384 Phil. 617

FIRST DIVISION

[G.R. No. 110524, March 14, 2000]

DOUGLAS MILLARES AND ROGELIO LAGDA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, TRANS-GLOBAL MARITIME AGENCY, INC. AND ESSO INTERNATIONAL SHIPPING CO., LTD., RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

Petitioners Douglas Millares and Rogelio Lagda seek the nullification of the decision, dated June 1, 1993, of the public respondent National Labor Relations Commission (NLRC) rendered in POEA Case (M) Adj 89-10-961 entitled "Douglas Millares and Rogelio Lagda v. Trans-Global Maritime Agency, Inc. and ESSO International Shipping Co., Ltd., et. al." dismissing for lack of merit petitioners' appeal and motion for new trial and affirming the decision, dated July 17, 1991, rendered by the Philippine Overseas Employment Administration (POEA).

The antecedent facts of the instant case are as follows:

Petitioner Douglas Millares was employed by private respondent ESSO International Shipping Company Ltd. (Esso International, for brevity) through its local manning agency, private respondent Trans-Global Maritime Agency, Inc. (Trans-Global, for brevity) on November 16, 1968 as a machinist. In 1975, he was promoted as Chief Engineer which position he occupied until he opted to retire in 1989. He was then receiving a monthly salary of US $1,939.00.[1]

On June 13, 1989, petitioner Millares applied for a leave of absence for the period July 9 to August 7, 1989. In a letter dated June 14, 1989, Michael J. Estaniel, President of private respondent Trans-Global, approved the request for leave of absence.[2] On June 21, 1989, petitioner Millares wrote G.S. Hanly, Operations Manager of Exxon International Co., (now Esso International) through Michael J. Estaniel, informing him of his intention to avail of the optional retirement plan under the Consecutive Enlistment Incentive Plan (CEIP) considering that he had already rendered more than twenty (20) years of continuous service. On July 13, 1989 respondent Esso International, through W.J. Vrints, Employee Relations Manager, denied petitioner Millares' request for optional retirement on the following grounds, to wit: (1) he was employed on a contractual basis; (2) his contract of enlistment (COE) did not provide for retirement before the age of sixty (60) years; and (3) he did not comply with the requirement for claiming benefits under the CEIP, i.e., to submit a written advice to the company of his intention to terminate his employment within thirty (30) days from his last disembarkation date.[3]

On August 9, 1989, petitioner Millares requested for an extension of his leave of absence from August 9 to 24, 1989. On August 19, 1989, Roy C. Palomar, Crewing

Manager, Ship Group A, Trans-Global, wrote petitioner Millares advising him that respondent Esso International "has corrected the deficiency in its manpower requirements specifically in the Chief Engineer rank by promoting a First Assistant Engineer to this position as a result of (his) previous leave of absence which expired last August 8, 1989. The adjustment in said rank was required in order to meet manpower schedules as a result of (his) inability."[4]

On September 26, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Millares that in view of his absence without leave, which is equivalent to abandonment of his position, he had been dropped from the roster of crew members effective September 1, 1989.[5]

On the other hand, petitioner Lagda was employed by private respondent Esso International as wiper/oiler in June 1969. He was promoted as Chief Engineer in 1980, a position he continued to occupy until his last COE expired on April 10, 1989. He was then receiving a monthly salary of US$1,939.00.[6]

On May 16, 1989, petitioner Lagda applied for a leave of absence from June 19,1989 up to the whole month of August 1989. On June 14, 1989, respondent Trans-Global's President, Michael J. Estaniel, approved petitioner Lagda's leave of absence from June 22, 1989 to July 20, 1989[7] and advised him to report for re-assignment on July 21, 1989.

On June 26, 1989, petitioner Lagda wrote a letter to G.S. Stanley, Operations Manager of respondent Esso International, through respondent Trans-Global's President Michael J. Estaniel, informing him of his intention to avail of the optional early retirement plan in view of his twenty (20) years continuous service in the company.[8]

On July 13, 1989, respondent Trans-Global denied petitioner Lagda's request for availment of the optional early retirement scheme on the same grounds upon which petitioner Millares' request was denied.[9]

On August 3, 1989, he requested for an extension of his leave of absence up to August 26, 1989 and the same was approved.[10] However, on September 27, 1989, respondent Esso International, through H. Regenboog, Personnel Administrator, advised petitioner Lagda that in view of his "unavailability for contractual sea service," he had been dropped from the roster of crew members effective September 1, 1989.[11]

On October 5, 1989, petitioners Millares and Lagda filed a complaint-affidavit, docketed as POEA (M) 89-10-9671, for illegal dismissal and non-payment of employee benefits against private respondents Esso International and Trans-Global, before the POEA.

On July 17, 1991, the POEA rendered a decision dismissing the complaint for lack of merit.[12]

Petitioners appealed the decision to the NLRC. On June 1, 1993, public respondent NLRC rendered the assailed decision dismissing petitioners' appeal and denying their

motion for new trial for lack of merit.[13]

Hence, the instant petition for *certiorari* based on the following grounds:

I. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONERS ARE NOT REGULAR EMPLOYEES.

II. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE TERMINATION OF PETITIONERS WAS VALID, DESPITE THE ABSENCE OF ANY JUST OR AUTHORIZED CAUSE FOR DISMISSAL.

III. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE TERMINATION OF PETITIONERS WAS VALID, DESPITE THE FACT THAT PETITIONERS WERE NOT GIVEN AN OPPORTUNITY TO BE HEARD PRIOR TO THEIR TERMINATION.

IV. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONERS ARE NOT ENTITLED TO ANY RETIREMENT BENEFIT UNDER THE OPTIONAL EARLY RETIREMENT POLICY ANNOUNCED BY RESPONDENTS.

V. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE THAT, EVEN IN THE ABSENCE OF AN OPTIONAL EARLY RETIREMENT POLICY ANNOUNCED BY RESPONDENTS, PETITIONERS WERE STILL ENTITLED TO RECEIVE 100% OF THEIR TOTAL CREDITED CONTRIBUTIONS TO THE CEIP, AS EXPRESSLY PROVIDED IN PARS. 2 (g) AND 2 (h) OF THE LETTER MEMORANDUM DATED MARCH 9, 1977 (ANNEX E OF ANNEX C-PETITION) AND PAR. III, SEC. (c) AND PAR. III, SEC. (b) OF THE CEIP (ANNEX D-PETITION) WHICH WERE ISSUED BY RESPONDENTS.

VI. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE ON THE LIABILITY FOR DAMAGES OF RESPONDENTS FOR HAVING WRONGFULLY AND MALICIOUSLY CAUSED THE NAME OF PETITIONER MILLARES TO BE PLACED IN THE POEA WATCHLIST AND THEREBY PREVENTING HIS TIMELY DEPARTURE.

VII. PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE ON THE LIABILITY OF RESPONDENTS FOR PAYMENT OF MORAL AND EXEMPLARY DAMAGES, AS WELL AS ATTORNEY'S FEES AND COSTS OF LITIGATION.[14]

Petitioners contend that public respondent NLRC gravely abused its discretion in ruling that they are not regular employees but are merely contractual employees whose employments are terminated every time their contracts of employment expire. Petitioners further aver that after rendering twenty (20) consecutive years of service, performing activities which were necessary and desirable in the trade or business of private respondents, they should be considered regular employees under Article 280 of the Labor Code. Consequently, they may only be dismissed for any of

the just or authorized causes for dismissal provided by law. Furthermore, petitioners asseverate that their dismissal was unlawful for failure of private respondents to comply with the twin requirements of due process, i.e., notice and hearing. Petitioners allege that they were not given any opportunity to be heard by private respondents prior to their termination.

Petitioners further contend that public respondent gravely abused its discretion in not giving evidentiary weight to the affirmation of eleven (11) former employees, as well as three (3) other witnesses as to the existence of the optional early retirement policy. Said witnesses were allegedly present when Captain Estaniel announced the optional early retirement policy under the CEIP. On the other hand, while the 11 former employees were not actually present at the announcement thereof, they attested to the fact that they were informed of said policy by the officers of private respondents. Petitioners point out that these former employees did not stand to benefit from the policy; thus, in the absence of any vested interest on their part, their affidavits should have been given more weight than the self-serving denials of private respondents' officers.

Petitioners also invoke the principle of estoppel. According to petitioners, estoppel bars a party who has, by his own declaration, act or omission, led another to believe a particular thing to be true, and to act upon such belief, from denying his own acts and representations to the prejudice of the other party who relied upon them. In the instant case, petitioners allege that since they relied in good faith and acted on the basis of the representations of private respondents that an optional early retirement plan indeed existed, the principle of estoppel *in pais* is clearly applicable to them.

Petitioners, likewise, maintain that public respondent NLRC seriously erred in invoking the parol evidence rule against them as there is no written agreement to speak of on optional retirement so as to make this rule applicable. Petitioners declare that "nowhere in the contract (of enlistment) is there any mention of the specific terms of the CEIP, particularly the provisions on the extent of benefits to be received by the seamen" but rather, the "specific details are contained in a separate document which is in the nature of an inter-office memorandum that is unilaterally issued by private respondents."

Petitioners further claim that public respondent NLRC abused its discretion in failing to consider that even in the absence of the optional early retirement policy, petitioners are still entitled to receive 100% of their total credited contributions to the CEIP either under Sec. III, par. (c) of the CEIP, or par. 2 (h) of the Letter-Memorandum dated March 9, 1977. Said memorandum which was signed by the then President/Chairman of Trans-Global, Inocencio P. Estaniel (now deceased), itemized the benefits that may be availed of by eligible employees. Paragraph 2 (h) thereof allegedly guarantees that an employee who is terminated for any reason, other than misconduct on his part, will be given 100% of the Total Credited CEIP Contributions for sixty (60) months of credited service.

On the other hand, Section III, paragraph (c) of the Consecutive Enlistment Incentive Plan provides:

> III. Distribution of Benefits
>
> x x x

C. Other Terminations

When the employment of an employee is terminated by the Company for a reason other than one in A, without any misconduct on his part, a percentage of the total amount credited to his account will be distributed to him in accordance with the following.

Credited Service	Percentage
36 months	50%
48 months	75%
60 months	100%

When the employment of an employee is terminated due to his poor performance, misconduct, unavailability, etc., or if employee is not offered re-engagement for similar reasons, no distribution of any portion of employee's account will ever be made to him (or his eligible survivor/s). A determination of poor performance, misconduct and unavailability shall be made by the Company.

Misconduct shall include acts and offenses as defined in the Contract of Enlistment and Company Manuals.

xxx[15]

Petitioners claim that since both of them had rendered at least twenty (20) years, or 240 months, of faithful service to private respondents, they are entitled to receive 100% of the total credited contributions, pursuant to the aforesaid provisions. Contrary to the findings of public respondent, petitioners argue that they were not guilty of "poor performance" for petitioner Millares, in fact, qualified for the Merit Pay Program[16] of private respondents at least 5 times in the years 1977, 1984, 1985, 1986 and 1987 in recognition of his above-average performance as ship officer. On the other hand, petitioner Lagda qualified for the Merit Pay Program for 3 consecutive years, i.e., in 1986, 1987 and 1988, likewise, in view of his above-average performance.

Petitioner Millares further contends that public respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it failed to rule that private respondents should pay actual damages in the amount of P770,000.00 for having wrongfully caused his name to be placed in the POEA watchlist.[17] Such wrongful act allegedly prevented petitioner Millares' from leaving the Philippines to report on time to his new employer, NAESS Shipping Corporation. Anent petitioner, public respondent failed to consider the evidence presented by petitioner Millares on this issue.

Finally, petitioners aver that public respondent erred in not granting them moral and exemplary damages, as well as attorney's fees and costs of litigation.

At this juncture, it is worthy to note that the Solicitor General, in his Manifestation and Motion in Lieu of Comment, manifested that he is not opposing the instant