SUPREME COURT
THIRD DIVISION

ORO ENTERPRISES, INC.,
***Petitioner*,**

-versus-

G.R. No. 110861
November 14, 1994

NATIONAL LABOR RELATIONS COMMISSION and LORETO L. CECILIO,
***Respondents*.**
x----------x

D E C I S I O N

VITUG, *J.*:

In this Petition for *Certiorari*, Oro Enterprises, Inc., seeks a reversal of the 22 March 1993 Decision and 29 May 1993 Order of respondent National Labor Relations Commission (NLRC) directing petitioner to pay private respondent Loreto Cecilio retirement pay in the amount of P61,500.00.

Private respondent was first employed by petitioner in August of 1949. After working continuously with the company for forty one (41) years, private respondent manifested, on 03 September 1990, her intention to retire from work by filing with petitioner a "Claim for Retirement Pay."

In her claim, private respondent pleaded that "the retirement pay she (was) receiving from the Social Security System in the total sum of five hundred pesos (P500.00) a month could hardly (suffice to) meet her daily subsistence."[1]

On 15 September 1990, petitioner wrote private respondent, informing her that it was in no financial position to give her any retirement benefit apart from the retirement pay she was already receiving from the Social Security System ("SSS"). Nonetheless, she was offered a house and lot located in San Jose, del Monte, Bulacan, in accordance with a "plan"[2] which was then still being conceived by the company president for retiring employees. The offer did not materialize, nor did the proposed company plan come into being, for one reason or another.

On 26 September 1990, private respondent filed her complaint with the Office of the Labor Arbiter (docketed as NLRC Case No. 00-09-05167-90). In her position paper, she reiterated —

> "That she has been employed and faithfully worked for petitioner continuously for forty-one (41) years until she reached the age of 65 on 19 August 1990; that when she requested petitioner for her 'retirement or termination pay,' the President of the company refused to comply; and that the lot being offered to her which is located in Bulacan would not meet her basic needs for subsistence in the remaining years of her life."[3]

On 04 October 1990, petitioner filed its own position paper, stating that —

> "Private respondent was not dismissed from the service but voluntarily stopped working on September 15, 1990; that it has no collective bargaining agreement or any other agreement or established policy concerning payment of retirement benefits to employees who reach a certain age except that which is required by the Social Security Law; that it has not agreed, whether expressly or impliedly, to pay any retirement benefit to private respondent or any of its employees; and that in Llora Motors,

> Inc., and/or Constantino Carlota, Jr. vs. Honorable Franklin Drilon, et al., (G.R. No. 82895, Nov. 7, 1989), this Honorable Court ruled that payment of retirement benefits cannot be required in the absence of a collective bargaining agreement or other contractual basis or any established employer policy providing the grant of such retirement benefits."[4]

On 11 February 1991, Labor Arbiter Edilberto J. Pangan, to whom the case was assigned, rendered a Decision, the dispositive portions of which read:

> "DAHIL DITO, inuutusan ang Oro Enterprises, Inc. na bayaran and nagsusumbong na si Bb. Loreto L. Cecilio ng kanyang bayad sa pamamahinga (Retirement Benefits), batay sa kalahating buwan sahod sa bawat isang taong paglilingkod (half month pay for every year of service), nagkakahalaga ng ANIMNAPU AT TATLONG LIBONG PISO (P63,000.00).
>
> "Gayon din, ipinag-uutos na bayaran ng sampung bahagi (10%) nang nasabing halaga o ANIM NA LIBO AT TATLONG DAANG PISO (P6,300.00) bilang bayad sa mananganggol, sa paghahain ng usaping ito.
>
> "At ang kabuuang dapat ibayad ng isinusumbong ay ANIMNAPU AT SIYAM NA LIBO AT TATLONG DAANG PISO (P69,300.00).
>
> "Sapagkat salat sa apat na batayan, ang kahilingan sa bayad pinsala, ay IPINAG-KAKAIT (DENIED).
>
> "IPINAG-UUTOS."[5]

Petitioner appealed to the NLRC. Private respondent likewise interposed her own appeal insofar as the Decision denied her claim for damages.

During the pendency of the appeal, or on 07 January 1993, Republic Act ("R.A.") No. 7641[6] took effect, providing among other things, thusly:

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

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.[7]

On 22 March 1993, the NLRC rendered its Decision awarding to private respondent a retirement pay on the basis of Republic Act 7641, hence —

> WHEREFORE, the respondent is hereby directed to pay complainant a retirement pay of P61,500.00. Since complainant's cause of action became meritorious only out of the curative effect of R.A. 7641, her award of 10% attorney's fee must fail.[8]

Petitioner filed a motion for reconsideration. In an Order, dated 19 May 1993, the NLRC denied the motion for lack of merit.

In the instant petition, Oro Enterprises ascribes grave abuse of discretion on the part of the NLRC in applying R.A. No. 7641. Petitioner argues that the law, which became effective only on 07 January 1993, cannot be given any such retroactive effect as to cover private respondent who, at the age of 65 years, retired from employment with petitioner on 03 September 1990.

At the time private respondent supposedly ceased to work with petitioner, Article 287 of the Labor Code, then in force, provided:

> "Art. 287. Retirement — Any employee maybe 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."

Rule 1, Book VI, of the Implementing Rules of the Labor Code, in turn, expressed:

> "Sec. 13. Retirement. — In the absence of any collective bargaining agreement or other applicable agreement concerning terms and conditions of employment which provides for retirement at an older age, an employee maybe retired upon reaching the age of sixty (60) years.
>
> "Sec. 14. Retirement benefits. — (a) An employee who is retired pursuant to a bonafide 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 at least to 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."

Private respondent, sustained by the Labor Arbiter, posits that there being no collective bargaining agreement ("CBA") that granted retirement benefits, conformably with Section 14 of the Implementing

Rules aforequoted, she should be entitled to a "termination pay equivalent at least to one-half month salary for every year of service."

This particular issue has long been put to rest. In Llora Motors, Inc., vs. Drilon, 179 SCRA 175, Mr. Justice Florentino P. Feliciano, speaking for the Court in an eruditely written ponencia, explained:

> Section 14 (a) refers to 'termination pay equivalent to at least one-half (½) month for every year of service' while Section 14 (b) mentions 'termination pay to which the employee would have been entitled had there been no such retirement fund' as well as 'termination pay the employee is entitled to receive.' It should be recalled that Sections 13 and 14 are found in Implementing Rule I which deals with both 'termination of employment' and 'retirement.' It is important to keep the two (2) concepts of 'termination pay' and 'retirement benefits' separate and distinct from each other. Termination pay or separation pay is required to be paid by an employer in particular situations identified by the Labor Code itself or by Implementing Rule I.[9] Termination pay where properly due and payable under some applicable provision of the Labor Code or under Section 4 (b) of Implementing Rule I, must be paid whether or not an additional retirement plan has been set up under an agreement with the employer or under an 'established employer policy.'
>
> "What needs to be stressed, however, is that Section 14 of Implementing Rule I, like Article 287 of the Labor Code, does not purport to require 'termination pay' to be paid to an employee who may want to retire but for whom no additional retirement plan had been set up prior agreement with the employer. Thus, Section 14 itself speaks of 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.' What Section 14 of Implementing Rule I may be seen to be saying is that where termination pay is otherwise payable to an employee under an applicable provision of the Labor Code, and an additional or consensual retirement plan exists, then payments under such retirement plan may be credited against the termination pay that is due, subject,

> however, to certain conditions. These conditions are: (a) that payments under the additional retirement plan cannot have the effect of reducing the amount of termination pay due and payable to less than one-half (½) month's salary for every year of service and (b) the employee cannot be made to contribute to the termination pay that he is entitled to receive under some provision of the Labor Code; in other words, the employee is entitled to the full amount of his termination pay plus at least the return of his own contributions to the additional retirement plan.[10]

While there apparently was some kind of a retirement plan then being devised by the company president for its retiring employees, it was, however, never formalized or implemented. The Labor Arbiter found thusly:

> Sa usaping pinag-uusapan ay mayroong plano sa pamamahinga (retirement plan) at ito nga, ay ang sinasabing lote na ipagkakaloob sa mga manggagawang may mahigit na sampung (10) taong paglilingkod, ngunit hanggang ngayon ay ito ay isang panaginip lamang. Wala pa, ni isang naisa-katuparan. At isa pa, napakalayo ang nasabing pook (San Jose del Monte, Bulacan) para sa isang katulad ng nagsusumbong upang doon siya tuluyan pumanaw, sa kabila ng kanyang pag-iisa. Kaya't ang sinasabing lote ay pansamantalang pang-palubag-loob lamang, at hindi seryosong biyaya o tunay na alay-biyaya.[11]

It then goes without saying, applying Llora Motors, that the beneficial provisions of Section 14 of Implementative Rules cannot properly be invoked by private respondent.

Instead, the pivotal issue, in our view, is whether or not R.A. 7641 can favorably apply to private respondent's case.

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. On this score, the case of Allied Investigation Bureau, Inc., vs. Ople, 91 SCRA 265, finds strong relevance:

> "1. There is no question that petitioner had agreed to grant retirement benefits to private respondent. It would, however, limit such retirement benefits only from the date of the effectivity of the Labor Code. That is its contention. The refutation given in the Comment of Solicitor General Estelito P. Mendoza is persuasive. As was pointed out, '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, which ever is higher, a fraction of at least six (6) months being considered as one whole year.' Further it was stated: '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.'
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> "2. Petitioner's insistence that the retirement benefits should date only from the time that the present Labor Code came into force could be based on the assumption that it should not be given a retroactive effect. That would be to ignore the well-settled principle that police power legislation intended to promote public welfare applies to existing

contracts. It was held in Ongsiako vs. Gamboa, decided in 1950, that a police power measure being remedial in character covers existing situations; otherwise, it would be self-defeating. Abe vs. Foster Wheeler Corporation, this Court, speaking through Justice Barrera, is even more in point. In that case, the contracts of employment were entered into at a time when there was no law granting the workers said right. Such being the case, it was then contended that the application as to them of the subsequent enactment would amount to an impairment of contractual obligations. In refuting such a view, it was made clear in the opinion that 'constitutional guaranty of non-impairment is limited by the exercise of the police power of the State, in the interest of public health, safety, morals and general welfare.' The latest reiteration of such a doctrine came in Gutierrez vs. Cantada, decided barely a month ago.

"3. Nor is it accurate to assert that the right to retirement benefits started from the enactment of the present Labor Code. That would be to ignore the social justice and protection to labor provisions of the 1935 Constitution. In the leading case of Antamok Goldfields Mining Company vs. Court of Industrial Relations, decided in 1940, a concurring opinion of Justice Laurel to this effect was cited: 'By and large, these provisions in our Constitution all evince and express the need of shifting emphasis to community interest with a view to affirmative enhancement of human values.' He had occasion to repeat it in his well-known definition of social justice in Calalang vs. Williams, decided the same year. Thus: 'Social justice is 'neither communism, nor despositism, nor atomism, nor anarchy,' but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the component elements of society, through the maintenance of a proper economic and social equilibrium

> in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.' The present Civil Code, which took effect on August 13, 1950, has a chapter on labor contracts, the first article of which recognizes that the relations between capital and labor 'are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good.'"

Republic Act 7641 took effect on 07 January 1993, while the appeal of private respondent was still 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.

Petitioner asserts that private respondent has never reported for work after the rejection of her application for retirement benefits. This claim is denied by private respondent, who avers that she did report for work again but that petitioner has refused to accept her on the ground of abandonment of duty. The Labor Arbiter has made these findings:

> Sa sinasabi ng isinusumbong na ang nagsusumbong daw ay kusang-loob na tinalikuran ang paglilingkod (abandonment of work) ay mahirap paniwalaan. Ang isang manggagawa na iningatan ang matapat niyang paglilingkod sa loob ng mahabang panahon, ay hindi basta na lamang lilisan at ipahahamak ito. Ang isang manggagawa na sa kanyang huling taon nang paglilingkod, ay walang dahilan na karaka-raka na lilisan ito upang ang biyayang tatanggapin ay masalalay sa alinlangan. Ang sinasabing pag-lisan ay hindi na-aayon sa katutuhanan ng pangyayari (natural course of events), kaya't hindi namin ito masasang-ayunan.
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> Ang katotohanan nito, ay noong malaman ni Gng. Marietta G. Holmgren, Pangulo ng isinusumbong (Oro Enterprises, Inc.) na ang nagsusumbong ay naglilingkod pa, ay nagalit ito at ang sabi,

> "pag nalaman ng SSS na nag(papa)trabaho pa ako na retired na, ay malilintikan kami (referring to Oro Enterprises, Inc.) sa SSS." Kaya't noong siya (naglilingkod) ay pumasok noong Setyembre 15, 1990, ay sinabihan siya na ito na ang kahulihulihan niyang araw ng paglilingkod. At simula noon ay hindi na siya pumasok. At ang sinasabing ulat ng pagputol ng paglilingkod (letter of termination) na may petsang Oktubre 12, 1990, ay walang sapat na batayan.[12]

The NLRC, in turn, has said:

After all, the least that could be said here is that the complainant filed her claim for retirement pay only on January 7, 1993 the date R.A. No. 7641 took effect and that against the backdrop that she retired only on September 15, 1990, her monetary claim could be treated as well filed within the three (3) years prescriptive period set by law."[13]

Given the above findings, which must be accorded due respect, we cannot see our way clear to attributing to NLRC grave abuse of discretion in concluding thereby that private respondent's claim for retirement benefits should accordingly be held to fall within the ambit of Republic Act No. 7641. Grave abuse of discretion, albeit an elastic phrase,[14] has always been understood as a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as, to exemplify, "where the power is exercised in an arbitrary or despotic manner."[15]

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**, and the Decision of the NLRC is **AFFIRMED**.

SO ORDERED.

Bidin, Romero and Melo, *JJ.*, concur.
Feliciano, *J.*, is on leave.

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[1] Rollo p. 60.
[2] Rollo p. 53, Records p. 12.
[3] Rollo, pp. 53-54.
[4] Rollo, p. 55.

[5] Records, p. 18.
[6] 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.
[7] Article 287, as amended by Republic Act. No. 7641, Labor Code of the Philippines.
[8] Rollo pp. 23-24.
[9] See Article 283 of the Labor Code dealing with:
1. installation of labor saving devices;
2. redundancy;
3. retrenchment to prevent losses;
4. closing or cessation of operation of the company; and

Article 284 referring to —

5. termination of services by reason of disease; and Sec. 4 (b), Rule I, Book VI of the Implementing Rules and Regulations relating to situations —

6. where reinstatement of the employee to his former position is required but is not possible because the company has closed or ceased operations or his former position no longer exists at the time of reinstatement (for reasons not attributable to the fault of the employer).

[10] 179 SCRA 175, pp. 183-185.
[11] Rollo pp. 34-35.
[12] Rollo pp. 36-37.
[13] Rollo p. 23
[14] Cruz, Philippine Political Law, 1991 ed., p. 229.
[15] Bustamante vs. Commissioner on Audit, 216 SCRA 134; Planters Products, Inc. vs. Court of Appeals, 193 SCRA 563; Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. vs. Tan, 163 SCRA 371.