

## THIRD DIVISION

**[ G.R. No. 166377, November 28, 2008 ]**

**MA. ISABEL T. SANTOS, REPRESENTED BY ANTONIO P. SANTOS,  
PETITIONER, VS. SERVIER PHILIPPINES, INC. AND NATIONAL  
LABOR RELATIONS COMMISSION, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to set aside the Court of Appeals (CA) Decision,<sup>[1]</sup> dated August 12, 2004 and its Resolution<sup>[2]</sup> dated December 17, 2004, in CA-G.R. SP No. 75706.

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

Petitioner Ma. Isabel T. Santos was the Human Resource Manager of respondent Servier Philippines, Inc. since 1991 until her termination from service in 1999. On March 26 and 27, 1998, petitioner attended a meeting<sup>[3]</sup> of all human resource managers of respondent, held in Paris, France. Since the last day of the meeting coincided with the graduation of petitioner's only child, she arranged for a European vacation with her family right after the meeting. She, thus, filed a vacation leave effective March 30, 1998.<sup>[4]</sup>

On March 29, 1998, petitioner, together with her husband Antonio P. Santos, her son, and some friends, had dinner at *Leon des Bruxelles*, a Paris restaurant known for mussels<sup>[5]</sup> as their specialty. While having dinner, petitioner complained of stomach pain, then vomited. Eventually, she was brought to the hospital known as *Centre Chirurgical de L'Quest* where she fell into coma for 21 days; and later stayed at the Intensive Care Unit (ICU) for 52 days. The hospital found that the probable cause of her sudden attack was "alimentary allergy," as she had recently ingested a meal of mussels which resulted in a concomitant uticarial eruption.<sup>[6]</sup>

During the time that petitioner was confined at the hospital, her husband and son stayed with her in Paris. Petitioner's hospitalization expenses, as well as those of her husband and son, were paid by respondent.<sup>[7]</sup>

In June 1998, petitioner's attending physicians gave a prognosis of the former's condition; and, with the consent of her family, allowed her to go back to the Philippines for the continuation of her medical treatment. She was then confined at the St. Luke's Medical Center for rehabilitation.<sup>[8]</sup> During the period of petitioner's rehabilitation, respondent continued to pay the former's salaries; and to assist her in paying her hospital bills.

In a letter dated May 14, 1999, respondent informed the petitioner that the former

had requested the latter's physician to conduct a thorough physical and psychological evaluation of her condition, to determine her fitness to resume her work at the company. Petitioner's physician concluded that the former had not fully recovered mentally and physically. Hence, respondent was constrained to terminate petitioner's services effective August 31, 1999.<sup>[9]</sup>

As a consequence of petitioner's termination from employment, respondent offered a retirement package which consists of:

Retirement Plan	P 1,063,841.76
Benefits:	
Insurance Pension at P20,000.00/month for 60 months from company-sponsored group life policy:	P 1,200,000.00
Educational assistance:	P 465,000.00
Medical and Health Care:	P 200,000.00 <sup>[10]</sup>

Of the promised retirement benefits amounting to P1,063,841.76, only P701,454.89 was released to petitioner's husband, the balance<sup>[11]</sup> thereof was withheld allegedly for taxation purposes. Respondent also failed to give the other benefits listed above.<sup>[12]</sup>

Petitioner, represented by her husband, instituted the instant case for unpaid salaries; unpaid separation pay; unpaid balance of retirement package plus interest; insurance pension for permanent disability; educational assistance for her son; medical assistance; reimbursement of medical and rehabilitation expenses; moral, exemplary, and actual damages, plus attorney's fees. The case was docketed as NLRC-NCR (SOUTH) Case No. 30-06-02520-01.

On September 28, 2001, Labor Arbiter Aliman D. Mangandog rendered a Decision<sup>[13]</sup> dismissing petitioner's complaint. The Labor Arbiter stressed that respondent had been generous in giving financial assistance to the petitioner.<sup>[14]</sup> He likewise noted that there was a retirement plan for the benefit of the employees. In denying petitioner's claim for separation pay, the Labor Arbiter ratiocinated that the same had already been integrated in the retirement plan established by respondent. Thus, petitioner could no longer collect separation pay over and above her retirement benefits.<sup>[15]</sup> The arbiter refused to rule on the legality of the deductions made by respondent from petitioner's total retirement benefits for taxation purposes, as the issue was beyond the jurisdiction of the NLRC.<sup>[16]</sup> On the matter of educational assistance, the Labor Arbiter found that the same may be granted only upon the submission of a certificate of enrollment.<sup>[17]</sup> Lastly, as to petitioner's claim for damages and attorney's fees, the Labor Arbiter denied the same as the former's dismissal was not tainted with bad faith.<sup>[18]</sup>

On appeal to the National Labor Relations Commission (NLRC), the tribunal set aside the Labor Arbiter's decision, ruling that:

WHEREFORE, premises considered, Complainant's appeal is partly GRANTED. The Labor Arbiter's decision in the above-entitled case is hereby SET ASIDE. Respondent is ordered to pay Complainant's portion of her separation pay covering the following: 1) P200,000.00 for medical and health care from September 1999 to April 2001; and 2) P35,000.00 per year for her son's high school (second year to fourth year) education and P45,000.00 per semester for the latter's four-year college education, upon presentation of any applicable certificate of enrollment.

SO ORDERED.<sup>[19]</sup>

The NLRC emphasized that petitioner was not retired from the service pursuant to law, collective bargaining agreement (CBA) or other employment contract; rather, she was dismissed from employment due to a disease/disability under Article 284<sup>[20]</sup> of the Labor Code.<sup>[21]</sup> In view of her non-entitlement to retirement benefits, the amounts received by petitioner should then be treated as her separation pay.<sup>[22]</sup> Though not legally obliged to give the other benefits, *i.e.*, educational assistance, respondent volunteered to grant them, for humanitarian consideration. The NLRC therefore ordered the payment of the other benefits promised by the respondent.<sup>[23]</sup> Lastly, it sustained the denial of petitioner's claim for damages for the latter's failure to substantiate the same.<sup>[24]</sup>

Unsatisfied, petitioner elevated the matter to the Court of Appeals which affirmed the NLRC decision.<sup>[25]</sup>

Hence, the instant petition.

At the outset, the Court notes that initially, petitioner raised the issue of whether she was entitled to separation pay, retirement benefits, and damages. In support of her claim for separation pay, she cited Article 284 of the Labor Code, as amended. However, in coming to this Court *via* a petition for review on *certiorari*, she abandoned her original position and alleged that she was, in fact, not dismissed from employment based on the above provision. She argued that her situation could not be characterized as a disease; rather, she became disabled. In short, in her petition before us, she now changes her theory by saying that she is not entitled to separation pay but to retirement pay pursuant to Section 4,<sup>[26]</sup> Article V of the Retirement Plan, on disability retirement. She, thus, prayed for the full payment of her retirement benefits by giving back to her the amount deducted for taxation purposes.

In our Resolution<sup>[27]</sup> dated November 23, 2005 requiring the parties to submit their respective memoranda, we specifically stated:

No new issues may be raised by a party in the Memorandum and the issues raised in the pleadings but not included in the Memorandum shall be deemed waived or abandoned.

Being summations of the parties' previous pleadings, the Court may consider the Memoranda alone in deciding or resolving this petition.

Pursuant to the above resolution, any argument raised in her petition, but not raised in her Memorandum,<sup>[28]</sup> is deemed abandoned.<sup>[29]</sup> Hence, the only issue proper for determination is the propriety of deducting P362,386.87 from her total benefits, for taxation purposes. Nevertheless, in order to resolve the legality of the deduction, it is imperative that we settle, once and for all, the ground relied upon by respondent in terminating the services of the petitioner, as well as the nature of the benefits given to her after such termination. Only then can we decide whether the amount deducted by the respondent should be paid to the petitioner.

Respondent dismissed the petitioner from her employment based on Article 284 of the Labor Code, as amended, which reads:

#### Art. 284. DISEASE AS GROUND FOR TERMINATION

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

As she was dismissed on the abovementioned ground, the law gives the petitioner the right to demand separation pay. However, respondent established a retirement plan in favor of all its employees which specifically provides for "disability retirement," to wit:

#### Sec. 4. DISABILITY RETIREMENT

In the event that a Member is retired by the Company due to permanent total incapacity or disability, as determined by a competent physician appointed by the Company, his disability retirement benefit shall be the Full Member's Account Balance determined as of the last valuation date.

x x x.<sup>[30]</sup>

On the basis of the above-mentioned retirement plan, respondent offered the petitioner a retirement package which consists of retirement plan benefits, insurance pension, and educational assistance.<sup>[31]</sup> The amount of P1,063,841.76 represented the disability retirement benefit provided for in the plan; while the insurance pension was to be paid by their insurer; and the educational assistance was voluntarily undertaken by the respondent as a gesture of compassion to the petitioner.<sup>[32]</sup>

We have declared in *Aquino v. National Labor Relations Commission*<sup>[33]</sup> that the receipt of retirement benefits does not bar the retiree from receiving separation pay. Separation pay is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment. On the other hand, retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support, and are a form of reward for his loyalty and service to the employer.<sup>[34]</sup> Hence, they are not mutually exclusive. However, this is only true if there is no specific prohibition against the payment of both benefits in the retirement plan and/or in the Collective Bargaining Agreement (CBA).<sup>[35]</sup>