528 Phil. 603

SECOND DIVISION

[G.R. NO. 147993, July 21, 2006]

ENRIQUEZ SECURITY SERVICES, INC., PETITIONER, VICTOR A. CABOTAJE, RESPONDENT.

D E C I S I O N

CORONA, J.:

Sometime in January 1979, respondent Victor A. Cabotaje was employed as a security guard by Enriquez Security and Investigation Agency (ESIA). On November 13, 1985, petitioner Enriquez Security Services, Inc. (ESSI) was incorporated. Respondent continued to work as security guard in petitioner's agency.

On reaching the age of 60 in July 1997,[1] respondent applied for retirement.

Petitioner acknowledged that respondent was entitled to retirement benefits but opposed his claim that the computation of such benefits must be reckoned from January 1979 when he started working for ESIA. It claimed that the benefits must be computed only from November 13, 1985 when ESSI was incorporated.

Respondent consequently filed a complaint in the National Labor Relations Commission (NLRC) seeking the payment of retirement benefits under Republic Act No. (RA) 7641, otherwise known as the Retirement Pay Law.[2]

On January 15, 1999, labor arbiter Eduardo Carpio decided in respondent's favor:

> Complainant is entitled to retirement pay. This entitlement was not denied by respondents. xxx The computation of this benefits shall cover the entire period of his employment from January 1979 up to July 16, 1997 based on his latest monthly salary of P5,383.15 per the payroll sheet submitted by respondents. While respondents claim that respondent corporation was merely registered with the DOTC on November 13, 1985, they did not deny however that complainant was an employee of the then Enriquez Security and Investigation Agency, and that complainant's services with the said security agency up to the present respondent corporation was uninterrupted. The obligation of the new company involves not only to absorb the workers of the dissolved company, but also to include the length of service earned by the absorbed employee with their former employer as well. To rule otherwise would be manifestly less than fair, certainly less than just and equitable.
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> xxx xxx xxx
>
> WHEREFORE, judgment is hereby rendered ordering respondents to pay complainant the grand total amount of P228,581.00 representing his

retirement benefits and other money claims.

SO ORDERED.[3]

On appeal, the NLRC set aside the labor arbiter's award of one-month salary for every year of service for being excessive. It ruled that under RA 7641, respondent Cabotaje was entitled to retirement pay equivalent only to one-half month salary for every year of service. Thus:

> WHEREFORE, the assailed decision is hereby set aside and a new one entered ordering respondents to pay complainant the amount of P76,710.60 representing his retirement benefits.
>
> SO ORDERED.[4]

On March 15, 2000, the NLRC denied petitioner's motion for reconsideration.[5]

On May 25, 2000, petitioner filed a special civil action for certiorari[6] with the Court of Appeals.

On September 26, 2000, the appellate court affirmed the NLRC decision.[7] It also denied the motion for reconsideration on May 8, 2001.[8]

Hence, this petition for review on certiorari[9] on the following issues:

1. [w]hether or not the Retirement [Pay] Law has retroactive effect.

2. [w]hether the whole 5 days service incentive leave or just a portion thereof equivalent to 1/12 should be included in the ½ month salary for purposes of computing the retirement pay.

3. [w]hether or not the length of service of a retired employee in a dissolved company (his former employer) should be included in his length of service with his last employer for purposes of computing the retirement pay.[10]

We find no merit in the petition.

First. Petitioner's contention that RA 7641 cannot be applied retroactively has long been settled in the Guidelines for Effective Implementation of RA 7641 issued on October 24, 1996 by the Department of Labor and Employment. Paragraph B of the guidelines provides:

> In reckoning the length of service, the period of employment with the same employer before the effectivity date of the law on January 7, 1993 should be included.

Thus, in *Rufina Patis Factory v. Lucas, Sr.*,[11] we held:

> RA 7641 is undoubtedly a social legislation. The law has been enacted as a labor protection measure and as a curative statute that - absent a retirement plan devised by, an agreement with, or a voluntary grant