

## **EIGHTEENTH DIVISION**

**[ CA G.R. CEB SP NO. 05465, February 28, 2014 ]**

**CHARITO SOCO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 7TH DIVISION AND CITY SAVINGS BANK, RESPONDENTS.**

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

**DIY, J.:**

Petitioner, by way of the instant petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, assails public respondent's May 31, 2010 Decision<sup>[1]</sup> declaring petitioner's termination from employment as legal, as well as its July 30, 2010 Resolution<sup>[2]</sup> denying petitioner's motion for reconsideration.<sup>[3]</sup>

The factual antecedents as culled from the records are as follows:

Petitioner was hired by private respondent City Savings Bank sometime in July 1977.

While she was still employed, petitioner was the Vice-President of the National Union of Bank Employees-City Savings Bank Chapter (NUBE-CSB, for brevity), the bargaining representative of private respondent's rank-and-file employees. Private respondent then had an existing Collective Bargaining Agreement (CBA) with NUBE-CSB covering a five-year period from January 1, 2005 to December 31, 2009.

In 2007, when the subsisting CBA was on its last two years of effectivity, private respondent and NUBE-CSB entered into negotiations anent the provisions of said CBA. Included among the matters for negotiation was private respondent's proposal to include a provision on compulsory retirement of the rank-and-file employees upon attaining the age of sixty (60) years old or upon completion of thirty (30) years of service, whichever comes first. The negotiations unfortunately ended in deadlock. On December 20, 2008, the union filed a Notice of Preventive Mediation with the National Conciliation and Mediation Board (NCMB). The notice was subsequently converted into a Notice of Strike on April 25, 2008 on the ground of deadlock in collective bargaining. On June 6, 2008, the Office of the Secretary of Labor and Employment assumed jurisdiction over the CBA deadlock.

On November 20, 2008, petitioner was served with a notice informing her that she would be compulsorily retired effective December 31, 2008 for having rendered thirty (30) years of service. Petitioner was then 52 years old.<sup>[4]</sup> The union wrote to private respondent in petitioner's behalf requesting that the forced retirement be halted. The union argued that the early retirement was not justified since the existing CBA does not provide for it and in fact, the matter was among the unresolved issues due to the deadlock in the CBA negotiations. The union added that in the absence of any CBA provision to such effect, it is Article 287 of the Labor

Code, as amended by Republic Act No. 7641, setting the retirement age at sixty-five (65) years that should apply. Under such provisions, petitioner cannot as yet be retired.<sup>[5]</sup>

In a letter-reply dated December 23, 2008,<sup>[6]</sup> private respondent denied the union's request and proceeded with the compulsory retirement of petitioner. At the time of the severance of petitioner's employment, she was occupying the position of Loan Staff and was receiving a monthly salary of P21,510.00.

On June 3, 2009, petitioner filed a complaint for Illegal Dismissal<sup>[7]</sup> with the Regional Arbitration Branch No. VII of Cebu City praying for reinstatement with payment of backwages, damages, and attorney's fees.

Private respondent for its part justified petitioner's early retirement based on the City Savings Bank Employees Retirement Plan (ERP, for brevity), which was allegedly formulated by its Board of Directors. Said ERP has allegedly been observed and implemented since January 1, 1974. The retirement plan provided for the retirement of an employee of City Savings Bank upon reaching the age of sixty (60) or rendition of thirty (30) years of service, whichever comes first. Private respondent claimed that its representatives had informed petitioner of such policy and that she was already up for compulsory retirement on account of having rendered service for thirty (30) years. Private respondent likewise admitted having received the union's letter requesting that petitioner's early retirement be halted and notwithstanding the same, private respondent nevertheless proceeded with petitioner's retirement. Private respondent further disclosed that it was under the impression that petitioner and the union would no longer contest the company policy as they appeared to have acquiesced to the implementation of the ERP. According to private respondent, petitioner further assented to her compulsory retirement since she accepted her last pay and retirement benefits, and executed two quitclaims, waivers, and releases. Private respondent further pointed out that it was even petitioner who caused the preparation of the quitclaims, and personally brought the same to the Notary Public.

On December 7, 2009, Executive Labor Arbiter Jose G. Gutierrez rendered a decision declaring petitioner's termination from employment as constitutive of illegal dismissal the same having been effected in the guise of early retirement. It then directed private respondent to reinstate petitioner without loss of seniority rights and privileges and to pay petitioner her backwages, less the amount petitioner already received.<sup>[8]</sup>

Private respondent elevated the matter before public respondent. On May 31, 2010, public respondent rendered the appealed decision reversing the decision of the Executive Labor Arbiter. It held that the Labor Code sanctions the early retirement of employees not only on the basis of the provisions of an existing CBA but upon any applicable employment contract as well. Public respondent thus relied on the ERP and held that petitioner's compulsory retirement was justified. Petitioner moved for reconsideration but the same proved unavailing. Hence, the instant petition anchored on the following –

## VII. GROUND FOR THE ALLOWANCE OF THE PETITION

Public respondent gravely abused its discretion and committed reversible error in reversing the decision of the Executive Labor Arbiter and declaring that the compulsory retirement of petitioner, who was only 52 years of age, was valid.<sup>[9]</sup>

Petitioner contends that public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed the decision of the Executive Labor Arbiter and ruled that petitioner's compulsory retirement was justified under the ERP. Petitioner asseverates that the retirement of private respondent's rank-and-file employees should be governed by the provisions of its existing CBA. Since the existing CBA does not provide for the retirement of the rank-and-file employees and the provisions of the ERP affecting retirement have likewise not been incorporated or made part of the CBA, petitioner argues that it is Article 287 of the Labor Code, as amended by Republic Act No. 7641, which should apply. Petitioner further explains that the legally mandated compulsory retirement is set at sixty-five (65) years of age while the minimum age for optional retirement is sixty (60) years of age. The prerogative of optional retirement furthermore rests with the employee. Consequently, petitioner importunes that retiring her at the age of fifty-two (52) notwithstanding rendition of thirty (30) years of service to private respondent was without legal basis. Petitioner further avers that her acceptance of benefits for which quitclaims had been executed does not preclude her from questioning the legality of her dismissal.

We reverse.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.<sup>[10]</sup>

In *Universal Robina Sugar Milling Corporation, et al. v. Caballada, et al.*,<sup>[11]</sup> the Supreme Court added:

**The age of retirement is primarily determined by the existing agreement between the employer and the employees. However, in the absence of such agreement, the retirement age shall be fixed by law. Under Art. 287 of the Labor Code as amended, the legally mandated age for compulsory retirement is 65 years, while the set minimum age for optional retirement is 60 years.**

(Emphasis supplied)

An employer is, however, free to impose a retirement age earlier than what the law mandates. A catena of cases has upheld such privilege as a valid exercise of management prerogative.<sup>[12]</sup> It is stressed that the employees' retirement benefits under any CBA and other agreements should not be less than those provided by law.<sup>[13]</sup>

In *Cercado v. UNIPROM, Inc.*,<sup>[14]</sup> the Supreme Court, however, elucidated that in the cases upholding the right of the employer to retire its employees below the ages provided by law, the retirement plans were the result of negotiations and eventual agreement between the employer and the employees. The retirement plans in these cases were either embodied in a CBA, or established after consultations and