

## TWENTIETH DIVISION

[ CA-G.R. SP. NO. 05391, February 26, 2014 ]

**JOSE PIVI H. GARRIDO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), SEVENTH DIVISION AND PHILIPPINE NATIONAL BANK, RESPONDENTS.**

### D E C I S I O N

**LAGURA-YAP, J.:**

The present petition seeks to nullify the February 26, 2010 *Decision*<sup>[1]</sup> issued by public respondent National Labor Relations Commission, Seventh Division (NLRC) in NLRC VAC-05-000628-09 for *illegal dismissal and payment of monetary benefits*.

### THE ANTECEDENTS

Stripped of the unessentials, the relevant facts of this case are as follows:

Petitioner started working for respondent Philippine National Bank (PNB) on May 22, 1972. When PNB was privatized in 1997, petitioner was deemed retired from government service and received P254,317.82 as retirement gratuity.<sup>[2]</sup> Although deemed retired, petitioner continued to be an employee of the PNB after its privatization.

On May 21, 2007, at the age of 57, petitioner was made to retire pursuant to PNB's retirement plan<sup>[3]</sup> which took effect on May 2, 2001. He signed a prepared Exit Form,<sup>[4]</sup> Retirement Letter,<sup>[5]</sup> and a Deed of Waiver and Quitclaim.<sup>[6]</sup>

Claiming that he was forced to retire, petitioner filed the case *a quo* against PNB before the Labor Arbiter (LA).

On December 18, 2008, the LA issued the Decision,<sup>[7]</sup> the dispositive portion of which reads:

WHEREFORE, for want of jurisdiction, this case is hereby dismissed.

The LA ruled that the case is not a termination dispute but involves the interpretation of a company policy which must be referred to the grievance machinery or a voluntary arbitrator.

On appeal, the NLRC issued the assailed February 26, 2010 Decision, the dispositive portion of which reads:

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit. Accordingly, the appealed Decision of the Executive Labor Arbiter is AFFIRMED.

Hence, this petition.

## ISSUE

WHETHER OR NOT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION DATED FEBRUARY 26, 2010.

Petitioner, citing *Pantranco North Express, Inc. v. NLRC*,<sup>[8]</sup> insists that the case is a termination dispute cognizable by the LA, as the interpretation of the company policy is only corollary to the complaint for illegal dismissal.

PNB, on the other hand, points out that a petition for certiorari is available only when there is no other plain remedy. Respondent insists that the instant case must be dismissed because petitioner has another remedy, and that is to file a case before a voluntary arbitrator. It also argues, citing *Vicente San Jose v. NLRC, et al.*<sup>[9]</sup> and *Del Monte Philipines, et al. v. Saldivar, et al.*,<sup>[10]</sup> that the LA cannot pass upon money claims arising from the interpretation of the collective bargaining agreement (CBA), such as this case.

## THE COURT'S RULING

The petition is **MERITORIOUS**.

At the outset, We clarify that the petitioner is asking Us to nullify the ruling of the NLRC dismissing his appeal. The function of a petition for certiorari under Rule 65 of the Revised Rules of Court is to correct errors of jurisdiction - lack of or excess of jurisdiction or grave abuse of discretion amounting to lack of jurisdiction - that courts or tribunals may have committed. Thus, Our inquiry is limited to the determination of whether the NLRC committed grave abuse of discretion or any jurisdictional error when it issued the assailed decision.

Grave abuse of discretion is committed when an act is done contrary to the Constitution, the law or jurisprudence, or executed whimsically or arbitrarily in a manner so patent and so gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined, as where the power is exercised in an arbitrary and despotic manner because of passion or personal hostility. An act of a court or tribunal may constitute grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction.<sup>[11]</sup>

We find that the NLRC committed grave abuse of discretion in the instant case. It failed to consider relevant jurisprudence, particularly, the *Pantranco* case which is substantially similar herein. Curiously, the NLRC failed to discuss it in the assailed decision despite the fact that it was the main thrust of petitioner's argument.<sup>[12]</sup> In said case, private respondent, Urbano Suñiga, filed a case for illegal dismissal against petitioner *Pantranco North Express, Inc.*, (*Pantranco*) after Suñiga was made to retire pursuant to the CBA entered into between the latter and the former's union. The LA and the NLRC ruled that Suñiga was illegally dismissed. *Pantranco* filed a petition for certiorari before the Supreme Court contending that the LA had no jurisdiction because the dispute concerns a provision of the CBA and its interpretation. The Supreme Court, brushed aside the contention. It ruled:

In *Sanyo Philippines Workers Union - PSSLU vs. Cañizares*,<sup>[13]</sup> a case cited by the petitioner, this Court ruled:

"x x x Hence, only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators.

In the instant case, both the union and the company are united or have come to an agreement regarding the dismissal of private respondents. No grievance between them exists which could be brought to a grievance machinery. The problem or dispute in the present case is between the union and the company on the one hand and some union and non-union members who were dismissed, on the other hand. The dispute has to be settled before an impartial body. The grievance machinery with members designated by the union and the company cannot be expected to be impartial against the dismissed employees. Due process demands that the dismissed workers' grievances be ventilated before an impartial body. Since there has already been an actual termination, the matter falls within the jurisdiction of the Labor Arbiter."

Applying the same rationale to the case at bar, it cannot be said that the "dispute" is between the union and petitioner company because both have previously agreed upon the provision on "compulsory retirement" as embodied in the CBA. Also, it was only private respondent on his own who questioned the compulsory retirement. Thus, the case is properly denominated as a "termination dispute" which comes under the jurisdiction of labor arbiters.

Verily, like in *Pantranco*, the LA have jurisdiction over the instant case, as the dispute in the case at bar is between petitioner and PNB. It does not involve the petitioner's union.

Moreover, PNB is estopped to question the jurisdiction of the LA owing to its participation in the proceedings below.<sup>[14]</sup> The active participation of the party against whom the action was brought, coupled with its failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction.<sup>[15]</sup>

PNB's contention that the instant petition for certiorari is unavailing because petitioner has another remedy which is to go to the grievance machinery or a voluntary arbitrator, cannot be given merit. Precisely, the instant petition was filed because petitioner believes that the said remedy is erroneous. Besides, a referral of the case to the grievance machinery and to the voluntary arbitrator would be futile because PNB had already terminated petitioner.<sup>[16]</sup>

PNB's reliance on *Del Monte* is equally without merit. True, the Supreme Court ruled therein that: