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THIRD DIVISION

[G.R. No. 155146. January 24, 2006]

DR. PERLA A. POSTIGO, FRANCISCO F. ALMACEN, NARCISO M. ALMENDRAL, NENA E. BASTO, JUANITO M. BERNARDINO, ADELFA B. CRESCINI, MARCIAL R. DE JESUS, DR. PEDRO LOPEZ DE LEON, PREMIA M. DUMLAO, DAVID F. ESTACIO, LINA G. ESTRELLA, GENOVEVA V. HERNANDEZ, PEDRO A. PARIL, PEDRO H. SINGSON, ALBERTO A. TUDIO, MARIETTA B. ULIT, LOURDES C. LEGASPI, PEDRO PEROCHO, LANI CORTEZ, GUADALUPE B. MACATANGAY, DOLORES C. FERNANDEZ, LUMINOSA G. REYNO, ESTRELLA P. SURATOS, LYDIA E. DE BOSCH, ZENAIDA C. CARRIEDO, DR. FINAFLOR C. TAN, *petitioners, vs.* **PHILIPPINE TUBERCULOSIS SOCIETY, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEAL FROM LABOR ARBITER'S DECISION INVOLVING MONETARY AWARD; WHEN RELAXATION OF THE RULE ON APPEAL BOND REQUIREMENT IS JUSTIFIED.— In *Ong v. Court of Appeals*, we ruled that the aggrieved party may file the appeal bond within the ten-day reglementary period following the receipt of the resolution of the NLRC to forestall the finality of such resolution. Hence, while the appeal of a decision involving a monetary award in labor cases may be perfected only upon the posting of a cash or surety bond and the posting of the bond is an indispensable requirement to perfect such an appeal, a relaxation of the appeal bond requirement could be justified by substantial compliance with the rule. Article 223 of the Labor Code provides that an appeal from a decision of the Labor Arbiter must be made within ten calendar days from receipt of a copy of the decision by the aggrieved party; and if the decision involves a monetary award, an appeal by the aggrieved party may be perfected only upon

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the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC in the amount equivalent to the monetary award. In addition, Section 6, Rule VI of the New Rules of Procedure of the NLRC provides that the Commission may, in justifiable cases and upon motion of the aggrieved party, reduce the amount of the bond. Further, the filing of the motion to reduce bond does not stop the running of the period to perfect appeal. Time and again, this Court has ruled that while the above-mentioned rule treats the filing of a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from, as a jurisdictional requirement to perfect an appeal, the bond requirement on appeals involving awards is sometimes given a liberal interpretation in line with the desired objective of resolving controversies on the merits. The special circumstances in this case, upon which the motion to reduce the bond was predicated, justify the relaxation of the appeal bond requirement. However, considering that the claim for retirement benefits was made sometime in 1999 to support the petitioners during the twilight years of their lives, there is no doubt that a remand of the case to the NLRC will only unduly delay the determination of their entitlement to such benefits. Moreover, since the case calls for the resolution of a question of law, we consider it more appropriate to resolve the appeal at this juncture, rather than remand the case to the NLRC.

2. ID.; ID.; EMPLOYEES OF GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS UNDER THE CORPORATION CODE ARE GOVERNED BY THE PROVISIONS OF THE LABOR CODE; APPLICATION IN CASE AT BAR.— In *Juco v. NLRC*, we clarified that employees of government-owned and controlled corporations with special charters are covered under the Civil Service. On the other hand, employees of government-owned and controlled corporations under the Corporation Code are governed by the provisions of the Labor Code. The Philippine Tuberculosis Society, Inc. (PTSI) belongs to the latter category and, therefore, covered by Rep. Act No. 7641 which is an amendment to the Labor Code. The accommodation under Rep. Act No. 1820 extending GSIS coverage to PTSI employees did not take away from petitioners the beneficial coverage afforded by Rep. Act No. 7641. Hence, the retirement pay payable under Article 287 of the Labor Code

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as amended by Rep. Act No. 7641 should be considered apart from the retirement benefit claimable by the petitioners under the social security law or, as in this case, the GSIS law.

APPEARANCES OF COUNSEL

Basilio C. Almazan, Jr. for petitioners.
Rene V. Sarmiento and *Rolando M. Delfin* for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition assails the *Decision*[1] dated June 13, 2002 of the Court of Appeals in CA-G.R. SP No. 59597, which set aside the *Resolution*[2] dated January 31, 2000 of the National Labor Relations Commission (NLRC) in NLRC NCR CN 00-02-02148-99. The NLRC had dismissed the respondent's appeal from the Decision of the Labor Arbiter, who ordered the payment of retirement benefits under Republic Act No. 7641 to petitioners. This petition likewise assails the *Resolution*[3] dated September 3, 2002 of the Court of Appeals denying petitioners' motion for reconsideration.

The antecedent facts, as summarized by the Court of Appeals and borne by the records, are as follows:

Petitioners Dr. Perla A. Postigo, *et al.*, were regular employees of the respondent Philippine Tuberculosis Society, Inc. (PTSI). They retired on various dates from 1996 to 1998. Upon retirement from service, some of the petitioners who were compulsory members of the Government Service Insurance System (GSIS) obtained retirement benefits from the GSIS.

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[1] *Rollo*, pp. 37-46. Penned by Associate Justice Romeo A. Brawner, with Associate Justices Jose L. Sabio, Jr., and Mario L. Guariña III concurring.

[2] Records, pp. 236-238.

[3] *Rollo*, p. 27.

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At the time the petitioners retired, Article 287 of the Labor Code had been amended by Republic Act No. 7641.[4] Rep. Act No. 7641 granted retirement pay to qualified employees in the private sector, in the absence of any retirement plan or agreement with the company. As the respondent did not have a retirement plan for its employees, aside from its contribution to the GSIS, petitioners claimed from the respondent their retirement benefits under Rep. Act No. 7641. The respondent denied their claims on the ground that the accommodation extended by the GSIS to the petitioners removed them from the coverage of the law.

The petitioners then sought the opinion of the Bureau of Working Conditions (BWC) of the Department of Labor and Employment regarding their entitlement to the retirement benefits provided in Rep. Act No. 7641.[5] The BWC confirmed their entitlement.[6] The same opinion was rendered and submitted by the respondent's legal counsel, Atty. Rene V. Sarmiento, to its Board of Directors.[7] Despite this, respondent PTSI refused to pay the petitioners their retirement benefits.

The petitioners then filed a complaint before the Labor Arbiter.

In a Decision[8] dated June 30, 1999, the Labor Arbiter declared petitioners entitled to retirement benefits under Rep. Act No. 7641. However, one petitioner, Dr. Finaflor C. Tan who was awarded her terminal leave pay, was not included in the award of retirement benefits.

Aggrieved, respondent PTSI appealed to the NLRC. Instead of posting the required cash or surety bond equivalent to the

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[4] 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, effective on 07 January 1993.

[5] Records, pp. 24-25.

[6] *Id.* at 26-31.

[7] *Id.* at 33-34.

[8] *Id.* at 93-109.

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amount of the award, the respondent filed a Motion to Reduce Bond on the ground that the amount awarded by the Labor Arbiter was erroneous. On January 31, 2000, the NLRC dismissed the appeal for failure to post the required cash or surety bond.

Undaunted, the respondent elevated the matter to the Court of Appeals. On June 13, 2002, the CA reversed the NLRC's decision in this wise:

> Indeed, in several occasions, the Supreme Court has cautioned the NLRC to give Article 223 of the Labor Code, as amended, particularly the provisions on requiring a bond on appeals involving monetary awards, a liberal interpretation in line with the desired objective of resolving controversies on the merits.
>
> Hence, considering the timeliness of the filing of the motion to reduce the appeal bond and the meritorious ground upon which it relies, We believe and so hold that the legal requirement of posting an appeal bond has been substantially satisfied. Public respondent acted with grave abuse of discretion in dismissing the appeal without passing upon the motion to reduce the appeal bond.
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> WHEREFORE, the petition is hereby GRANTED. Resolutions dated 31 January 2000 and 24 May 2000 in NLRC-NCR CN 00-02-02148-99 of public respondent National Labor Relations Commission are hereby SET ASIDE. The NLRC is directed to act on the Motion to Reduce Bond and to give due course to the Appeal.
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> SO ORDERED.[9]

The petitioners now submit the following issues for our consideration:

I. Whether or not the remand of the case to the NLRC would only further delay the resolution of this case.

II. Whether or not the Honorable Court of Appeals decided the instant case in accordance with law and applicable jurisprudence and based on the evidence on record for having failed to apply the jurisprudential precepts that:

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[9] *Rollo*, p. 45.

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a. errors in the computation of the monetary award are properly a subject of appeal and should be ventilated at the appropriate time, not in a mere motion to reduce bond; and

b. the posting of a bond is an indispensable requirement to perfect an employer's appeal.

III. Whether or not Petitioners are entitled to the benefits of the Retirement Pay Law.

IV. Whether or not Petitioners are entitled to interest on their retirement benefits for the unjustified withholding thereof.

V. Whether or not Petitioner Dr. Tan should be made similarly entitled to her retirement pay, which was inadvertently excluded by the Labor Arbiter, pursuant to the timely motion to render judgment *nunc pro tunc* she filed before the Labor Arbiter and which was consistently raised all the way up to this Honorable Court, in order to effect a complete disposition of the instant case.[10]

In short, petitioners raise for our resolution these issues: (1) Did the Court of Appeals err in granting the petition and directing the NLRC to act on the Motion to Reduce Bond and to give due course to the appeal? and (2) Are the petitioners entitled to benefits under Rep. Act No. 7641?

On the first issue, petitioners contend that (1) errors in the computation of the monetary award are properly a subject of appeal and should be ventilated at the appropriate time, not in a mere motion to reduce bond; and (2) the posting of a bond is an indispensable requirement to perfect an employer's appeal.

Respondent counters that in case the monetary award is being disputed, an appeal may still be filed without the appeal bond, provided that a motion to reduce bond is filed within the reglementary period.

We think that the Court of Appeals did not err in granting the petition and holding that there was substantial compliance

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[10] *Id.* at 750-751.

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in the posting of a cash or surety bond. We likewise find *Nationwide Security and Allied Services, Inc. v. NLRC*[11] and *Rosewood Processing, Inc. v. NLRC*[12] inapplicable to this case.

In *Nationwide Security*, the petitioners therein filed a motion to reduce bond instead of an appeal or surety bond. The NLRC denied the motion on the grounds that petitioners' alleged inability to post the bond was without basis, and to grant the motion on the grounds stated therein would be tantamount to ruling on the merits. In affirming the decision of the NLRC, the Court noted that petitioners had funds from its other businesses to post the required bond. Further, the errors raised in the motion dealt with matters that would go into the merits of the case and were thus more appropriate in an appeal.

In this case, respondent deferred the posting of the surety bond in view of the alleged erroneous computation by the Labor Arbiter of the monetary award. While the Labor Arbiter awarded ₱5,480,484.25[13] as retirement benefits, only ₱5,072,277.73,[14] according to the respondent's computation was due and owing to the petitioners. Since the motion raised a pure mathematical error, the same may be resolved without going into the merits of the case.

In *Rosewood,* the petitioner therein filed a motion to reduce the bond with the appeal bond, albeit not in the amount equivalent to the monetary award in the judgment appealed from. The Court held that the NLRC gravely abused its discretion in dismissing the appeal since a consideration of the merits appearing in the appeal as well as the filing of the appeal bond show that there was substantial compliance with the rules governing appeal.

Here, aside from the fact that the filing of the motion was justified, the respondent immediately submitted a *supersedeas*

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[11] G.R. No. 123204, 11 July 1997, 275 SCRA 394.

[12] G.R. Nos. 116476-84, 21 May 1998, 290 SCRA 408.

[13] Records, p. 109.

[14] *Id.* at 125.

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bond[15] with its motion for reconsideration of the NLRC resolution dismissing its appeal. In *Ong v. Court of Appeals,*[16] we ruled that the aggrieved party may file the appeal bond within the ten-day reglementary period following the receipt of the resolution of the NLRC to forestall the finality of such resolution.[17] Hence, while the appeal of a decision involving a monetary award in labor cases may be perfected only upon the posting of a cash or surety bond and the posting of the bond is an indispensable requirement to perfect such an appeal, a relaxation of the appeal bond requirement could be justified by substantial compliance with the rule.

Article 223 of the Labor Code provides that an appeal from a decision of the Labor Arbiter must be made within ten calendar days from receipt of a copy of the decision by the aggrieved party; and if the decision involves a monetary award, an appeal by the aggrieved party may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC in the amount equivalent to the monetary award. In addition, Section 6, Rule VI of the New Rules of Procedure of the NLRC provides that the Commission may, in justifiable cases and upon motion of the aggrieved party, reduce the amount of the bond. Further, the filing of the motion to reduce bond does not stop the running of the period to perfect appeal.

Time and again, this Court has ruled that while the above-mentioned rule treats the filing of a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from, as a jurisdictional requirement to perfect an appeal, the bond requirement on appeals involving awards is sometimes given a liberal interpretation in line with the desired objective of resolving controversies on the merits.[18]

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[15] *Id.* at 247-252.

[16] G.R. No. 152494, 22 September 2004, 438 SCRA 668.

[17] *Id.* at 673.

[18] See *Cosico, Jr. v. NLRC,* G.R. No. 118432, 23 May 1997, 272 SCRA 583, 593; *Star Angel Handicraft v. National Labor Relations Commission,* G.R. No. 108914, 20 September 1994, 236 SCRA 580, 585; *Blancaflor v. NLRC,* G.R. No. 101013, 2 February 1993, 218 SCRA 366, 370-371; *YBL (Your Bus Line) v. NLRC,* G.R. No. 93381, 28 September 1990, 190 SCRA 160, 164.

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The special circumstances in this case, upon which the motion to reduce the bond was predicated, justify the relaxation of the appeal bond requirement. However, considering that the claim for retirement benefits was made sometime in 1999 to support the petitioners during the twilight years of their lives, there is no doubt that a remand of the case to the NLRC will only unduly delay the determination of their entitlement to such benefits. Moreover, since the case calls for the resolution of a question of law, we consider it more appropriate to resolve the appeal at this juncture, rather than remand the case to the NLRC.

We come now to the second issue. The petitioners contend that despite their compulsory membership in the GSIS, they are still covered by Rep. Act No. 7641 for the following reasons: (1) the respondent is registered with the Securities and Exchange Commission as a non-stock and non-profit corporation; hence, it is a private entity and its employees are employees in the private sector; and (2) the petitioners are not included in the exemptions from coverage of Rep. Act No. 7641.

Respondent PTSI counters that as an employer in the public sector, it is not covered by Rep. Act No. 7641 which applies only to employees in the private sector. It relies on Section 3, Rule I of the Amended Rules Implementing Title II, Book IV of the Labor Code, to wit:

> SEC. 3. ***Employer*** — (a) The term shall mean any person natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment.
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> (b) An employer shall belong to either:
>
> (1) The public sector covered by the GSIS, comprising the National Government, including government-owned or controlled corporations, the Philippine Tuberculosis Society, the Philippine National Red Cross, and the Philippine Veterans Bank; or

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(2) The private sector covered by the SSS, comprising all employers other than those defined in the immediately preceding paragraph.

Respondent's reliance on the afore-quoted rules is unfounded. The definition of a public sector employer as quoted above is relevant only for purposes of coverage under the Employees' Compensation and State Insurance Fund. Instead, it is the implementing rules of Title II, Book VI of the Labor Code, which provides for the coverage and exemptions of retirement benefits. Thus:

SECTION 1. ***General Statement on Coverage.*** — This Rule shall apply to all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted under Section 2 hereof. As used herein, the term "Act" shall refer to Republic Act No. 7641 which took effect on January 7, 1993.

SEC. 2. ***Exemption.*** — This Rule shall not apply to the following employees:

2.1 Employees of the National Government and its political subdivisions, including Government-owned and/or - controlled corporations, if they are covered by the Civil Service Law and its regulations.

. . . . . .

Having determined the applicable implementing rules, we now proceed to resolve whether the respondent is a private corporation or a public corporation; and consequently, whether the petitioners are employees in the private sector or in the public sector.

On this score, the case of *Feliciano v. Commission on Audit*,[19] finds strong relevance. Although with different factual circumstances, the Court discussed therein the two classes of corporations recognized by the 1987 Constitution. The first refers to private corporations created under a general law; the second

[19] G.R. No. 147402, 14 January 2004, 419 SCRA 363.

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refers to government-owned or controlled corporations created by special charters. We also reiterated that under Section 14 of the Corporation Code, "[a]ll corporations organized under this Code shall file with the Securities and Exchange Commission articles of incorporation . . ."

The respondent was incorporated on March 11, 1960 as a non-profit, benevolent and non-stock corporation under the Corporation Code.[20] Having been created under the general corporation law instead of a special charter, we hold that the respondent is a private and not a governmental corporation. More so, Section 2(1), Article IX(B) of the 1987 Constitution provides:

> SECTION 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

Extant on the records is the respondent's admission that although its employees are compulsory members of the GSIS, said employees are not governed by the Civil Service Law. If the respondent is truly a government-owned or controlled corporation, and petitioners are employees in the public sector, then, they should have been covered by said law. The truth, however, is that, the respondent is a non-profit but private corporation organized under the Corporation Code, and the petitioners are covered by the Labor Code and not by the Civil Service Law.

From the foregoing, it is clear to us that the petitioners are employees in the private sector, hence entitled to the benefits of Rep. Act No. 7641.

Even assuming that by virtue of their compulsory inclusion in the GSIS, the petitioners became employees in the public sector, they are still entitled to the benefits of Rep. Act No. 7641 since they are not covered by the Civil Service Law and

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[20] Records, pp. 35-37.

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its regulations. This much is certain upon reading the implementing rules of Title II, Book VI of the Labor Code as afore-cited as well as the Labor Advisory on Retirement Pay Law.[21] Under the said advisory, the coverage of, as well as the exclusion from, Rep. Act No. 7641 has been delineated as follows:

> RA 7641 or the Retirement Pay Law shall apply to all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid. They shall include part-time employees, employees of service and other job contractors and domestic helpers or persons in the personal service of another.
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> *The law does not cover* employees of retail, service and agricultural establishments or operations employing not more than (10) employees or workers and *employees of the National Government and its political subdivisions, including Government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations.* (Italics ours.)

Neither do we find merit in the respondent's argument that the rationale behind the enactment of Rep. Act No. 7641 justifies the exclusion of employees in the public sector, who are already enjoying retirement benefits under the GSIS law, from the New Retirement Law.

We direct the respondent's attention to Section 2 of Rep. Act No. 7641, to wit:

> SEC. 2. Nothing in this Act shall deprive any employee of benefits to which he may be entitled under existing laws or company policies or practices.

In addition, Rule II of the Rules Implementing Book VI of the Labor Code provides as follows:

> SEC. 8. ***Relation to agreements and regulations***. — Nothing in this Rule shall justify an employer from withdrawing or reducing any benefits, supplements or payments as provided in existing laws, individual or collective agreements or employment practices or policies.

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[21] Dated 24 October 1996.

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. . . . . .

In *Juco v. NLRC*,[22] we clarified that employees of government-owned and controlled corporations with special charters are covered under the Civil Service. On the other hand, employees of government-owned and controlled corporations under the Corporation Code are governed by the provisions of the Labor Code.

The Philippine Tuberculosis Society, Inc. (PTSI) belongs to the latter category and, therefore, covered by Rep. Act No. 7641 which is an amendment to the Labor Code. The accommodation under Rep. Act No. 1820 extending GSIS coverage to PTSI employees did not take away from petitioners the beneficial coverage afforded by Rep. Act No. 7641. Hence, the retirement pay payable under Article 287 of the Labor Code as amended by Rep. Act No. 7641 should be considered apart from the retirement benefit claimable by the petitioners under the social security law or, as in this case, the GSIS law.

As to the alleged prolonged refusal by the respondent to pay the petitioners their retirement benefits, we do not think that the respondent's stance was entirely in bad faith. The respondent harbored the honest belief that their compulsory coverage in the GSIS converted it into a public corporation excluded from the coverage of Rep. Act No. 7641. As noted by this Court, the respondent even filed a *supersedeas* bond, albeit belatedly, with its motion for reconsideration of the NLRC resolution dismissing its appeal. Such act only demonstrates that the respondent filed the appeal in good faith. We could not speculate and say that respondent did not intend to pay the petitioners their retirement benefits in case the appeal is dismissed.

On the matter of petitioner Dr. Finaflor C. Tan, records show she has two causes of action: (1) non-payment of terminal leave pay; and (2) non-payment of retirement benefits.[23] While the Labor Arbiter ruled that she is entitled to the commutation into

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[22] G.R. No. 98107, 18 August 1997, 277 SCRA 528, 533.

[23] Records, pp. 6-7.

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cash of her unused leave credits which is the equivalent of her terminal leave pay, the former did not include her in the award of retirement benefits. This was properly raised in the Motion to Render Judgment *Nunc Pro Tunc*[24] filed by the petitioners on October 29, 1999 before the NLRC. We see no cogent reason why she should be excluded from the over-all award of retirement benefits considering that she has participated in the proceedings before the Labor Arbiter.

WHEREFORE, this petition is *PARTIALLY GRANTED*. The Decision dated June 13, 2002 of the Court of Appeals in CA-G.R. SP No. 59597, directing the NLRC to act on the Motion to Reduce Bond and to give due course to the Appeal, as well as its Resolution denying the petitioners' motion for reconsideration, are *MODIFIED*.

Consequently, it is *DECLARED* that the petitioners are entitled to retirement benefits under Rep. Act No. 7641. In addition to retirement benefits, petitioner Dr. Finaflor C. Tan is entitled to the commutation into cash of her unused leave credits which is the equivalent of her terminal leave pay. Likewise, the petitioners are entitled to attorney's fees, equivalent to 10% of the total monetary award.

Let this case be remanded to the Labor Arbiter for the computation of the retirement benefits and terminal leave pay above-mentioned. No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, and *Tinga, JJ.,* concur.

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[24] *Id.* at 214-215.