narvasa and Professor (later, Court of Appeals Justice) Cecilio Pe, respectively, entered into an agreement on March 25, 1985, which provided inter alia:

1.0 Under this Agreement and the Collective Bargaining Agreement that the parties shall eventually execute, UST shall grant to all its faculty members the additional benefits specified in the succeeding paragraphs hereof, over and above the benefits currently enjoyed by the said faculty members, which additional benefits shall amount in the aggregate to P35,000,000.00, divided and receivable over a period of three (3) years, within School Years 1985-1986, 1986-1987, and 1987-1988, it being explicitly understood and stipulated by both parties hereto that UST's total commitments under and by virtue of this Agreement and the Collective Bargaining Agreement to be hereafter executed, cannot and shall not exceed nor be less than the amount of P35,000,000.00.

2.0 For School Year 1985-1986, UST shall grant the following:

* * *

2.3 Christmas gift of P2,000.00 each to all full-time faculty members - i.e., those with an average assignment of at least 15 units in the current school year - provided that they have been employed for at least 12 months as of December 1, 1985; and of P1,000.00 each to all part-time faculty members - i.e., those with an average teaching assignment of less than 15 units in the current school year - or faculty members employed for less than 12 months as of December 1, 1985;

* * *

3.0. For School Year 1986-1987 and 1987-1988, UST shall grant a salary increase of not less than 10% in each year under the conditions set forth in paragraph 2.1 (see Annex A) and the same amount of benefits set out in paragraphs 2.2 to 2.5, inclusive.

* * *

6.0 If at the end of School Year 1987-1988 there should be any unspent balance of the aggregate of P35,000,000.00, such unspent balance shall be distributed proportionately to all faculty members.

* * *

[Rollo, pp. 64-65.]

UST had not been previously paying its faculty members 13th month pay. Presidential Decree No. 851, which took effect on December 16, 1975 provides:

Section 1. All employers are hereby required to pay all their employees receiving a basic salary of not more than P1,000 a month, regardless of the nature of the employment, a 13th month pay not later than December 24 of every year.

Section 2. Employers already paying their employees a 13th month pay or its equivalent are not covered by this Decree.

Thus, since the faculty members of UST were receiving salaries greater than P1,000.00 a month, UST was not required to pay them any 13th month pay.

On August 13, 1986, President Aquino issued Memorandum Order No. 28 which provided: "Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank-and-file employees a 13th month pay not later than December 24 of every year."

Thus starting with the year 1986 the UST was required by law to pay its faculty members the 13th month pay. At the same time the faculty expected compliance with the Agreement of March 25, 1985 to pay Christmas gifts of P2,000.00 for full-time faculty members and P1,000.00 for part-time faculty members. It was because of this that the controversy arose.

On December 3, 1986, Prof. Pe wrote a letter to the rector of the university expressing the faculty members' apprehensions regarding reports "that the 13th month pay is being reduced by deducting therefrom the amount of the said Christmas gift."

The rector replied the next day, December 4, 1986, by attaching a memorandum of its legal counsel which concluded that "the Christmas bonus already paid to the employees shall be credited as compliance with the 13th month pay."

On December 9, 1986, Prof. Pe wrote the rector another letter expressing the union's disagreement with the university legal counsel's opinion and reiterating its position that the Christmas gift is not a bonus and should be paid in addition to the 13th month pay. The letter further stated:

It will be recalled that when you and Fr. Fermin, and I - in the presence of Alex Tagaro - met at the Quezon City Sports Club in March, 1985 and discussed possible settlement of our then existing labor dispute in the University, it was readily agreed that the University would pay the faculty members the aggregate amount of P35 million demanded by the Union. It was only thereafter that we proceeded, in a subsequent meeting held in the same place, to take up the matter of allocation, that is, how the sum of P35 million would be paid and what form. As finally agreed, the payment in cash would be made over a period of three (3) years in the form of salary increases, increase of contribution to the Retirement Fund, Christmas gift, hospitalization benefits, and educational benefits. All this embodied in our Agreement dated March 25, 1985 which is part and parcel (Annex "A") of our CBA dated May 17, 1986. So clear was our agreement that the University's obligation was to pay the faculty members the total amount of P35 million - no more, no less - (see par. 1.0 of the March 25 Agreement) that it is expressly and explicitly stipulated therein that at the end of School Year 1987-88 there should be any unspent balance of the aggregate P35,000,000.00, such unspent balance shall be distributed

proportionately to all faculty members. (See par. 6.0.) The allocation was not intended to affect in any way the obligation of the University to pay P35 million, no part of which should therefore be considered as a bonus. [Rollo, p. 92.]

When UST did not heed the union's demand, the latter filed a complaint with the arbitration branch of the NLRC on December 10, 1986 seeking to compel UST to pay the faculty members the full amount of their 13th month pay and not to deduct therefrom the P2,000.00 or P1,000.00 given as Christmas gift.

On January 4, 1989, the Labor Arbiter rendered a decision dismissing the union's complaint. The arbiter ruled that the Christmas gift may be considered an equivalent of the 13th month pay pursuant to the rules implementing P.D. No. 851.

The union appealed to the NLRC. In a decision dated August 23, 1989, the NLRC dismissed the appeal and affirmed the arbiter's decision. The union moved for reconsideration but this was denied on September 29, 1989.

But the issue was ventilated not only before the NLRC. Individual faculty members filed complaints before the Grievance Adjudication Committee created pursuant to the CBA. In a unanimous decision dated March 27, 1987, the Committee ruled "that the P2,000/1,000 provided for in Sec. 2.3 of Annex "A" of the CBA is not a Christmas Bonus creditable to the 13th month pay but part of the P35 million which in the Compromise Agreement (Annex "A" of CBA) was agreed upon by the Faculty Union and the respondent University as a settlement of all existing claims of the Union." [Rollo, p. 86.] The decision was signed by Justice Eduardo P. Caguioa and Dean Minerva A. Gonzalez, representing the university, and Atty. Eduardo J. Marino, Jr. and Prof. Ma. Melvyn P. Alamis, representing the union. Although its representatives signed the committee decision, UST refused to accept the judgment.

These are the incidents that led to the filing of the instant petition. After comments were filed by private and public respondents, and petitioner filed a reply, the petition was given due course on February 27, 1990 and the parties were required to file their memoranda. After the parties complied, the case was deemed submitted.

The leading case on the 13th month pay is *National Federation of Sugar Workers (NFSW) v. Ovejera*, G.R. No. 59743, May 31, 1982, 114 SCRA 354, an en banc decision. In concluding that "Christmas bonus," "milling bonus" and "amelioration bonus," the yearly total of which exceeds one month salary, may be considered as an "equivalent" of the 13th month pay under the rules implementing P.D. No. 851, the Court said:

The evident intention of the law, as revealed by the law itself, was to grant an additional income in the form of a 13th month pay to employees not already receiving the same. Otherwise put, the intention was to grant some relief - not to all workers - but only to the unfortunate ones not actually paid a 13th month salary or what amounts to it, by whatever name called; but it was not envisioned that a double burden would be imposed on the employer already paying his employees a 13th month pay or its equivalent - whether out of pure generosity or on the basis of a binding agreement and, in the latter case, regardless of the conditional character of the grant (such as making the payment dependent on profit), so long as there is actual payment. Otherwise, what was conceived to be a 13th month salary would in effect become a 14th or possibly 15th month pay.

This view is justified by the law itself which makes no distinction in the grant of exemption: "Employers already paying their employees a 13th month pay or its equivalent are not covered by this Decree." (P.D. 851.)

The Rules Implementing P.D. 851 issued by MOLE immediately after the adoption of said law reinforce this stand. Under Section 3(e) thereof -

"The term 'its equivalent' . . . shall include Christmas bonus, mid-year bonus, profit-sharing payments and other cash bonuses amounting to not less than 1/12th of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary

benefits. Where an employer pays less than 1/12th of the employee's basic salary, the employer shall pay the difference." (Italics supplied.)

Having been issued by the agency charged with the implementation of PD 851 as its contemporaneous interpretation of the law, the quoted rule should be accorded great weight.

Pragmatic considerations also weigh heavily in favor of crediting both voluntary and contractual bonuses for the purpose of determining liability for the 13th month pay. To require employers (already giving their employees a 13th month salary or its equivalent) to give a second 13th month pay would be unfair and productive of undesirable results. To the employer who had acceded and is already bound to give bonuses to his employees, the additional burden of a 13th month pay would amount to a penalty for his munificence of liberality. The probable reaction of one so circumstanced would be to withdraw the bonuses or resist further voluntary grants for fear that if and when a law is passed giving the same benefits, his prior concessions might not be given due credit; and this negative attitude would have an adverse impact on the employees. [At pp. 369-370.]

Then, in *Dole Philippines, Inc. v. Leogardo, Jr.*, G.R. No. 60018, October 23, 1982, 117 SCRA 938, the Court, using the holding in *National Federation of Sugar Workers (NFSW)* as yardstick, said:

Tested against this norm, it becomes clear that the year-end productivity bonus granted by petitioner to private respondents pursuant to their CBA is, in legal contemplation, an integral part of their 13th month pay, notwithstanding its conditional nature. When, therefore, petitioner, in order to comply with the mandate of PD No. 851, credited the year-end productivity bonus as part of the 13th month pay and adopted the procedure of paying only the difference between said bonus and the 1/12th of the worker's yearly basic salary, it acted well within the letter and spirit of the law and its implementing rules. For in the event that "an employer pays less than one-twelfth of the employees' basic salary, all that said employer is required to do under the law is to pay the difference."

To hold otherwise would be to impose an unreasonable and undue burden upon those employers who had demonstrated their sensitivity and concern for the welfare of their employees. A contrary stance would indeed create an absurd situation whereby an employer who started giving his employees the 13th month pay only because of the unmistakable force of the law would be in a far better position than another who, by his own magnanimity or by mutual agreement, had long been extending to his employees the benefits contemplated under PD No. 851, by whatever nomenclature these benefits have come to be known. Indeed, PD No. 851, a legislation benevolent in its purpose, never intended to bring about such oppressive situation. [At pp. 943-944.]

In *Brokenshire Memorial Hospital, Inc. v. NLRC*, G.R. No. 69741, August 19, 1986, 143 SCRA 564, the Court, applying the rulings in *National Federation of Sugar Workers (NFSW)* and *Dole*, held that an employer can not be made to bear the double burden of giving both 13th month pay and Christmas bonus.

In providing for a 13th month pay, P.D. No. 851 intended to uniformly provide low-paid employees with additional income. This is clear from the preamble to the decree which states:

WHEREAS, it is necessary to further protect the level of real wages from the ravage of world-wide inflation;

WHEREAS, there has been no increase in the legal minimum wage rates since 1970;

WHEREAS, the Christmas season is an opportune time for society to show its concern for the plight of the working masses so they may properly celebrate Christmas and New Year.

The law wanted to uniformly provide low-paid employees with additional income because on the average their salaries for twelve (12) months were grossly inadequate to meet the expenses for day-to-day subsistence. This additional income took the form of an extra month's salary to be given in December.

Thus, where such additional income, whether granted by the employer voluntarily or agreed upon by the employer and the employees in a CBA, or its equivalent is already given by the employer, whether in December or in some other date, the 13th month pay need not be given. If, on the other hand, an amount less than that required by law is given, the employer has only to pay his employees the deficiency. In both instances, the purpose of the law is met. The modification introduced by Memorandum Order No. 28 did not substantially alter the purpose of the law but expands the coverage of the 13th month pay, now to uniformly provide all rank-and-file employees additional income.

Clearly, from the discussions in *National Federation of Sugar Workers (NFSW)*, *Dole* and *Brokenshire*, what the law wants to prevent is the imposition of a “double burden” upon the employer who is already paying the equivalent of a 13th month pay. The law exempts from the payment of the 13th month pay employers who are already giving its equivalent. Otherwise the goal of uniformly providing employees with additional income will not be met. Another inequity will result: while most employees will be paid thirteen (13) months salary, some, by virtue of P.D. No. 851, will be receiving salary for fourteen (14) months.

The imposition of a “double burden” does not obtain in the present case even if UST pays both the 13th month pay and the Christmas gift of P2,000.00 or P1,000.00. The Christmas gift is part of the lump sum of P35M which the school has obliged itself to pay the faculty members in full settlement of their share in the increase of tuition fees pursuant to P.D. No. 451. It is not a bonus, incentive or additional income. Neither is the giving of the Christmas gift an act of liberality on the part of the university. The Christmas gift was partial payment, according to a schedule agreed upon by UST and the faculty union, of the university’s outstanding obligation to the faculty members for their share in the increase in tuition fees under P.D. No. 451. Once the university has fully paid the P35M to the faculty members within the time frame and in the forms specified in the agreement, its obligation to pay a Christmas gift of P2,000.00 or P1,000.00, as part of the P35M compromise package, ceases. UST would then have to comply only with P.D. No. 851 as amended by Memorandum Order No. 28 by paying the 13th month pay.

The Christmas gift is clearly not an “equivalent” of the 13th month pay under the rules implementing P.D. No. 851. It is not akin to a “Christmas bonus,” “mid-year bonus,” “profit-sharing payments” or “other cash bonuses.” [Sec. 3.]

[A] bonus is an amount granted and paid to an employee for his industry and loyalty which contributed to the success of the employer’s business and made possible the realization of profits. It is an act of generosity of the employer . . . It is also granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits. [*Philippine Education Co., Inc. v. Court of Industrial Relations*, 92 Phil. 381, 385 (1952).]

The Christmas gift cannot therefore be compared to the “Christmas bonus,” “milling bonus,” and “amelioration bonus” in *National Federation of Sugar Workers (NFSW)*, the “year-end productivity bonus” in *Dole*, and the “Christmas bonus” in *Brokenshire* which were actually forms of incentives and additional income for the employees. Neither is it in the same category as the fixed “transportation allowance” ruled as a form of bonus equivalent to the 13th month pay in *FEU Employees Labor Union v. FEU*, G.R. Nos. 69224-5, December 18, 1987, 156 SCRA 629 (consolidated with *Cebu Institute of Technology v. Ople*, G.R. No. 58870, December 18, 1987, 156 SCRA 629, the lead case under which FEU is indexed.)

We are not saying that these cases are no longer good law. What we are saying is that the facts and circumstances in the case now before us are at variance with those in the aforecited cases and, hence, do not call for a disposition similar to that in said cases.

This is not the first time that the Court has ruled in this fashion. In *United CMC Textile Workers Union v. Valenzuela*, G.R. No. 70763, April 30, 1987, 149 SCRA 424, we ruled that an employer still has to give the 13th month pay under P.D. No. 851 on top of the Christmas bonus in graduated amounts, based on length of service, provided in the CBA. In said case, the Court distilled from the facts and circumstances the conclusion that the purpose of the bonus was to reward employees for their length of service, a purpose different from that in P.D. No. 851 which seeks to uniformly provide low-paid employees additional income.

To recapitulate, under P.D. No. 851, as amended by Memorandum Order No. 28, and the March 25, 1985 agreement, UST has to pay its faculty members both the 13th month pay and the Christmas gift of P2,000.00 or P1,000.00 for the years 1986 and 1987. Payment of the Christmas gift provided in the March 25, 1985 agreement cannot be credited as partial compliance with P.D. No. 851, as amended. Consequently, we find that the NLRC gravely abused its discretion when it affirmed the dismissal of the union's complaint.

WHEREFORE, the petition is GRANTED and the decision of the NLRC dated August 23, 1989 and its resolution dated September 29, 1989 are SET ASIDE. UST is DIRECTED to pay its faculty members 13th month pay in accordance with P.D. No. 851, as amended by Memorandum Order No. 28, and the Christmas gift under the Agreement dated March 25, 1985 for the years 1986 and 1987.

SO ORDERED.

Fernan, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Bidin, Sarmiento, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Narvasa and Padilla, JJ., no part.

Paras, J., on leave.

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