461 Phil. 720

THIRD DIVISION

[G.R. No. 144483, November 19, 2003]

STA. CATALINA COLLEGE AND SR. LORETA ORANZA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND HILARIA G. TERCERO, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

From the April 28, 2000 decision of the Court of Appeals (CA) [1] affirming that of the National Labor Relations Commission (NLRC) awarding retirement benefits in the amount of P85,287.72 to private respondent Hilaria G. Tercero (Hilaria), petitioners Sta. Catalina College and its former directress Sr. Loreta Oranza come to this Court on a petition for review on *certiorari*.

In June 1955, Hilaria was hired as an elementary school teacher at the Sta. Catalina College (petitioner school) in San Antonio, Biñan, Laguna. In 1970, she applied for and was granted a one year leave of absence without pay on account of the illness of her mother. After the expiration in 1971 of her leave of absence, she had not been heard from by petitioner school.

In the meantime, she was employed as a teacher at the San Pedro Parochial School during school year 1980-1981 and at the Liceo de San Pedro, Biñan, Laguna during school year 1981-1982.

In 1982, she applied anew[2] at petitioner school which hired her with a monthly salary of P6,567.95.[3]

On March 22, 1997, during the 51st Commencement Exercises of petitioner school, Hilaria was awarded a Plaque of Appreciation for thirty years of service and P12,000.00 as gratuity pay.

On May 31, 1997, Hilaria reached the compulsory retirement age of 65. Retiring pursuant to Article 287 of the Labor Code, as amended by Republic Act 7641, petitioner school pegged her retirement benefits at P59,038.35, [4] computed on the basis of fifteen years of service from 1982 to 1997. Her service from 1955 to 1970 was excluded in the computation, petitioner school having asserted that she had, in 1971, abandoned her employment.

From the P59,038.35 retirement benefits was deducted the amount of P28,853.09[5] representing reimbursement of the employer's contribution to her retirement benefits under the Private Education Retirement Annuity Association (PERAA) which Hilaria had already received. Deducted too was the amount of P12,000.00 representing the gratuity pay which was given to her. The remaining balance of the

retirement benefits due her thus amounted to P18,185.26.[6]

Hilaria insisted, however, that her retirement benefits should be computed on the basis of her thirty years of service, inclusive of the period from 1955 to 1970; and that the gratuity pay earlier given to her should not be deducted therefrom. She thus concluded that she was entitled to P190,539.90, computed as follows:

Retirement Benefits = ½ month salary for every year of service

One-half month salary
= (15 days x latest salary per day) + (5 days leave x latest salary per day) + ($^{1}/_{12}$ of 13th month pay)
= P4,512.30 + P1,504.10 + P547.33
= P6,563.73

Retirement Pay = number of years in service x one-half month salary
= 15 years x P6,580.43
= P98,455.95

The parties having failed to agree on how the retirement benefits should be computed, Hilaria filed a complaint[8] before the NLRC Regional Arbitration, Branch No. IV against petitioner school and/or petitioner Sr. Loreta Oranza for non-payment of retirement benefits. The complaint was docketed as NLRC Case No. RAB-IV-3-9860.

By Decision of October 30, 1998, Labor Arbiter Pedro C. Ramos upheld petitioners' position, disposing as follows:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents to pay the complainant the amount of P18,185.26 only as the differential of her retirement benefits.
>
> SO ORDERED.[9]

On appeal, the NLRC, by Decision of April 27, 1999, set aside the Labor Arbiter's decision and disposed as follows:

> WHEREFORE, on account of the foregoing, the judgment a quo is SET ASIDE.
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> Respondent-appellee is hereby ordered to pay the total amount of P85,287.72 computed as follows: P3,935.89 (total computation of the retirement components) MULTIPLIED by 29 (number of years in service) EQUALS P114,140.81 (total retirement package) LESS P28,287.72 (representing respondent-appellee's contribution with the PERAA proven to have already been received by complainant-appellant). However, the gratuity pay earlier already given shall not be deducted from the retirement package.
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> SO ORDERED. [10]

Not satisfied with the NLRC decision, petitioners brought the case on *certiorari*[11] to the CA which, by the assailed decision, dismissed it, holding that petitioners failed to prove that Hilaria had abandoned her position in 1970, as petitioner school even gave her a Plaque of Appreciation for thirty years of service "precisely because of her thirty year continuous service," and that petitioner school never sent notice to her dismissing her, hence, the employer-employee relationship was not severed and, therefore, her services for petitioner school during the period from 1955-1970 should be credited in the computation of her retirement benefits. Held the CA:

> x x x [D]espite the absence of the Private Respondent for a period of eleven (11) years or so from 1970 to 1982 and her employment with the Liceo de San Pedro and San Pedro Parochial School, her employer-employee juridical relationship, with the Petitioner School, had not been severed, namely: (a) the Petitioner School never sent any notice to the Private Respondent dismissing her from her employment on account of her unexplained and prolonged absence as required by Section 2, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code (Reno Foods, Inc. versus NLRC, et al., 249 SCRA 386); (b) the Private Respondent did not receive any amount, from the Petitioner School, by way of separation pay, indemnity pay, and her share of her retirement contributions for the period from 1955 when she commenced her employment with the Petitioner School until her leave of absence in 1970; (c) the Petitioner School gave the Private Respondent a "Plaque of Appreciation" for her thirty (30) year continuous service to the Petitioner School on the occasion of the 51st Commencement Exercise of her Petitioner School on March 22, 1997; (d) she was given a gratuity of P12,000.00 on account of her exemplary services to the Petitioner School until the time when she reached the compulsory retirement age of 65 years.[12] (Underscoring supplied)

With respect to the gratuity pay awarded to Hilaria, the CA upheld the NLRC ruling that it should not be deducted from the retirement benefits due her.

Their motion for reconsideration[13] having been denied by the CA Resolution [14] of August 11, 2000, petitioners lodged the present petition which imputes the following error to the appellate court:

> THE PUBLIC RESPONDENT CA ERRED IN AWARDING THE RETIREMENT BENEFITS DIFFERENTIAL OF [HILARIA] COMPUTED BASED ON HER 29 YEARS OF SERVICE WHEN SHE MERELY RENDERED 15 CONTINUOUS YEARS OF SERVICE PRIOR TO HER RETIREMENT. THE COURT OF APPEALS COMPLETELY IGNORED THE RULING OF THIS HONORABLE COURT IN CARANDANG V. DULAY, 188 SCRA 793 [1990] THAT SEPARATION PAY SHOULD BE BASED ON THE NUMBER OF CONTINUOUS YEARS OF SERVICE OF THE EMPLOYEE BEFORE THE DATE OF HIS SEPARATION FROM EMPLOYMENT.[15]

Petitioners argue that when Hilaria did not report upon the expiration in 1971 of her one year leave of absence without pay nor request for an extension thereof, she actually voluntarily resigned from or abandoned her employment,[16] thus effectively forfeiting all the benefits she had earned for services rendered from 1955

to 1970, hence, she ceased to be an employee of the school. Prescinding from this ratiocination, petitioners conclude that the period from 1955 to 1970 cannot be included in the determination of her retirement benefits, for when she was rehired in 1982, she was a new employee.

In support of their position, petitioners cite the case of *Carandang v. Dulay* which held that when therein petitioner was re-hired as teacher six years after resigning, she had to start from "zero experience" and her previous years of service with the therein respondent school could not be credited to her. What was in issue in *Carandang*, however, was the therein petitioner's separation, not retirement pay, this Court therein ruling that separation pay should be computed on the basis of her last continuous period of service.

Petitioners further argue that the P12,000.00 gratuity earlier given to Hilaria should be considered part of the retirement benefits due her since it was given precisely because she had retired and was in addition to the amount that the school contributed to PERAA for her retirement.

As a general rule, the factual findings and conclusions of quasi-judicial agencies such as the NLRC are, on appeal, accorded great weight and respect and even finality as long as they are supported by substantial evidence or that amount of relevant evidence which a reasonable man might accept as adequate to justify a conclusion.[17] Where, as in the present case, the findings of the NLRC contradict those of the Labor Arbiter, this Court must of necessity examine the records and the evidence presented to determine which finding should be preferred as more conformable with the evidentiary facts.[18]

The threshold issue is whether Hilaria's services for petitioner school during the period from 1955 to 1970 should be factored in the computation of her retirement benefits.

The inapplicability to the present case of the ruling in *Carandang* notwithstanding, Hilaria cannot be credited for her services in 1955-1970 in the determination of her retirement benefits. For, after her one year leave of absence expired in 1971 without her requesting for extension thereof as in fact she had not been heard from until she resurfaced in 1982 when she reapplied with petitioner school, she abandoned her teaching position as in fact she was employed elsewhere in the interim and effectively relinquished the retirement benefits accumulated during the said period.

For a valid finding of abandonment, two factors must be present: (1) the failure to report for work, or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second element as the more determinative factor, being manifested by some overt acts.[19]

To prove abandonment, the employer must show that the employee deliberately and unjustifiably refused to resume his employment without any intention of returning. [20] There must be a concurrence of the intention to abandon and some overt acts from which an employee may be deduced as having no more intention to work.[21] The law, however, does not enumerate what specific overt acts can be considered as strong evidence of the intention to sever the employee-employer relationship.[22]

It is not disputed that the approved one year leave of absence without pay of Hilaria expired in 1971, without her, it bears repeating, requesting for extension thereof or notifying petitioner school if and when she would resume teaching. Nor is it disputed that she was rehired only in 1982 after filing anew an application, without her proffering any explanation for her more than a decade of absence. Under the circumstances, abandonment of work at petitioner school in 1971 is indubitably manifest.

As regards the requirement of notice of termination, it was error for the CA to apply

Sec 2, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code.[23] It should be noted that when Hilaria abandoned her teaching position in 1971, the law in force was Republic Act 1052 or the Termination Pay Law, as amended by Republic Act 1787, Section 1 of which provides:

> SEC. 1. In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, **the employer** or the employee **may terminate at any time the employment with just cause;** or without just cause in the case of an employee by serving written notice on the employer at least one month in advance, or in the case of an employer, by serving such notice to the employee at least one month in advance or one-half month for every year of service of the employee, whichever is longer, a fraction of at least six months being considered as one whole year.
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> The employer, upon whom no such notice was served in case of termination of employment without just cause may hold the employee liable for damages.
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> The employee, upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice.
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> x x x (Emphasis and underscoring supplied)

Above-stated law should thus apply in the case at bar, so *Mapua Institute of Technology v. Manalo*[24] instructs:

> Without declaring that a private college or university like the Mapua Institute of Technology is a commercial, industrial, or agricultural establishment, we believe that there being no special law governing the dismissal or separation of professors from colleges and universities, the provisions of Republic Act No. 1052, as amended by Republic Act No. 1787, should be made to apply. Authority for such a course of action is 78 Corpus Juris Secundum 617, which says:
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> "Contracts between private schools and teachers or other instructors are governed, in general, by the rules applicable to other contracts of employment." (Underscoring supplied)