

## EN BANC

[ G.R. No. 205813, January 10, 2018 ]

**ALFREDO F. LAYA, JR., PETITIONER, VS. PHILIPPINE VETERANS BANK AND RICARDO A. BALBIDO, JR., RESPONDENTS.**

### DECISION

#### **BERSAMIN, J.:**

An employee in the private sector who did not expressly agree to the terms of an early retirement plan cannot be separated from the service before he reaches the age of 65 years. The employer who retires the employee prematurely is guilty of illegal dismissal, and is liable to pay his backwages and to reinstate him without loss of seniority and other benefits, unless the employee has meanwhile reached the mandatory retirement age under the Labor Code, in which case he is entitled to separation pay pursuant to the terms of the plan, with legal interest on the backwages and separation pay reckoned from the finality of the decision.

#### **The Case**

The petitioner seeks the review and reversal of the adverse decision promulgated on August 31, 2012,<sup>[1]</sup> whereby the Court of Appeals (CA) upheld the ruling of the National Labor Relations Commission (NLRC) dated June 21, 2010 affirming the dismissal of his complaint for illegal dismissal by the Labor Arbiter.

#### **Antecedents**

The CA summarized the factual antecedents as follows:

On 1 June 2001, petitioner Alfredo F. Laya, Jr. was hired by respondent Philippine Veterans Bank as its Chief Legal Counsel with a rank of Vice President. Among others, the terms and conditions of his appointment are as follows; (sic)

"3. As a Senior Officer of the Bank, you are entitled to the following executive ben[e]fits:

- Car Plan limit of P700,000.00, without equity on your part; a gasoline subsidy of 300 liters per month and subject further to The Car Plan Policy of the Bank.
- Membership in a professional organization in relation to your profession and/or assigned functions in the Bank.
- Membership in the Provident Fund Program/Retirement Program.

- Entitlement to any and all other basic and fringe benefits enjoyed by the officers; core of the Bank relative to Insurance covers, Healthcare Insurance, vacation and sick leaves, among others."

On the other hand, private respondent has its Retirement Plan Rules and Regulations which provides among others, as follows:

#### ARTICLE IV

##### RETIREMENT DATES

Section 1. Normal Retirement. The normal retirement date of a Member shall be the first day of the month coincident with or next following his attainment of age 60.

Section 2. Early Retirement. A Member may, with the approval of the Board of Directors, retire early on the first day of any month coincident with or following his attainment of age 50 and completion of at least 10 years of Credited Service.

Section 3. Late Retirement. A Member may, with the approval of the Board of Directors, extend his service beyond his normal retirement date but not beyond age 65. Such deferred retirement shall be on a case by case and yearly extension basis.

On 14 June, 2007, petitioner was informed thru letter by the private respondent of his retirement effective on 1 July 2007.

On 21 June 2007 petitioner wrote Col. Emmanuel V. De Ocampo, Chairman of respondent bank, requesting for an extension of his tenure for two (2) more years pursuant to the Bank's Retirement Plan (Late Retirement).

On 26 June 2008, private respondent issued a memorandum directing the petitioner to continue to discharge his official duties and functions as chief legal counsel pending his request. However on 18 July 2007, petitioner was informed thru its president Ricardo A Balbido Jr. that his request for an extension of tenure was denied.<sup>[2]</sup>

According to the petitioner, he was made aware of the retirement plan of respondent Philippine Veterans Bank (PVB) only after he had long been employed and was shown a photocopy of the Retirement Plan Rules and Regulations,<sup>[3]</sup> but PVB's President Ricardo A. Balbido, Jr. had told him then that his request for extension of his service would be denied "to avoid precedence."<sup>[4]</sup> He sought the reconsideration of the denial of the request for the extension of his retirement,<sup>[5]</sup> but PVB certified his retirement from the service as of July 1, 2007 on March 6, 2008.<sup>[6]</sup>

On December 24, 2008, the petitioner filed his complaint for illegal dismissal against PVB and Balbido, Jr. in the NLRC to protest his unexpected retirement.<sup>[7]</sup>

## **Ruling of the Labor Arbiter**

On August 28, 2009, the Labor Arbiter rendered a decision dismissing the complaint for illegal dismissal,<sup>[8]</sup> to wit:

WHEREFORE, the charge of illegal dismissal and money claims raised by the complainant, together with the counterclaim raised by the respondents are DISMISSED for lack of merit but by reason of a flaw in the denial of complainant's application for term extension as discussed above, the respondent bank is hereby ordered to pay the complainant the amount of 200,000.00 by way of reasonable (sic) indemnity.

Ricardo Balbido, Jr., is hereby dropped as party respondent.

SO ORDERED.<sup>[9]</sup>

After his motion for reconsideration was denied,<sup>[10]</sup> the petitioner appealed to the NLRC.<sup>[11]</sup>

## **Ruling of the NLRC**

On June 21, 2010, the NLRC affirmed the dismissal of the petitioner's complaint, and deleted the indemnity imposed by the Labor Arbiter,<sup>[12]</sup> viz.:

WHEREFORE, premises considered the appeal of the complainant is hereby DENIED for lack of merit. The appeal of respondents is GRANTED. The Decision below is hereby AFFIRMED with MODIFICATION, deleting the award of indemnity to complainant.

SO ORDERED.<sup>[13]</sup>

The petitioner assailed the ruling to the CA through *certiorari*.

## **Ruling of the CA**

On August 31, 2012, the CA promulgated the now assailed decision,<sup>[14]</sup> holding that the petitioner's acceptance of his appointment as Chief Legal Officer of PVB signified his conformity to the retirement program;<sup>[15]</sup> that he could not have been unaware of the retirement program which had been in effect since January 1, 1996;<sup>[16]</sup> that the lowering of the retirement age through the retirement plan was a recognized exception under the provisions of Article 287 of the *Labor Code*;<sup>[17]</sup> that considering his failure to adduce evidence showing that PVB had acted maliciously in applying the provisions of the retirement plan to him and in denying his request for the extension of his service, PVB's implementation of the retirement plan was a valid exercise of its management prerogative.<sup>[18]</sup>

The CA denied the petitioner's motion for reconsideration on February 8, 2013.<sup>[19]</sup>

On April 8, 2013, the Court (First Division) denied the petition for review on *certiorari*.<sup>[20]</sup> In his motion for reconsideration, the petitioner not only prayed for

the reconsideration of the denial but also sought the referral of his petition to the Court *En Banc*,<sup>[21]</sup> arguing that the CA and the NLRC had erroneously applied laws and legal principles intended for corporations in the private sector to a public instrumentality like PVB;<sup>[22]</sup> and that to allow the adverse rulings to stand would be to condone the creation of a private corporation by Congress other than by a general law on incorporation.<sup>[23]</sup>

In its resolution promulgated on August 28, 2013, the Court (First Division) denied the petitioner's motion for reconsideration, as well as his prayer to refer the case to the Court *En Banc*.<sup>[24]</sup> The entry of judgment was issued on December 6, 2013.<sup>[25]</sup>

The petitioner filed a second motion for reconsideration on December 18, 2013,<sup>[26]</sup> whereby he expounded on the issues he was raising in his first motion for reconsideration. He urged that the Court should find and declare PVB as a public instrumentality; that the law applicable to his case was Presidential Decree No. 1146 (GSIS Law), which stipulated the compulsory retirement age of 65 years;<sup>[27]</sup> and that the compulsory retirement age for civil servants could not be "contracted out."<sup>[28]</sup>

On March 25, 2014, the Court *En Banc* accepted the referral of this case by the First Division.<sup>[29]</sup>

On April 22, 2014, the Court *En Banc* required PVB and the Office of the Solicitor General (OSG) to file their comments on the petitioner's second motion for reconsideration.<sup>[30]</sup>

The comment of PVB poses several challenges to the petition.

In support of its first challenge, PVB contends that the Court should not have accepted the referral of the case to the *Banc* because the First Division had already denied with finality the petitioner's first motion for reconsideration, as well as his motion to refer the case to the *Banc*;<sup>[31]</sup> that the Court *En Banc*'s acceptance of the case was in violation of the principle of immutability of final judgments as well as of Section 3, Rule 15 of the *Internal Rules of the Supreme Court*<sup>[32]</sup> to the effect that a second motion for reconsideration could be allowed only "before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration;"<sup>[33]</sup> and that the First Division had correctly denied the petition for review because the issues raised therein were factual matters that this mode of appeal could not review and pass upon.<sup>[34]</sup>

As its second challenge, PVB demurrs to the propriety of the petitioner's attack on its corporate existence. It submits that he should not be allowed to pose such attack for the first time in this appeal;<sup>[35]</sup> that his argument was also an impermissible collateral attack on the constitutionality of Republic Act No. 3518 and Republic Act No. 7169;<sup>[36]</sup> and that his seeking a declaration of PVB as a public institution "partakes the nature of a petition for declaratory relief which is an action beyond the original jurisdiction of the Honorable Court."<sup>[37]</sup>

Nevertheless, PVB maintains that it is not a public or government entity for several

reasons, namely: (1) the Government does not own a single share in it;<sup>[38]</sup> (2) the Government has no appointee or representative in the Board of Directors, and is not involved in its management;<sup>[39]</sup> and (3) it does not administer government funds.<sup>[40]</sup>

PVB insists that its creation as a private bank with a special charter does not in any way violate Section 16, Article XII of the Constitution,<sup>[41]</sup> explaining:

Firstly, the mischief which the constitutional provision seeks to prevent, i.e., *giving certain individuals, families or groups special privileges denied to other citizens*, will not be present insofar as the Bank is concerned. As this Honorable Court observed in Philippine Veterans Bank Employees Union-NUBE vs. Philippine Veterans Bank -

*These stockholdings (of the veterans, widows, orphans or compulsory heirs) do not enjoy any special immunity over and above shares of stock in any other corporation, which are always subject to the vicissitudes of business. Their value may appreciate or decline or the stocks may become worthless altogether. Like any other property, they do not have a fixed but a fluctuating price. Certainly, the mere acceptance of these shares of stock by the petitioners did not create any legal assurance from the Government that their original value would be preserved and that the owners could not be deprived of such property under any circumstance no matter how justified.*

Secondly, the obvious legislative intent is "to give meaning and realization to the constitutional mandate to provide immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans" Article XVI, Section 7 of the Constitution states:

*Section 7. The State shall provide immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans. Funds shall be provided therefor and due consideration shall be given them in the disposition of agricultural lands of the public domain and, in appropriate cases, in the utilization of natural resources.*

The creation of Veterans Bank through Republic Act Nos. 3518 and 7169 should therefore be taken in conjunction and harmonized with Section 16, Article XII of the Constitution. The predilection of the said Republic Acts towards the welfare of the veterans, their widows, orphans or compulsory heirs is supported by no less than a constitutional provision. That Republic Act Nos. 3518 and 7169 do not fall within the proscription against the creation of private corporations is readily apparent from the fact that in both laws, the intendment of the legislature is that Veterans Bank will eventually be operated, managed and exist under the general laws, i.e., Corporation Code and General Banking Act. The mere circumstance that the charter was granted directly by Congress does not signify that only Congress can modify or abrogate it by another