SUPREME COURT
FIRST DIVISION

PHILIPPINE SCOUT VETERANS SECURITY AND INVESTIGATION AGENCY AND/OR SEVERO SANTIAGO,
***Petitioners*,**

-versus-

G.R. No. 115019
April 14, 1997

NATIONAL LABOR RELATIONS COMMISSION and MARIANO FEDERICO,
***Respondents*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

MARIANO FEDERICO, private respondent, had been working with petitioners Philippine Scout Veterans Security and Investigation Agency and/or Severo Santiago as a security guard for twenty-three (23) years. On 16 September 1991 Federico, then already sixty (60) years old, tendered his so-called "letter of resignation" citing as his reasons physical disability to perform his duties and desire to spend the rest of his life in the province. It seems that the letter did not strictly refer to "resignation" but "withdrawal from occupation" because thereafter he sought alternative reliefs from petitioners,

namely, termination pay corresponding to his years of service, or retirement benefits.

Petitioners rejected the claim for termination pay contending that respondent Federico voluntarily resigned. The claim for retirement benefits met the same fate there being no collective or individual agreement providing therefor.

On 4 December 1991 respondent Federico brought his grievance to the Labor Arbiter. However, the latter sustained the stand of petitioners. Hence on 25 August 1992 he ruled against Federico. Nevertheless, the termination of the proceedings did not leave respondent empty-handed. The Labor Arbiter directed petitioners to pay respondent P10,000.00, the amount they previously offered him, as financial assistance.[1]

On 28 December 1993 public respondent National Labor Relations Commission (NLRC) set aside on appeal the subject Decision, relying on Art. 287 of the Labor Code as amended by R.A. 7641 which, in the absence of a retirement plan or agreement providing for retirement benefits, grants retirement pay equivalent to fifteen (15) days for every year of service.[2] The amendment, which took effect on 7 January 1993, was thus retroactively applied in favor of respondent Federico. On 21 March 1994, NLRC denied reconsideration of the Decision.[3]

The question to be resolved is whether Art. 287 of the Labor Code as amended by R.A. 7641 may be applied retroactively to the complaint filed on 4 December 1991 by respondent Mariano Federico.

Petitioners argue that the amendment introduced by R.A. 7641 applies to employees of the private sector who retired beginning 7 January 1993, the date of its effectivity, and onwards. In the present case therefore respondent Federico, who filed his complaint two (2) years prior to the effectivity of the law, cannot seek refuge in the provision. Besides, this Court in Llora Motors, Inc. vs. Drilon[4] was faced with the same controversy. Its ruling thereon is now judicial precedent.

The Office of the Solicitor General contends that the matter of giving retroactive effect to social legislation has long been settled in the leading case of Allied Investigation Bureau, Inc. vs. Ople.[5]

We grant the petition not on the basis of the arguments of petitioners but on recent jurisprudence. Article 287 then in force provided —

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

In Allied, private respondent had been an employee of petitioner since 1953. In 1976, having reached the age of sixty (60) years, he submitted to petitioner an application for retirement benefits which was subsequently approved although there was then no collective bargaining agreement or employer policy establishing an additional retirement plan for its employees. Controversy arose with respect to the method of computing the amount of retirement benefits. Instead of basing the amount upon private respondent's actual period of employment (from 1953 up to 1976), petitioner computed such amount starting with the date of the effectivity of the Labor Code (1 November 1974) up to 1976. The Labor Arbiter, the NLRC and the then Minister of Labor were one in the view that the computation should be on the basis of the length of service. This Court sustained the computation of public respondents since it found the comment of the Solicitor General in support thereof persuasive —

> In the computation thereof, public respondents acted judiciously in reckoning the retirement pay from the time private respondent started working with petitioner since respondent employee's application for retirement benefits and the company's approval of the same make express mention of Sections 13 and 14, Rule 1, Book VI of the Implementing Rules and Regulations of the Labor Code as the basis for retirement pay. Section 14 (a) of said rule provides that an employee who is

> retired pursuant to a bona fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein or to termination pay equivalent to at least one-half month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year. This position taken by public respondents squares with the principle that social legislation should be interpreted in favor of workers in the light of the Constitutional mandate that the State shall afford protection to labor.

Quite differently, in Llora Motors, we set aside the grant of retirement benefits because of the absence of a collective bargaining agreement or other contractual basis or any established employer policy that contemplated said grant. Private respondent invoked Allied but we found the reliance thereon misplaced because —

> While Allied had no collective bargaining agreement or similar employment contract establishing a plan under which employees could retire, its approval of (private respondent's) application, although unilateral and possibly ad hoc, supplied the necessary consensual basis. In the instant case, (petitioner) consistently resisted the demand for separation pay or retirement benefits by private respondent.

As between Llora which is invoked by petitioners and Allied which is invoked by the Solicitor General, we could have applied the former because of similarity in factual milieu except that we have to take into account the amendment of Art. 287 by R.A. 7641 on 7 January 1993 or during the pendency of the proceedings before the NLRC. As amended, Art. 287 now pertinently provides —

> Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> 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.
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> In the absence of a retirement plan or agreement 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 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 (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year. (Emphasis on amendment supplied).

Under the amendment, respondent Federico appears to be entitled to retirement pay. But can he avail himself of this provision considering that it took effect subsequent to his filing of the complaint? This brings to mind the principle reiterated in Allied that police power legislation intended to promote public welfare applies to existing contracts and can therefore be given retroactive effect. Actually, the case at bench no longer presents a novel issue. We have ruled in Oro Enterprises, Inc. vs. NLRC[6] that R.A. 7641 can indeed be applied retroactively. Private respondent in that case, after working continuously with the company for forty-one (41) years, manifested her intention to retire from work by filing with petitioner a claim for retirement pay which was however denied. The Labor Arbiter granted her claim. During the pendency of the appeal, R.A. 7641 took effect and on that basis the NLRC affirmed the subject decision with modification. We sustained the NLRC on its rationalization that —

> R.A. 7641 is undoubtedly a social legislation. The law has been enacted as a labor protection measure and as a curative statute that — absent a retirement plan devised by, an agreement with, or a voluntary grant from, an employer — can respond, in part at least, to the financial well-being of workers during their twilight years soon following their life of labor. There should be little doubt about the fact that the law can apply to labor contracts still existing at the time the statute has taken effect, and that its benefits can be reckoned not only from the date of

> the law's enactment but retroactively to the time said employment contracts have started. (Emphasis supplied).

The labor contract between private respondent and petitioner therein was still existing at the time of the effectivity of R.A. 7641 because the NLRC was still tasked with determining, among other things, the issue of whether private respondent has in fact been effectively retired.

We thus culled from Oro that the retroactive application of R.A. 7641 necessitated the concurrence of certain circumstances. In CJC Trading, Inc. vs. NLRC,[7] we elaborated thereon. Thus, private respondents filed separate claims for illegal dismissal and monetary awards against petitioners on 23 August 1992 and 15 September 1992. Neither the Labor Arbiter nor the NLRC found merit in their complaint. Invoking justice, fairness and equitable consideration, private respondents sought reconsideration and asked for termination pay for the first time. The NLRC saw fit to award separation pay instead. The Court overruled the NLRC because it was clear that private respondents had voluntarily resigned. We then noted their prayer for an award of termination pay. Inasmuch as they were close to the age of sixty (60) when they stopped working for petitioner and that they have been in its employ for several years, we took the view most favorable to them by considering their prayer for termination pay as referring to retirement benefits. The issue that had to be resolved next was whether to grant retirement benefits by applying retroactively Art. 287 as amended by R.A. 7641. At this point we emphasized the circumstances, based on Oro, that must concur before the law could be given retroactive effect: (a) the claimant for retirement benefits was still the employee of the employer at the time the statute took effect; and, (b) the claimant was in compliance with the requirements for eligibility under the statute for such retirement benefits.

It was quite clear in CJC, as held by the Labor Arbiter and the NLRC, that private respondents had ceased to be employees of petitioner by reason of their voluntary resignation before the statute went into effect. Moreover, at the time they stopped working for petitioner, they had not yet reached the age of sixty (60) years. The end result was that they were neither entitled to retirement benefits. Nevertheless,

the Court stressed that there was nothing to prevent the employer from voluntarily giving the employees some financial assistance on an ex gratia basis.

Returning to the present case, although the second circumstance exists, respondent Federico severed his employment relationship with petitioners when he tendered his "letter of resignation" on 16 September 1991 or prior to the effectivity of R.A. 7641. In fact, the issue before public respondents was not the existence of employee-employer relationship between the parties; rather, considering the cessation of his service, whether he was entitled to monetary awards. On the authority of CJC, private respondent therefore cannot seek the beneficial provision of R.A. 7641 and must settle for the financial assistance of P10,000.00 offered by petitioners and directed to be released to him by the Labor Arbiter.

WHEREFORE, the Petition is **GRANTED**. The Decision of respondent National Labor Relations Commission of 28 December 1993 and its Order of 21 March 1994 are **SET ASIDE**. The Decision of the Labor Arbiter of 25 August 1993 directing petitioners to extend financial assistance of P10,000.00 to private respondent Mariano Federico is **REINSTATED.**

SO ORDERED.

Padilla, Vitug and Kapunan, *JJ.*, concur.
Hermosisima, Jr., *J.*, is on leave.

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[1] Decision was penned by Labor Arbiter Eduardo J. Carpio; Rollo, p. 76.
[2] Decision penned by Commissioner Vicente S.E. Veloso with Presiding Commissioner Bartolome S. Carale and Commissioner Alberto R. Quimpo concurring; Rollo, p. 41.
[3] Rollo, pp. 43-44.
[4] G.R. No. 82895, 7 November 1989, 179 SCRA 175.
[5] No. L-49678, 29 June 1979, 91 SCRA 265.
[6] G.R. No. 110861, 14 November 1994, 238 SCRA 105.
[7] G.R. No. 115884, 20 July 1995, 246 SCRA 724.