G.R. No. 120802

THIRD DIVISION

[G.R. No. 120802, June 17, 1997]

JOSE T. CAPILI, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, AND UNIVERSITY OF MINDANAO, RESPONDENTS.

D E C I S I O N

DAVIDE, JR., J.:

The pivotal issue in this petition is whether an instructor of a private educational institution may be compelled to retire at the age of sixty years. A corollary issue is whether his subsequent acceptance of retirement benefits would estop him from pursuing his complaint questioning the validity of his forced retirement.

Petitioner Jose T. Capili, Jr., was employed by private respondent University of Mindanao (hereafter, UM) as a college instructor in November 1982. On 2 July 1993, the private respondent informed the petitioner that under the law and UM's retirement program he would be eligible for retirement when he would reach the age of 60 years on 18 August 1993. In his answer of 5 August 1993, the petitioner informed UM that pursuant to Section 4, Rule II, Book VI of the Rules Implementing the Labor Code, the that he was not opting to retire but would continue to serve until he reaches the compulsory retirement age of 65. In its reply of 10 August 1993 to the petitioner, UM reiterated its position that under the university's retirement plan, it could retire him. It argued that under Section 4 cited by the petitioner, the employee has the option only in the absence of a retirement plan.

Perceiving the school's insistence as constructive dismissal, and recalling at least four other faculty members who were allowed to teach beyond their sixtieth birth anniversary, the petitioner filed a complaint[1] for illegal dismissal before the Regional Arbitration Branch No. XI of the NLRC in Davao City. He sought his reinstatement to his former position without loss of seniority rights with full back wages, wage differential, 13th month differential, moral and exemplary damages, and attorney's fees.[2]

In its position paper,[3] UM invoked 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. It contended that it has a retirement plan, known as the University of Mindanao & Associated Enterprises Retirement Plan, under which it could retire the petitioner upon his reaching the age of 60. UM also cited Policy Instruction No. 25 issued by the Secretary of Labor, which provides that in the absence of a retirement plan any teacher or other employee in a private educational institution may retire or be retired from the service upon reaching the age of 60 years.

In his position paper[4] the petitioner maintained that private respondent's retirement plan applies only to members thereof, pursuant to Articles II and III of

its Rules and Regulations,[5] and that since he is not a member of the Plan, he is not covered by it. He further contended that Policy Instruction No. 25, issued on 1 June 1977, was abrogated by Republic Act No. 7641, which took effect on 7 January 1993; and that pursuant to the new Rule II, Book VI of the Omnibus Rules Implementing the Labor Code,[6] which also took effect on 7 January 1993, he has the option whether or not to retire upon attaining the age of 60 years.

On 18 April 1994,[7] Labor Arbiter Newton Sancho held for UM and dismissed the complaint. He ruled:

> There is no question that UM [University of Mindanao] has an existing retirement plan which fixed 60 years as an age for "normal retirement." It applies to all its employees and that of its associated enterprises, including the non-members thereof as a matter of school policy. As such, the option to retire complainant lies on the administration of UM.
>
> Complainant's reliance on R.A. No. 7641 is evidently misplaced. It only provides for retirement pay to qualified private sector employees in the absence of any retirement plan of the establishment. Given UM's retirement plan or school policy of retiring its teachers upon reaching the age of 60, said law does not clearly operate in his favor.
>
> That at least four (4) teachers had been allowed to work beyond their 60th birthday does not make them an exception to UM's policy on the matter. They did so on a case-to-case and semestral basis to which UM consented in the exercise of its management prerogative.
>
> The charge that he was discriminated against through "forced" retirement because of his propensity to question certain school policies or regulations cannot be given credence. For want of corroborative evidence, it is simply self-serving!
>
> Ditto his money claims. UM has proofs that he had been fully paid thereof.

The petitioner appealed[8] from the decision to the respondent Commission on 10 May 1994, or thirteen days after he received the Labor Arbiter's decision. He argued that the Labor Arbiter erred in ruling that private respondent's retirement plan applies to all its employees and that he had been fully paid his monetary claims.

The private respondent moved to dismiss the appeal[9] for having been filed out of time, as the same should have been filed within ten days from petitioner's receipt of the Arbiter's decision, or, at the latest, on 7 May 1994.

On 21 November 1994, the private respondent filed a Manifestation with Motion[10] alleging that on 6 October 1994, the petitioner "received his retirement pay and other accrued benefits" due from the private respondent, thus making the appeal moot and academic. The petitioner filed a Counter-Manifestation[11] wherein he

alleged that his "partial acceptance" of retirement benefits did not render the case moot and academic, and that having "long and unjustly been denied of his retirement benefits since August 18, 1993 [he could not] be expected to remain idle."

On 19 January 1995, the respondent NLRC dismissed the appeal for having been filed out of time, it appearing that since the petitioner received a copy of the assailed decision on 27 April 1994, he had only until 7 May 1994 to file his appeal; however, considering that 7 May 1994 was a Saturday, he had until 9 May 1994, the next working day, to file the appeal. He filed the appeal only on 10 May 1994.[12]

The petitioner moved for the reconsideration[13] of the order, alleging that he could not have filed his appeal on 9 May 1994 which was a non-working holiday, as the barangay elections were held on the said date.

In its resolution of 31 March 1995,[14] the NLRC reconsidered the order of 19 January 1995 and decided the case on its merits. In disposing of the appeal, it made the following observations and conclusions:

> After a careful review of the respective arguments of the parties, We find no serious inconsistency between the company retirement plan of the university and the provision of Article 287 of the Labor Code, as amended by R.A. 7641. Both speak of fixing the normal retirement age at 60 in the absence of a retirement plan or agreement. The retirement plan of the university allows retirement at a later or beyond 60 by mutual assent and on a case-to-case basis. Whereas, R.A. 7641, has fixed 65 as the compulsory retirement date.
>
> Except therefore for the fixing of a maximum retirement age of 65 or the compulsory retirement date, Section 14, Rule I, Book VI of the Implementing Rules of Article 287 prior to its amendment by R.A. 7641, has equally fixed the retirement benefit to at least one-half (1/2) month for every year of service.
>
> The contention of complainant that respondent's retirement plan is inapplicable for being a non-member is beside the point. Respondent has expressly assented to the extension of the retirement plan to complainant thereby serving as the "consensual basis" for the applicability of the retirement plan to complainant. (See Llora Motors, Inc. vs. Drilon, 179 SCRA 176, November 7, 1989, citing Allied Investigation Bureau, Inc. vs. Ople, 91 SCRA 265).
>
> The ultimate question, however, is that will complainant be forced by the respondent to retire at age 60 or on his 60th birthday if he refuses to accept the same.
>
> It is Our well discerned view that respondent may not force complainant to retire at age 60, unless there are other justifiable reason to compel complainant to accept the same. This is so because the law (R.A. 7641) has fixed age 65 as the compulsory age of retirement.

> It, however, appears that this particular issue has become moot and academic. During the pendency of the case, complainant has accepted and received from respondent university his retirement benefits (Annex "1" to Respondent's Manifestation).
>
> Complainant's counter-manifestation that this was only "partial acceptance" of his retirement benefits is belied by the computation of his retirement benefits based on his length of service in the sum of P67,344.42, plus other fringe benefits or in the total sum of P75,338.10. Deducting therefrom the sum of P60,015.45 which was partially released to him, he received the balance of his retirement benefits in the sum of P15,322.65 as shown by his signature appearing on the Journal Voucher dated October 4, 1994 (Annex "2", ibid).
>
> Except for the notation on the exclusion of incremental proceeds of his benefits which is still subject of conciliation, there is nothing on Annex "1" indicating that complainant only received partial payment of his retirement benefits or a reservation that receipt of the balance of his retirement was without prejudice to his claims in the instant case.
>
> Complainant therefore by his own act of accepting the proceeds of his retirement benefits as originally offered to him by respondent is now estopped from further pursuing his claims in the instant case. Besides, the main cause of action of complainant in suing respondent is the charge of illegal or constructive dismissal. There being no concrete and convincing proof that complainant was illegally dismissed, the present action must equally fail. Thus, the issue as to whether or not complainant was forced to prematurely retire by respondent is now moot and academic in view of the subsequent acceptance by complainant of his retirement benefits from respondent.

It then dismissed the appeal for lack of merit and affirmed the Labor Arbiter’s decision, subject to the foregoing modification.

> Petitioner’s motion for reconsideration[15] of the above resolution having been denied in the resolution[16] of 31 May 1995, the petitioner filed this petition. He alleges that the respondent Commission committed grave abuse of discretion amounting to excess or lack of jurisdiction

(i) ... WHEN IT RENDERED ITS RESOLUTIONS IN A MANNER VIOLATIVE OF SUBSTANTIAL DUE PROCESS.

(ii) ...WHEN IT RENDERED THE QUESTIONED RESOLUTION... DISMISSING THE APPEAL IN CONTRAVENTION TO THE RULING OF THE SUPREME COURT IN THE CASE OF ZURBANO, SR. VS. NLRC (229 SCRA 563) AND OTHERS.

(iii) ...IN HOLDING THAT THE PETITIONER BY ACCEPTING THE PROCEEDS OF HIS RETIREMENT BENEFITS IS ESTOPPED FROM PURSUING HIS CLAIMS.

The first assigned error consists of the last two errors, which boil down to the issue of whether the petitioner, by his acceptance of retirement benefits, is estopped from pursuing his claim of illegal dismissal arising from his forced retirement before the age of 65.

In its comment, the Office of the Solicitor General agrees with the petitioner that the latter's acceptance of retirement benefits does not amount to estoppel or render the appeal moot and academic, and hence, the NLRC committed reversible error and grave abuse of discretion in perfunctorily dismissing petitioner's appeal solely on the ground of estoppel. It nevertheless disagreed with the NLRC's conclusion that the petitioner could not be forced to retire at age 60. It is of the view that petitioner's forced retirement at the age of 60 is valid and that petitioner's not being a member of the retirement plan is of no moment, since all employees of UM are covered by it. These notwithstanding, the OSG concurred in the dispositive portion of the NLRC's resolution.

On the other hand, the private respondent submits that the NLRC was correct in holding that petitioner's voluntarily acceptance of his retirement benefits amounted to a waiver of his claims, and that his retirement was in accordance with UM's retirement policy.

We resolved to give due course to the petition and required the parties to submit their respective memoranda. Only the petitioner and private respondent submitted their memoranda. The OSG manifested that it be excused from filing a memorandum and that its comment be treated as its memorandum.

The applicable law on the matter is Article 287 of the Labor Code of the Philippines, as amended by R.A. No. 7641, which took effect on 7 January 1993.[17] As amended, the Article reads 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 agreement 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.