Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

EDWIN H. BARROGA,* Petitioner,	**G.R. No. 235572**
	Present:
- versus -	CARPIO, *J.*, Chairperson, PERLAS-BERNABE, CAGUIOA, A. REYES, JR., and CARANDANG, *JJ.*
QUEZON COLLEGES OF THE NORTH and/or MA. CRISTINA A. ALONZO and IRMA SEGUNDA A. BELTRAN, Respondents.	Promulgated: 05 DEC 2018

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DECISION

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Edwin H. Barroga (petitioner) assailing the Decision[2] dated July 18, 2017 and the Resolution[3] dated October 20, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145828, which modified the Decision[4] dated January 15, 2016 and the Resolution[5] dated March 16, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000096-16, and accordingly, ruled *inter alia*, that petitioner was not illegally dismissed by respondents Quezon Colleges of the North (QCN) and/or Ma. Cristina A. Alonzo (Alonzo) and Irma Segunda A. Beltran[6] (Beltran; collectively, respondents), but merely retired from service.

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* "Edwin A. Barroga" in some parts of the *rollo*.

1 *Rollo*, pp. 12-28.

2 Id. at 33-46. Penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Ramon A. Cruz and Zenaida T. Galapate-Laguilles, concurring.

3 Id. at 48-49.

4 Id. at 102-109. Penned by Commissioner Cecilio Alejandro C. Villanueva with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring.

5 Id. at 110-113.

6 Respondents Cristina A. Alonzo and Irma Segunda A. Beltran were impleaded as corporate officers and representatives of QCN. See id. at 13.

The Facts

Petitioner alleged that he was a full-time science and chemistry teacher at QCN's High School Department continuously from June 1985 to March 2014. However, at the beginning of school year 2014-2015, respondents told him that he could not be given any teaching load allegedly because there were not enough enrollees. Petitioner found the timing thereof suspicious as he was already due for optional retirement for continuously serving respondents for almost thirty (30) years.[7] Initially, petitioner filed a case via Single-Entry Approach (SENA) before the Department of Labor and Employment Regional Office in Aparri, Cagayan (SENA Case),[8] where he and QCN,[9] agreed on a settlement whereby the latter undertook to pay him his money claims on or before December 2014.[10] However, QCN failed to honor the settlement agreement, prompting petitioner to file a complaint,[11] docketed as NLRC RAB No. II Case No. 06-00195-2015, for *inter alia* illegal dismissal against respondents.[12]

Respondents moved for and were granted extensions of time to file their position paper, but still failed to file the same. Hence, the Labor Arbiter (LA) was constrained to rule on the basis of petitioner's position paper.[13]

The LA Ruling

In a Decision[14] dated November 5, 2015, the LA ruled in petitioner's favor, and accordingly, ordered respondents to pay him the total amount of ₱357,873.29, representing petitioner's retirement pay, backwages, proportionate 13th month pay, service incentive leave pay, and attorney's fees.[15] The LA found that respondents' failure to submit their position paper despite numerous extensions is tantamount to their admission of petitioner's allegations, *i.e.*, that he was illegally dismissed, and thus, must be recompensed therefor.[16]

Seven (7) days later, or on November 12, 2015, respondents belatedly filed their position paper,[17] averring that: (*a*) they hired petitioner as a teacher in June 1985; (*b*) he resigned on September 1, 2006, as evidenced by a

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7 See id. at 34.

8 See SENA Form dated July 28, 2014; id. at 114.

9 Through Alonzo and Ramona Augustha Carniyan, who were the School President and the Assistant School Principal, respectively. See id.

10 See Settlement of Agreement dated August 27, 2014; id. at 128.

11 Dated June 24, 2015. Id. at 115-116.

12 See id. at 103-104.

13 See id. at 104. See also Complainant's Position Paper dated August 19, 2015; id. at 117-120.

14 Id. at 85-87. Penned by Labor Arbiter Officer-in-Charge Ma. Lourdes K. Baricaua.

15 Id. at 87-88.

16 Id. at 86.

17 See Position Paper for the Plaintiff with Motion to Admit Position Paper dated November 9, 2015 filed by Alonzo, representing Quezon Colleges; id. at 121-125.

resignation letter of even date (2006 Resignation Letter);[18] and (*c*) per the letter[19] dated September 9, 2015 of the Private Education Retirement Annuity Association (PERAA), petitioner was already paid his retirement benefits in the total amount of ₱71,546.44 (PERAA Letter).[20] However, in view of the LA's ruling, respondents appealed[21] to the NLRC, principally reiterating their contentions in their position paper.

The NLRC Ruling

In a Decision[22] dated January 15, 2016, the NLRC affirmed the LA ruling. It held that respondents failed to prove their averment that petitioner had already retired prior to the filing of the illegal dismissal case, observing that there was no proof or record showing that respondents accepted petitioner's 2006 Resignation Letter, and that petitioner had undergone clearance proceedings after his purported resignation in 2006, or that he was no longer part of the school's payroll from such time.[23] Relatedly, the NLRC also pointed out that while respondents claimed that petitioner resigned way back in 2006, they nevertheless presented another letter[24] dated June 9, 2014 allegedly prepared by petitioner signifying his intention to retire (2014 Retirement Letter). In this regard, the NLRC opined that if petitioner really resigned in 2006, then there would be no reason for him to write respondents a retirement letter eight (8) years after his alleged resignation.[25] Further, the NLRC pointed out that the PERAA Letter did not prove that petitioner had been paid his retirement benefits, as the plain wording of the letter shows that what was paid to him was merely the repurchase benefit of his shares in the PERAA.[26] In sum, the NLRC concluded that since petitioner was already entitled to optional retirement, respondents' act of not assigning him any teaching load is a malicious scheme to dismiss him from service and to avoid payment of his retirement benefits.[27]

Respondents filed a motion for reconsideration,[28] contending therein for the first time that petitioner was not illegally dismissed as he retired on June 9, 2014 as evidenced by the 2014 Retirement Letter.[29] In a Resolution[30] dated March 16, 2016, the NLRC denied respondents' motion, holding, among others, that respondents can no longer change the theory of their

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18 Id. at 97.
19 Id. at 127.
20 Id. at 104.
21 See Appeal Memorandum dated November 23, 2015; id. at 70-82.
22 Id. at 102-109.
23 See id. at 106.
24 Id. at 101.
25 See id. at 106.
26 See id.
27 See id. at 107.
28 Not attached to the *rollo*.
29 See *rollo*, p. 111.
30 Id. at 110-113.

defense after the case was already decided by a tribunal.[31] Aggrieved, respondents filed a petition for *certiorari*[32] before the CA.

The CA Ruling

In a Decision[33] dated July 18, 2017, the CA modified the NLRC ruling holding that petitioner was not illegally dismissed, but is nevertheless entitled to retirement pay, proportionate 13th month pay for 2014, and service incentive leave pay from 1985 until retirement, plus legal interest of six percent (6%) per annum from finality of the CA Decision until fully paid.[34] It held that petitioner failed to prove his allegation that respondents dismissed him from employment when he was not given any teaching load for school year 2014-2015. In this regard, the CA opined that he was not given any teaching load for the said school year because he had tendered his retirement, as evidenced by the 2014 Retirement Letter, the existence of which was not disputed by petitioner, as well as the SENA Form reflecting that petitioner was only claiming for non-payment of retirement benefits.[35] Nonetheless, the CA ordered respondents to pay petitioner his other monetary claims, including retirement pay, absent any proof that the former already paid the same.[36] Finally, the CA ordered Beltran to be dropped as party-respondent in this case, considering that petitioner failed to show why she should be held solidarily liable with QCN and its admitted representative, Alonzo.

Dissatisfied, petitioner moved for partial reconsideration[37] which was, however, denied in a Resolution[38] dated October 20, 2017; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly ruled that petitioner was not illegally dismissed by respondents, but rather, retired from his employment with the latter.

The Court's Ruling

The petition lacks merit.

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31 See Id. at 111-112.
32 Dated April 29, 2016. Id. at 52-65.
33 Id. at 33-46.
34 Id. at 45.
35 See id. at 40-42.
36 See id. at 43 and 45.
37 See Motion for Partial Reconsideration dated August 16, 2017; id. at 160-168.
38 Id. at 48-49.

"Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."[39]

"Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[40]

"In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."[41]

Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC as the evidence of record show that petitioner retired from the service, as will be explained hereunder.

While retirement from service is similar to termination of employment insofar as they are common modes of ending employment, they are mutually exclusive, with varying juridical bases and resulting benefits. Retirement from service is contractual, while termination of employment is statutory.[42] Verily, the main feature of retirement is that it is the result of a bilateral act of both the employer and the employee based on their *voluntary* agreement that upon reaching a certain age, the employee agrees to sever his employment.[43] Since the core premise of retirement is that it is a voluntary agreement, it necessarily

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39 *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, G.R. No. 184262, April 24, 2017, 824 SCRA 52, 60; citing *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 187 (2016).

40 *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, id. at 61; citing *Gadia v. Sykes Asia, Inc.*, 752 Phil. 413, 419-420 (2015).

41 *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, id.; citing *Gadia v. Sykes Asia, Inc.*, id. at 420.

42 *General Milling Corporation v. Viajar*, 702 Phil. 532, 546 (2013); citing *Quevedo v. Benguet Electric Cooperative, Inc.*, 615 Phil. 504, 509-510 (2009).

43 See *Robina Farms Cebu v. Villa*, 784 Phil. 636, 649 (2016); citing *Universal Robina Sugar Milling Corporation v. Caballeda*, 582 Phil. 118, 133 (2008).

follows that if the intent to retire is not clearly established or if the retirement is involuntary, it is to be treated as a discharge.[44]

The line between "voluntary" and "involuntary" retirement is thin but it is one which case law had already drawn. On the one hand, voluntary retirement cuts the employment ties leaving no residual employer liability; on the other, involuntary retirement amounts to a discharge, rendering the employer liable for termination without cause. The employee's intent is decisive. In determining such intent, the relevant parameters to consider are the fairness of the process governing the retirement decision, the payment of stipulated benefits, and the absence of badges of intimidation or coercion.[45]

In this case, petitioner's claim that respondents forced him to retire is anchored on the supposed fact that at the start of school year 2014-2015, he was suddenly not given any teaching load by the respondents on the ground that there were not enough enrollees in the school. However, aside from such bare claims, petitioner has not shown any evidence that would corroborate the same. It is settled that bare allegations of discharge, when uncorroborated by the evidence on record, cannot be given credence.[46]

Moreover, petitioner's aforesaid claim is belied by the fact that about a week after the beginning of school year 2014-2015,[47] he submitted to respondents the 2014 Retirement Letter[48] wherein he expressed his intent to optionally retire at the age of 61. Notably, records are bereft of any showing that petitioner ever challenged the authenticity and due execution of such letter. Further, if petitioner really believed that respondents indeed illegally dismissed him from service, then he would have already made such claim at the earliest instance, *i.e.*, on July 28, 2014 when he filed a SENA Case against the latter. However, an examination his SENA Form[49] readily shows that petitioner's claim against respondents was just for "non-payment of retirement benefits," which they ultimately agreed to settle.[50] Clearly, this agreement to settle cements petitioner's intent and decision to opt for voluntary retirement which, as mentioned, is separate and distinct from the concept of dismissal as a mode of terminating employment. Unfortunately,

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44 See *Laya, Jr. v. Philippine Veterans Bank*, G.R. No. 205813, January 10, 2018; citing *Paz v. Northern Tobacco Redrying Co., Inc.*, 754 Phil. 251, 266 (2015).

45 See *Robina Farms Cebu v. Villa*, supra note 43, at 649-650; citing *Quevedo v. Benguet Electric Cooperative, Inc.*, supra note 42, at 510-511.

46 See *Hechanova Bugay Vilchez Lawyers v. Matorre*, 719 Phil. 608, 609 (2013); citing *Vicente v. CA*, 557 Phil. 777, 787 (2007).

47 The Court takes judicial notice that school year 2014-2015 started on June 2, 2014. See Department of Education Department Order No. 18, Series of 2014, entitled "SCHOOL CALENDAR FOR SCHOOL YEAR (SY) 2014-2015" <http://www.deped.gov.ph/2014/03/28/do-18-s-2014-school-calendar-for-school-year-sy-2014-2015/> (last visited November 19, 2018). See also "Official School Calendar for School Year 2014-2015 <https://www.officialgazette.gov.ph/2014/05/19/official-school-calendar-for-school-year-2014-2015/> (last visited November 19, 2018) and "DepEd: School Year 2014-2015 to Start June 2" <http://www.gmanetwork.com/news/news/nation/355147/deped-school-year-2014-2015-to-start-june-2/story/> (last visited November 19, 2018).

48 *Rollo*, p. 101.

49 Id. at 114.

50 Id. at 128.

and as found by the tribunals *a quo* and the CA, respondents failed to comply with its undertaking under the Settlement of Agreement as petitioner's retirement benefits remain unpaid.[51]

From these circumstances, the Court is therefore inclined to hold that petitioner retired from service, but nonetheless, pursued the filing of the instant illegal dismissal case in order to recover the proper benefits due to him. In fact, it is telling that he never asked to be reinstated as he only sought the payment of his retirement benefits. In view of the foregoing, respondents must duly pay petitioner not only his retirement benefits, but also his other monetary claims (*i.e.*, proportionate 13th month pay for 2014 and service incentive leave pay from 1985 until his retirement) which the tribunals *a quo* and the CA also found to be unpaid.

On this note, case law instructs that in labor cases where the concerned employee is entitled to the wages/benefits prayed for, said employee is also entitled to attorney's fees amounting to ten percent (10%) of the total monetary award due him.[52] Hence, the CA erred in deleting the award of attorney's fees. Thus, the reinstatement of such award is in order.[53]

Further, all monetary awards due to petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of this ruling until full payment.[54]

Finally, the Court sustains the CA's order to drop Beltran as a party-respondent in this case for petitioner's failure to allege any fact which would make her solidarily liable with QCN and its representative, Alonzo.

WHEREFORE, the petition is **DENIED**. The Decision dated July 18, 2017 and the Resolution dated October 20, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145828 are **AFFIRMED** with the following **MODIFICATIONS**: (*a*) respondents Quezon Colleges of the North and/or Ma. Cristina A. Alonzo are ordered to pay petitioner Edwin H. Barroga attorney's fees amounting to ten percent (10%) of the monetary claims granted to him; and (*b*) all monetary amounts due to petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of the ruling until full payment. The rest of the CA Decision stands.

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51 See id. at 43, 86, and 108.

52 See *Horlador v. Philippine Transmarine Carriers, Inc.*, G.R. No. 236576, September 5, 2018, citations omitted.

53 See id.

54 See *Nacar v. Gallery Frames*, 716 Phil. 267, 282 (2013).

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ROSMARI D. CARANDANG
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 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