

## SECOND DIVISION

**[ G.R. No. 166570, December 18, 2009 ]**

**EFREN M. HERRERA AND ESTHER C. GALVEZ, FOR AND ON THEIR BEHALF AND ON BEHALF OF OTHER SEPARATED, UNREHIRED AND RETIRED EMPLOYEES OF THE NATIONAL POWER CORPORATION, PETITIONERS, VS. NATIONAL POWER CORPORATION, THE DEPARTMENT OF BUDGET AND MANAGEMENT AND THE OFFICE OF THE SOLICITOR GENERAL, RESPONDENTS.**

### **D E C I S I O N**

**DEL CASTILLO, J.:**

The question at the heart of this case is whether petitioners, former employees of the National Power Corporation (NPC) who were separated from service due to the government's initiative of restructuring the electric power industry, are entitled to their retirement benefits in addition to the separation pay granted by law.

Absent explicit statutory authority, we cannot provide our *imprimatur* to the grant of separation pay and retirement benefits from one single act of involuntary separation from the service, lest there be duplication of purpose and depletion of government resources. Within the context of government reorganization, separation pay and retirement benefits arising from the same cause, are in consideration of the same services and granted for the same purpose. Whether denominated as separation pay or retirement benefits, these financial benefits reward government service and provide monetary assistance to employees involuntarily separated due to *bona fide* reorganization.

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court on a pure question of law against the Decision<sup>[1]</sup> dated December 23, 2004 rendered by the Regional Trial Court (RTC), Branch 101, Quezon City in SCA No. Q-03-50681 (for Declaratory Relief) entitled *National Power Corporation v. Napocor Employees and Workers Union (NEWU), NAPOCOR Employees Consolidated Union (NECU), NPC Executive Officers Association, Inc. (NPC-EXA), Esther Galvez and Efren Herrera, for and on their behalf and in behalf of other separated, unrehired, and retired employees of the National Power Corporation, the Department of Budget and Management (DBM), the Office of the Solicitor General (OSG), the Civil Service Commission (CSC) and the Commission on Audit (COA)*. Said Decision ruled that the petitioners are not entitled to receive retirement benefits under Commonwealth Act No. 186 (CA No. 186),<sup>[2]</sup> as amended, over and above the separation benefits they received under Republic Act (RA) No. 9136,<sup>[3]</sup> otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).

***Legal and factual background***

RA No. 9136 was enacted on June 8, 2001 to provide a framework for the restructuring of the electric power industry, including the privatization of NPC's assets and liabilities.<sup>[4]</sup> One necessary consequence of the reorganization was the displacement of employees from the Department of Energy, the Energy Regulatory Board, the National Electrification Administration and the NPC. To soften the blow from the severance of employment, Congress provided in Section 63 of the EPIRA, for a separation package superior than those provided under existing laws, as follows:

*SEC. 63. Separation Benefits of Officials and Employees of Affected Agencies.* - National government employees displaced or separated from the service as a result of the restructuring of the [electric power] industry and privatization of NPC assets pursuant to this Act, **shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government**: Provided, however, That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization. x x x (Emphasis supplied)

The implementing rules of the EPIRA, approved by the Joint Congressional Power Commission on February 27, 2002,<sup>[5]</sup> further expounded on the separation benefits, viz:

#### RULE 33. Separation Benefits

##### Section 1. General Statement on Coverage.

This Rule shall apply to all employees in the National Government service as of June 26, 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the restructuring of the electric [power] industry and privatization of NPC assets: Provided, however, That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested [to] by the Civil Service Commission (CSC).

##### Section 2. Scope of Application.

This Rule shall apply to affected personnel of DOE, ERB, NEA and NPC.

##### Section 3. Separation and Other Benefits.

(a) **The separation benefit shall consist of either a separation pay and other benefits granted in accordance with existing laws, rules and regulations or a separation plan equivalent to one and one**

**half (1-1/2) months' salary for every year of service in the government, whichever is higher;** Provided, That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act.

x x x x

(e) For this purpose, "Salary", as a rule, refers to the basic pay including the thirteenth (13th) month pay received by an employee pursuant to his appointment, excluding per diems, bonuses, overtime pay, honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws.

(f) Likewise, **"Separation" or "Displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws,** as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the Act. (Emphasis supplied)

On February 28, 2003, all NPC employees, including the petitioners, were separated from the service. As a result, all the employees who held permanent positions at the NPC as of June 26, 2001 opted for and were paid the corresponding separation pay equivalent to one and a half months' salary per year of service. Nonetheless, in addition to the separation package mandated by the EPIRA, a number of NPC employees also claimed retirement benefits under CA No. 186,<sup>[6]</sup> as amended by RA No. 660<sup>[7]</sup> and RA No. 1616.<sup>[8]</sup> Under these laws, government employees who have rendered at least 20 years of service are entitled to a gratuity equivalent to one month's salary for every year of service for the first 20 years, one and a half months' salary for every year of service over 20 but below 30 years, and two months' salary for every year of service in excess of 30 years.<sup>[9]</sup>

The NPC, on the other hand, took the position that the grant of retirement benefits to displaced employees in addition to separation pay was inconsistent with the constitutional proscription on the grant of a double gratuity. Unable to amicably resolve this matter with its former employees, the NPC filed on September 18, 2003, a Petition for Declaratory Relief<sup>[10]</sup> against several parties,<sup>[11]</sup> including the petitioners, before the RTC of Quezon City, to obtain confirmation that RA No. 9136 did not specifically authorize NPC to grant retirement benefits in addition to separation pay.<sup>[12]</sup> The case was docketed as SCA No. Q-03-50681 and raffled to Branch 101 of said court.

After submission of the respondents' respective Answers and Comments,<sup>[13]</sup> the parties agreed that the court *a quo* would resolve the case based on the arguments raised in their memoranda<sup>[14]</sup> since only a question of law was involved.<sup>[15]</sup> In due course, the court *a quo* rendered the assailed Decision, finding that employees who received the separation benefit under RA No. 9136 are no longer entitled to retirement benefits:

The aforementioned law speaks of two (2) options for the employee to choose from, that is: (1) to receive separation pay and other benefits in accordance with existing laws, rules, and regulations or (2) to avail of the privileges provided under a separation plan (under R.A. 9136), which shall be one and one half months' salary for every year of service in the government.

Under Section 3(f) of Rule 33 of the Implementing Rules and Regulations of R.A. 9136, "separation or displacement refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules, and regulations nor has opted to retire under existing laws as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the act". Thus, it is clear that the receipt of benefits under the EPIRA law, by employees who opted to retire under such law bars the receipt of retirement benefits under R.A. 1616.

Moreover, Section 8 of Article IX-B of the 1987 Constitution prohibits the grant of both separation pay and retirement benefits. x x x

x x x x

In said constitutional provision, it is x x x clear that additional or indirect compensation is barred by law and only [allowed] when so specifically authorized by law. Furthermore, on the Private Respondents' contention that the second paragraph should be applied in their [case], the same will not hold water. This is so because "retirement benefits" [are] not synonymous to pension or gratuities as contemplated by law.

R.A. 9136 did not clearly and unequivocally authorize the payment of additional benefits to Private Respondents as the benefits referred to in such law should not be interpreted to include retirement benefits in addition to their separation pay. Separation from service due to [the] restructuring of the [electric] power industry should not be interpreted to mean "retirement" as both are different in every respect. The law specifically defines the meaning of "separation" by virtue of the restructuring. x x x

x x x x

Thus, the Respondent-Employees are not entitled to receive retirement benefits under Republic Act No. 1616 over and above the separation benefits they received under Republic Act No. 9136.<sup>[16]</sup>

Petitioners sought recourse from the assailed Decision directly before this court on a pure question of law. The Department of Budget and Management (DBM) submitted its Comment on June 30, 2005,<sup>[17]</sup> while the NPC, through the Office of the Solicitor General, filed its Comment on August 23, 2005.<sup>[18]</sup> Petitioners then filed their Consolidated Reply by registered mail on November 18, 2005.<sup>[19]</sup> After the parties filed their respective memoranda,<sup>[20]</sup> the case was

submitted for decision.

### ***Petitioners' arguments***

Before us, petitioners argue that:

- 1) The EPIRA does not bar the application of CA No. 186, as amended. Petitioners are therefore entitled to their retirement pay in addition to separation pay.
- 2) Petitioners have vested rights over their retirement benefits.
- 3) The payment of both retirement pay and separation pay does not constitute double compensation, as the Constitution provides that "pensions or gratuities shall not be considered as additional, double or indirect compensation".

### ***Respondents' arguments***

Respondents NPC and the DBM, on the other hand, maintain that:

- 1) Section 63 of RA No. 9136 and Section 3, Rule 33 of its Implementing Rules and Regulations do not authorize the grant of retirement benefits in addition to the separation pay already received. Rather, Section 63 requires separated employees to choose between a separation plan under existing laws or the separation package under the EPIRA.
- 2) The grant of both separation pay and retirement benefit amounts to double gratuity in direct contravention of the Constitution.
- 3) No law authorizes the payment of both separation pay and retirement benefits to petitioners.

### **Issue**

The sole issue in this case is whether or not NPC employees who were separated from the service because of the reorganization of the electric power industry and who received their separation pay under RA No. 9136 are still entitled to receive retirement benefits under CA No. 186, as amended.

### **Our Ruling**

We deny the petition and affirm the court *a quo's* Decision dated December 23, 2004 in SCA No. Q-03-50681.

*Absent clear and unequivocal statutory authority, the grant of both separation pay and retirement benefits violates the constitutional proscription on additional compensation.*