

100 Phil. 1051

[ G. R. No. L-8480. March 29, 1957 ]

**HERMOGENES M. PERALTA, PETITIONER, VS. THE AUDITOR GENERAL,  
RESPONDENT.**

**D E C I S I O N**

**PADILLA, J.:**

This is a pauper's petition to review a decision of the Auditor General.

On 16 March 1951 Hermogenes M. Peralta, a member of the Armed Forces of the Philippines, retired under the provisions of Republic Act No. 340 with the grade of First Sergeant, after thirty years of continuous service, and was paid a lump-sum gratuity of P3,600. On 3 January 1952 he reentered the service of the Government as patrolman of the Caloocan Police Force at a monthly salary of P80. His appointment was duly forwarded to the Commissioner of Civil Service for attestation and notation. Pending action on his appointment by the Commissioner he received compensation as patrolman from 3 January to 31 December 1952. On 10 September 1953 the Commissioner authorized his temporary appointment under section 682 of the Revised Administrative Code, but coursed the appointment through the Auditor General "for the proper determination on the matter of refunds which under the existing laws retired officers and employees are required to make upon reinstatement in the government service." (Annex A.) On 11 September 1953 the Acting Auditor General forwarded the appointment to the Executive Secretary with the advice that —.

\* \* \* refund of the gratuity of P3,600 received by Mr. Hermogenes Peralta under section 1(6) of Republic Act No. 340 on March 16, 1951 which he received in lump sum according to his verbal information upon his retirement from the service of the Armed Forces of the Philippines', less the corresponding gratuity already earned prior to his reemployment as patrolman in the municipality of Caloocan be made, unless he should renounce the salary attached to his position

as such patrolman corresponding to the period covered by his unearned gratuity. (Annex B.)

The appointee received in due course notice of the aforequoted ruling of the Auditor General and in view thereof his salary from 1 January to 14 September 1953, when he resigned from the position of patrolman of Caloqcan, Rizal, was withheld. He asked for reconsideration of the ruling of the Auditor General but it was denied on 12 March 1954 (Annex J). A second motion for reconsideration was denied on 4 October 1954 (Annex N). On 11 November 1954 this petition to review the decision of the Auditor General was filed under Rule 45.

The petitioner contends that as he received the gratuity in lump-sum under the provisions of sections 1 and 2 of Republic Act No. 340, he is not bound to refund a proportionate amount of the gratuity that he received before he' could receive the full compensation for the position he held when he reentered the service of the Government. Section 7-1(9), Commonwealth Act No. 246, provides:

A person receiving life pension, annuity, or gratuity from the Government of the Commonwealth of the Philippines or any province, city, municipality, or other subdivision thereof, or from any government owned or controlled entity or enterprise, who is re-appointed to any position, the appropriation for the salary of which is provided from funds of the said Commonwealth Government or any province, city, municipality, or other subdivision thereof, or from any government owned or controlled entity, or enterprise, shall have the option. to receive either the compensation for the position, or the pension, gratuity or annuity; *but in no case shall he receive both.* (Italics supplied.)

So that a retired government officer or employee who reenters the service of the Government cannot receive both the pension, annuity, or gratuity and the compensation for the position upon reentering the Government service. He must elect between receiving the pension, annuity, or gratuity and the compensation for the position upon reentering the service of the Government. Pension, annuity, or gratuity is granted by the Government to its officers and employees in recognition of past services rendered, designed primarily to provide for old age and disability of- persons in its employ. Congress in enacting Republic Act No. 340, known as the Armed Forces Retirement Act, had this primordial aim in

mind—to provide for old age and disability, to encourage officers and enlisted men to render honest, faithful and efficient service in the Armed Forces. Section 2 of the said Act grants to a retiring officer or enlisted man of the Armed Forces the option, to choose between lump-sum gratuity and an annual retirement pay payable in monthly installments. To sustain the petitioner's theory that he could receive the full compensation provided for the position upon reentering the service of the Government and keep the lump-sum gratuity which he had received, because he has already spent it all and because he is not receiving a life pension, a life annuity, or a life gratuity, would be contrary to the above quoted provisions of Commonwealth Act No. 246. A life pension is that paid during the life of the recipient. An annuity is that paid annually or monthly or periodically computed upon the basis of the amount to be paid yearly, but not necessarily for life, because it may be just for a number of years and ceases after the lapse of the period regardless of whether the annuitant survives. A gratuity is that paid to the beneficiary for past services rendered purely out of generosity of the giver or grantor. It may be paid in partial amounts during the life of the beneficiary as the grantor may provide, but it is not necessarily a life gratuity because it may be paid at once if the grantor so directs. So that the gratuity paid to the petitioner in lump sum comes under the above quoted provisions of Commonwealth Act No. 246. To hold that upon reentering the government service those who receive retirement pay in installments must elect between the pension, annuity, or gratuity and the compensation because they cannot receive both; whereas, those who have received it in lump sum may still receive the compensation for the office or employment upon reentering the service, would be a clear disregard of the prohibition to receive both the compensation (and the pension, annuity, or gratuity).

The decision of the Auditor General under review is affirmed, without pronouncement as to costs.

*Paras, C, J., Bengzon, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia and Felix, JJ., concur.*