SUPREME COURT
FIRST DIVISION

HERMITO CABCABAN,
***Petitioner*,**

-versus-

G.R. No. 120256
August 18, 1997

NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION and TEODORA CABILLO DE GUIA,
***Respondents*.**
x----------x

D E C I S I O N

KAPUNAN, *J.*:

On March 16, 1993, Hermito Cabcaban, then 63 years old, filed a complaint for retirement benefits under Republic Act 7641 against Hda. Corazon de Jesus and/or Teodora Cabillo de Guia. Complainant alleged that he worked at the 50-hectare hacienda, owned by Teodora Cabillo de Guia at Bais, Negros Oriental, from 1962 to July 1991,[1]

performing such jobs as clearing the plantation, planting, weeding, fertilizing, cutting cane points, canal digging, harvesting/loading, "depol," "gahit," and gathering coconuts.

Respondents moved to dismiss the complaint on the following grounds: first, that complainant's cause of action had already prescribed; and second, that complainant is also one of the complainants in RAB-VII-06-0110-92-D,[2] a case for illegal dismissal and reinstatement against the same respondents pending before another Labor Arbiter.

On the basis of the parties' position papers, the Labor Arbiter in the complaint for retirements benefits rendered a decision in complainant's favor. The dispositive portion of said decision reads:

> "WHEREFORE, in the light of the foregoing, judgment is hereby rendered directing the respondent to pay complainant's retirement pay in the amount of PESOS: THIRTY SEVEN THOUSAND EIGHT HUNDRED TWELVE & 30/100 (P37,812.30).
>
> "SO ORDERED."[3]

On appeal to the National Labor Relations Commission (NLRC), respondents reiterated their defense that complainant's cause of action had already prescribed. As proof thereof respondents presented as "newly-found evidence" an "Application for Retirement Benefit"[4] which complainant filed with the Social Security System (SSS) on March 11, 1991. Said document was obtained by respondents from the SSS Field Services Division in Bacolod City.

According to respondents:

> Complainant-appellee declared in his application under "History of Employment" that he was an employee of Augusto de Guia (deceased spouse of Respondent — de Guia) and that his period of employment covers only from July 1, 1973 to December 31, 1978. This newly found evidence is an admission against complainant-appellee's interest since this piece of document will show that he was separated last December 31,

> 1978, contrary to his claim in this instant case that he worked from 1962 until July 1991. If complainant-appellee was dismissed in 1978, then clearly his cause of action had already prescribed.[5]

Respondents, likewise, argued that assuming complainant's action had not prescribed, he still would not be entitled to any retirement benefits since he was only 48 years old when he was separated from employment in 1978, well below the 60-year old retirement age prescribed by the Labor Code.

It does not appear that complainant filed any opposition to respondents' appeal.

On June 30, 1994, the NLRC rendered a Decision dismissing the complaint for lack of merit.

On August 29, 1994, complainant filed a Motion for Reconsideration before the NLRC. He pointed out that in the same Application for Retirement Benefit adduced by respondents, complainant's employer, Teodora C. de Guia, certified complainant's exact date of separation to be February 28, 1991.

The NLRC, however, denied complainant's motion in a Resolution promulgated on April 7, 1995. It held that:

> It is not disputed as found by the Commission that the applicant had applied for retirement benefits under the Social Security System and may have already enjoyed the said benefits. Moreover, even on the assumption that the complainant was separated from the service on February 28, 1991, he is not covered by R.A. 7641 which took effect on January 7, 1993, years before his separation from the service.[6]

In this special civil action *certiorari*, complainant, now petitioner, claims that:

> The Honorable Commission did not only abuse its discretion amounting to lack of jurisdiction BUT THE DECISION IS

> NULL AND VOID FOR BEING CONTRARY TO THE FACTS AND EVIDENCE.[7]

First, petitioner takes exception to the following pronouncement in the impugned resolution:

> One more observation in the instant case is that the evidence relied on by the complainant to show merit in his claim for retirement benefits is the latter's application for retirement benefits tending to show that complainant was still in the service up to February 29, 1991. This particular evidence was not made available to the Labor Arbiter in the proceedings below. Thus, he could not be faulted for his findings against the respondents.[8]

Petitioner brands the above pronouncement as "totally untrue" since the records show that the application for retirement benefits was used as evidence by private respondent, not by petitioner.

The contention is well-taken. Indeed, the document in question was attached as Annex "B" in private respondent's Memorandum of Appeal before the NLRC. Nevertheless, it does not appear that the NLRC's "observation" played a profound role in its decision to deny petitioner retirement benefits.

Petitioner next faults in the NLRC for denying petitioner's claim on the ground that he had earlier availed of retirement benefits from the SSS. He contends that the provisions of R.A. 7641 entitles an employee to retirement pay in addition to the retirement benefits granted by the SSS. He adds that, despite his having retired prior to R.A. 7641's date of effectivity, the same should apply retroactively in his favor in line with our ruling in Oro Enterprises, Inc. vs. NLRC.[9]

We do not agree.

Prior to its amendment, Article 287 of the Labor Code provided as follows:

> 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 agreements.

In Llora Motors, Inc. vs. Drilon,[10] we interpreted the provisions of the above article to mean that:

> Article 287 not itself purport to impose any obligation upon employers to set up a retirement scheme for their employees over and above that already established under existing laws. In other words, Article 287 recognizes that existing laws already provide for a scheme by which retirement benefits may be earned or accrue [sic] in favor of employees, as part of a broader social security system that provides not only for retirement benefits but also death and funeral benefits, permanent disability benefits, sickness and maternity leave benefits.[11]

As a consequence of our ruling in the above case, Congress enacted Republic Act 7641,[12] amending Article 287 of the Labor Code to read as follows:

> 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 agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less that those provided herein.

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.

Unless the parties provide for broader inclusions, the term 'one-half (½) 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.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

R.A. 7641 took effect on January 7, 1993. nevertheless, we did not hesitate to give retroactive effect to said law in Oro Enterprises, supra, as follows:

> RA 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.
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> Republic Act 7641 took effect on 07 January 1993, while the appeal of private respondent was till pending consideration by the NLRC. Still for determination at the time was, among other things, the issue of whether or not private respondent has, in fact, been effectively retired.[13]

The case of Oro Enterprises, however, does not find application in the instant petition. In CJC Trading, Inc. vs. National Labor Relations Commission,[14] we enumerated the requirements for the proper application of Oro Enterprises, as follows:

> We read Oro Enterprises as holding that R.A. No. 7641 may be given effect where (1) the claimant for retirement benefits was still the employee of the employer at the time the statute took effect; and (2) the claimant was in compliance with the requirements for eligibility under the statute for such retirement benefits.[15]

The above requisites have not been met in the case at bar.

First, although petitioner's complaint was filed after R.A. 7641 took effect, his application for retirement benefits with SSS indubitably shows that petitioner was separated from private respondent's employ on December 31, 1978, as follows:

HISTORY OF EMPLOYMENT

	PERIOD OF EMPLOYMENT		
EMPLOYER	From	To	ADDRESS
Augusto de Guia	07-01-93	12-31-78	Tanjay, Negros Oriental

Petitioner does not explain why he submitted said application to the SSS despite the apparent discrepancy between the above information and his alleged actual period of employment. He insists, however, that said documents contains a certification by private respondent that he was dismissed on February 28, 1991. However, as shown below, the date "February 28, 1991" refers not to the actual date of separation, the space for which was left blank, but to the date of the employer's certification which is enclosed in a box and separated by a bar from the former. Thus:

CERTIFICATE OF SEPARATION FROM LAST EMPLOYER

UNDERSIGNED EMPLOYER CERTIFIES	DATE OF CERTIFICATION
THAT THE EMPLOYEE NAMED HEREIN WAS SEPARATED FROM HIS EMPLOY ON ACTUAL DATE OF SEPARATIONFULL NAME OF EMPLOYER/AUTHORIZED	February 28, 1991

REPRESENTATIVE(Sgd.)

AUGUSTO DE GUIA
EMPLOYER'S DESIGNATION/CAPACITY

TEODORA C. DE GUIA
SIGNATURE OF EMPLOYER/
Actg. Administratrix
AUTHORIZED REPRESENTATIVE

Petitioner's bare and — as noted earlier[16] inconsistent allegations that he was employed by private respondent through the early 1990s cannot prevail over private respondent's evidence showing that he was separated from employment in 1978 way before R.A. 7641 took effect in 1993.

Second, petitioner has not shown any employment contract or collective bargaining agreement which entitles him to retirement benefits. Moreover, his application for retirement benefits states that he was born in 1930, and thus, only forty-eight (48) years of age when he was separated from private respondent's employ in 1978. The same document shows that petitioner was employed by private respondent for a mere four and a half (4½) years, from July 1973 to December 31, 1978. Clearly then, petitioner is not qualified to an award of retirement pay under Article 287, as amended.[17]

Article 287, as amended, therefore cannot be applied retroactively to favor petitioner.

Neither can petitioner avail of retirement benefits under the old Article 287. As stated earlier, petitioner has not shown the existence of any collective bargaining agreement or employment contract which entitles him to such benefits.

It is, therefore, irrelevant petitioner whether petitioner is precluded from availing of retirement pay in addition o retirement benefits under the SSS Law since petitioner is not entitled to any retirement pay in the first place. Likewise, academic is the question of prescription raised previously by private respondent, petitioner having no cause of action to speak of, much less a right of action to enforce the same.

WHEREFORE, the instant Petition is **DISMISSED**, and the Decision and Resolution of the NLRC are hereby **AFFIRMED**. No costs.

SO ORDERED.

Padilla, Bellosillo, Vitug and Hermosisima, Jr., *JJ.*, concur.

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[1] Annex "C," Position Paper for Complainant; Records, p. 22. In his complaint (Records, p. 1), however, complainant stated that he was employed by respondent from 1962 to 1992.
[2] Entitled "National Federation of Sugar Workers/Food and General Trade (NFSW/FGT), for and in behalf of 32 members of the Union at Hda. Corazon de Jesus vs. Teodora Cabillo de Guia and/or Hda. Corazon de Jesus," Records, p. 56.
[3] Id., at 40.
[4] Annex "A" in Appellant's Memorandum of Appeal; Id., at 55.
[5] Id., at 51, underscoring in the original.
[6] Id., at 97.
[7] Rollo, p. 5; emphasis in the original.
[8] Records, pp. 97-98.
[9] 238 SCRA 105 (1994).
[10] 179 SCRA 175 (1989). Cited in Abaquin Security and Detective Agency, Inc. vs. Atienza, 190 SCRA 460 (1990) at 465.
[11] Id., at 181; italics in the original.
[12] See explanatory note of House Bill No. 317 which eventually became R.A. No. 7641.
[13] See note 9, pp. 122, 114; italics in the original.
[14] 246 SCRA 724 (1995).
[15] Id., at 731.
[16] See note 1.
[17] See third paragraph thereof.
