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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 18 2015

Republic of the Philippines
Supreme Court
Manila

DEC 21 2015

THIRD DIVISION

PURISIMO M. CABAOBAS, EXUPERIO C. MOLINA, GILBERTO V. OPINION, VICENTE R. LAURON, RAMON M. DE PAZ, JR., ZACARIAS E. CARBO, JULITO G. ABARRACOSO, DOMINGO B. GLORIA, and FRANCISCO P. CUMPIO,
Petitioners,

- versus -

PEPSI-COLA PRODUCTS, PHILIPPINES, INC.,
Respondents.

G.R. No. 176908

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

November 11, 2015

x - x

RESOLUTION

PERALTA, *J.*:

For resolution is petitioners' Motion for Reconsideration of the Court's Decision dated March 25, 2015 with Motion to Refer Case to the [Court] *En Banc*, stating that:

> WITH ALL DUE RESPECT, THIS MATTER IS PROPER FOR RESOLUTION BY THIS HONORABLE COURT, EN BANC.[1]
>
> WITH ALL DUE RESPECT, THIS CASE HAS TO BE DECIDED ON THE BASIS OF ITS OWN PECULIAR FACTUAL SETTING AND

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[1] *Rollo*, p. 418.

> NOT ON THE BASIS OF THE FACTS PROVED AND EXISTING IN THE CASE OF MOLON.[2]
>
> RESPONDENT FAILED TO PROVE COMPLIANCE WITH ALL OF THE REQUISITES OF A VALID RETRENCHMENT PROGRAM AND THE DECISIONS OF THE HONORABLE COURT OF APPEALS AND NLRC ARE BEREFT OF ANY DISCUSSION OR CONCLUSION THAT RESPONDENT COMPLIED WITH THE THIRD, FOURTH AND FIFTH REQUISITES.[3]

Petitioners contend that the principle of *stare decisis* is not applicable because the factual circumstances of this case and those in the case of *Pepsi-Cola Products, Inc. v. Molon*,[4] are divergent. According to petitioners, records in *Molon* show that both the Court of Appeals (*CA*) and the National Labor Relations Commission (*NLRC*) had already determined that Pepsi complied with the requirements of substantial loss and due notice to both the DOLE and the workers to be retrenched, and that the requisite separation pay had already been paid as evidenced by the September 1999 quitclaims. In contrast, petitioners point out that a few days after service of their notices of termination, four (4) employees[5] were regularized, and replacements to the forty-seven (47) dismissed employees were also hired, and that they have not yet received their separation pay. Petitioners conclude that respondent Pepsi-Cola Products, Inc. (*PCPI*) failed to prove the fourth and the fifth requisites of a valid retrenchment program,[6] as the CA and the NLRC were silent on the matter.

Petitioners' motion for reconsideration with motion to refer the case to the Court *en banc* is denied for lack of merit.

Contrary to petitioners' contention, the factual circumstances of this case and those in *Molon* are not divergent, hence, the principle of *stare decisis* is applicable. As held in the Court's Decision dated March 25, 2015:

> x x x the issues, subject matters and causes of action between the parties in *Pepsi-Cola Products Philippines, Inc. v. Molon* and the present case are identical, namely, the validity of PCPPI's retrenchment program, and the legality of its employees' termination. There is also substantial identity of parties because there is a community of interest between the parties in the first case and the parties in the second case, even if the latter was not impleaded in the first case. The respondents in *Pepsi-Cola Products Philippines, Inc. vs. Molon* are petitioners' former co-employees

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2 *Id.* at 420.

3 *Id.* at 421.

4 G.R. No. 175002, February 18, 2013, 691 SCRA 113.

5 Casino, A., Mendigo, R., Poblete, E. and Rosario, R., *rollo*, p. 420.

6 4. That the employer exercises its prerogative in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

5. That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age and financial hardship for certain workers.

> and co-union members of LEPCEU-ALU who were also terminated pursuant to the PCPPI's retrenchment program. The only difference between the two cases is the date of the employees' termination, *i.e.*, Molon, *et al.*, belong to the first batch of employees retrenched on July 31, 1999, while petitioners belong to the second batch retrenched on February 15, 2000. That the validity of the same PCPPI retrenchment program had already been passed upon and, thereafter, sustained in the related case of *Pepsi-Cola Products Philippines, Inc. v. Molon,* albeit involving different parties, impels the Court to accord a similar disposition and uphold the legality of same program. x x x[7]

On petitioners' claim that after they were served notices of termination, 4 employees were regularized, and replacements to the 47 dismissed employees were also hired, the Court has resolved the same in the Decision dated March 25, 2015, thus:

> On PCPPI's alleged failure to explain its acts of regularizing four (4) employees and hiring of sixty (63) replacements and additional workers, the Court upholds the NLRC's correct ruling thereon, *viz.*:
>
> > Let Us squarely tackle this issue of replacements in the cases of the complainant in this case. We bear in mind that replacements refer to the regular workers subjected to retrenchment, occupying regular positions in the company structure. Artemio Kempis, a filer mechanic with a salary of ₱9,366.00 was replaced by Rogelio Castil. Rogelio Castil was hired through an agency named Helpmate Janitorial Services. Castil's employer is Helpmate Janitorial Services. How can a janitorial service employee perform the function of a filer mechanic? How much does Pepsi Cola pay Helpmate Janitorial Services for the contract of service? These questions immediately come to mind. Being not a regular employee of Pepsi Cola, he is not a replacement of Kempis. **The idea of rightsizing is to reduce the number of workers and related functions and trim down, streamline, or simplify the structure of the organization to the level of utmost efficiency and productivity in order to realize profit and survive. After the CRP shall have been implemented, the desired size of the corporation is attained. Engaging the services of service contractors does not expand the size of the corporate structure. In this sense, the retrenched workers were not replaced.**
> >
> > The same is true in the case of Exuperio C. Molina who was allegedly replaced by Eddie Piamonte, an employee of, again, Helpmate Janitorial Services; of Gilberto V. Opinion who was allegedly replaced by Norlito Ulahay, an employee of Nestor Ortiga General Services; of Purisimo M. Caba[o]bas who was allegedly replaced by Christopher Albadrigo, an employee of Helpmate Janitorial Services; of Vicente R. Lauron who was allegedly replaced

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7 *Rollo*, pp. 407-408. (Citations omitted.)

> by Wendylen Bron, an employee of Double "N" General Services; of Ramos M. de Paz, who was disabled, and replaced by Alex Dieta, an employee of Nestor Ortiga General Services; and of Zacarias E. Carbo who was allegedly replaced by an employee of Double "N" General Services. x x x[8]

There is also no merit in petitioners' claim that PCPI failed to comply with the third requisite of a valid retrenchment program, since they have not yet been paid their separation pay.

In their Consolidated Position Paper, petitioners only sought for reinstatement without loss of seniority rights and other privileges, payment of backwages, damages and attorney's fees on account of their unlawful retrenchment. PCPI, on the other hand, alleged in its position paper that it had offered to pay petitioners separation package equivalent to 150% or 1.5 months for every year of service, and that they were served individual notices advising them to claim their separation pay. In its Decision dated December 15, 2000, the Labor Arbiter ruled that it was duly established that the last two (2) requisites for a valid retrenchment under Article 283 of the Labor Code, were complied with by PCPPI,[9] namely, written notices to employees and to the Department of Labor and Employment, and the payment of separation pay. On appeal, the NLRC ruled in its September 11, 2002 Decision that having been validly retrenched, petitioners were not entitled to reinstatement with full backwages. However, in ordering PCPI to pay petitioners' separation benefits of 1½ month salary for every year of service, plus commutation of all vacation and sick leave credits, the NLRC noted that the corresponding length of petitioners' services with PCPI are different from what they had erroneously alleged.[10] Meanwhile, the CA held in its Decision dated July 31, 2006 that the requisite for the payment of separation pay was evidenced by the notices sent by PCPI to petitioners.[11] Clearly, PCPI cannot be faulted for petitioners' failure to receive their separation pay.

Likewise without merit is petitioners' contention that PCPI failed to establish the fourth and fifth requisites of a valid retrenchment program, *i.e.*, that the employer exercised its prerogative in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure, and it used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained.

It bears emphasis that petitioners are raising such issue only for the first time in this motion for reconsideration, and that explains why the

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8 *Id.* at 411-412. (Emphasis added)
9 *Id.* at 53.
10 *Id.* at 214.
11 *Id.* at 38.

NLRC and the CA did not discuss such issue in the first place. Notably, petitioners' main contention in their petition for review on *certiorari* is that PCPI's retrenchment program and their consequent dismissal from employment were both unlawful because it failed to prove financial losses and to explain its act of hiring replacement and additional workers, and its true motive was to prevent their union, LEPCEU-ALU, from becoming the certified bargaining agent. Suffice it to state that, as a rule, no question will be entertained on appeal unless it has been raised in the proceedings below. "Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel.*"[12]

In view of the foregoing discussion, the Court finds that this case cannot be considered as one of those cases under the Internal Rules of the Supreme Court[13] (A.M. No. 10-4-20-SC) that shall be acted upon by the Court *En Banc*.

WHEREFORE, petitioners' Motion for Reconsideration of the Court's March 25, 2015 Decision with Motion to Refer Case to the [Court] *En Banc* is **DENIED**.

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12 *Engr. Besana, et al. v. Mayor*, 639 Phil. 216, 229 (2010).

13 **Section 3.** *Court en banc matters and cases.* – The Court *en banc* shall act on the following matters and cases:

(a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;
(b) cases raising novel questions of law;
(c) cases affecting ambassadors, other public ministers, and consuls;
(d) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit;
(e) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;
(f) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;
(g) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate court;
(h) cases where a doctrine or principle laid down by the Court *en banc* or by a Division may be modified or reversed;
(i) cases involving conflicting decisions of two or more divisions;
(j) cases where three votes in a Division cannot be obtained;
(k) division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;
(l) subject to Section 11 (b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court en banc;
(m) cases that the Court *en banc* deems of sufficient importance to merit its attention; and
(n) all matters involving policy decisions in the administrative supervision of all courts and their personnel.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

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