431 Phil. 510

FIRST DIVISION

[G.R. No. 141707, May 07, 2002]

CAYO G. GAMOGAMO, PETITIONER, VS. PNOC SHIPPING AND TRANSPORT CORP., RESPONDENT.

D E C I S I O N

DAVIDE JR., C.J.:

The pivotal issue raised in the petition in this case is whether, for the purpose of computing an employee's retirement pay, prior service rendered in a government agency can be tacked in and added to the creditable service later acquired in a government-owned and controlled corporation without original charter.

On 23 January 1963, Petitioner Cayo F. Gamogamo was first employed with the Department of Health (DOH) as Dental Aide. On 22 February 1967, he was promoted to the position of Dentist 1. He remained employed at the DOH for fourteen years until he resigned on 2 November 1977.[1]

On 9 November 1977, petitioner was hired as company dentist by Luzon Stevedoring Corporation (LUSTEVECO), a private domestic corporation.[2] Subsequently, respondent PNOC Shipping and Transport Corporation (hereafter Respondent) acquired and took over the shipping business of LUSTEVECO, and on 1 August 1979, petitioner was among those who opted to be absorbed by the Respondent.[3] Thus, he continued to work as company dentist. In a letter dated 1 August 1979, Respondent assumed without interruption petitioner's service credits with LUSTEVECO,[4] but it did not make reference to nor assumed petitioner's service credits with the DOH.

On 10 June 1993, then President Fidel V. Ramos issued a memorandum[5] approving the privatization of PNOC subsidiaries, including Respondent, pursuant to the provisions of Section III(B) of the Guidelines and Regulations to implement Executive Order No. 37.[6] Accordingly, Respondent implemented a Manpower Reduction Program to govern employees whose respective positions have been classified as redundant as a result of Respondent's decrease in operations and the downsizing of the organization due to lay-up and sale of its vessels pursuant to its direction towards privatization.[7] Under this program, retrenched employees shall receive a two-month pay for every year of service.

Sometime in 1995, petitioner requested to be included in the next retrenchment schedule. However, his request was turned down for the following reasons:[8]

1. As a company dentist he was holding a permanent position;

2. He was already due for mandatory retirement in April 1995 under his retirement plan (first day of the month following his 60th birthday which was on 7 March 1995).

Eventually, petitioner retired after serving the Respondent and LUSTEVECO for 17 years and 4 months upon reaching his 60th birthday, on 1 April 1995. He received a retirement pay of P512,524.15,[9] which is equivalent to one month pay for every year of service and other benefits.

On 30 August 1995, Admiral Carlito Y. Cunanan, Repondent's president, died of Dengue Fever and was forthwith replaced by Dr. Nemesio E. Prudente who assumed office in December 1995. The new president implemented significant cost-saving measures. In 1996, after petitioner's retirement, the cases of Dr. Rogelio T. Buena (company doctor) and Mrs. Luz C. Reyes (telephone operator), who were holding permanent/non-redundant positions but were willing to be retrenched under the program were brought to the attention of the new president who ordered that a study on the cost-effect of the retrenchment of these employees be conducted. After a thorough study, Respondent's Board of Directors recommended the approval of the retrenchment. These two employees were retrenched and paid a 2-month separation pay for every year of service under Respondent's Manpower Reduction Program.[10]

In view of the action taken by Respondent in the retrenchment of Dr. Buena and Mrs. Reyes, petitioner filed a complaint at the National Labor Relations Commission (NLRC) for the full payment of his retirement benefits. Petitioner argued that his service with the DOH should have been included in the computation of his years of service. Hence, with an accumulated service of 32 years he should have been paid a two-month pay for every year of service per the retirement plan and thus should have received at least P1,833,920.00.

The Labor Arbiter dismissed petitioner's complaint.[11] On appeal, however, the NLRC reversed the decision of the Labor Arbiter. In its decision[12] of 28 November 1997, the NLRC ruled:

> WHEREFORE, the Decision of the Labor Arbiter dated May 30, 1997 is hereby SET ASIDE and another judgment is hereby rendered to wit:
>
> (1) the government service of the complainant with the Department of Health numbering fourteen (14) years is hereby considered creditable service for purposes of computing his retirement benefits;
>
> (2) crediting his fourteen (14) years service with the Department of Health, together with his nearly eighteen (18) years of service with the respondent, complainant therefore has almost thirty-two (32) years service upon which his retirement benefits would be computed or based on;
>
> (3) complainant is entitled to the full payment of his retirement benefits pursuant to the respondent's

> Retirement Law or the retrenchment program (Manpower Reduction Program). In any case, he is entitled to two (2) months retirement/separation pay for every year of service.
>
> (4) all other claims are DISMISSED.
>
> SO ORDERED.

Respondent filed a motion for reconsideration but it was denied.[13]

Unsatisfied with the reversal, Respondent filed with the Court of Appeals a special civil action for *certiorari* which was docketed as CA-G.R. SP No. 51152. In its decision[14] of 8 November 1999, the Court of Appeals set aside the NLRC judgment and decreed:

> WHEREFORE, the petition is hereby GIVEN DUE COURSE and the writ prayed for GRANTED. Consequently, the Decision and Resolution of the National Labor Relations Commission (Second Division) dated November 28, 1997 and May 15, 1998, respectively, are hereby SET ASIDE AND NULLIFIED, without prejudice to private respondent Cayo F. Gamo-gamo's recovery of whatever benefits he may have been entitled to receive by reason of his fourteen (14) years of service with the Department of Health.
>
> No pronouncement as to costs.

His motion for reconsideration having been denied by the Court of Appeals,[15] petitioner filed with us the petition in the case at bar. Petitioner contends that: (1) his years of service with the DOH must be considered as creditable service for the purpose of computing his retirement pay; and (2) he was discriminated against in the application of the Manpower Reduction Program.[16]

Petitioner maintains that his government service with the DOH should be recognized and tacked in to his length of service with Respondent because LUSTEVECO, which was later bought by Respondent, and Respondent itself, were government-owned and controlled corporations and were, therefore, under the Civil Service Law. Prior to the separation of Respondent from the Civil Service by virtue of the 1987 Constitution, petitioner's length of service was considered continuous. The effectivity of the 1987 Constitution did not interrupt his continuity of service. He claims that he is supported by the opinion of 18 May 1993 of the Civil Service Commission in the case of *Petron Corporation*, where the Commission allegedly opined:

> … that all government services rendered by employees of the Petron prior to 1987 Constitution are considered creditable services for purposes of computation of retirement benefits. This must necessarily be so considering that in the event that Petron would consider only those services of an employee with Petron when it was excluded from the civil service coverage (that is after the 1987 Constitution), it would render nugatory his government agencies prior to his transfer to Petron. Hence, Petron or any other PNOC subsidiary has to include in its retirement

scheme or in its Collective Bargaining Agreement a provision of the inclusion of the other government services of its employees rendered outside Petron, otherwise, it would be prejudicial to the interest of the retireable employee concerned.

Petitioner asserts that with the tacking in of his 14 years of service with the DOH to his 17 years and 4 months service with LUSTEVECO and Respondent, he had 31 years and 4 months creditable service as basis for the computation of his retirement benefits. Thus, pursuant to Respondent's Manpower Reduction Program, he should have been paid two months pay for every year of his 31 years of service.

Petitioner likewise asserts that the principle of tacking is anchored on Republic Act No. 7699.[17]

Petitioner concludes that there was discrimination when his application for coverage under the Manpower Reduction Program was disapproved. His application was denied because he was holding a permanent position and that he was due for retirement. However, Respondent granted the application of Dr. Rogelio Buena, who was likewise holding a permanent position and was also about to retire. Petitioner was only given one-month pay for every year of service under the regular retirement plan while Dr. Buena was given a 2-month pay for every year of service under the Manpower Reduction Program.

In its Comment to the petition, Respondent maintains that although it is a government-owned and controlled corporation, it has no original charter. Hence, it is not within the coverage of the Civil Service Law. It cites the decision in *PNOC-EDC v. Leogardo,*[18] wherein we held that only corporations created by special charters are subject to the provisions of the Civil Service Law. Those without original charters are covered by the Labor Code. Respondent also asserts that R.A. No. 7699 is not applicable. Under this law an employee who has worked in both the private and public sectors and has been covered by both the Government Service Insurance System (GSIS) and the Social Security System (SSS), shall have his creditable services or contributions in both Systems credited to his service or contribution record in each of the Systems, which shall be summed up for purposes of old age, disability, survivorship and other benefits in case the covered member does not qualify for such benefits in either or both Systems without the *totalization*.

Respondent further contends that petitioner was not discriminated upon when his application under the Manpower Reduction Program was denied. At the time of his retirement in 1995, redundancy was the main consideration for qualification for the Manpower Reduction Program. Petitioner was not qualified. However in 1996, in order to solve the company's business reversals, the new president, Dr. Nemesio Prudente, found it necessary to implement cost-saving strategies, among which was the retrenchment of willing employees. Thus, the applications for retrenchment of Dr. Buena and Mrs. Reyes were approved. Respondent had the prerogative to amend its policies to meet the contingencies of the business for self-preservation.

We rule in the negative the issue of whether petitioner's service with the DOH should be included in the computation of his retirement benefits.

Respondent's Retirement scheme[19] pertinently provides: