SUPREME COURT
THIRD DIVISION

UNIVERSITY OF THE EAST,
***Petitioner*,**

-versus-

G.R. No. 74007
July 31, 1987

HON. MINISTER OF LABOR AND U.E. FACULTY ASSOCIATION,
***Respondents*.**
x----------x

D E C I S I O N

GUTIERREZ, JR., *J.*:

This Petition for *Certiorari* seeks to nullify the order of the Minister of Labor and Employment directing the University of the East to pay the faculty members concerned retirement benefits in accordance with their collective bargaining agreement, in addition to the payment of separation pay according to the Termination Pay Law.

On April 23, 1983 and May 4, 1983, the then president of the University of the East (UE) announced the phase-out of the College of Secretarial Education and the High School Department respectively, starting with the school year 1983-1984 on the grounds of lack of economic viability and financial losses.

The respondent UE Faculty Association opposed the phase-out, contending that such action contravened the law because it constitutes union busting. The association also emphasized the alleged failure of the petitioner to present evidence substantiating the alleged losses.

The parties tried to find a solution for the problems attending the phase-out but were unsuccessful. Hence, the private respondent filed a notice of strike with the Bureau of Labor Relations (BLR) on August 4, 1983. The BLR conducted several conciliation proceedings but when no amicable settlement was reached by the parties, the respondent Minister issued an order assuming jurisdiction over the case and directing the BLR to receive evidence in connection with the dispute.

On September 25, 1985, the respondent Minister issued the questioned order. He ruled that the phaseout of the two departments was arbitrary. According to the respondent Minister, nowhere in the submissions of the petitioner was there any evidence or allegation that the departments concerned had contributed the most to the university's financial losses and neither was there evidence that their closure would reverse the trend. The public respondent further found violations of Articles 278 and 284 of the Labor Code because the petitioner did not serve the necessary one month termination notice to the private respondent prior to the phase-out. Finally, the respondent Minister ruled that the accrued benefits under the collective bargaining agreement (CBA) are not affected by the phase-out of the two departments. Hence, the petitioner is liable for the payment of separation pay in addition to the payment of retirement benefits to those entitled under the CBA. The dispositive portion of the questioned order provides:

> "WHEREFORE, respondent University of the East is hereby directed to pay all affected faculty members of the College Secretarial Education and the High School Department a separation pay of one month or one-half month pay for every year of service whichever is higher plus one month compensation in addition to said separation pay in lieu of notice.

> In addition to the termination pay, the University is likewise directed to pay retirement benefits to all affected faculty members who, in accordance with the collective bargaining agreement, are retireable prior to or at the time of the phase-out." (Rollo, p. 59).

The petitioner filed a motion for reconsideration but the same was denied on February 14, 1986. Hence, it filed this petition raising the sole issue of whether or not the respondent Minister of Labor and Employment committed grave abuse of discretion amounting to lack of jurisdiction in awarding both retirement benefits and separation pay to the faculty members affected by the phase-out.

The petitioner maintains that there can only be one mode of termination of employment with respect to one and the same employee. It argues that the faculty members of the phased out departments cannot be considered retired and, therefore, entitled to retirement benefits and at the same time retrenched with the right to separation pay. The petitioner cites the case of Soberano vs. Hon. Secretary of Labor, (99 SCRA 549) where this Court ruled that retirement from service is distinct from dismissal or termination of employment and that retirements which are agreed upon by the employer and the employee in their collective bargaining agreement are not dismissals as contemplated under the termination pay law.

The public respondent argues that the faculty members affected by the phase-out were awarded separation pay because the petitioner failed to show that their separation from employment was due to a valid or authorized cause; while the award for retirement benefits was by virtue of the provisions of the CBA, regardless of the cause of separation.

We rule for the respondents.

Under Article 284 of the Labor Code, the termination of employment of any employee arising from retrenchment to prevent losses shall entitle the employee affected thereby to separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. (Columbia Development Corporation vs. Minister of Labor and Employment, 146 SCRA 421, 429).

The respondent Minister found that the petitioner failed to present evidence as to the university's actual losses and what caused them. It, therefore, failed to satisfy the burden under Article 278(b) of the Labor Code of proving that the termination of employees was for a valid or authorized cause, in this case to prevent losses. No evidence was presented to show that it was the operation of the two departments which resulted in financial losses. A complete statement of the university's finances was not submitted. The Minister of Labor further ruled that the private respondents concerned were entitled to separation pay and one-month pay in lieu of the required notice which the petitioner likewise failed to give. The employees were thus deprived of the opportunity to look for other employment.

The petitioner, however, takes exception to the respondent Minister's order that in addition to separation benefits, retirement benefits may also be awarded to the private respondent pursuant to the CBA. It maintains that the award of separation pay pursuant to the Termination Pay Law necessarily excludes retirement benefits.

In the case of Batangas Laguna Tayabas Bus Co. vs. Court of Appeals (71 SCRA 470, 482-483) we ruled:

> "But petitioner contends that private respondent can only avail himself of either separation pay or retirement benefits but not both, citing in support thereof, the ruling of this Court in the case of Cipriano vs. San Miguel. (24 SCRA 703) The foregoing ruling cannot be made to apply to the present suit because in said case it is so expressly provided in the Labor Agreement that:
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> > 'Regular employees who are separated from the service of the company for any reason other than misconduct or voluntary resignation shall be entitled to either 100% of the benefits provided in Section 2, Article VIII hereof regardless of their length of service in the company or to the severance pay provided by law, whichever is the greater amount.'

> Thus in said case the employee was entitled to either the amount prescribed in the plan or the severance pay provided by law whichever is the greater amount. In the present case, there is nothing in the labor agreement entered into by petitioner with the Batangas Transportation Employees Association of which private respondent is a member barring the latter from recovering whatever benefits he is entitled to under the law in addition to the gratuity benefits under the labor agreement between him and his employer. Neither is there any provision in the Termination Pay Law (Republic Act No. 1052, as amended, by Republic Act No. 1787) that an employee who receives his termination pay upon separation from the service without cause is precluded from recovering any other benefits agreed upon by him and his employer. In the absence of any such prohibition, both in the aforesaid Labor Agreement and the Termination Pay Law the private respondent has the right to recover from the petitioner whatever benefits he is entitled to under the Termination Pay Law in addition to other benefits conferred upon him by the aforesaid labor agreement."

Therefore, if there is no provision contained in the collective bargaining agreement to the effect that benefits received under the Termination Pay Law shall preclude the employee from receiving other benefits from the agreement, then said employee is entitled to the benefits embodied in the agreement in addition to whatever benefits are mandated by statute. In the case at bar, there is no such provision. We cannot presume that it forms an implicit part of either the CBA or the law. Separation pay arising from a forced termination of employment and benefits given as a contractual right due to many years of faithful service are not necessarily antagonistic to each other, especially where there are strong equitable considerations as in this case. Article VIII-8.2 of the CBA provided:

> "Art. VIII-8.2. In case of unusual circumstances, such as decrease in enrollment, or the closure of any College or Department of the University, etc., which may warrant the reduction of the number of faculty members in any rank, faculty members whose services are terminated shall be granted the retirement benefits, if they are entitled thereto, provided that the services of those with less years of service shall be

> terminated first. Those who have not yet met the requirements for retirement as to length of service will also be considered as retired and will be given the retirement pay provided in the Rules on retirement of the University based on the actual length of their services. This retirement privilege, however, shall not apply to faculty members who may be transferred from one College or Department to another of the University." (Rollo, p. 115).

Clearly, the only situation contemplated in the CBA wherein an employee shall be precluded from receiving retirement benefits is when said employee is not separated from service but transferred instead from one college or department to another. There is no provision to the effect that teachers who are forcibly dismissed are not entitled to retirement benefits if the MOLE awards them separation pay. Furthermore, since the above provision has become in effect part of the petitioner's policy, the same should be enforced separately from the provisions of the Termination Pay Law. As we have ruled in Philippine Overseas Drilling and Oil Development Corporation vs. Ministry of Labor, (146 SCRA 79, 89):

> "Be that as it may, the finding of the respondent Director, that there was a company policy to grant separation benefit or pay equivalent to one (1) month pay for every year of service to employees who were similarly situated as private respondent, is supported by substantial evidence which means 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' (Ang Tibay vs. CIR, 69 Phil. 635; Canete vs. Workmen's Compensation Commission, May 8, 1985, 136 SCRA 302, 208). Documents to this effect were presented by private respondent at the hearing on January 24, 1980 as Annexes 'D' thru 'D-7' of his position paper.
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> "Having found that there was a company policy to that effect, respondent Director correctly held that private respondent was legally entitled to a separation benefit or pay equivalent to one (1) month pay for every year of service, notwithstanding the fact that he had voluntarily resigned. He applied a basic principle permeating the Labor Code and its Implementing Rules and Regulations. (Tiangco vs. Leogardo, Jr., May 16, 1983, 122

SCRA 267, 272-273; Marcopper Mining Corporation vs. Ople, June 11, 1981, 105 SCRA 75, 83; Oceanic Pharmacal Employees Union (FFW) vs. Inciong, November 7, 1979, 94 SCRA 270, 275). After having served petitioner for ten years, private respondent deserved his separation benefit or pay."

The case of Soberano vs. Clave, supra, cited by herein petitioner does not apply to the case at bar. In Soberano, the employees concerned either voluntarily retired or were retired upon reaching the age of sixty pursuant to their collective bargaining agreement. We, thus, ruled that voluntary or compulsory retirement under such an agreement cannot in any sense be deemed a dismissal without cause as to justify the application of the Termination Pay Law. In the present case, the herein faculty members were "retired" or considered "as retired" not because of the mutual agreement of the employer and employee pursuant to the collective bargaining agreement but against the employees' will and over their vehement charges of discrimination. It was the unilateral act of the employer, petitioner herein, which "retired" then because they were supposed to be responsible for the university' continued hemorrhaging. In the former case, the employees voluntarily retired with benefits while in the latter, the faculty members were actually dismissed against their will and on the basis of unproved causes. Both law and equity are on the side of the teachers.

WHEREFORE, IN VIEW OF THE FOREGOING, the Petition is hereby **DISMISSED** for lack of merit. The Temporary Restraining Order issued on June 18, 1986 is **LIFTED**.

SO ORDERED.

Fernan, *J.*, *(Chairman)*, Feliciano, Bidin and Cortes, *JJ.*, concur.