

103 Phil. 651

[G.R. No. L-11580. May 09, 1958]

MARCELINO GABRIEL, PETITIONER AND APPELLANT, VS. GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENT AND APPELLEE.

D E C I S I O N

CONCEPCION, J.:

The pertinent facts are correctly set forth in appellant's brief, from which we quote:

"The petitioner-appellant, former District Supervisor in the Bureau of Public Schools with 33 years in the classified civil service, was laid off' on February X, 1951 by virtue of Executive No, 392 in pursuance of the Reorganization Act known as Republic Act No. 422, which abolished his position. Accordingly, he received P2,760.00 as gratuity equivalent to one year salary as district supervisor.

"On July 9, 1952, petitioner-appellant filed with respondent-appellee an application for retirement insurance benefit under Republic Act No. 660, as amended, electing monthly joint life annuity without definite period but payable during lifetime with his wife, subject to reduction, upon the death of either spouse, to one-half of the amount in favor of the survivor. The application was approved, effective February 1, 1951; and by reason of the approval of his application, he has been receiving the monthly annuity of P62.15, payable at the end of each month. The respondent-appellee fixed the monthly annuity of only P62.15 after deducting in its computation the gratuity of P2,760.00 previously granted by operation of Executive Order No. 392 and in pursuance of Republic Act No. 422. Without deduction by way of refund, the monthly annuity would be P79.63

instead of the lesser amount; and such refund has been affected under Resolution No. 131, series of 1953 of the GSIS Board of Trustees (respondent-appellee). The appellee still continues making the deduction and the applicant, who has never been reinstated or re-employed in the government service, questions as unlawful such refund.”

Contending that the gratuity under Republic Act No. 422 should not be deducted from his annuity under Republic Act No. 660, petitioner Marcelino Gabriel instituted this action for mandamus in order to discontinue said deduction by respondent Government Service Insurance System and to recover all amounts heretofore deducted from his annuity, with legal interest, and costs. The Court of First Instance of Manila rendered judgment for respondent. Hence, this appeal by petitioner.

The only issue is whether the gratuity, received by petitioner under Executive Order No. 392, pursuant to Republic Act No. 422, is deductible from his annuity under Republic Act No. 660.

Respondent, maintains the affirmative, and the lower court sustained this view, relying upon the second paragraph of section 26, Republic Act No. 660. Petitioner insist, however, that Executive Order No. 392 and Republic Act No. 422 intended to give, to those separated from the service under the provisions of both, a legal right to the gratuity therein granted, “without any condition of refund requirement, nor any string attached to it,” in the words of petitioner; that there is no incompatibility between the gratuity under Republic Act No. 422 and the retirement insurance benefit under Republic Act No. 660; and that Congress intended to give both to those retired under Republic Act No. 422.

The question for us to determine is not whether Republic Act No. 422 and Executive Order 392 impose any qualifications upon the gratuity therein provided. We are here concerned with intent of the lawmaker in the enactment of Republic Act No. 660. The second paragraph of section 26 thereof provides:

“Notwithstanding any provisions of this Act to the contrary, any officer or employee whose position was abolished or who was separated from the service as

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consequence of the reorganization provided for in Republic Act Numbered Four hundred and twenty-two may be retired under the provisions of this Act if qualified: Provided, That any gratuity or retirement benefit already received by him shall be refunded to the System. * * *

It is clear from this paragraph, not only that Congress did not propose to give to those separated from the service under Executive Order No. 392, in relation to Republic Act No. 422, the benefits of the retirement insurance benefits under Republic Act No. 660, in addition to the gratuity received under said Executive Order No. 392 and Republic Act No. 422, but, also, that our lawmakers intended this gratuity to be excluded by the enjoyment of said retirement insurance benefits.

Again, said Republic Act No. 660 does not seek to deprive anybody of his vested rights. However, one separated from the service under Republic Act No. 422 is given in Republic Act No. 660 the option to avail of the benefits of the retirement insurance provided in the latter, subject to the condition that “any gratuity or retirement benefits already received by him should be refunded to the System.” Petitioner necessarily accepted this condition when he applied for the benefits of Republic Act No. 660. In other words, it is he, by voluntarily choosing to be under Republic Act No. 660, who divested himself of his right to said gratuity.

Wherefore, the decision appealed from is hereby affirmed, with costs against petitioner-appellant.

It is so ordered.

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

