EN BANC

G.R. No. 205813 – ALFREDO F. LAYA, JR., *Petitioner,* **versus COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE VETERANS BANK, and RICARDO A. BALBIDO, JR.,** *Respondents.*

Promulgated:
January 10, 2018

x - x

CONCURRING OPINION

CARPIO, *J.*:

I concur with the *ponencia* on the ground that **any waiver of a constitutional right must be clear, categorical, knowing, and intelligent**.

Section 3, Article XIII of the 1987 Constitution provides that an employee "**shall be entitled to security of tenure**." Thus, the right to security of tenure is a **constitutional right** of an employee.

This Court has explained that "[s]ecurity of tenure is a right of paramount value. Precisely, it is given specific recognition and guarantee by the Constitution no less. The State shall afford protection to labor and 'shall assure the rights of workers to x x x security of tenure.'"[1] This Court has explained further: "It stands to reason that a right so highly ranked as security of tenure should not lightly be denied on so nebulous a basis as mere speculation."[2]

The well-recognized rule is that any waiver of a **constitutional right** must be **clear, categorical, knowing, and intelligent**. Thus, in a long line of cases, this Court has ruled: "The relinquishment of a constitutional right has to be laid out convincingly. **Such waiver must be clear, categorical, knowing, and intelligent**."[3]

Under Article 287 of the Labor Code, the "compulsory retirement age" is 65 years, "in the absence of a retirement plan or agreement providing for retirement benefits of employees." While Philippine Veterans Bank (PVB) has a retirement plan making 60 years the compulsory retirement age,

---

[1] *City Service Corp. Workers Union v. City Service Corporation*, 220 Phil. 239, 242 (1985).

[2] Id.

[3] *People v. Espinosa*, 456 Phil. 507, 518 (2003), citing *People v. Nicandro*, 225 Phil. 248 (1986), further citing *People v. Caguioa*, 184 Phil. 1 (1980); *Chavez v. CA*, 133 Phil. 661 (1968); *Abriol v. Homeres*, 84 Phil. 525 (1949).

this specific fact was not made known to petitioner at the time PVB handed him his appointment letter on 1 June 2001. The appointment letter mentioned in one line a retirement plan but the retirement plan itself was not attached to the appointment letter or given to petitioner. **Nothing in the appointment letter indicated, expressly or impliedly, that the compulsory retirement age was 60 years. Anyone who received and read the appointment letter would not have known that the compulsory retirement age was 60 years**. In short, petitioner could not have waived **knowingly** the compulsory retirement age of 65 years because **this fact was not made known to him** at the time of his appointment. Any such waiver was **not made knowingly**.

The fact that petitioner is a lawyer cannot give rise to the presumption that he impliedly waived his constitutional right to security of tenure when he accepted the appointment letter. This Court has ruled:

> But a waiver by implication cannot be presumed. There must be clear and convincing evidence of an **actual intention to relinquish the right to constitute a waiver of a constitutional right**. There must be proof of the following: (a) that the right exists; (b) that the person involved had knowledge, either actual or constructive, of the existence of such right; and, (c) **that the said person had an actual intention to relinquish the right**. The waiver must be made voluntarily, knowingly and intelligently. The Court indulges every reasonable presumption against any waiver of fundamental constitutional rights.[4] (Emphasis supplied)

There is no showing here that petitioner has an actual intention to waive his constitutional right to security of tenure. **Such intention to waive a fundamental constitutional right cannot be presumed but must be actually shown and established**. The bar against any implied waiver is very high because this Court "indulges [in] every reasonable presumption against any waiver of fundamental constitutional rights." PVB has failed to surmount that high bar.

Even in determining whether the appointment of an employee is permanent or probationary, actual disclosure of the performance standards **at the time of the employment** is required and cannot be presumed. This Court has explained that a probationary employee shall be deemed a regular employee **where no standards are made known to him at the time of his engagement**, unless the job is self-descriptive, like maid, cook, driver, or messenger.[5] Thus, to comply with the constitutional mandate that the "**State shall afford full protection to labor**," disclosure to the employee **at the time of appointment** is necessary to bind the employee. "**Full protection**" means implied waivers in derogation of an employee's constitutional or

---

[4] *Lui v. Spouses Matillano*, 473 Phil. 483, 512-513 (2004); *Pasion Vda. de Garcia v. Locsin*, 65 Phil. 689 (1938); *People v. Compacion*, 414 Phil. 68 (2001).

[5] *Abbott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 532-533, 534 (2013), citing *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, 655 Phil. 133, 142 (2011).

statutory right cannot be presumed.

Accordingly, I vote to **GRANT** the petition.

ANTONIO T. CARPIO
Associate Justice