Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GUIDO B. PULONG,
Petitioner,

-versus-

SUPER MANUFACTURING INC., ENGR. EDUARDO DY and ERMILO PICO,
Respondents.

G.R. No. 247819

Present:

CARPIO, *Chairperson*,
CAGUIOA,
REYES, J., JR.,*
LAZARO-JAVIER, and
ZALAMEDA, *JJ.*

Promulgated:

14 OCT 2019

x----------x

DECISION

LAZARO-JAVIER, *J.*:

The Case

This petition seeks to nullify the following dispositions of the Court of Appeals in CA-G.R. SP No. 146616:

1. Decision[1] dated July 13, 2018 affirming the ruling of the National Labor Relations Commission (NLRC) that petitioner was not illegally dismissed but had validly retired from service.

---

* Justice Jose C. Reyes, Jr., on leave.
[1] Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Ricardo R. Rosario and Ronaldo Roberto B. Martin concurring, *Rollo*, pp. 257-268.

2. Resolution[2] dated March 6, 2019 denying petitioner's motion for reconsideration.

Antecedents

On September 30, 2014, petitioner Guido B. Pulong filed a complaint for illegal dismissal, non-payment of wages, 13th month pay, damages, and attorney's fees against herein respondents.

He essentially alleged that, in December 1978, respondent Super Manufacturing Inc., (SMI) hired him as a spot welder in its production plant in Quezon City.[3] In May 1998, he and other workers were granted their separation pay following the transfer of SMI's production plant to Calamba City, Laguna. On August 1, 1998, SMI re-employed him as a Senior Die Setter. He had since continued working for SMI.

On September 22, 2014, however, he was denied entry into SMI's production plant. SMI's Personnel Manager Ermilo Pico showed him a document stating he was compulsory retired since he had already turned sixty (60) years old. He refused to sign the retirement papers because he still wanted to work until sixty-five (65) years old. SMI, nevertheless, prevented him from returning work.[4]

For their part, respondents countered that petitioner was not illegally dismissed. Rather, he was compulsorily retired pursuant to the Memorandum of Agreement[5] (MOA) dated January 1, 2013 between SMI and its workers, purportedly represented by Safety/Liaison Officer Eduardo K. Abad, Painter II Glenn B. Bionat, and Rewinder I Julio D. Cruz, *viz*:

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement executed by and between:

Super Manufacturing, Inc., Laguna Plant

xxx xxx xxx.

and

The Workers of Super Manufacturing, Inc., Laguna Plant located at Barangay Saimsim, Calamba City, Laguna.

xxx xxx xxx

---

[2] *Rollo*, pp. 280-282.
[3] *Id.* at 6.
[4] *Id.* at 144.
[5] *Id.* at 339-341.

III MISCELLANEOUS

5. Retirement pay – in accordance with law

5.1. Retirement Age – 60 years with at least 5 years of continuous service

5.2. Optional – 20 years of continuous service[6]

In his Reply and Rejoinder, petitioner argued that the MOA dated January 1, 2013 did not bind him for he was not a signatory therein. Abad, Bionat, and Cruz signed the MOA without authority to represent SMI's workers. As proof, petitioner submitted an Affidavit signed by thirteen (13) workers of SMI declaring they did not authorize Abad, Bionat, and Cruz to sign any contract in their behalf and they were not aware of the MOA; much less, the 60-year threshold for SMI workers.[7]

On the other hand, in their Reply and Rejoinder, respondents maintained that the MOA was validly entered into by SMI and the workers' representatives. Further, petitioner was estopped from claiming that the MOA did not bind him considering he had already availed of the benefits enumerated therein, e.g. uniform, Christmas gift, monetization of leave credits, and health card.[8]

Labor Arbiter's Ruling

Under Decision[9] dated June 10, 2015, Labor Arbiter Danna M. Castillon ruled that petitioner was illegally dismissed. Respondents failed to prove that the MOA dated January 1, 2013 was executed upon consultation with SMI's workers.[10] SMI failed to establish that Abad, Bionat, and Cruz were the authorized bargaining agents of its workers. The labor arbiter thus ruled:

> **WHEREFORE**, premises considered, the complainant is declared illegally dismissed by the respondent Super Manufacturing Inc. Thus, it is ordered to reinstate complainant to his former position without loss of seniority rights and to pay his backwages in the amount of **P125,815.03**.
>
> Respondent is directed to report compliance on the reinstatement aspect of this decision within ten (10) days from receipt of this decision.
>
> It is further ordered to pay ten percent (10%) attorney's fees.
>
> SO ORDERED.[11]

---

[6] *Id.* at 339-340.
[7] *Id.* at 258.
[8] *Id.* at 202.
[9] *Id.* at 116-122.
[10] *Id.* at 121.
[11] *Id.* at 258-259.

The NLRC's Ruling

On appeal, the NLRC affirmed.[12] It found that respondents failed to prove that Abad, Bionat, and Cruz were either appointed or elected by their co-workers to sign the MOA in their behalf.

Respondents filed a Motion for Reconsideration submitting for the first time documentary proofs of petitioner and his co-workers' receipt of benefits provided under the MOA, i.e. uniform, Christmas gift (a sack of rice, t-shirt, calendar, and P250.00 cash gift), monetization of 2013 leave credits, and health cards.[13]

But the tides had turned under Resolution dated February 29, 2016.[14] The NLRC found that petitioner and his co-workers' acceptance of benefits under the MOA estopped them from assailing its validity, as well as the authority of Abad, Bionat, and Cruz to sign it. Instead of paying petitioner's money claims on ground of illegal dismissal, SMI was thus ordered to pay petitioner's retirement benefits, *viz*:

> **WHEREFORE**, the motion for reconsideration of respondent Super Manufacturing Inc. is **GRANTED** and the 30 September 2015 Decision is **REVERSED AND SET ASIDE**. The complaint is **DISMISSED** for lack of merit. Nonetheless, respondent Super Manufacturing Inc. is **DIRECTED** to pay complainant's retirement pay in the amount of **P211,200.00**.
>
> **SO ORDERED**.[15]

Petitioner filed a motion for reconsideration but the NLRC denied with modification under Resolution dated April 29, 2016,[16] thus:

> **WHEREFORE**, complainant's motion for reconsideration and respondents' *Motion to Recompute Retirement Pay* are **DENIED** for lack of merit. However, the 29 February 2016 Resolution is **MODIFIED** by increasing complainant's retirement pay from P211,200.00 to P216,000.00 pursuant to the clarified computation of retirement pay in *Elegir v. Philippine Airlines, Inc.* No motion for reconsideration of the same tenor shall be entertained.
>
> **SO ORDERED**.[17]

Aggrieved, petitioner sought to nullify the NLRC dispositions via a petition for certiorari before the Court of Appeals.

---

[12] Under Decision dated September 30, 2015, penned by Comm. Grace E. Maniquiz-Tan and concurred in by Comms. Dolores Peralta-Beley and Mercedes R. Posada-Lacap; *Rollo*, pp. 143-150.
[13] *Rollo*, p. 202.
[14] *Id.* at 201-207.
[15] *Id.* at 206.
[16] *Id.* at 220-226.
[17] *Id.* at 226.

The Court of Appeals' Ruling

Under Decision[18] dated July 13, 2018, the Court of Appeals affirmed. It upheld SMI's compulsory retirement under the MOA, finding it was signed by authorized representatives of SMI's workers. The appellate court ruled that the MOA was the covenant between SMI and its workers for there was neither union nor a CBA at that time of its execution.[19]

Petitioner moved for a reconsideration but the Court of Appeals denied the same through its Resolution dated March 6, 2019.[20]

The Present Petition

Petitioner now seeks affirmative relief from the Court. He maintains he was illegally dismissed when respondents retired him at the age of sixty (60) against his will.[21] He argues that he accepted the benefits given him under the belief they were gratuities from SMI.[22]

In their Comment,[23] respondents riposte that petitioner's enjoyment of the benefits under the MOA proves its binding force upon him thus, precluding him from assailing its validity.

Issue

Did the Court of Appeals err in upholding petitioner's compulsory retirement at the age of sixty (60) years under the MOA dated January 1, 2013?

Ruling

We grant the petition.

Article 287[24] of the Labor Code, as amended by Republic Act 7641 (RA No. 7641) otherwise known as the "New Retirement Pay Law"[25] governs the retirement of employees in the private sector, *viz*:

> Art. 287. Retirement. — **Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.**

---

[18] *Id.* at 257-268.
[19] *Id.* at 265-266.
[20] *Id.* at 280-282.
[21] *Id.* at 9.
[22] *Id.* at 23.
[23] *Id.* at 301-332.
[24] Pursuant to Department of Labor and Employment (DOLE) Advisory No. 1, Series of 2015, Renumbering of the Labor Code of the Philippines, As Amended, Art. 287 has been renumbered to Art. 302.
[25] Entitled "An Act Amending Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, by Providing for Retirement Pay to Qualified Private Sector Employees in the Absence of Any Retirement Plan in the Establishment."

> 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 plan 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 as 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. xxx (emphasis supplied)

By its express language, the law permits employers and employees to fix the employee's retirement age. Absent such an agreement, the law fixes the age for compulsory retirement at sixty-five (65) years, while the minimum age for optional retirement is set at sixty (60) years.[26] Thus, retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of sixty-five (65) years are not *per se* repugnant to the constitutional guaranty of security of tenure, *provided that the retirement benefits are not lower than those prescribed by law*[27] *and they have the* ***employee's consent.***[28] It is axiomatic, therefore, that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be assented to by the latter, otherwise, its adhesive imposition will amount to a deprivation of property without due process.[29]

In the recent case of ***Laya, Jr. v. Philippine Veterans Bank,***[30] we emphasized the character of the employee's consent to the employer's early retirement policy: it must be explicit, voluntary, free, and uncompelled. Unfortunately, this is not the case here. In fact, petitioner was not at all shown to have voluntarily acquiesced to SMI's compulsory retirement age of sixty (60).[31]

Petitioner did not give his consent to the MOA dated January 1, 2013

It is incumbent upon SMI to prove that Abad, Bionat, and Cruz were the duly authorized bargaining representatives of SMI's workers for purposes of signing the MOA. This, SMI failed to do. For it merely asserts that Abad

---

[26] *Manila Hotel Corp. v. De Leon*, G.R. No. 219774, July 23, 2018.
[27] *Laya, Jr. v. Philippine Veterans Bank*, G.R. No. 205813, January 10, 2018, 850 SCRA 315, 348.
[28] *Jaculbe v. Silliman University*, 547 Phil. 352, 359 (2007).
[29] *Cercado v. UNIPROM, Inc.*, 647 Phil. 603, 611 (2010).
[30] G.R. No. 205813, January 10, 2018, 850 SCRA 315, 341-342; citing *Cercado v. UNIPROM, Inc.*, 647 Phil. 603 (2010).
[31] Supra note 29.

and Bionat were among the representatives of SMI's workers in the previous MOAs of SMI and the employees, *viz*:

> 1) MOA dated January 1, 2004 was signed by **Abad** together with one Servando Alvarico;[32]
>
> 2) MOA dated January 1, 2008 was signed by **Abad** with a certain Edgar S. De Leon and Nilo C. Charlon;[33] and
>
> 3) MOA dated January 1, 2009 was signed by **Bionat** together with Edgar S. De Leon and one Ronaldo L. Nacion signed.[34]

This is *non-sequitur*. Even assuming that one (1) of the three (3) signatories to the MOA dated January 1, 2013 had, on different periods, validly represented SMI's workers, SMI still had to establish that all three (3) signatories, Abad, Bionat, and Cruz, were authorized by SMI's workers to represent them in the subsequent negotiations and execution of the MOA dated January 1, 2013. But this, SMI failed to do.

SMI has not shown any proof that Abad, Bionat, and Cruz were authorized to represent SMI's workers to sign the January 1, 2013 MOA in their behalf. It did not even disclose under what capacity or authority they could have represented SMI's workers, including herein petitioner.[35] In fact, by Decision dated September 30, 2015, the NLRC found that SMI failed to submit any evidence showing that Abad, Bionat, and Cruz were either appointed or elected by their co-workers to represent them in negotiations with SMI.[36] Evidently, the January 1, 2013 MOA is not the "covenant" between SMI and its workers. For Abad, Bionat, and Cruz were not proven to have been chosen by SMI's workers as their true collective bargaining representative. The MOA dated January 1, 2013, therefore, does not govern the employment terms and conditions of SMI's workers, let alone, petitioner's "retirement".

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.[37] In *Cercado v. Uniprom, Inc.*,[38] we held that an early retirement plan must be voluntarily assented to by the employees, thus:

> Acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. **While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code this prerogative must be exercised pursuant to a mutually instituted early retirement plan.** In other words, only the

---

[32] *Rollo*, p. 295.
[33] *Id.* at 296.
[34] *Id.* at 297.
[35] *Id.* at 147.
[36] *Id.* at 146.
[37] See *Cercado v. UNIPROM, Inc.*, 647 Phil. 603, 608 (2010); and *Banco De Oro Unibank, Inc. v. Sagaysay*, 769 Phil. 897, 906 (2015).
[38] Supra note 29.

> implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. **For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.** (emphasis supplied).

As stated, the MOA here was not assented to by petitioner and his co-workers. It was not executed after consultations and negotiations with the employees' authorized bargaining representative. The MOA, therefore, does not bind petitioner; much less, its provisions on compulsory retirement at age sixty (60). For it was not a result of any bilateral act; instead, it was a unilateral imposition of SMI upon petitioner.

Petitioner is not estopped from assailing the validity of the MOA

To force upon petitioner the binding effect of the MOA's retirement provisions, respondents argue that petitioner's receipt of the benefits provided therein estops him from questioning their validity.

We disagree.

The benefits which petitioner received under the January 1, 2013 MOA are, as follows:

1. Uniform: Wagner T-shirts – six (6) pcs. for June and six (6) pcs. for December;

2. Christmas Gift: one (1) sack of rice, one (1) calendar, one (1) Wagner T-shirt and P250.00 cash;

3. Monetization of 2013 Leave Credits: January to June – P3, 289.46 July to December – P3, 600.69; and

4. Health Card: ValuCare (semi-private with dental) – P7, 2062.00.[39]

These benefits are the usual gratuities granted to the employees as a matter of company practice. Petitioner's acceptance of these benefits does not equate to his assent to SMI's retirement plan. For petitioner was a mere passive recipient of whatever benefits were given him. Nothing more may be implied therefrom.

At any rate, the acquiescence by the employee to an early retirement plan cannot be lightly inferred from his acceptance of employment, or in this case, employment benefits.[40] The acceptance must be unequivocal such that his consent specifically referred to the retirement plan.[41] In early retirement programs, the offer of benefits must be certain while the acceptance to be

---

[39] *Rollo*, pp. 298-305.
[40] Supra note 27.
[41] Supra note 29.

retired should be absolute.[42]

It would be absurd, therefore, to equate petitioner's receipt of employment benefits as his acquiescence to SMI's retirement plan.

All told, an employee who did not expressly agree to an early retirement plan cannot be retired from service before he reaches the age of sixty-five (65) years. Even implied knowledge, regardless of duration, cannot equate to the voluntary acceptance required by law in granting an early retirement age option.[43] The law demands more than a passive acquiescence on the part of the employee, considering that his early retirement age option involves conceding the constitutional right to security of tenure.[44] We defer to Senior Associate Justice Antonio T. Carpio's separate concurring opinion in *Laya, Jr. v. Philippine Veterans Bank*:[45] **any waiver of a constitutional right must be clear, categorical, knowing, and intelligent**, thus:

> Section 3, Article XIII of the 1987 Constitution provides that an employee **"shall be entitled to security of tenure."** Thus, the right to security of tenure is a **constitutional right** of an employee.
>
> This Court has explained that "[s]ecurity of tenure is a right of paramount value. Precisely, it is given specific recognition and guarantee by the Constitution no less. The State shall afford protection to labor and 'shall assure the rights of workers to x x x security of tenure." This Court has explained further: "It stands to reason that a right so highly ranked as security of tenure should not lightly be denied on so nebulous a basis as mere speculation."
>
> The well-recognized rule is that any waiver of a **constitutional right** must be **clear, categorical, knowing, and intelligent**. Thus, in a long line of cases, this Court has ruled: "The relinquishment of a constitutional right has to be laid out convincingly. **Such waiver must be clear, categorical, knowing, and intelligent**."
>
> xxx
>
> There is no showing here that petitioner has an actual intention to waive his constitutional right to security of tenure. **Such intention to waive a fundamental constitutional right cannot be presumed but must be actually shown and established.** The bar against any implied waiver is very high because this Court "indulges [in] every reasonable presumption against any waiver of fundamental constitutional rights." xxx. (emphases in the original)

Verily, having terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by him, SMI is guilty of illegal dismissal.[46] It is thus liable to pay petitioner backwages and to reinstate him without loss of seniority and other benefits. At this point, however,

---

[42] *Robina Farms Cebu v. Villa*, 784 Phil. 636, 650 (2016).
[43] Supra note 29.
[44] Supra note 26
[45] Supra note 27; citing *Cercado v. UNIPROM, Inc.*, 647 Phil. 603 (2010).
[46] Supra note 28.

reinstatement is no longer possible since petitioner had already reached the mandatory retirement age of sixty-five (65) years. For this reason, we grant him separation pay in lieu of reinstatement.[47]

Hence, we modify the award of backwages in his favor, computed from the time of his illegal dismissal on September 20, 2014 up to his compulsory retirement age of sixty-five (65) years. These backwages shall be subject to six percent (6%) interest per annum from September 20, 2014 until full satisfaction.[48] Petitioner must also receive the retirement benefits due him in accordance with Article 287[49] of the Labor Code, as amended.[50] Finally, the Court drops Engr. Eduardo Dy and Ermilo Pico as party-respondents in this case for petitioner's failure to allege any fact which would make them solidarily liable with respondent SMI.[51]

ACCORDINGLY, the petition is **GRANTED**. The Decision dated July 13, 2018 and Resolution dated March 6, 2019 of the Court of Appeals in CA-G.R. SP No. 146616 are **REVERSED** and **SET ASIDE**. The Decision of the Labor Arbiter dated June 10, 2015 in NLRC CASE NO. RAB-IV-09-01488-14-L is **REINSTATED** with **MODIFICATION**. Respondent Super Manufacturing, Inc. is **ORDERED** to **PAY** petitioner Guido B. Pulong the following:

1. Backwages computed from September 20, 2014, the time of his illegal dismissal, until his compulsory age of retirement, plus six percent (6%) interest per annum from September 20, 2014 until fully paid;

2. Separation pay equivalent to one (1) month salary for every year of service until his compulsory age of retirement;

3. Retirement benefits equivalent to ½ month salary for every of service, the ½ month being computed at 22.5 days pursuant Article 287[52] of the Labor Code, as amended;[53]

4. Ten percent (10%) Attorney's Fees; and

---

[47] Supra note 27 and 28.
[48] G.R. No. 225433, August 28, 2019.
[49] Pursuant to Department of Labor and Employment (DOLE) Advisory No. 1, Series of 2015, Renumbering of the Labor Code of the Philippines, As Amended, Art. 287 has been renumbered to Art. 302.
[50] *Fernandez, Jr. v. Manila Electric Co.*, G.R. No. 226002, June 25, 2018.
[51] *Barroga v. Quezon Colleges of the North*, G.R. No. 235572, December 5, 2018.
[52] Pursuant to Department of Labor and Employment (DOLE) Advisory No. 1, Series of 2015, Renumbering of the Labor Code of the Philippines, As Amended, Art. 287 has been renumbered to Art. 302.
[53] One-half (1/2) month salary means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay and the remaining 5 days for service incentive leave; see *Elegir v. Philippine Airlines, Inc.*, 691 Phil. 58, 73 (2012).

5. Legal interest of six percent (6%) interest per annum for (2), (3), and (4) from the finality of this Decision until fully paid.

The Court **DIRECTS** that any amount which petitioner received from respondent Super Manufacturing, Inc. by virtue of his illegal retirement shall be deducted from the amounts awarded him.

The Court **DIRECTS** the National Labor Relations Commission to facilitate the computation and payment of the total monetary benefits and awards due to the petitioner in accordance with this Decision.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(on leave)
JOSE C. REYES, JR.
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

ATTY. TERESITA A. TUAZON
Deputy Division Clerk of Court