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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MAYNILAD WATER SUPERVISORS ASSOCIATION, represented by ROBERTA ESTINO, Petitioners,	**G.R. No. 198935** Present: CARPIO, *J.*, Chairperson, VELASCO, JR.,* LEONARDO-DE CASTRO,** DEL CASTILLO, and PEREZ, *JJ.*
- versus -	
MAYNILAD WATER SERVICES, INC., Respondent.	Promulgated: NOV 27 2013

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DECISION

PEREZ, *J.*:

For resolution is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to reverse, annul and set aside the Amended Decision and Resolution issued by the Court of Appeals (CA) in CA-G.R. S.P. No. 101911, specifically the (a) Amended Decision[2] dated 31 January 2011 which reversed its earlier Decision dated 31 May 2010 and (b) Resolution[3] dated 12 September 2011 which denied petitioner's Motion for Reconsideration.

* Per raffle dated 15 October 2012.

** Per raffle dated 15 October 2012.

1 *Rollo*, pp. 10-33.

2 Id. at 264-279; Penned by Associate Justice Rodil V. Zalameda with Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr. concurring.

3 Id. at 336-341.

Culled from the records are the following antecedent facts:[4]

Petitioner Maynilad Water Supervisors Association (MWSA) is an association composed of former supervisory employees of Metropolitan Waterworks and Sewerage System (MWSS). These employees claim that during their employment with MWSS, they were receiving a monthly cost of living allowance (COLA) equivalent to 40% of their basic pay.

The payment of these allowances and other additional compensation, including the COLA were, however, discontinued without qualification effective 1 November 1989 when the Department of Budget and Management (DBM) issued Corporate Compensation Circular No. 10 (CCC No. 10).

In 1997, MWSS was privatized and part of it, MWSS West, was acquired by Maynilad Water Services, Inc. (Maynilad). Some of the employees of MWSS, which included members of MWSA, were absorbed by Maynilad subject to the terms and conditions of a Concession Agreement, a portion of which reads:

> Article 6.1.1 (ii)
>
> One month prior to the Commencement Date, the Concessionaire shall make an offer to employ each Concessionaire Employee, subject to a probationary period of six months following the Commencement Date, at a salary or pay scale and with benefits at least equal to those enjoyed by such Employee on the date of his or her separation from MWSS. x x x
>
> x x x x
>
> Article 6.1.3. Non-Diminution of Benefits
>
> The Concessionaire shall grant to all Concessionaire Employees employee benefits no less favorable than those granted to such employees by the MWSS at the time of their separation from MWSS, particularly those set forth in Exhibit F and the following:
>
> x x x x

The payment of COLA was not among those listed as benefits in Exhibit "F."

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4 Id. at 12-19; Petition.

In 1998, the Supreme Court promulgated a Decision[5] declaring DBM CCC No.10 ineffective for failure to comply with the publication requirement. Consequently, MWSS partially released the COLA payments for its employees, including members of MWSA, covering the years 1989 to 1997, and up to year 1999 for its retained employees.

In 2002, MWSA filed a complaint before the Labor Arbiter praying for the payment of their COLA from the year 1997, the time its members were absorbed by Maynilad, up to the present. MWSA argued that since DBM CCC No. 10 was rendered ineffective, the COLA should be paid as part of the benefits enjoyed by their members at the time of their separation from MWSS, and which should form part of their salaries and benefits with Maynilad.

In a decision dated 10 November 2006, the Labor Arbiter granted MWSA's claim and directed Maynilad to pay the COLA of the supervisors retroactive to the date when they were hired in 1997, with legal interest from the date of promulgation of the decision. It also directed Maynilad to take necessary measures to ensure that the benefit is incorporated in the employees' monthly compensation.[6]

On 11 December 2006, Maynilad appealed the decision before the National Labor Relations Commission (NLRC) and filed an Urgent Manifestation and Motion to Reduce Bond.

The NLRC granted Maynilad's motion and reversed on appeal the decision of the Labor Arbiter.

On 28 September 2007, MWSA filed a motion for reconsideration but this was denied by the NLRC in its 23 October 2007 resolution.

Aggrieved, MWSA filed a petition for certiorari with the CA on 11 January 2008.

In a Decision[7] dated 31 May 2010, the CA Ninth Division annulled and set aside the decision of the NLRC. It thus reinstated the decision of the Labor Arbiter.

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5 *De Jesus v. COA*, 355 Phil. 584 (1998).
6 *Rollo*, pp. 82-92.
7 Id. at 219-229.

Maynilad filed a motion for reconsideration of the 31 May 2010 CA Decision.

On 31 January 2011, the CA Ninth Division reconsidered its earlier Decision. The decretal portion of the amended decision reads:

> **WHEREFORE**, premises considered, the Motion for Reconsideration is **GRANTED**. Consequently, the Court's 31 May 2010 Decision is **REVERSED** and **SET ASIDE**, and the 07 September 2007 Decision and 23 October 2007 Resolution of the NLRC are **AFFIRMED**, and are thus **REINSTATED**.[8]

MWSA filed a Motion for Reconsideration of the amended decision. Pending resolution of the Motion for Reconsideration, MWSA moved for the inhibition of the members of the Ninth Division of the CA. The members of the division recused from the case in a Resolution dated 3 June 2011.

Thereafter, the Second Division of the CA, to which the case was raffled, issued a Resolution[9] on 12 September 2011 denying MWSA's Motion for Reconsideration.

Hence, this Petition for Review on Certiorari under Rule 45 of the Rules of Court.

ISSUES

Whether the CA erred in not holding that the MWSA members are entitled to COLA under the Concession Agreement.

Whether the CA erred in not finding grave abuse of discretion on the part of NLRC when the latter granted Maynilad's appeal despite insufficiency of the appeal bond.

OUR RULING

Simply stated, the main issue in this case is whether Maynilad bound itself under the Concession Agreement to pay the COLA of the employees it

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8 Id. 278-279.

9 Id. at 336-341.

absorbed from MWSS. A careful review of the Concession Agreement led us to conclude that both MWSS and Maynilad never intended to include COLA as one of the benefits to be granted to the absorbed employees.

The benefits agreed upon by the parties are stated in Exhibit "F" of the Concession Agreement, to wit:

Existing MWSS Fringe Benefits

A. ALLOWANCES

PERA - P500.00 Salary Grade 1 to 23 except those with RATA
ACA – P500.00 Salary Grade 1 to 25
RATA- 40% of basic – Supervisory Level, Section Chiefs and up or equivalent ranks. Technical and Executive Assistants
Medical – 2,500/year
Rice – 500/month
Uniform – 2,000/year
Meal – 25.00/day (for medical personnel – P30.00/day)
Longevity – 50.00/year of service/month
Children – 30.00/child/month, maximum four (4) children below 21 years old
Hazard – 50.00/month

B. BONUSES

Year-End Financial Assistance – One (1) month Gross pay (Basic Salary plus PERA, ACA, rice, meal, longevity, Children and RATA
Mid-Year – One (1) month Gross Pay
Christmas Bonus and Cash Gift – One (1) month Basic salary plus P1,000 cash gift
Anniversary (Bigay-pala) – 4,000.00 or 50% of basic, whichever is greater
Productivity as of December 1995 – Amount equivalent to P5,000 or 60% of gross pay, exclusive of RATA, whichever is higher

C. PREMIUMS

Graveyard – 50% (12MN – 6:00 AM)
Nightwork – 25% (6PM – 6AM)
Holiday – 125%
Sunday – 150%
Overtime – 125%
Distress – 25% of basic pay (For Sewerage Department only)

D. PAID LEAVES

Vacation – 15 days/year
Sick – 15 days/year

Maternity – 60 calendar days
Paternity – 7 working days
Emergency Leave - 3 days/year
(Birthday/Funeral/Mourning/Graduation/Enrollment/Wedding/
Anniversary/Hospitalization/Accident/Relocation)

E. STUDY LEAVE

- Study now pay later scheme
- Grant (with contract to serve MWSS)[10]

It is clear from the aforesaid enumeration that COLA is not among the benefits to be received by the absorbed employees. Contrary to the contention of MWSA, the declaration by the Court of the ineffectiveness of DBM CCC No. 10 due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country,[11] did not give rise to the employee's right to demand payment of the subject benefit from Maynilad.

As far as their employment relationship with Maynilad is concerned, the same is not affected by the *De Jesus* ruling because it is governed by a separate compensation package provided for under the Concession Agreement. It would be erroneous to presume that had the COLA been received during the time of the execution of the contract, the benefit would have been included in Exhibit "F." First of all, we note that the Court's ruling in the *De Jesus* case applies only to government-owned and controlled corporations and not to private entities. Secondly, the parties to the Concession Agreement could not have thought of including the COLA in Exhibit "F" because as early as 1989, the government already resolved to remove the COLA, among others, from the list of allowances being received by government employees. Hence, the enactment of Republic Act R.A. No. 6758 or the Compensation and Position Classification Act of 1989[12] which integrated the COLA into the standardized salary rate. Section 12 thereof provides:

> Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. x x x

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10 CA *rollo*, pp. 112-113.

11 *De Jesus v. COA*, supra note 5.

12 An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes.

From the aforesaid provision, we note that all allowances were deemed integrated into the standardized salary rates except:

(1) representation and transportation allowances;
(2) clothing and laundry allowances;
(3) subsistence allowances of marine officers and crew on board government vessels;
(4) subsistence allowances of hospital personnel;
(5) hazard pay;
(6) allowances of foreign service personnel stationed abroad; and
(7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.

In *Gutierrez v. DBM*,[13] which is a consolidated case involving over 20 government-owned and controlled corporations, the Court found proper the inclusion of COLA in the standardized salary rates. It settled that COLA, not being an enumerated exclusion, was deemed already incorporated in the standardized salary rates of government employees under the general rule of integration. In explaining its inclusion in the standardized salary rates, the Court cited its ruling in *National Tobacco Administration v. COA*,[14] in that the enumerated fringe benefits in items (1) to (6) have one thing in common – they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. On the other hand, item (7) is a "catch-all proviso" for benefits in the nature of allowances similar to those enumerated.[15]

Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty.[16] As defined, cost of living refers to "the level of prices relating to a range of everyday items"[17] or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption."[18] Based on this premise, COLA is

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13 G.R. No. 153266, 18 March 2010, 616 SCRA 1, 18.
14 Id. citing *National Tobacco Administration v. COA* 370 Phil. 793, 805 (1999).
15 Id. citing *Bureau of Fisheries and Aquatic Resources Employees Union, Regional Office No. VII, Cebu City v. COA*, G.R. No. 169815, 13 August 2008, 562 SCRA 134, 141.
16 Id. at 18-19.
17 Id. at 19 citing The New Oxford American Dictionary, Oxford University Press, 2005 Edition.
18 Id. citing Webster's Third New International Dictionary, Merriam-Webster Inc., 1993 Edition.

a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.

From the aforesaid discussion, it is evident therefore, that at the time the MWSS employees were absorbed by Maynilad in 1997, the COLA was already part and parcel of their monthly salary. The non-publication of DBM CCC No. 10 in the Official Gazette or newspaper of general circulation did not nullify the integration of COLA into the standardized salary rates upon the effectivity of R.A. No. 6758.[19] As held by this Court in *Phil. International Trading Corp. v. COA*,[20] the validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules.

To grant COLA to herein petitioners now would create an absurd situation wherein they would be receiving an additional COLA in the amount equivalent to 40% of their basic salary even if the Court has already ruled that the COLA is already integrated in the employee's basic salary. Such conclusion would give the absorbed employees far greater rights than their former co-employees or other government employees from whom COLA was eventually disallowed.

The ruling of the Labor Arbiter which MWSA insists on is also erroneous in that it seeks to have the COLA incorporated in the monthly compensation to be received by the absorbed employees. It failed to consider that the employment contracts of the MWSA members with MWSS were terminated prior to their employment with MAYNILAD. Although they may have continued performing the same function, their employment is already covered by an entirely new employment contract.

This Court has ruled that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being *in personam*, thus binding only between the parties.[21] In the instant case, the only commitment of Maynilad under the Concession Agreement it entered with MWSS was to provide the absorbed employees with a compensation package "no less favorable than those granted to [them] by the MWSS at the time of their separation from MWSS, particularly those set forth in Exhibit

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19 Id. at 24.

20 461 Phil. 737, 750 (2003).

21 *Sundowner Development Corp. v. Hon. Drilon*, 259 Phil. 481, 485 (1989); *Robledo v. NLRC*, G.R. No. 110358, 9 November 1994, 238 SCRA 52, 56-57; *Associated Labor Unions-VIMCONTU v. NLRC*, G.R. No. 74841, 20 December 1991, 204 SCRA 913, 923; *Barayoga v. Asset Privatization Trust*, 510 Phil. 452, 461 (2005).

'F' x x x."[22] It is undisputed that Maynilad complied with such commitment. It cannot, however, be compelled to assume the payment of an allowance which was not agreed upon. Such would not only be unreasonable but also unfair for Maynilad. MWSS and Maynilad could not have presumed that the COLA was part of the agreement when it was no longer being received by the employees at the time of the execution of the contract, which is the reckoning point of their new employment .

In *Norton Resources and Development Corporation v. All Asia Bank Corporation,*[23] this Court ruled that [t]he agreement or contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. Thus, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement between the parties and their successors in interest. Time and again, we have stressed the rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs or public policy. Otherwise, courts would be interfering with the freedom of contract of the parties. Simply put, courts cannot stipulate for the parties or amend the latter's agreement, for to do so would be to alter the real intention of the contracting parties when the contrary function of courts is to give force and effect to the intention of the parties.

In fine, contrary to the allegation of MWSA, there is no ambiguity in the Concession Agreement. Thus, there is nothing to be construed.

Anent the issue of the insufficiency of the appeal bond posted by Maynilad, we agree with the NLRC that there was merit in the arguments forwarded in support of the prayer for the reduction of the appeal bond. Maynilad sought the reduction of the appeal bond to ten percent (10%) for the following reasons: a) that it had filed a Petition for Rehabilitation before the Regional Trial Court of Quezon City; and b) that as a result thereof, the Rehabilitation Court issued a Stay Order prohibiting it from selling, encumbering, transferring or disposing in any manner any of its properties making it impossible for it to fully comply with the appeal bond requirement.[24] Our ruling in *Garcia, et al. v. KJ Commercial* [25] that the

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22 *Rollo*, p. 13; Petition, Article 6.1.3 on Non-Diminution of Benefits.

23 G.R. No. 162523, 25 November 2009, 605 SCRA 370, 380.

24 *Rollo*, p. 130; NLRC Decision.

25 G.R. No. 196830, 29 February 2012, 667 SCRA 396, 411-413 citing *Rosewood Processing, Inc. v. NLRC*, 352 Phil. 1013, 1029 (1998); *Quiambao v. NLRC*, 324 Phil. 455, 461 (1996); *Globe General Services and Security Agency v. NLRC,* 319 Phil. 531, 535 ; *Ong v. Court of Appeals*, 482 Phil. 170, 180-181 (2004).

requirement on appeals may be relaxed when there is substantial compliance with the Rules of Procedure of the NLRC or when the appellant shows willingness to post a partial bond. Here, we note that Maynilad's appeal was accompanied by an appeal bond in the amount of Twenty Five Million Pesos (₱25,000,000.00) with an Urgent Manifestation and Motion to Reduce Bond on the ground that the labor arbiter failed to specify the exact amount of monetary award from which the amount of the appeal bond is to be based.

In *University Plans v. Solano*,[26] this Court reiterated the guidelines which the NLRC must exercise in considering the motions for reduction of bond:

> The bond requirement on appeals involving monetary awards has been and may be relaxed in meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.

It is evident that the aforesaid instances are present in the instant case.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED** and the 31 January 2011 Amended Decision and 12 September 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 101911 is **AFFIRMED** in *toto*.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

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[26] G. R. No. 170416, 22 June 2011, 652 SCRA 492, 504-505 citing *Nicol v. FootjJoy Industrial Corporation*, 27 July 2007, 528 SCRA 300, 312-313.

WE CONCUR:

ANTONIO T. CARPIO
Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. LOURDES P. A. SERENO
Chief Justice