IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2021

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR. ……..….CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……..ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH……ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE…….ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA……ASSOCIATE JUSTICE

The Management of the Liberia Coca-Cola Bottling Company (LCCBC) of the City of Paynesville, Montserrado County, Republic of Liberia.....Appellant	)	
VERSUS	)	
	)	APPEAL
Her Honor Comfort S. Natt, Judge National Labour Court, Republic of Liberia…….Appellee	)	
AND	)	
Ezekiel Doweh, also of the City of Monrovia, Montserrado County, Republic of Liberia ……Appellee	)	

HEARD: November 8, 2018 Decided: August 25, 2021

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The appeal before us is premised on a question of the applicable law regarding the legal entitlement of a retired employee as it relates to the Labor Practices Law (1961), PART V, *Social Welfare,* Section 26, *"RETIREMENT PENSIONS*" *vis a vis* the National Social Security and Welfare Law (1980), *Title 22a* - Liberian Code of Laws Revised.

The facts culled from the certified records show that Co-appellee Ezekiel Doweh, a former employee of the Liberia Coco-Cola Bottling Company (LCCBC), with twenty-five (25) years of continuous service, was retired on June 6, 2011. He contends that the appellant, LCCBC, in its notice informing him of his retirement, stated that his retirement package would be delivered to him on August 5, 2011, at a special program; that contrary to what he anticipated, during the retirement program, he received one month's pay which the appellant, LCCBC, said represented his vacation pay. No money was paid for his retirement as anticipated by him; that his inquiries to the LCCBC about his retirement pay, the LCCBC directed him to the National Social Security and Welfare Corporation (NASSCORP) for receipt of his monthly retirement pension.

Consequently, the co-appellee complained the appellant to the Ministry of Labor for unfair labor practice, asserting his entitlement to a non-contributory retirement pension package from the appellant pursuant to Section 2501, of the Labor Practices Law of Liberia (1961). This, Co-appellee Ezekiel Doweh alleges, is required to be paid him in addition to his retirement pay due under the National Social Security and Welfare Pension Scheme.

Upon receipt of citations from and appearance before the Hearing Officer at the Ministry of Labor, both parties conceded that their dispute presented a lone issue, that is: *Whether or not a retired employee who is eligible and receives pension under the PRC Decree N0. 14 establishing the National Social Security and Welfare Corporation and Welfare Fund (1980), is also concurrently entitled to pension payment from his employer under Section 2501 of the Labor Practices Law (1961) of Liberia?*

Based upon the concession by the parties on this lone issue of contention, both parties were required by the Hearing Officer to file legal memoranda in support of their respective positions. In his brief before this Court, the Co-appellee Eziekieh Doweh contended that Section 2501 of the Labor Practices Law of Liberia (1961) obliges every employer to pay its retirees a defined retirement pension without any contribution from the employee whereas, the social security scheme is a contributory scheme under which both the employee and the employer make contributions for the sole benefit of the employee through the employer, and that the obligation of the employer to care for its employees cannot be transferred exclusively to the public; that Section 89.55 of the NSS&W Act (1980), provides that contributions made by employers to the fund are considered normal business expenses; and , an expense incurred to operate and promote a business, especially, an expenditure made to further the business in the taxable year in which the expense was incurred and is tax deductible; that the retirement pension provided for under the Labor Practices Law (1961) is distinct from other retirement benefits under the National Social Security and Welfare Law (NSS&WC Law).

The co-appellee Doweh also contended that a retirement pension is a fixed sum paid regularly to a person or his/her beneficiaries by an employer, given in exchange to secure greater faithfulness and efficiency on the part of the employees, and to increase continuity of service and decrease labor turnover, and by this, gives to employees some assurance of security as they approach and reach the age at which their earning ability are materially impaired. In contrast, social security retirement pension/social insurance is provided by the government to persons facing perils such as unemployment or disability or to persons of certain status, such as old age, who have completed a specific term of contributions toward said fund. There is nowhere, the co-appellee argued, in the Social Security Act, that the Labor Practices Law of 1961, on retirement pension, is amended; that a strong proof that Section 2501 of the Labor Practices Law (1961), "*RETIREMENT PENSION"* was not affected by the coming into force of the Social Security Law, the co-appellee said, is found in Section 89.9 of the Social Security Act, which states:

> "The existence of a pension, gratuity or provident fund in respect of employees to whom this decree applies shall not exempt the employer of such employees from the provisions of this Chapter."

The co-appellee therefore concluded that the Labor Practices Law (1961) and the National Security and Welfare Law, are two distinct and separate statutes, passed at two different times to address different needs, and in many other Common Law jurisdictions, including the United States which is much copied by Liberia, retirement pension and social security are different and generally accepted as such.

The appellant, on the other hand, argued that an employer who has made contributions towards an employee's retirement benefit under the Social Security

Scheme is not required to again pay pension of forty percent (40%) of the employee's salary per annum as required by the Labor Practices Law (1961). To make a social security contribution payment geared towards the payment of pension scheme and again make pension payment would be imposing a double obligation on employers and thereby discouraging investment and increasing unemployment gap. Also, the appellant contended that it made three hundred monthly payments to NASSCORP towards the co-appellee's pension scheme which was far beyond the one hundred payment required as eligibility for a retired employee to receive pension from the NASSCORP. Further, the creation of the NASSCORP, its Employment Injury Scheme, National Pension Scheme, and Welfare Fund substituted and supplanted Section 2501 of the Labor Practices Law (1961). Appellant referred to the March Term Opinion of the Supreme Court, rendered on September 14, 2005, L*iberia Telecommunications Corp v. Kollie et al.* in support of his argument. The creation of the Employment Injury Scheme and the National Pension Scheme, the appellant argued, was intended for employers to transfer these obligations under the Labor Practices Law (1961) to NASSCORP. By this Social Security Act, the appellant contended, it was not obligated to Co-appellee Doweh for pension but that the co-appellee is now required to look to the NASSCORP for his pension.

In a Ruling dated June 12, 2013, and which we observed was signed by the clerk of the Ministry of Labor, held that the Co-appellee Doweh was entitled to pension from the appellant as stated in the Labor Practices Law (1961), in addition to any other entitlement that was being denied the co-appellee by the appellant.

The appellant excepted to the Ministry of Labor's ruling and filed a petition for judicial review before the National Labor Court, Montserrado County, to review the Ministry's ruling. Her Honor, Judge Comfort Natt, Judge of the National Labor Court, refused to honor the ruling of June 12, 2013, holding that it was not signed by the Hearing Officer as was the practice extant in this jurisdiction which mandates that the judge or presiding officer be the person to sign his or her ruling and not a third party. She therefore had the ruling returned to the Ministry of Labor for the sole purpose of the Hearing Officer who presided over the investigation sign his own ruling and not the clerk.

The Hearing Officer, upon receipt of this mandate from the National Labor Court proceeded to write and present his ruling in line with practice, but contrary to the previous ruling of June 12, 2013, which awarded only a pension amount of NINE HUNDRED AND SIXTY TWO THOUSAND, SIXTEEN DOLLARS (L$962,016.00), the Hearing Officer awarded additional amounts of THIRTY Eight Thousand Dollars (L$38,000) for one month leave payment and FORTY FOUR THOUSAND, TWO HUNDRED AND TEN DOLLARS (L$44,210.00) for one month salary arrears, said amounts totaling L$1,044,226.00 (ONE MILLION, FORTY-FOUR THOUSAND, TWO HUNDRED and TWENTY-SIX LIBERIAN DOLLARS).

The appellant again noted exceptions to the Hearing Officer's ruling, reiterating the same issue raised in its petition for judicial review, that is, whether the co-appellee is entitled to receive retirement pension in addition to his retirement pension due him under the National Pension Scheme of the NSS&WC Act. The appellant further contended that the additional award made by the Hearing Officer in his subsequent ruling, awarding the co-appellee one month salary arrears and one month leave pay did not form part of the complaint filed by Co-appellee

Doweh, especially given that there was no hearing on the issue of one month salary arrears and one month leave pay due the co-appellee.

The Judge of the National Labor Court having heard the petition for judicial review, ruled, confirming the Hearing Officer's ruling that the retirement pension provided for under the Labor Practices Law (1961) is distinct from other retirement benefits under the National Social Security & Welfare Corporation Act, and both are payable to an employee upon his/her retirement. She confirmed the Ministry of Labor's ruling, awarding the total sum of L$1,044,226.00 (ONE MILLION, FORTY-FOUR THOUSAND, TWO HUNDRED and TWENTY-SIX LIBERIAN DOLLARS), making no reference in her ruling to the subsequent additional award made by the Hearing Officer for one month salary and one month leave pay which was challenged by the appellant. This issue of the award of the one month pay and one month leave pay shall be addressed later on in this Opinion.

The salient issue which this Court must delve into is whether Co-appellee Doweh is entitled to receive retirement pension from his employer, LBCC/appellant, in addition to retirement pension due him under the National Pension Scheme of the National Social Security and Welfare Law?

To answer this issue it is imperative that we first review the contentious provisions of both the Labor Practices Law (1961), PART V, Social Welfare, Section 26, "RETIREMENT PENSIONS", the National Social Security and Welfare Law of 1980, Title 22a - Liberian Code of Laws Revised, applicable statutes, case laws, and then make a determination as to whether Co-appellee Doweh is entitled to receive retirement pension from his employer in addition to his pension from the National Social Security and Welfare Law.

It is the law that the canons of statutory interpretation and application are mandatory and must be strictly adhered to. *The Abi Jaudi & Azar Trading Corporation v The Monrovia Tobacco Corporation, 35 LLR 22, 34(1998)*. These canons do not only require that the focus of courts in interpreting statute must be restricted to the act itself to determine the objective of the Legislature but that to ascertain said legislative object, the occasion and the necessity of the enactment, and in some cases, public policy should be given serious consideration. *Commercial Fisheries Corporation v. PUK YANG Fisheries, 35LLR 534 546, (1998); Roberts v. Roberts 7 LLR 358 (1942)*. An essential canon of statutory interpretation is that statutes are to be construed as they were intended to be understood when they were passed; they are to be read in the light of the attendant circumstances existing at the time of their enactment. *Brown, et al. v. Republic, 22 LLR 121 (1973).* The statutory constructional principle of *in pari material*, which means "of the same matter; on the same subject, or two laws relating to the same subject matter must be analyzed with each other, requires that in interpreting the provisions of a statute, all provisions or sections relating to the same subject, or provisions, having the same general purpose should be construed together as though they constituted one law, or, one provision. They must be governed by one system, one spirit and policy. *Commercial Fisheries Corporation v. PUK YANG Fisheries, 35LLR 534 546, (1998); Roberts v. Roberts 7 LLR 358 (1942)*; Abraham v. Cooper 21 LLR 157 (1972).

Therefore the relevant question here is what was the intent of the Legislature in enacting PRC Decree No. 14 establishing the National Social Security and Welfare Corporation and inserted therein sections 89.20 and 89.21 which provide for the

requirement of pension and the minimum rate of retirement pension for certain categories of employees in the face of prior legislation, the Labor Practices Law, which had similarly addressed the issue of retirement pension for the identical category of employees. Was it the intention of the legislature that an employer be required to pay a person who has attained the requisite age or length of service a retirement pension under section 2501 of the Labor Practices Law and at same time under sections 89.20 and 89.21 of PRC Decree No. 14 establishing the National Social Security and Welfare Corporation? We think not.

Section 2501 of the Labor Practices Law which provides for retirement pension was enacted to cover employees who worked for an entity consecutively for 25 years and have retired or who worked for a consecutive period of 15 years and attained the age of 60, states thus:

> "An employee within the application of this Chapter is entitled to receive from his employer retirement pension on retirement from an undertaking at the age of 60 and if such employee has completed at least fifteen years of continuous service or he may retire at any age after he has completed twenty-five years of continuous service in such undertaking. The amount of pension paid annually to an employee shall be at least forty-percent of the average monthly earnings for the last five years immediately preceding his retirement. One-twelfth of such amount shall be paid each month from the time of retirement until the death of the employee."

It is a matter of public knowledge that the Labor Practices law which provision is quoted above was enacted on June 6, 1961 and it is a general law which addresses variety of employer-employee related issues including: wrongful dismissal, work schedule, annual leave, redundancy, as well as retirement pension. There is also no dispute that at the time of the enactment of the Labor Practices Law and up to July of 1980, a period of approximately twenty (20) years, the National Social Security and Welfare Corporation had not been established thereby all Labor related issues were governed by the Labor Practices Law (1961), including retirement pension.

It was not until July 1, 1980 that the Legislature enacted PRC Decree No. 14 establishing the National Social Security and Welfare Corporation and included therein, sections 89.20 and 89.21 which provide for the requirement of pension and the minimum rate of retirement pension for different categories of employees as was done in the Labor Practices Law.

The sections state thus:

89.20. Retirement pension.

> "A person shall be entitled to a retirement pension if:
> a. He has obtained 60 years of age;
> b. He retires from his employment; and
> c. He has paid 100 monthly contributions.
>
> For a person who retires before the end of the fifth year of the Scheme's operation, instead of the figure of 100 monthly contributions in Section 89.20(c) there shall be substituted 40; for a person retiring in the sixth year of the Scheme's operation, the figure shall be 50 and

so on, increasing in multiples of 10 for those retiring in successive years until the tenth year of the Scheme's operation."

Provided that an employee who fails to fulfill the minimum contributory condition shall be entitled to a retirement grant, in lump sum of an amount equivalent together with interest thereon at the rate specified in the Regulations.

Provided further that the claimant shall not be entitled to the retirement grant unless he has paid twelve month contributions in the aggregate since his first entry into insurable employment."

Section 89.21. Minimum rate of retirement pension.

"The minimum rate of retirement pension shall be:

a. The monthly rate of 25 percent of the average monthly remuneration of an employee who has paid the number of monthly contributions required by the foregoing subsections;

b. For an employee who has paid more than 100 monthly contributions, the minimum rate of retirement pension shall be increased by 1 percent of average monthly remuneration for each 10 monthly contributions paid in addition to the said 100, subject to a minimum of 40% of average monthly remuneration if the employee has paid 180 or more contributions.
c. For the purposes of this Part, a person who has not previously retired shall be deemed to have retired on attaining 65 years of age."

The National Social Security and Welfare Act (1980) being specific on the subject of retirement pension as compared to the Labor Practices Law which is more general of the holistic working conditions between an employer and an employee, for the purpose of determining retirement pension requirements and minimum rate of pension, the National Social Security and Welfare Act shall govern.

Our law states as follow:

"in interpreting and construing statutes, the general rule applied by courts of common law jurisdiction is that where two legislative acts are repugnant to, or in conflict with each other, the last one enacted will governed, control or prevail and supersede and impliedly repeal the earlier act although it contains no repealing clause." *Corniff's Art Printery v. William H. Kennedy, 30 LLR, 38, 42 (1982).*

In the present appeal, the special statute, NASSCORP Act, deals with national pension fund, injury fund & social welfare fund only. Its provisions therefore take precedence and are the governing law to control such matters.

Also, the time of enactment is a factor in determining the effect of statute especially where the two statutes speak to the identical subject as in the present case. As noted earlier, the Labor Practices Law was enacted in 1961 while the NASSCORP Act was promulgated in 1980 and since both laws have provisions on retirement pension, the legislative intent is to be construed either to harmonize

them or if harmonization is inapplicable, to give priority and effect to the latter law which is the NASSCORP Act in this case.

This principle of law that the latter statute repeals the former in the face of inconsistency especially where both statutes are on the same subject matter is also recognized by common law authorities.

At common law it is stated that:

> "if an act is so repugnant to, or so contradictory of, or so irreconcilably in conflict with a prior act that the two acts cannot be harmonized in order to effect the purpose of their enactment, the later act operates without any repealing clause as a repeal of the first to the extent of the irreconcilable inconsistency. Since laws are presumed to be passed with deliberation and with full knowledge of existing ones on the same subject, it is reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter unless the repugnancy between the two is irreconcilable…" *73 Am Jur 2d §285 Inconsistency.*

The controlling phrase in all the authorities cited herein is that where two legislative acts are in conflict with each other, the last one enacted will governed although it contains no repealing clause. We note that section 2501 of the Labour Law relating to retirement pension and the NASSCORP Act were enacted for the sole purpose of undertaking a contributory employment scheme between the employer and employee. This is why the both laws outlined the identical categories of employees who may retire, the procedure for retirement, and the rate of retirement pension payment. The legislative intent is not for an employer to make double payment to an employee upon retirement as the co-appellee is arguing rather, it is to ensure that an employee who meets all the eligibility qualifications for retirement specified in those laws receives his or her retirement benefits in accordance with law. We hold that where two legislative acts are repugnant to, or in conflict with each other, the last one enacted will govern, control or prevail and supersede and impliedly repeal the earlier act although it contains no repealing clause. Hence, the NASSCORP Act of 1980 being the recent law at the time of the Co-appellee retirement on June 6, 2011 the said law will govern his retirement pension and section 2501 of the Labour Practices Law (1961).

The co-appellee has counter argued that in as much as Chapter 26, section 2501 of the Labor Practices Law was not expressly repealed by the NASSCORP Act, the co-appellee is entitled to retirement payments under both laws. This argument is premised on section 89.9 of the NASSCORP Act which addresses the 'effect of existing pensions, Gratuity or Provident Funds.

The said section reads:

> "The existence of a Pension, Gratuity or Provident Fund in respect of employees to whom this Decree applies shall not exempt the employer of such employees from the provisions of this Chapter; rather, the employer shall, as of a date to be established by the Director General, deduct the contributions at the rate herein provided from the remuneration of the employees and pay the amount along with the

employers' own contributions into the appropriate Fund in accordance with the provisions of this Decree." We disagreed!

The language of the above provision is clear that where there exists an expressed pension plan, gratuity or provident fund between the employer and the employee, the employee is entitled to payment under such a scheme and payment under the NASSCORP Act. And, it does not and cannot refer to section 2501 of the Labor Practice Law as same is inapplicable under the principles of law discussed herein. Rather, it refers to those pension plans, gratuity agreements or provident funds arrangements as may be voluntarily established between an employer and employee.

The words pension plan and gratuitous (noun for gratuity) have the following meaning:

Gratuity is whereby something is "done or performed without obligation to do so; given without consideration in circumstances that do not otherwise impose a duty." *Black's Law Dictionary, 9th Edition*

Pension plan is "any plan, fund or program established or maintained by an employer or an employee organization that provides retirement income to employees or results in a deferral of income by employees extending to the termination of employment or beyond; it is a plan in which employer provide specific benefits to each employee" *Id.*

The glaring distinction between the 'pension plan and gratuity or provident fund' as referenced in section 89.9 of the NASSCORP Act to that of the 'Retirement Pension' as prescribed in section 2501 of the Labour Practice Law of July 6, 1961 and section 89.20 of the NASSCORP Act are as follow:

1. The gratuity is voluntary and imposes no obligation on the employer to undertake; it is given with consideration, whereas the 'retirement pension' is mandatory and it is a duty imposed by law and cannot be negotiated by the parties;

2. Pension plan is negotiated either between the employee and the employer; or amongst the employees themselves, hence it takes a form of a contract voluntarily negotiated by parties of legal capacity and with mutual consent, whereas 'retirement pension' is never negotiated but imposed by statute;

3. Under a pension plan, the employer provides specific benefits to each employee; it is a fixed benefit plan whereas the 'retirement pension' is cumulative and accrues over the term of service of the employee;

4. Generally, Pension plan and gratuity or provident fund are contractual in nature which the employer and employee, with mutual consent, may voluntarily ignore or even decide not to establish, whereas 'retirement pension' is neither negotiated nor established by the parties rather is a compulsory pre-existing duty sanctioned by legislative enactment.

Given the above analysis, we are totally in agreement with the legislature when it inserted in the NASSCORP Act that "*the existence of a Pension, Gratuity or Provident Fund in respect of employees to whom this Decree applies shall not*

exempt the employer of such employees from the provisions of this Chapter…" This is in consonance with Article 25 of the Constitution of 1986 which states that:

> *"Obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right."*

More besides, nowhere in the records before this Court is it shown that a 'pension scheme based on agreement' ever existed between the parties herein; there is no showing that a 'provident fund' was ever established nor is there any indication that the appellant agreed to 'match contributions made by the co-appellee. We see that the co-appellee entire case is based on the presumption that the co-appellee was 'expecting a package comprising a lump sum of his pension, and that he was disappointed when the package contained only one month of his vacation pay." We hold that the unexpressed, unwritten and imaginary expectation of an employee being speculative and therefore untenable cannot be upheld by this Court.

WHEREFORE AND IN VIEW OF THE FOREGOING, the appellant's appeal is granted and the final ruling of the National Labour Court, Montserrado County is reversed. The NASSCORP Act of 1980 being the governing law on retirement pension, the appellee must proceed to NASSCORP for his pension payment. The Clerk of this Court is ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and give effect to this Opinion. Costs are ruled against the appellee. IT IS HEREBY SO ORDERED.

Appeal granted.

When this case called for hearing, Counsellors Albert S. Sims and Golda A. Bonah Elliott of the Sherman & Sherman, Inc. appeared for the appellant. Counsellors Mark M. M. Marvey and Yafar V. Baikpeh appeared for the appellee.