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THIRD DIVISION

[G.R. No. 166377. November 28, 2008]

MA. ISABEL T. SANTOS, represented by ANTONIO P. SANTOS, *petitioner, vs.* **SERVIER PHILIPPINES, INC. and NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABSENT SPECIFIC PROHIBITION AGAINST THE PAYMENT OF BOTH BENEFITS IN THE RETIREMENT PLAN AND/OR COLLECTIVE BARGAINING AGREEMENT, THE RECEIPT OF RETIREMENT BENEFITS DOES NOT BAR THE RETIREE FROM RECEIVING SEPARATION PAY.— We have declared in *Aquino v. National Labor Relations Commission* that the receipt of retirement benefits does not bar the retiree from receiving separation pay. Separation pay is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment. On the other hand, retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support, and are a form of reward for his loyalty and service to the employer. Hence, they are not mutually exclusive. However, this is only true if there is no specific prohibition against the payment of both benefits in the retirement plan and/or in the Collective Bargaining Agreement (CBA). In the instant case, the Retirement Plan bars the petitioner from claiming additional benefits on top of that provided for in the Plan. xxx There being such a provision, as held in *Cruz v. Philippine Global Communications, Inc.*, petitioner is entitled only to either the separation pay under the law or retirement benefits under the Plan, and not both.

2. ID.; ID.; ID.; CLAIM FOR ILLEGAL DEDUCTION FALLS WITHIN THE JURISDICTION OF THE LABOR ARBITER AND THE NATIONAL RELATIONS COMMISSION. — Contrary to the

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Labor Arbiter and NLRC's conclusions, petitioner's claim for illegal deduction falls within the tribunal's jurisdiction. It is noteworthy that petitioner demanded the completion of her retirement benefits, including the amount withheld by respondent for taxation purposes. The issue of deduction for tax purposes is intertwined with the main issue of whether or not petitioner's benefits have been fully given her. It is, therefore, a money claim arising from the employer-employee relationship, which clearly falls within the jurisdiction of the Labor Arbiter and the NLRC.

3. TAXATION; WITHHOLDING TAX; EXEMPTION OF RETIREMENT BENEFITS FROM WITHOLDING TAX, REQUIREMENTS; NOT COMPLIED WITH IN CASE AT BAR. — Section 32 (B) (6) (a) of the New National Internal Revenue Code (NIRC) provides for the exclusion of retirement benefits from gross income xxx. Thus, for the retirement benefits to be exempt from the withholding tax, the taxpayer is burdened to prove the concurrence of the following elements: (1) a reasonable private benefit plan is maintained by the employer; (2) the retiring official or employee has been in the service of the same employer for at least ten (10) years; (3) the retiring official or employee is not less than fifty (50) years of age at the time of his retirement; and (4) the benefit had been availed of only once. As discussed above, petitioner was qualified for disability retirement. At the time of such retirement, petitioner was only 41 years of age; and had been in the service for more or less eight (8) years. As such, the above provision is not applicable for failure to comply with the age and length of service requirements. Therefore, respondent cannot be faulted for deducting from petitioner's total retirement benefits the amount of ₱362,386.87, for taxation purposes.

APPEARANCES OF COUNSEL

Aguilar Salvador & Tria Law Offices for petitioner.
Alonso and Partners for private respondent.

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D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to set aside the Court of Appeals (CA) Decision,[1] dated August 12, 2004 and its Resolution[2] dated December 17, 2004, in CA-G.R. SP No. 75706.

The facts, as culled from the records, are as follows:

Petitioner Ma. Isabel T. Santos was the Human Resource Manager of respondent Servier Philippines, Inc. since 1991 until her termination from service in 1999. On March 26 and 27, 1998, petitioner attended a meeting[3] of all human resource managers of respondent, held in Paris, France. Since the last day of the meeting coincided with the graduation of petitioner's only child, she arranged for a European vacation with her family right after the meeting. She, thus, filed a vacation leave effective March 30, 1998.[4]

On March 29, 1998, petitioner, together with her husband Antonio P. Santos, her son, and some friends, had dinner at *Leon des Bruxelles*, a Paris restaurant known for mussels[5] as their specialty. While having dinner, petitioner complained of stomach pain, then vomited. Eventually, she was brought to the hospital known as *Centre Chirurgical de L'Quest* where she fell into coma for 21 days; and later stayed at the Intensive Care Unit (ICU) for 52 days. The hospital found that the probable cause of her sudden attack was "alimentary allergy," as she had recently ingested a meal of mussels which resulted in a concomitant uticarial eruption.[6]

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[1] Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Delilah Vidallon-Magtolis and Arturo D. Brion (now a member of this Court), concurring; *rollo*, pp. 34-42.

[2] *Rollo*, p. 44.

[3] The meeting was entitled "Reunion DRH Internationale."

[4] *Rollo*, p. 35.

[5] Commonly known as "*tahong*" in the Philippines.

[6] *Rollo*, p. 35.

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During the time that petitioner was confined at the hospital, her husband and son stayed with her in Paris. Petitioner's hospitalization expenses, as well as those of her husband and son, were paid by respondent.[7]

In June 1998, petitioner's attending physicians gave a prognosis of the former's condition; and, with the consent of her family, allowed her to go back to the Philippines for the continuation of her medical treatment. She was then confined at the St. Luke's Medical Center for rehabilitation.[8] During the period of petitioner's rehabilitation, respondent continued to pay the former's salaries; and to assist her in paying her hospital bills.

In a letter dated May 14, 1999, respondent informed the petitioner that the former had requested the latter's physician to conduct a thorough physical and psychological evaluation of her condition, to determine her fitness to resume her work at the company. Petitioner's physician concluded that the former had not fully recovered mentally and physically. Hence, respondent was constrained to terminate petitioner's services effective August 31, 1999.[9]

As a consequence of petitioner's termination from employment, respondent offered a retirement package which consists of:

Retirement Plan Benefits:	₱ 1,063,841.76
Insurance Pension at ₱20,000.00/month for 60 months from company-sponsored group life policy:	₱ 1,200,000.00
Educational assistance:	₱ 465,000.00
Medical and Health Care:	₱ 200,000.00[10]

Of the promised retirement benefits amounting to ₱1,063,841.76, only ₱701,454.89 was released to petitioner's

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[7] *Id.* at 36.

[8] *Id*.

[9] Petitioner's termination from employment was embodied in a letter dated July 15, 1999; *id.* at 132-133.

[10] *Rollo,* p. 134.

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husband, the balance[11] thereof was withheld allegedly for taxation purposes. Respondent also failed to give the other benefits listed above.[12]

Petitioner, represented by her husband, instituted the instant case for unpaid salaries; unpaid separation pay; unpaid balance of retirement package plus interest; insurance pension for permanent disability; educational assistance for her son; medical assistance; reimbursement of medical and rehabilitation expenses; moral, exemplary, and actual damages, plus attorney's fees. The case was docketed as NLRC-NCR (SOUTH) Case No. 30-06-02520-01.

On September 28, 2001, Labor Arbiter Aliman D. Mangandog rendered a Decision[13] dismissing petitioner's complaint. The Labor Arbiter stressed that respondent had been generous in giving financial assistance to the petitioner.[14] He likewise noted that there was a retirement plan for the benefit of the employees. In denying petitioner's claim for separation pay, the Labor Arbiter ratiocinated that the same had already been integrated in the retirement plan established by respondent. Thus, petitioner could no longer collect separation pay over and above her retirement benefits.[15] The arbiter refused to rule on the legality of the deductions made by respondent from petitioner's total retirement benefits for taxation purposes, as the issue was beyond the jurisdiction of the NLRC.[16] On the matter of educational assistance, the Labor Arbiter found that the same may be granted only upon the submission of a certificate of enrollment.[17] Lastly, as to petitioner's claim for damages and attorney's fees, the

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[11] Amounting to ₱362,386.87.

[12] *Rollo*, p. 37.

[13] *Id.* at 204-213.

[14] *Id.* at 209.

[15] *Id.* at 210-211.

[16] *Id.* at 211.

[17] *Id*.

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Labor Arbiter denied the same as the former's dismissal was not tainted with bad faith.[18]

On appeal to the National Labor Relations Commission (NLRC), the tribunal set aside the Labor Arbiter's decision, ruling that:

> WHEREFORE, premises considered, Complainant's appeal is partly GRANTED. The Labor Arbiter's decision in the above-entitled case is hereby SET ASIDE. Respondent is ordered to pay Complainant's portion of her separation pay covering the following: 1) ₱200,000.00 for medical and health care from September 1999 to April 2001; and 2) ₱35,000.00 per year for her son's high school (second year to fourth year) education and ₱45,000.00 per semester for the latter's four-year college education, upon presentation of any applicable certificate of enrollment.
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> SO ORDERED.[19]

The NLRC emphasized that petitioner was not retired from the service pursuant to law, collective bargaining agreement (CBA) or other employment contract; rather, she was dismissed from employment due to a disease/disability under Article 284[20] of the Labor Code.[21] In view of her non-entitlement to retirement benefits, the amounts received by petitioner should then be treated as her separation pay.[22] Though not legally obliged to give the other benefits, *i.e.*, educational assistance, respondent volunteered to grant them, for humanitarian consideration. The

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[18] *Id.* at 211-212.

[19] *Id.* at 264-265

[20] ART. 284. DISEASE AS GROUND FOR TERMINATION

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[21] *Rollo*, pp. 260-261.

[22] *Id.* at 262.

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NLRC therefore ordered the payment of the other benefits promised by the respondent.[23] Lastly, it sustained the denial of petitioner's claim for damages for the latter's failure to substantiate the same.[24]

Unsatisfied, petitioner elevated the matter to the Court of Appeals which affirmed the NLRC decision.[25]

Hence, the instant petition.

At the outset, the Court notes that initially, petitioner raised the issue of whether she was entitled to separation pay, retirement benefits, and damages. In support of her claim for separation pay, she cited Article 284 of the Labor Code, as amended. However, in coming to this Court *via* a petition for review on *certiorari*, she abandoned her original position and alleged that she was, in fact, not dismissed from employment based on the above provision. She argued that her situation could not be characterized as a disease; rather, she became disabled. In short, in her petition before us, she now changes her theory by saying that she is not entitled to separation pay but to retirement pay pursuant to Section 4,[26] Article V of the Retirement Plan, on disability retirement. She, thus, prayed for the full payment of her retirement benefits by giving back to her the amount deducted for taxation purposes.

In our Resolution[27] dated November 23, 2005 requiring the parties to submit their respective memoranda, we specifically stated:

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[23] Said benefits consist of the following: 1) ₱200,000.00 for medical and health care; and 2) educational assistance for petitioner's son; *id.* at 264-265.

[24] *Rollo*, p. 263.

[25] *Supra* note 1.

[26] Section 4. DISABILITY RETIREMENT.

In the event that a Member is retired by the Company due to permanent total incapacity or disability, as determined by a competent physician appointed by the Company, his disability retirement benefit shall be the Full Member's Account Balance determined as of the last valuation date. x x x; *rollo*, p. 359.

[27] *Rollo*, pp. 785-786.

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No new issues may be raised by a party in the Memorandum and the issues raised in the pleadings but not included in the Memorandum shall be deemed waived or abandoned.

Being summations of the parties' previous pleadings, the Court may consider the Memoranda alone in deciding or resolving this petition.

Pursuant to the above resolution, any argument raised in her petition, but not raised in her Memorandum,[28] is deemed abandoned.[29] Hence, the only issue proper for determination is the propriety of deducting ₱362,386.87 from her total benefits, for taxation purposes. Nevertheless, in order to resolve the legality of the deduction, it is imperative that we settle, once and for all, the ground relied upon by respondent in terminating the services of the petitioner, as well as the nature of the benefits given to her after such termination. Only then can we decide whether the amount deducted by the respondent should be paid to the petitioner.

Respondent dismissed the petitioner from her employment based on Article 284 of the Labor Code, as amended, which reads:

Art. 284. DISEASE AS GROUND FOR TERMINATION

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

As she was dismissed on the abovementioned ground, the law gives the petitioner the right to demand separation pay. However, respondent established a retirement plan in favor of all its

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[28] *Id.* at 915-942.

[29] *Republic v. Kalaw*, G.R. No. 155138, June 8, 2004, 431 SCRA 401, 406.

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employees which specifically provides for "disability retirement," to wit:

> Sec. 4. DISABILITY RETIREMENT
>
> In the event that a Member is retired by the Company due to permanent total incapacity or disability, as determined by a competent physician appointed by the Company, his disability retirement benefit shall be the Full Member's Account Balance determined as of the last valuation date. x x x.[30]

On the basis of the above-mentioned retirement plan, respondent offered the petitioner a retirement package which consists of retirement plan benefits, insurance pension, and educational assistance.[31] The amount of ₱1,063,841.76 represented the disability retirement benefit provided for in the plan; while the insurance pension was to be paid by their insurer; and the educational assistance was voluntarily undertaken by the respondent as a gesture of compassion to the petitioner.[32]

We have declared in *Aquino v. National Labor Relations Commission*[33] that the receipt of retirement benefits does not bar the retiree from receiving separation pay. Separation pay is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment. On the other hand, retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support, and are a form of reward for his loyalty and service to the employer.[34] Hence, they are not mutually exclusive. However, this is only true if there is no specific prohibition against the payment of

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[30] *Rollo*, p. 359.

[31] *Id.* at 134.

[32] *Id*.

[33] G.R. No. 87653, February 11, 1992, 206 SCRA 118.

[34] *Aquino v. National Labor Relations Commission*, G.R. No. 87653, February 11, 1992, 206 SCRA 118, 121-122.

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both benefits in the retirement plan and/or in the Collective Bargaining Agreement (CBA).[35]

In the instant case, the Retirement Plan bars the petitioner from claiming additional benefits on top of that provided for in the Plan. Section 2, Article XII of the Retirement Plan provides:

> Section 2. NO DUPLICATION OF BENEFITS
>
> No other benefits other than those provided under this Plan shall be payable from the Fund. Further, in the event the Member receives benefits under the Plan, he shall be precluded from receiving any other benefits under the Labor Code or under any present or future legislation under any other contract or Collective Bargaining Agreement with the Company.[36]

There being such a provision, as held in *Cruz v. Philippine Global Communications, Inc.*,[37] petitioner is entitled only to either the separation pay under the law or retirement benefits under the Plan, and not both.

Clearly, the benefits received by petitioner from the respondent represent her retirement benefits under the Plan. The question that now confronts us is whether these benefits are taxable. If so, respondent correctly made the deduction for tax purposes. Otherwise, the deduction was illegal and respondent is still liable for the completion of petitioner's retirement benefits.

Respondent argues that the legality of the deduction from petitioner's total benefits cannot be taken cognizance of by this Court since the issue was not raised during the early stage of the proceedings.[38]

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[35] *Aquino v. National Labor Relations Commission*, G.R. No. 87653, February 11, 1992, 206 SCRA 118, 122; *University of the East v. Minister of Labor*, No. 74007, July 31, 1987, 152 SCRA 676; *Batangas Laguna Tayabas Bus Company v. Court of Appeals*, 163 Phil. 494 (1976).

[36] *Rollo*, p. 364.

[37] G.R. No. 141868, May 28, 2004, 430 SCRA 184.

[38] *Rollo*, p. 947.

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We do not agree.

Records reveal that as early as in petitioner's position paper filed with the Labor Arbiter, she already raised the legality of said deduction, *albeit* designated as "unpaid balance of the retirement package." Petitioner specifically averred that ₱362,386.87 was not given to her by respondent as it was allegedly a part of the former's taxable income.[39] This is likewise evident in the Labor Arbiter and the NLRC's decisions although they ruled that the issue was beyond the tribunal's jurisdiction. They even suggested that petitioner's claim for illegal deduction could be addressed by filing a tax refund with the Bureau of Internal Revenue.[40]

Contrary to the Labor Arbiter and NLRC's conclusions, petitioner's claim for illegal deduction falls within the tribunal's jurisdiction. It is noteworthy that petitioner demanded the completion of her retirement benefits, including the amount withheld by respondent for taxation purposes. The issue of deduction for tax purposes is intertwined with the main issue of whether or not petitioner's benefits have been fully given her. It is, therefore, a money claim arising from the employer-employee relationship, which clearly falls within the jurisdiction[41] of the Labor Arbiter and the NLRC.

This is not the first time that the labor tribunal is faced with the issue of illegal deduction. In *Intercontinental Broadcasting*

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[39] *Id.* at 120.

[40] *Id.* at 211, 264.

[41] Article 217 of the Labor Code, as amended reads:

Article 217. JURISDICTION OF LABOR ARBITERS AND THE COMMISSION

(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x, the following cases involving all workers, whether agricultural or non-agricultural:

x x x x x x x x x

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations x x x.

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Corporation (IBC) v. Amarilla,[42] IBC withheld the salary differentials due its retired employees to offset the tax due on their retirement benefits. The retirees thus lodged a complaint with the NLRC questioning said withholding. They averred that their retirement benefits were exempt from income tax; and IBC had no authority to withhold their salary differentials. The Labor Arbiter took cognizance of the case, and this Court made a definitive ruling that retirement benefits are exempt from income tax, provided that certain requirements are met.

Nothing, therefore, prevents us from deciding this main issue of whether the retirement benefits are taxable.

We answer in the affirmative.

Section 32 (B) (6) (a) of the New National Internal Revenue Code (NIRC) provides for the exclusion of retirement benefits from gross income, thus:

(6) Retirement Benefits, Pensions, Gratuities, *etc*. –

a) Retirement benefits received under Republic Act 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: *Provided*, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: *Provided further*, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. x x x.

Thus, for the retirement benefits to be exempt from the withholding tax, the taxpayer is burdened to prove the concurrence of the following elements: (1) a reasonable private benefit plan is maintained by the employer; (2) the retiring official or employee has been in the service of the same employer for at least ten (10) years; (3) the retiring official or employee is not less than fifty (50) years of age at the time of his retirement; and (4) the benefit had been availed of only once.[43]

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[42] G.R. No. 162775, October 27, 2006, 505 SCRA 687.

[43] *Intercontinental Broadcasting Corporation (IBC) v. Amarilla*, G.R. No. 162775, October 27, 2006, 505 SCRA 687, 699.

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As discussed above, petitioner was qualified for disability retirement. At the time of such retirement, petitioner was only 41 years of age; and had been in the service for more or less eight (8) years. As such, the above provision is not applicable for failure to comply with the age and length of service requirements. Therefore, respondent cannot be faulted for deducting from petitioner's total retirement benefits the amount of ₱362,386.87, for taxation purposes.

WHEREFORE, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated August 12, 2004 and its Resolution dated December 17, 2004, in CA-G.R. SP No. 75706 are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.,* concur.

EN BANC

[G.R. No. 167755. November 28, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NESTOR VELUZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROSECUTION FOR RAPE, GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES. — This Court has ruled that in the review of rape cases, the Court is guided by the following precepts: (a) an accusation of rape can be made with facility, but it is more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.