

SECOND DIVISION

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

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

DECISION

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:

$$\begin{array}{r} \text{P18,662.00/30} = \text{P622.06/day} \\ \text{P622.06} \times 22.5 = \text{P13,996.35} \times \\ 20 \end{array} \qquad \begin{array}{r} \text{P279,927.00} \\ - \text{P136,210.00} \\ \hline \text{P143,717.00} \end{array} \supset \text{[18]}$$

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 **13th 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 | <u>÷ 30 days</u> |
| Daily rate | P 454.13 ^[27] |
| x 22.5 days | <u>x 22.5 days</u> |
| ½ month salary ^[28] | P 10,218.00 |
| x 20 years | <u>x 20 years</u> |
| Total amount of retirement benefits | P204,360.00 |
| - Amount deposited in trust | <u>136,210.00</u> |
| <i>Retirement benefits differential</i> | 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 ($\frac{1}{2}$) 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 ($\frac{1}{2}$) month salary shall mean fifteen (15) days plus one-twelfth ($\frac{1}{12}$) of the 13th 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 ($\frac{1}{2}$) month for every year of service. Considering, however, that GCHS computed Filipinas’ retirement pay without including one-twelfth ($\frac{1}{12}$) of her 13th 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 ($\frac{1}{2}$) 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 ($\frac{1}{2}$) month salary means 22.5 days: 15 days plus 2.5 days representing one-twelfth ($\frac{1}{12}$) 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 $\frac{1}{12}$ 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 “ $\frac{1}{2}$ month salary” due a retiring employee, to wit:

RULE II Retirement Benefits