701 Phil. 697

# SECOND DIVISION

# [ G.R. No. 199338, January 21, 2013 ]

## ELEAZAR S. PADILLO,+ PETITIONER, VS. RURAL BANK OF NABUNTURAN, INC. AND MARK S. OROPEZA, RESPONDENTS.

## D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is a Petition for Review on *Certiorari*[1] assailing the June 28, 2011 Decision[2] and October 27, 2011 Resolution[3] of the Cagayan de Oro City Court of Appeals (CA) in CA-G.R. SP No. 03669-MIN which revoked and set aside the National Labor Relations Commission's (NLRC's) Resolutions dated December 29, 2009[4] and March 31, 2010[5] and reinstated the Labor Arbiter's (LA's) Decision dated March 13, 2009[6] with modification.

### The Facts

On October 1, 1977, petitioner, the late Eleazar Padillo (Padillo), was employed by respondent Rural Bank of Nabunturan, Inc. (Bank) as its SA Bookkeeper. Due to liquidity problems which arose sometime in 2003, the Bank took out retirement/insurance plans with Philippine American Life and General Insurance Company (Philam Life) for all its employees in anticipation of its possible closure and the concomitant severance of its personnel. In this regard, the Bank procured Philam Plan Certificate of Full Payment No. 88204, Plan Type 02FP10SC, Agreement No. PP98013771 (Philam Life Plan) in favor of Padillo for a benefit amount of P100,000.00 and which was set to mature on July 11, 2009.[7]

On October 14, 2004, respondent Mark S. Oropeza (Oropeza), the President of the Bank, bought majority shares of stock in the Bank and took over its management which brought about its gradual rehabilitation. The Bank's finances improved and eventually, its liquidity was regained.[8]

During the latter part of 2007, Padillo suffered a mild stroke due to hypertension which consequently impaired his ability to effectively pursue his work. In particular, he was diagnosed with Hypertension S/P CVA (Cerebrovascular Accident) with short term memory loss, the nature of which had been classified as a total disability.[9] On September 10, 2007, he wrote a letter addressed to respondent Oropeza expressing his intention to avail of an early retirement package. Despite several follow-ups, his request remained unheeded.

On October 3, 2007, Padillo was separated from employment due to his poor and failing health as reflected in a Certification dated December 4, 2007 issued by the Bank. Not having received his claimed retirement benefits, Padillo filed on September 23, 2008 with the NLRC Regional Arbitration Branch No. XI of Davao City

a complaint for the recovery of unpaid retirement benefits. He asserted, among others, that the Bank had adopted a policy of granting its aging employees early retirement packages, pointing out that one of his co-employees, Nenita Lusan (Lusan), was accorded retirement benefits in the amount of P348,672.72[10] when she retired at the age of only fifty-three (53). The Bank and Oropeza (respondents) countered that the claim of Padillo for retirement benefits was not favorably acted upon for lack of any basis to grant the same.[11]

**The LA Ruling**

On March 13, 2009, the LA issued a Decision[12] dismissing Padillo's complaint but directed the Bank to pay him the amount of P100,000.00 as financial assistance, treated as an advance from the amounts receivable under the Philam Life Plan.[13] It found Padillo disqualified to receive any benefits under Article 300 (formerly, Article 287) of the Labor Code of the Philippines (Labor Code)[14] as he was only fifty-five (55) years old when he resigned, while the law specifically provides for an optional retirement age of sixty (60) and compulsory retirement age of sixty-five (65). Dissatisfied with the LA's ruling, Padillo elevated the matter to the NLRC.

**The NLRC Ruling**

On December 29, 2009, the NLRC's Fifth Division reversed and set aside the LA's ruling and ordered respondents to pay Padillo the amount of P164,903.70 as separation pay, on top of the P100,000.00 Philam Life Plan benefit.[15] Relying on the case of *Abaquin Security and Detective Agency, Inc. v. Atienza (Abaquin)*,[16] the NLRC applied the Labor Code provision on termination on the ground of disease – particularly, Article 297 thereof (formerly, Article 323) – holding that while Padillo did resign, he did so only because of his poor health condition.[17] Respondents moved for reconsideration but the same was denied by the NLRC in its Resolution dated March 31, 2010.[18] Aggrieved, respondents filed a petition for *certiorari* with the CA.

**The CA Ruling**

On June 28, 2011, the CA granted respondents' petition for *certiorari* and rendered a decision setting aside the NLRC's December 29, 2009 and March 31, 2010 Resolutions, thereby reinstating the LA's March 13, 2009 Decision but with modification. It directed the respondents to pay Padillo the amount of P50,000.00 as financial assistance exclusive of the P100,000.00 Philam Life Plan benefit which already matured on July 11, 2009.

The CA held that Padillo could not, absent any agreement with the Bank, receive any retirement benefits pursuant to Article 300 of the Labor Code considering that he was only fifty-five (55) years old when he retired.[19] It likewise found the evidence insufficient to prove that the Bank has an existing company policy of granting retirement benefits to its aging employees. Finally, citing the case of *Villaruel v. Yeo Han Guan* (*Villaruel*),[20] it pronounced that separation pay on the ground of disease under Article 297 of the Labor Code should not be given to Padillo because he was the one who initiated the severance of his employment and that even before September 10, 2007, he already stopped working due to his poor and failing health.

[21]

Nonetheless, Padillo was still awarded the amount of P50,000.00 as financial assistance, in addition to the benefits accruing under the Philam Life Plan, considering his twenty-nine (29) years of service with no derogatory record and that he was severed not by reason of any infraction on his part but because of his failing physical condition.[22]

Displeased with the CA's ruling, Padillo (now substituted by his legal heirs due to his death on February 24, 2012) filed the instant petition contending that the CA erred when it: (a) deviated from the factual findings of the NLRC; (b) misapplied the case of *Villaruel* vis-à-vis the factual antecedents of this case; (c) drastically reduced the computation of financial assistance awarded by the NLRC; (d) failed to rule on the consequences of respondents' bad faith; and (e) reversed and set aside the NLRC's December 29, 2009 Resolution.[23]

**The Ruling of the Court**

The petition is partly meritorious.

At the outset, it must be maintained that the Labor Code provision on termination on the ground of disease under Article 297[24] does not apply in this case, considering that it was the petitioner and not the Bank who severed the employment relations. As borne from the records, the clear import of Padillo's September 10, 2007 letter[25] and the fact that he stopped working before the foregoing date and never reported for work even thereafter show that it was Padillo who voluntarily retired and that he was not terminated by the Bank.

As held in *Villaruel*,[26] a precedent which the CA correctly applied, Article 297 of the Labor Code contemplates a situation where the employer, and not the employee, initiates the termination of employment on the ground of the latter's disease or sickness, *viz*:

> A plain reading of the [Article 297 of the Labor Code] **clearly presupposes that it is the employer who terminates the services of the employee 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. It does not contemplate a situation where it is the employee who severs his or her employment ties**. This is precisely the reason why Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, directs that an employer shall not terminate the services of the employee unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. (Emphasis, underscoring and words in brackets supplied)

Thus, given the inapplicability of Article 297 of the Labor Code to the case at bar, it

necessarily follows that petitioners' claim for separation pay anchored on such provision must be denied.

Further, it is noteworthy to point out that the NLRC's application of *Abaquin*[27] was gravely misplaced considering its dissimilar factual milieu with the present case.

To elucidate, a careful reading of *Abaquin* shows that the Court merely awarded termination pay on the ground of disease in favor of security guard[28] Antonio Jose because he belonged to a "special class of employees x x x deprived of the right to ventilate demands collectively."[29] Thus, notwithstanding the fact that it was Antonio Jose who voluntarily resigned because of his sickness and it was not the security agency which terminated his employment, the Court held that Jose "deserve[d] the full measure of the law's benevolence" and still granted him separation pay because of his situation, particularly, the fact that he could not have organized with other employees belonging to the same class for the purpose of bargaining with their employer for greater benefits on account of the prohibition under the old law.

In this case, it cannot be said that Padillo belonged to the same class of employees prohibited to self-organize which, at present, consist of: (1) managerial employees; [30] and (2) confidential employees who assist persons who formulate, determine, and effectuate management policies in the field of labor relations.[31] Therefore, absent this equitable peculiarity, termination pay on the ground of disease under Article 297 of the Labor Code and the Court's ruling in *Abaquin* should not be applied.

What remains applicable, however, is the Labor Code provision on retirement. In particular, Article 300 of the Labor Code as amended by Republic Act Nos. 7641[32] and 8558[33] partly provides:

> Art. 300. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.
>
> **In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more**, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, **may retire and shall be entitled to retirement pay** equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

> Unless the parties provide for broader inclusions, the term one half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves. (Emphasis and underscoring supplied)

Simply stated, in the absence of any applicable agreement, an employee must (1) retire when he is at least sixty (60) years of age and (2) serve at least (5) years in the company to entitle him/her to a retirement benefit of at least one-half (1/2) month salary for every year of service, with a fraction of at least six (6) months being considered as one whole year. Notably, these age and tenure requirements are cumulative and non-compliance with one negates the employee's entitlement to the retirement benefits under Article 300 of the Labor Code altogether.

In this case, it is undisputed that there exists no retirement plan, collective bargaining agreement or any other equivalent contract between the parties which set out the terms and condition for the retirement of employees, with the sole exception of the Philam Life Plan which premiums had already been paid by the Bank.

Neither was it proven that there exists an established company policy of giving early retirement packages to the Bank's aging employees. In the case of *Metropolitan Bank and Trust Company v. National Labor Relations Commission*, it has been pronounced that to be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate.[34] In this relation, petitioners' bare allegation of the solitary case of Lusan cannot – assuming such fact to be true – sufficiently establish that the Bank's grant of an early retirement package to her (Lusan) evolved into an established company practice precisely because of the palpable lack of the element of consistency. As such, petitioners' reliance on the Lusan incident cannot bolster their claim.

All told, in the absence of any applicable contract or any evolved company policy, Padillo should have met the age and tenure requirements set forth under Article 300 of the Labor Code to be entitled to the retirement benefits provided therein. Unfortunately, while Padillo was able to comply with the five (5) year tenure requirement – as he served for twenty-nine (29) years – he, however, fell short with respect to the sixty (60) year age requirement given that he was only fifty-five (55) years old when he retired. Therefore, without prejudice to the proceeds due under the Philam Life Plan, petitioners' claim for retirement benefits must be denied.

Nevertheless, the Court concurs with the CA that financial assistance should be awarded but at an increased amount. With a veritable understanding that the award of financial assistance is usually the final refuge of the laborer, considering as well the supervening length of time which had sadly overtaken the point of Padillo's death – an employee who had devoted twenty-nine (29) years of dedicated service to the Bank – the Court, in light of the dictates of social justice, holds that the CA's financial assistance award should be increased from P50,000.00 to P75,000.00, still exclusive of the P100,000.00 benefit receivable by the petitioners under the Philam Life Plan which remains undisputed.