CEBU CITY

TWENTIETH DIVISION

[CA-G.R. CEB SP NO. 07780, December 16, 2014]

CENTRAL PHILIPPINES RETREADERS INCORPORATED AND VICTORIA SARMIENTO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SEVENTH DIVISION) AND NESTOR R. PINTOR, RESPONDENTS.

D E C I S I O N

QUIJANO-PADILLA, J.:

This is a petition for *certiorari* assailing the Decision[1] dated February 28, 2013 of the National Labor Relations Commission [NLRC], 7th Division, Cebu City in NLRC Case No. VAC-12-000725-2012 which affirmed the Decision[2] dated September 21, 2012 of the Regional Arbitration Branch No. VII, Cebu City in NLRC RAB-VII-05-0677-12 for Non-Payment of Retirement Benefits.

The Facts

Petitioner Central Philippines Retreaders Incorporated [CPRI] was formerly known as Central Philippines Bandag Retreaders Incorporated until its change of name upon the approval of the Securities and Exchange Commission on August 28, 2003.[3] CPRI is engaged in the business of retreading services. On the other hand, private respondent Nestor R. Pintor [Pintor] was hired by the company on April 1, 1991 and worked in the company as a bookkeeper and continuously rendered his services for twenty [20] years until his retirement on April 30, 2011.[4] He was 52 years old when he applied for retirement and was receiving a monthly salary of P12,017.06 at that time.[5]

When his retirement was approved by CPRI, a computation made by Sarmiento Management Corporation, which is the firm that controls CPRI, reflected thereon that Pintor was to receive a total amount of P360,511.80 as retirement pay, however, he only received a total amount of P127,768.32[6] which was paid to him on a staggered basis over the span of eleven [11] months or from November 25, 2010 until November 9, 2011.[7]

Because of the disparity, Pintor filed before the Labor Arbiter a complaint for non-payment of full retirement benefits. In his position paper he asserts that he is entitled to retirement pay and gratuity pursuant to company practice. His retirement pay should be computed at 150% as of the latest monthly salary for each year of service and on top of that, as a company practice of CPRI, he was likewise entitled to be given a gratuity at a rate to be determined by CPRI. Moreover, as alluded to and as practiced by CPRI over the years, the said retirement pay and gratuity are supposed to be paid in lump sum or in one occasion only. Considering that he already received the amount of P127,768.32, he is claiming for the balance of

P232,743.48, which amount he is entitled to per computation of Sarmiento Management Corporation.[8]

CPRI in its position paper alleged that Pintor was only 52 years old at that time he applied for retirement, as such, he was not entitled to retirement benefits under the Retirement Pay Law, thus, any remuneration given which are not required by law is gratuity. Gratuity is defined as an act of liberality of the giver which the recipient has no right to demand as a matter of right. Given that Pintor's benefits has no basis in law but rather has basis on the liberality of CPRI, the former has no right to demand from the latter. Moreover, as the bookkeeper of the CPRI, he is privy to the audited financial statements of the corporation showing that it was experiencing financial difficulties.[9]

The Labor Arbiter in its Decision[10] dated September 21, 2012, granted Pintor's claims and ruled that pursuant to the ruling of the Supreme Court in Nestle Philippines, Inc. v. NLRC [G.R. No. 91231, February 4, 1991], employees have a vested right to a non-contributory retirement plan. It is an existing benefit voluntarily granted to them by their employer so that the latter may not unilaterally withdraw, eliminate or diminish such benefits. Management discretion may not be exercised arbitrarily or capriciously especially with regard [to] the implementation of the retirement plan. Upon acceptance of employment, a contractual relationship was established giving the employee and enforceable vested interest in the retirement fund. The retirement scheme became an integral part of his employment package and the benefits to be derived therefrom constituted a continuing consideration for services rendered as well as an effective inducement for remaining with the firm. Having rendered twenty (20) years of service with the company, the employee has already acquired a vested right to the retirement fund- a right which can only be withheld upon a clear showing of good and compelling reasons.[11]

The dispositive portion of the Labor Arbiter's Decision, reads:

> "WHEREFORE, judgment is hereby rendered declaring that complainants (sic) are (sic) entitled to retirement pay. Respondents are hereby ordered to jointly and solidarily pay complainant, the total amount of PESOS: TWO HUNDRED TWENTY TWO THOUSAND SEVEN HUNDRED FORTY THREE AND 48/100 (P222,743.48).
>
> All other claims are denied for lack of merit.
>
> SO ORDERED."[12]

Discontented, CPRI appealed the adverse decision before the NLRC but the latter affirmed the decision of the Labor Arbiter, the *fallo* of the NLRC's decision, reads:

> "WHEREFORE, premises considered, respondents' appeal is DISMISSED. The Labor Arbiter's decision is AFFIRMED.
>
> SO ORDERED."[13]

Hence, upon denial[14] of CPRI's Motion for Reconsideration,[15] it comes to Us via this petition for *certiorari* with the following assignment of errors, to wit:

"I. THE HONORABLE LABOR ARBITER COMMITTED A SERIOUS ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN HOLDING THAT COMPLAINANT IS ENTITLED TO RETIREMENT PAY EQUIVALENT TO 150% OR ONE MONTH AND A HALF FOR EVERY YEAR OF SERVICE NOTWITHSTANDING THE FACT THAT THERE WAS NO COLLECTIVE BARGAINING AGREEMENT OR CONTRACT BETWEEN THE PARTIES; and

II. THE HONORABLE LABOR ARBITER COMMITTED A SERIOUS ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN HOLDING THAT RESPONDENT ATTY. MARIA VICTORIA SARMIENTO IS JOINTLY AND SOLIDARILY LIABLE WITH RESPONDENT CPRI NOTWITHSTANDING THE FACT THAT THERE WAS NO FINDING OF BAD FAITH OR MALICE."[16]

Our Ruling

Petitioner CPRI avers that both the Labor Arbiter and the NLRC erred in granting the monetary award of P222,743.48 as the balance of Pintor's retirement benefit because as already established there was no company retirement plan and that there was no Collective Bargaining Agreement to that effect. What Pintor received from CPRI is an act of liberality or gratuity from the latter and does not ripen into a right that is properly demandable by Pintor.

The petition is meritorious.

We are aware that the rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC in a petition for *certiorari* under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari,* which is merely confined to issues of jurisdiction or grave abuse of discretion.[17] However, by way of exception, in Tan, Jr. v. Matsuura, et al.,[18] the Supreme Court ruled that "grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It also refers to cases in which, for various reasons, there has been a gross misapprehension of facts."

We find that both the Labor Arbiter and the NLRC had misapprehended the factual antecedents of the instant case.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. The age of retirement is primarily determined by the existing agreement between the employer and the employees. However, in the absence of such agreement, the retirement age shall be fixed by law. Under Art. 287 of the Labor Code as amended, the legally mandated age for compulsory retirement is 65 years, while the set minimum age for optional retirement is 60 years. In the absence of any provision on optional retirement in a collective bargaining agreement, other employment contract, or employer's retirement plan, an employee may optionally retire upon reaching the age of 60 years or more, but not beyond 65 years, provided he has served at least five years in the establishment concerned. That prerogative is exclusively lodged in the employee.[19] While Pintor mentioned a CPRI retirement plan,[20] this allegation is