Republic of the Philippines
Supreme Court
Manila

EN BANC

ALFREDO F. LAYA, JR.,
Petitioner,

- *versus* -

COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE VETERANS BANK and RICARDO A. BALBIDO, JR.,
Respondents.

G.R. No. 205813

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
*JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.*:

Promulgated

January 10, 2018

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DECISION

BERSAMIN, *J.*:

An employee in the private sector who did not expressly agree to the terms of an early retirement plan cannot be separated from the service before he reaches the age of 65 years. The employer who retires the employee prematurely is guilty of illegal dismissal, and is liable to pay his backwages and to reinstate him without loss of seniority and other benefits, unless the employee has meanwhile reached the mandatory retirement age under the *Labor Code*, in which case he is entitled to separation pay pursuant to the

* No part due to his prior participation as the Solicitor General.

terms of the plan, with legal interest on the backwages and separation pay reckoned from the finality of the decision.

The Case

The petitioner seeks the review and reversal of the adverse decision promulgated on August 31, 2012,[1] whereby the Court of Appeals (CA) upheld the ruling of the National Labor Relations Commission (NLRC) dated June 21, 2010 affirming the dismissal of his complaint for illegal dismissal by the Labor Arbiter.

Antecedents

The CA summarized the factual antecedents as follows:

> On 1 June 2001, petitioner Alfredo F. Laya, Jr. was hired by respondent Philippine Veterans Bank as its Chief Legal Counsel with a rank of Vice President. Among others, the terms and conditions of his appointment are as follows; (sic)
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> > "3. As a Senior Officer of the Bank, you are entitled to the following executive ben[e]fits:
> >
> > • Car Plan limit of ₱700,000.00, without equity on your part; a gasoline subsidy of 300 liters per month and subject further to The Car Plan Policy of the Bank.
> >
> > • Membership in a professional organization in relation to your profession and/or assigned functions in the Bank.
> >
> > • Membership in the Provident Fund Program/Retirement Program.
> >
> > • Entitlement to any and all other basic and fringe benefits enjoyed by the officers; core of the Bank relative to Insurance covers, Healthcare Insurance, vacation and sick leaves, among others."
>
> On the other hand, private respondent has its Retirement Plan Rules and Regulations which provides among others, as follows:
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> ARTICLE IV
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> RETIREMENT DATES
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> > Section 1. Normal Retirement. The normal retirement date of a Member shall be the first day of the month coincident with or next following his attainment of age 60.

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[1] *Rollo*, pp. 34-48; penned by Associate Justice Leoncia Real-Dimagiba, and concurred in by Associate Justice Rosmari D. Carandang and Associate Justice Ricardo R. Rosario.

> Section 2. Early Retirement. A Member may, with the approval of the Board of Directors, retire early on the first day of any month coincident with or following his attainment of age 50 and completion of at least 10 years of Credited Service.
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> Section 3. Late Retirement. A Member may, with the approval of the Board of Directors, extend his service beyond his normal retirement date but not beyond age 65. Such deferred retirement shall be on a case by case and yearly extension basis.
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> On 14 June, 2007, petitioner was informed thru letter by the private respondent of his retirement effective on 1 July 2007.
>
> On 21 June 2007 petitioner wrote Col. Emmanuel V. De Ocampo, Chairman of respondent bank, requesting for an extension of his tenure for two (2) more years pursuant to the Bank's Retirement Plan (Late Retirement).
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> On 26 June 2008, private respondent issued a memorandum directing the petitioner to continue to discharge his official duties and functions as chief legal counsel pending his request. However on 18 July 2007, petitioner was informed thru its president Ricardo A. Balbido Jr. that his request for an extension of tenure was denied.[2]

According to the petitioner, he was made aware of the retirement plan of respondent Philippine Veterans Bank (PVB) only after he had long been employed and was shown a photocopy of the Retirement Plan Rules and Regulations,[3] but PVB's President Ricardo A. Balbido, Jr. had told him then that his request for extension of his service would be denied "to avoid precedence."[4] He sought the reconsideration of the denial of the request for the extension of his retirement,[5] but PVB certified his retirement from the service as of July 1, 2007 on March 6, 2008.[6]

On December 24, 2008, the petitioner filed his complaint for illegal dismissal against PVB and Balbido, Jr. in the NLRC to protest his unexpected retirement.[7]

Ruling of the Labor Arbiter

On August 28, 2009, the Labor Arbiter rendered a decision dismissing the complaint for illegal dismissal,[8] to wit:

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2 Id. at 35-37.
3 Id. at 7.
4 Id. at 8.
5 Id.
6 Id. at 10.
7 Id.
8 Id. at 37.

> WHEREFORE, the charge of illegal dismissal and money claims raised by the complainant, together with the counterclaim raised by the respondents are DISMISSED for lack of merit but by reason of a flaw in the denial of complainant's application for term extension as discussed above, the respondent bank is hereby ordered to pay the complainant the amount of ₱200,000.00 by way of reasonble (sic) indemnity.
>
> Ricardo Balbido, Jr., is hereby dropped as party respondent.
>
> SO ORDERED.[9]

After his motion for reconsideration was denied,[10] the petitioner appealed to the NLRC.[11]

Ruling of the NLRC

On June 21, 2010, the NLRC affirmed the dismissal of the petitioner's complaint, and deleted the indemnity imposed by the Labor Arbiter,[12] *viz.*:

> WHEREFORE, premises considered the appeal of the complainant is hereby DENIED for lack of merit. The appeal of respondents is GRANTED. The Decision below is hereby AFFIRMED with MODIFICATION, deleting the award of indemnity to complainant.
>
> SO ORDERED.[13]

The petitioner assailed the ruling to the CA through *certiorari*.

Ruling of the CA

On August 31, 2012, the CA promulgated the now assailed decision,[14] holding that the petitioner's acceptance of his appointment as Chief Legal Officer of PVB signified his conformity to the retirement program;[15] that he could not have been unaware of the retirement program which had been in effect since January 1, 1996;[16] that the lowering of the retirement age through the retirement plan was a recognized exception under the provisions of Article 287 of the *Labor Code*;[17] that considering his failure to adduce evidence showing that PVB had acted maliciously in applying the provisions

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9 Id. at 40.
10 Id.
11 Id.
12 Id.
13 Id. at 42-43.
14 Supra note 1.
15 Id. at 45.
16 Id. at 45-46.
17 Id. at 46.

of the retirement plan to him and in denying his request for the extension of his service, PVB's implementation of the retirement plan was a valid exercise of its management prerogative.[18]

The CA denied the petitioner's motion for reconsideration on February 8, 2013.[19]

On April 8, 2013, the Court (First Division) denied the petition for review on *certiorari*.[20] In his motion for reconsideration, the petitioner not only prayed for the reconsideration of the denial but also sought the referral of his petition to the Court *En Banc*,[21] arguing that the CA and the NLRC had erroneously applied laws and legal principles intended for corporations in the private sector to a public instrumentality like PVB;[22] and that to allow the adverse rulings to stand would be to condone the creation of a private corporation by Congress other than by a general law on incorporation.[23]

In its resolution promulgated on August 28, 2013, the Court (First Division) denied the petitioner's motion for reconsideration, as well as his prayer to refer the case to the Court *En Banc*.[24] The entry of judgment was issued on December 6, 2013.[25]

The petitioner filed a second motion for reconsideration on December 18, 2013,[26] whereby he expounded on the issues he was raising in his first motion for reconsideration. He urged that the Court should find and declare PVB as a public instrumentality; that the law applicable to his case was Presidential Decree No. 1146 (GSIS Law), which stipulated the compulsory retirement age of 65 years;[27] and that the compulsory retirement age for civil servants could not be "contracted out."[28]

On March 25, 2014, the Court *En Banc* accepted the referral of this case by the First Division.[29]

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18 Id. at 46-47.
19 Id. at 51-52.
20 Id. at 56.
21 Id. at 57-66.
22 Id. at 57.
23 Id. at 57-58.
24 Id. at 106.
25 Id. at 126.
26 Id. at 108-124.
27 Id. at 110-111.
28 Id. at 111.
29 Id. at 152.

On April 22, 2014, the Court *En Banc* required PVB and the Office of the Solicitor General (OSG) to file their comments on the petitioner's second motion for reconsideration.[30]

The comment of PVB poses several challenges to the petition.

In support of its first challenge, PVB contends that the Court should not have accepted the referral of the case to the *Banc* because the First Division had already denied with finality the petitioner's first motion for reconsideration, as well as his motion to refer the case to the *Banc*;[31] that the Court *En Banc*'s acceptance of the case was in violation of the principle of immutability of final judgments as well as of Section 3, Rule 15 of the *Internal Rules of the Supreme Court*[32] to the effect that a second motion for reconsideration could be allowed only "before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration;"[33] and that the First Division had correctly denied the petition for review because the issues raised therein were factual matters that this mode of appeal could not review and pass upon.[34]

As its second challenge, PVB demurrs to the propriety of the petitioner's attack on its corporate existence. It submits that he should not be allowed to pose such attack for the first time in this appeal;[35] that his argument was also an impermissible collateral attack on the constitutionality of Republic Act No. 3518 and Republic Act No. 7169;[36] and that his seeking a declaration of PVB as a public institution "partakes the nature of a petition for declaratory relief which is an action beyond the original jurisdiction of the Honorable Court."[37]

Nevertheless, PVB maintains that it is not a public or government entity for several reasons, namely: (1) the Government does not own a single share in it;[38] (2) the Government has no appointee or representative in the Board of Directors, and is not involved in its management;[39] and (3) it does not administer government funds.[40]

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30 Id. at 154-A.
31 Id. at 233.
32 Section 3.*Second Motion for Reconsideration.* — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration. x x x
33 *Rollo*, pp. 232-233.
34 Id. at 238-239.
35 Id. at 242.
36 Id. at 243.
37 Id. at 245.
38 Id. at 247-248.
39 Id. at 248-249.
40 Id. at 249.

PVB insists that its creation as a private bank with a special charter does not in any way violate Section 16, Article XII of the Constitution,[41] explaining:

> Firstly, the mischief which the constitutional provision seeks to prevent, i.e., *giving certain individuals, families or groups special privileges denied to other citizens,* will not be present insofar as the Bank is concerned. As this Honorable Court observed in *Philippine Veterans Bank Employees Union-NUBE vs. Philippine Veterans Bank* –
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> > *These stockholdings* (of the veterans, widows, orphans or compulsory heirs) *do not enjoy any special immunity over and above shares of stock in any other corporation, which are always subject to the vicissitudes of business. Their value may appreciate or decline or the stocks may become worthless altogether. Like any other property, they do not have a fixed but a fluctuating price. Certainly, the mere acceptance of these shares of stock by the petitioners did not create any legal assurance from the Government that their original value would be preserved and that the owners could not be deprived of such property under any circumstance no matter how justified.*
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> Secondly, the obvious legislative intent is "*to give meaning and realization to the constitutional mandate to provide immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans*" Article XVI, Section 7 of the Constitution states:
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> > *Section 7. The State shall provide immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans. Funds shall be provided therefor and due consideration shall be given them in the disposition of agricultural lands of the public domain and, in appropriate cases, in the utilization of natural resources.*
>
> The creation of Veterans Bank through Republic Act Nos. 3518 and 7169 should therefore be taken in conjunction and harmonized with Section 16, Article XII of the Constitution. The predilection of the said Republic Acts towards the welfare of the veterans, their widows, orphans or compulsory heirs is supported by no less than a constitutional provision. That Republic Act Nos. 3518 and 7169 do not fall within the proscription against the creation of private corporations is readily apparent from the fact that in both laws, the intendment of the legislature is that Veterans Bank will eventually be operated, managed and exist under the general laws, i.e., Corporation Code and General Banking Act. The mere circumstance that the charter was granted directly by Congress does not signify that only Congress can modify or abrogate it by another enactment.

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[41] Id. at 250.

Thirdly, the following mandate of Section 3 of Republic Act No. 7169 had been accomplished:

> *"The operations and changes in the capital structure of the Veterans Bank, as well as other amendments to its articles of incorporation and by-laws as prescribed under Republic Act No. 3518, shall be in accordance with the Corporation Code, the General Banking Act, and other related laws."*
>
> Pursuant hereto, the Bank had registered with the Securities and Exchange Commission under its certificate of incorporation/registration number 24681. It has its articles of incorporation and by-laws separate and distinct from the provisions of Republic Act Nos. 3518 and 7169. The manner by which the Bank's Board of Directors is to be organized and the Officers to be elected or appointed are stated in the by-laws. The latest Definitive Information Sheet of the Bank indicates that as of April 30, 2014, the total number of shareholders of record (common and preferred) is 383,852. There had been 25,303,869 common shares and 3,611,556 preferred shares issued, none of which belong to the government. It is thus operating under and by virtue of the Corporation Code and the General Banking Act.[42]

Through its comment, the OSG presents an opinion favorable to the position of the petitioner, opining upon the authority of *Boy Scouts of the Philippines v. Commission on Audit*[43] and Article 44 of the *Civil Code*[44] that PVB is a public corporation created in the public interest, and a government instrumentality with juridical personality;[45] hence, the law governing the petitioner's compulsory retirement age was Republic Act No. 8291, and the compulsory retirement age for him should be 65 years.[46]

Issues

The following procedural and substantive issues are to be considered and resolved, namely: (1) whether or not the Court could accept the petitioner's second motion for reconsideration; (2) whether PVB is a private entity or a public instrumentality; and (3) whether the petitioner was validly retired by PVB at age 60.

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42 Id. at 251-252.

43 G.R. No. 177131, June 7, 2011, 651 SCRA 146, 188.

44 Article 44. The following are juridical persons:

(1) The State and its political subdivisions;

(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member. (35a).

45 *Rollo*, p. 276.

46 Id. at 290-293.

Ruling of the Court

In light of pertinent laws and relevant jurisprudence, the Court has ascertained, after going over the parties' arguments and the records of the case, that the reconsideration of the Court's resolutions promulgated on April 8, 2013 and August 28, 2013, and the lifting of the entry of judgment made herein are in order; and that the appeal by the petitioner should be given due course.

1.
The Court *En Banc* properly accepted the petitioner's second motion for reconsideration.

As a general rule, second and subsequent motions for reconsideration are forbidden.[47] Nevertheless, there are situations in which exceptional circumstances warrant allowing such motions for reconsideration, and for that reason the Court has recognized several exceptions to the general rule. We have extensively expounded on the exceptions in *McBurnie v. Ganzon*,[48] where we observed:

> At the outset, the Court emphasizes that second and subsequent motions for reconsideration are, as a general rule, prohibited. Section 2, Rule 52 of the Rules of Court provides that "[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." The rule rests on the basic tenet of immutability of judgments. "At some point, a decision becomes final and executory and, consequently, all litigations must come to an end."
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> The general rule, however, against second and subsequent motions for reconsideration admits of settled exceptions. For one, the present Internal Rules of the Supreme Court, particularly Section 3, Rule 15 thereof, provides:
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> > **Sec. 3. *Second motion for reconsideration.*** — The Court shall not entertain a second motion for reconsideration, and **any exception to this rule can only be granted in the higher interest of justice** by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" **when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties.** A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> x x x x

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47 Section 2, Rule 52 of the *Rules of Court*.

48 G.R. Nos. 178034 & 178117 & G.R. Nos. 186984-85 (Resolution), October 17, 2013, 707 SCRA 646.

In a line of cases, the Court has then entertained and granted second motions for reconsideration "in the higher interest of substantial justice," as allowed under the Internal Rules when the assailed decision is "legally erroneous," "patently unjust" and "potentially capable of causing unwarranted and irremediable injury or damage to the parties." In *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.),* we also explained that a second motion for reconsideration may be allowed in instances of "extraordinarily persuasive reasons and only after an express leave shall have been obtained." In *Apo Fruits Corporation v. Land Bank of the Philippines* we allowed a second motion for reconsideration as the issue involved therein was a matter of public interest, as it pertained to the proper application of a basic constitutionally-guaranteed right in the government's implementation of its agrarian reform program. In *San Miguel Corporation v. NLRC,* the Court set aside the decisions of the LA and the NLRC that favored claimants-security guards upon the Court's review of San Miguel Corporation's second motion for reconsideration. In *Vir-Jen Shipping and Marine Services, Inc. v. NLRC, et al.,* the Court *en banc* reversed on a third motion for reconsideration the ruling of the Court's Division on therein private respondents' claim for wages and monetary benefits.

It is also recognized that in some instances, the prudent action towards a just resolution of a case is for the Court to suspend rules of procedure, for "the power of this Court to suspend its own rules or to except a particular case from its operations whenever the purposes of justice require it, cannot be questioned." In *De Guzman v. Sandiganbayan,* the Court, thus, explained:

> [T]he rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Even the Rules of Court envision this liberality. This power to suspend or even disregard the rules can be so pervasive and encompassing so as to alter even that which this Court itself has already declared to be final, as we are now compelled to do in this case x x x.
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> x x x x
>
> The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, *"should give way to the realities of the situation."* x x x.

Consistent with the foregoing precepts, the Court has then reconsidered even decisions that have attained finality, finding it more appropriate to lift entries of judgments already made in these cases. In *Navarro v. Executive Secretary,* we reiterated the pronouncement in *De*

Guzman that the power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself has already declared final. The Court then recalled in *Navarro* an entry of judgment after it had determined the validity and constitutionality of Republic Act No. 9355, explaining that:

> Verily, the Court had, on several occasions, sanctioned the recall of entries of judgment in light of attendant extraordinary circumstances. The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final. In this case, the compelling concern is not only to afford the movants-intervenors the right to be heard since they would be adversely affected by the judgment in this case despite not being original parties thereto, but also to arrive at the correct interpretation of the provisions of the [Local Government Code (LGC)] with respect to the creation of local government units. x x x.

In *Muñoz v. CA,* the Court resolved to recall an entry of judgment to prevent a miscarriage of justice. This justification was likewise applied in *Tan Tiac Chiong v. Hon. Cosico,* wherein the Court held that:

> The recall of entries of judgments, albeit rare, is not a novelty. In *Muñoz v. CA,* where the case was elevated to this Court and a first and *second* motion for reconsideration had been denied with *finality,* the Court, in the interest of substantial justice, recalled the Entry of Judgment as well as the letter of transmittal of the records to the Court of Appeals.
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> In *Barnes v. Judge Padilla,* we ruled:
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> [A] final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.
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> However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. (Citations omitted; underscoring supplied)[49]

In short, the Court may entertain second and subsequent motions for reconsideration when the assailed decision is legally erroneous, patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. Under these circumstances, even final and executory judgments may be set aside because of the existence of compelling reasons.

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[49] Id. at 664-668.

It is notable that the retirement program in question herein was established solely by PVB as the employer. Although PVB could validly impose a retirement age lower than 65 years for as long as it did so with the employees' consent,[50] the consent must be explicit, voluntary, free, and uncompelled.[51] In dismissing the petition for review on *certiorari*, the Court's First Division inadvertently overlooked that the law required the employees' consent to be express and voluntary in order for them to be bound by the retirement program providing for a retirement age earlier than the age of 65 years. Hence, the Court deems it proper to render a fair adjudication on the merits of the appeal upon the petitioner's second motion for reconsideration. Furthermore, allowing this case to be reviewed on its merits furnishes the Court with the opportunity to re-examine the case in order to ascertain whether or not the dismissal produced results patently unjust to the petitioner. These reasons do justify treating this case as an exception to the general rule on immutability of judgments.

2.
The pronouncement of the Court in *Philippine Veterans Bank Employees Union-NUBE v. The Philippine Veterans Bank* is still doctrinal on the status of the Philippine Veterans Bank as a private, not a government, entity

In *Philippine Veterans Bank Employees Union-NUBE v. The Philippine Veterans Bank*,[52] we pertinently pronounced:

> Coming now to the ownership of the Bank, we find it is not a government bank, as claimed by the petitioners. The fact is that under Section 3(b) of its charter, while 51% of the capital stock of the Bank was initially fully subscribed by the Republic of the Philippines for and in behalf of the veterans, their widows, orphans or compulsory heirs, the corresponding shares of stock were to be turned over within 5 years from the organization by the Bank to the said beneficiaries who would thereafter have the right to vote such common shares. The balance of about 49% was to be divided into preferred shares which would be opened for subscription by any recognized veteran, widow, orphans or compulsory heirs of said veteran at the rate of one preferred share per veteran, on the condition that in case of failure of any particular veteran to subscribe for any preferred share of stock so offered to him within thirty (30) days from the date of receipt of notice, said share of stock shall be available for subscription to other veterans in accordance with such rules or regulations as may be promulgated by the Board of Directors. Moreover, under Sec. 6(a), the affairs of the Bank are managed by a board of directors composed of eleven members, three of whom are *ex officio* members, with the other eight being elected annually by the stockholders

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50 *Jaculbe vs. Silliman University*, G.R. No. 156934, March 16, 2007, 518 SCRA 445, 452.
51 *Cercado v. Uniprom, Inc.*, G.R. No. 188154, October 13, 2010, 633 SCRA 281, 290.
52 G.R. No. 67125, 82337, August 24, 1990, 189 SCRA 14.

in the manner prescribed by the Corporation Law. Significantly, Sec. 28 also provides as follows:

> Sec. 28. *Articles of incorporation.* — This Act, upon its approval, shall be deemed and accepted to all legal intents and purposes as the statutory articles of incorporation or Charter of the Philippine Veterans' Bank; and that, notwithstanding the provisions of any existing law to the contrary, said Bank shall be deemed registered and duly authorized to do business and operate as a commercial bank as of the date of approval of this Act.

This point is important because the Constitution provides in its Article IX-B, Section 2(1) that "the Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." As the Bank is not owned or controlled by the Government although it does have an original charter in the form of R.A. No. 3518, it clearly does not fall under the Civil Service and should be regarded as an ordinary commercial corporation. Section 28 of the said law so provides. The consequence is that the relations of the Bank with its employees should be governed by the labor laws, under which in fact they have already been paid some of their claims.[53] (Bold underscoring supplied for emphasis)

Anent whether PVB was a government or a private entity, therefore, we declare that it is the latter. The foregoing jurisprudential pronouncement remains to be good law, and should be doctrinal and controlling.

We also note that Congress enacted Republic Act No. 7169,[54] whereby it acknowledged the Filipino veterans of World War II as the owners of PVB, but their ownership had not been fully realized despite the implementation of Republic Act No. 3518.[55] As one of the mechanisms to rehabilitate PVB, Congress saw fit to modify PVB's operations, capital structure, articles of incorporation and by-laws through the enactment of Republic Act No. 7169.[56] By restoring PVB *as envisioned* by Republic Act No. 3518,[57] and by providing that the creation of the PVB would be in accord with the *Corporation Code*, the *General Banking Act*, and other related laws, Congress undeniably bestowed upon the PVB the personality of a *private commercial bank* through Republic Act No. 7169. In that regard, Section 8 of Republic Act No. 7169 directed the Filipino veterans to raise

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53 Id. at 29-30.

54 *An Act to Rehabilitate the Philippine Veterans Bank Created Under Republic Act No. 3518, Providing the Mechanisms Therefor, And For Other Purposes.*

55 *An Act Creating the Philippine Veterans Bank, And For Other Purposes.*

56 Section 3 of R.A. No. 7169 states:

> Section 3. Operations and Changes in the Capital Structure of the Veterans Bank and other Amendments. – The operations and changes in the capital structure of the Veterans Bank, as well as other amendments to its articles of incorporation and by-laws as prescribed under Republic Act No. 3518, shall be in accordance with the Corporation Code, the General Banking Act, and other related laws.

57 Sec. 4, R.A. No. 7169.

₱750,000,000.00 in total unimpaired capital accounts, prior to PVB's reopening, but excused the Government from making any new capital infusion, *viz.*:

> Section 8. Transitory Provisions. – Without requiring new capital infusion either from the Government or from outside investigators, the Filipino veterans of World War II who are real owners-stockholders of the Veterans Bank shall cause the said bank to have at least Seven hundred fifty million pesos (₱750,000,000.00) in total unimpaired capital accounts prior to reopening pursuant to this Act as a commercial bank.
>
> It is hereby provided that the Board of Trustees of the Veterans of World War II (BTVWW II) created under Republic Act No. 3518 is hereby designated as trustee of all issued but undelivered shares of stock.

With the Government having no more stake in PVB, there is no justification for the insistence of the petitioner that PVB "is a public corporation masquerading as a private corporation."[58]

3.
Petitioner Alfredo Laya was not validly retired at age 60

Notwithstanding the rejection of the petitioner's insistence that PVB was a public corporation, we find and declare that the petitioner was not validly retired at age 60.

Before going further, we clarify that the CA, in the exercise of its *certiorari* jurisdiction, is limited to determining whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction. The remedy is the special civil action for *certiorari* under Rule 65 of the *Rules of Court* brought in the CA, and once the CA decides the case the party thereby aggrieved may appeal the decision of the CA by petition for review on *certiorari* under Rule 45 of the *Rules of Court.*

However, rigidly limiting the authority of the CA to the determination of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC does not fully conform with prevailing case law, particularly *St. Martin Funeral Home v. NLRC*,[59] where we firmly observed that because of the "growing number of labor cases being elevated to this Court which, not being a trier of fact, has at times been constrained to remand the case to the NLRC for resolution of unclear or ambiguous factual findings"[60] the CA could more properly address petitions for *certiorari*

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58 *Rollo*, p. 27.
59 G.R. No. 130866, September 16, 1998, 295 SCRA 494.
60 Id at 509.

brought against the NLRC. Conformably with such observation made in *St. Martin Funeral Homes*, we have then later on clarified that the CA, in its exercise of its *certiorari* jurisdiction, can review the factual findings or even the legal conclusions of the NLRC,[61] *viz.*:

> In *St. Martin Funeral Home[s] v. NLRC*, it was held that the special civil action of *certiorari* is the mode of judicial review of the decisions of the NLRC either by this Court and the Court of Appeals, although the latter court is the appropriate forum for seeking the relief desired "in strict observance of the doctrine on the hierarchy of courts" and that, in the exercise of its power, the Court of Appeals can review the factual findings or the legal conclusions of the NLRC. The contrary rule in *Jamer* was thus overruled.[62]

There is now no dispute that the CA can make a determination whether the factual findings by the NLRC or the Labor Arbiter were based on the evidence and in accord with pertinent laws and jurisprudence.

The significance of this clarification is that whenever the decision of the CA in a labor case is appealed by petition for review on *certiorari*, the Court can competently delve into the propriety of the factual review not only by the CA but also by the NLRC. Such ability is still in pursuance to the exercise of our review jurisdiction over administrative findings of fact that we have discoursed on in several rulings, including *Aklan Electric Coooperative, Inc. v. National Labor Relations Commission*,[63] where we have pointed out:

> While administrative findings of fact are accorded great respect, and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court had not hesitated to reverse their factual findings. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness.[64]

The review of the findings of the CA becomes more compelling herein, inasmuch as it appears that the CA did not appreciate the fact that the retirement plan was not the sole prerogative of the employer, and that the petitioner was automatically made a member of the plan. Upon reviewing the resolution by the NLRC, the CA simply concluded that the petitioner's acceptance of the employment offer had carried with it his acquiescence, which implied his knowledge of the plan, thus:

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61 *Agustilo v. Court of Appeals*, G.R. No. 142875, September 7, 2001, 364 SCRA 740.
62 Id. at 747.
63 G.R. No. 121439, January 25, 2000, 323 SCRA 258.
64 Id. at 270.

> This Court finds petitioner's argument to be misplaced. It must be stressed that when petitioner was appointed as Chief Legal Officer on 01 June 2001 among the terms and conditions of his employment is the membership in the Provident Fund Program/Retirement Program. Worthy to note that when petitioner accepted his appointment as Chief Legal Officer, he likewise signified his conformity with the provisions of the Retirement Program considering that the same has already been in existence and effective since 1 January 1996, *i.e.* prior to his appointment. As such, this Court is not convinced that petitioner was not aware of the private respondent's retirement program.[65]

The retirement of employees in the private sector is governed by Article 287 of the *Labor Code*:[66]

> Art. 287. Retirement. **Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.**
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided*, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.
>
> **In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age**, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay x x x x.

Under the provision, the employers and employees may agree to fix the retirement age for the latter, and to embody their agreement in either their collective bargaining agreements (CBAs) or their employment contracts. Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure, provided that the retirement benefits are not lower than those prescribed by law.[67]

The CA concluded that the petitioner had agreed to be bound by the retirement plan of PVB when he accepted the letter of appointment as its Chief Legal Counsel.

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[65] *Rollo*, pp. 45-46.

[66] Now Article 302, pursuant to Republic Act No. 10151 (See DOLE Department Advisory No. 01, series of 2015).

[67] *Obusan v. Philippine National Bank*, G.R. No. 181178, July 26, 2010, 625 SCRA 542, 553.

We disagree with the conclusion. We declare that based on the clear circumstances herein the CA erred in so concluding.

The petitioner's letter of appointment pertinently stated:

> 3. As a Senior Officer of the Bank, you are entitled to the following executive benefits:
>
> • Car Plan limit of ₱700,000.00, without equity on your part; a gasoline subsidy of 300 liters per month and subject further to The Car Plan Policy of the Bank.
>
> • Membership in a professional organization in relation to your profession and/or assigned functions in the Bank.
>
> • **Membership in the Provident Fund Program/Retirement Program.**
>
> • Entitlement to any and all other basic and fringe benefits enjoyed by the officers; core of the Bank relative to Insurance covers, Healthcare Insurance, vacation and sick leaves, among others.[68]

Obviously, the mere mention of the retirement plan in the letter of appointment did not sufficiently inform the petitioner of the contents or details of the retirement program. To construe from the petitioner's acceptance of his appointment that he had acquiesced to be retired earlier than the compulsory age of 65 years would, therefore, not be warranted. This is because retirement should be the result of the bilateral act of both the employer and the employee based on their voluntary agreement that the employee agrees to sever his employment upon reaching a certain age.[69]

That the petitioner might be well aware of the existence of the retirement program at the time of his engagement did not suffice. His implied knowledge, regardless of duration, did not equate to the voluntary acceptance required by law in granting an early retirement age option to the employee. The law demanded more than a passive acquiescence on the part of the employee, considering that his early retirement age option involved conceding the constitutional right to security of tenure.[70]

In *Cercado v. Uniprom, Inc.*,[71] we have underscored the character of the employee's consent in agreeing to the early retirement policy of the employer, *viz.*:

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[68] *Rollo*, p. 35.

[69] *Robina Farms Cebu v. Villa*, G.R. No. 175869, April 18, 2016; *Paz v. Northern Tobacco Redrying, Co., Inc.*, G.R. No. 199554, February 18, 2015, 751 SCRA 99, 114.

[70] *Cercado v. Uniprom, Inc.*, G.R. No. 188154, October 13, 2010, 633 SCRA 281, 289.

[71] Id.

> Acceptance by the employees of an early retirement age option must be **explicit, voluntary, free, and uncompelled**. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.[72] (Bold emphasis supplied)

Furthermore, the petitioner's membership in the retirement plan could not be justifiably attributed to his signing of the letter of appointment that only listed the minimum benefits provided to PVB's employees. Indeed, in *Cercado*, we have declared that the employee's consent to the retirement plan that came into being two years after the hiring could not be inferred from her signature on the personnel action forms accepting the terms of her job description, and compliance with the company policies, rules and regulations, to wit:

> **We also cannot subscribe to respondent's submission that petitioner's consent to the retirement plan may be inferred from her signature in the personnel action forms containing the phrase: "*Employee hereby expressly acknowledges receipt of and undertakes to abide by the provisions of his/her Job Description, Company Code of Conduct and such other policies, guidelines, rules and regulations the company may prescribe.*"**
>
> **It should be noted that the personnel action forms relate to the increase in petitioner's salary at various periodic intervals. To conclude that her acceptance of the salary increases was also, simultaneously, a concurrence to the retirement plan would be tantamount to compelling her to agree to the latter. Moreover, voluntary and equivocal acceptance by an employee of an early retirement age option in a retirement plan necessarily connotes that her consent specifically refers to the plan or that she has at least read the same when she affixed her conformity thereto.**[73]

A perusal of PVB's retirement plan shows that under its Article III all the regular employees of PVB were automatically admitted into membership, thus:

> ARTICLE III
> MEMBERSHIP IN THE PLAN
>
> Section 1. **Eligibility at Effective Date**. Any Employee of the Bank as of January 1, 1996 shall automatically be a Member of the Plan as of such date.

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72 Id. at 290.
73 Id at 290-291.

> Section 2. **Eligibility after Effective Date. Any person who becomes an Employee after January 1, 1996 shall automatically become a Member of the Plan on the date he becomes a regular permanent Employee, provided he is less than 55 years old as of such date.**
>
> Section 3. **Continuation/Termination of Membership.** Membership in the Plan shall be concurrent with employment with the Bank, and shall cease automatically upon termination of the Member's service with the Bank for any reason whatsoever.[74] (Bold underscoring supplied for emphasis)

Having thus automatically become a member of the retirement plan through his acceptance of employment as Chief Legal Officer of PVB,[75] the petitioner could not withdraw from the plan except upon his termination from employment.

It is also notable that the retirement plan had been in existence since January 1, 1996,[76] or more than five years prior to the petitioner's employment by PVB. The plan was established solely by the PVB,[77] and approved by its president.[78] As such, the plan was in the nature of a contract of adhesion,[79] in respect to which the petitioner was reduced to mere submission by accepting his employment, and automatically became a member of the plan. With the plan being a contract of adhesion, to consider him to have voluntarily and freely given his consent to the terms thereof as to warrant his being compulsorily retired at the age of 60 years is factually unwarranted.

In view of the foregoing, the Court disagrees with the view tendered by Justice Leonen to the effect that the petitioner, because of his legal expertise and educational attainment, could not now validly claim that he was not informed of the provisions of the retirement program. The pertinent rule on retirement plans does not presume consent or acquiescence from the high educational attainment or legal knowledge of the employee. In fact, the rule provides that the acquiescence by the employee cannot be lightly inferred from his acceptance of employment.

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74 CA *rollo*, p. 122.

75 The appointment letter pertinently reads:
Dear Atty. Laya,
This is to inform your appointment as Chief Legal Officer with a rank of Vice President effective 01 June 2001 under the following terms and conditions:
1. **Your appointment is on a regular status** x x x:
x x x x
(CA *Rollo*, p. 160; bold emphasis supplied)

76 Section 3, Article I.

77 Section 1, Article I.

78 CA *rollo*, p. 129.

79 *Capili v. National Labor Relations Commission*, G.R. No. 120802, June 17, 1997, 273 SCRA 576, 588.

Moreover, it was incumbent upon PVB to prove that the petitioner had been fully apprised of the terms of the retirement program at the time of his acceptance of the offer of employment. PVB did not discharge its burden, for the petitioner's appointment letter apparently enumerated only the minimum benefits that he would enjoy during his employment by PVB, and contained no indication of PVB having given him a copy of the program itself in order to fully apprise him of the contents and details thereof. Nonetheless, even assuming that he subsequently obtained information about the program in the course of his employment, he still could not opt to simply withdraw from the program due to his membership therein being automatic for the regular employees of PVB.

To stress, company retirement plans must not only comply with the standards set by the prevailing labor laws but must also be accepted by the employees as commensurate to their faithful services to the employer within the requisite period.[80] Although the employer could be free to impose a retirement age lower than 65 years for as long its employees consented,[81] the retirement of the employee whose intent to retire was not clearly established, or whose retirement was involuntary is to be treated as a discharge.[82]

With the petitioner having been thus dismissed pursuant to the retirement provision that he had not knowingly and voluntarily agreed to, PVB was guilty of illegal dismissal as to him. Being an illegally dismissed employee, he was entitled to the reliefs provided under Article 279[83] of the *Labor Code*, to wit:

> Article 279. Security of tenure. —In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Considering that the petitioner's reinstatement is no longer feasible because of his having meanwhile reached the compulsory retirement age of 65 years by June 11, 2012, he should be granted separation pay. In this regard, retirement benefits and separation pay are not mutually exclusive.[84]

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80 *Obusan v. Philippine National Bank* G.R. No. 181178, July 26, 2010, 625 SCRA 542, 554.

81 *Jaculbe v. Silliman University*, G.R. No. 156934, March 16, 2007, 518 SCRA 445, 450.

82 *Paz v. Northern Tobacco Redrying, Co., Inc.*, G.R. No. 199554, February 18, 2015, 751 SCRA 99, 115.

83 Now Article 294 pursuant to Republic Act No. 10151 (See DOLE Department Advisory No. 01, series of 2015).

84 *Goodyear Philippines, Inc. v. Angus*, G.R. No. 185449, November 12, 2014, 740 SCRA 24, 38.

The basis for computing the separation pay should accord with Section 4,[85] Article III of PVB's retirement plan. Hence, his full backwages should be computed from July 18, 2007 – the date when he was illegally dismissed – until his compulsory retirement age of 65 years on June 11, 2012. Such backwages shall all be subject to legal interest of 12% *per annum* from July 18, 2007 until June 30, 2013, and then to legal interest of 6% interest *per annum* from July 1, 2013 until full satisfaction, conformably with *Nacar v. Gallery Frames.*[86]

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated by the Court of Appeals on August 31, 2012; **FINDS** and **DECLARES** respondent **PHILIPPINE VETERANS BANK** guilty of illegally dismissing the petitioner; and **ORDERS** respondent **PHILIPPINE VETERANS BANK** to pay to the petitioner, as follows: (*a*) backwages computed from July 18, 2007, the time of his illegal dismissal, until his compulsory age of retirement, plus legal interest of 12% *per annum* from July 18, 2007 until June 30, 2013, and legal interest of 6% *per annum* from July 1, 2013 until full satisfaction; (*b*) separation pay computed at the rate of 100% of the final monthly salary received by the petitioner pursuant to Section 4, Article V of the PVB Retirement Plan; and (*c*) the costs of suit.

The Court **DIRECTS** that any amount that the petitioner received from respondent **PHILIPPINE VETERANS BANK** by virtue of his illegal retirement shall be deducted from the amounts hereby awarded to him.

The Court **DIRECTS** the National Labor Relations Commission to facilitate the computation and payment of the total monetary benefits and awards due to the petitioner in accordance with this decision.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

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[85] Section 4. Involuntary Separation Benefit. Any Member who is involuntarily separated from service by the Bank for any cause not due to his own fault, misconduct, negligence, or fraud, shall be entitled to receive a separation benefit computed in accordance with the retirement benefit formula described in Section 1 of this Article or the applicable termination benefit under existing laws whichever is greater. (CA Rollo, p. 124)

[86] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457-458.

WE CONCUR:

I join the dissent of J. Leonen.

MARIA LOURDES P. A. SERENO
Chief Justice

See Concurring Opinion

ANTONIO T. CARPIO
Associate Justice

I join the dissent of J. Leonen.

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

I join the dissent of J. Leonen

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

I join the dissent of J. Leonen

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT