

GENEROSO A. BUENDIA, PATRICIO C. PEREZ, AND FEDERICO L. CABATO, PETITIONERS, VS. THE CITY OF BAGUIO, THE CITY TREASURER OF BAGUIO, CITY AUDITOR OF BAGUIO, THE HONORABLE SECRETAR...

G.R. No. L-33156. July 25, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The two petitions at bar are herein jointly decided since they involve a common question of law raised by petitioners-city judges of Baguio and Butuan Cities against respondent Auditor-General's ruling based on the opinion of respondent Secretary of Justice that under the express proviso of the second paragraph of section 7 of Republic Act No. 5967 (enacted without Executive approval on June 21, 1969)[1] petitioners' salary as city judges "shall be at least one hundred pesos per month less than that of the city mayor, " i. e. at P16,800.00 per annum since the city mayors receive a salary of P18,000.00 per annum.

The Court applies herein its recent ruling in PEMA (Philnabank Employees Association) vs. Auditor General[2] to the effect that public officers and employees such as petitioners-city judges are not private persons or entities who alone under the 1935 Constitution and Commonwealth Act No. 327 are entitled to appeal the Auditor General's adverse decision directly to the Supreme Court instead of to the President.

In purported implementation of Republic Act No. 5967, the Baguio and Butuan city councils passed resolutions fixing the petitioners-city judges' salaries at P19,000.00 per annum and appropriating their respective city shares.

Thus, petitioners-city judges were paid and received their respective salaries at P19,000.00 per annum for the periods mentioned in the petitions, until after such payments were reverted to P16,800.00 per annum by virtue of Provincial Memorandum No. 38 dated October 27, 1970 issued by respondent Auditor General. Said official therein quoted in full the opinion dated October 5, 1970 of respondent Secretary of Justice, holding that the qualifying proviso in the Act that the salary of city judges "shall be at least one hundred pesos per month less than that of the city mayor" (of P18, 000.00 per annum) prevails over the annual salary rate of P19, 000.00 fixed in the first paragraph of section 7 of the Act, since inter alia, the primary purpose of a proviso is to limit or restrain the general language of the statute and the proviso takes precedence over the body of the text as the latest expression of the legislative intent as borne out further by the Senate floor deliberations which centered on the proposition embodied in the proviso that the salary of a city judge should not be higher than that of the mayor. Respondent Auditor General therefore enjoined therein all concerned "to see to it that the annual salary of city court judges is at least one hundred pesos per month less than the salary of the city mayor concerned."

Faced furthermore with demands of the city treasurers for refunds of the "overpayments" made to them in excess of P16,800.00 per annum, petitioners city judges of Baguio city filed on March 1, 1971 their amended petition at bar in the form of mandamus to set aside respondent Auditor-General's ruling. Petitioner city judge of Butuan city filed on September 7, 1971 his petition at bar "for review and/or mandamus certiorari and prohibition" after

having served on respondents officials a specific notice of appealing the Auditor General's decision to this Court, and likewise prayed for judgment to prohibit enforcement of the said decision appealed from.

As in *PEMA vs. Auditor General*, supra, the parties have discussed quite lengthily in their memoranda the basic and related issues revolving on the proper interpretation of the provisions of section 7 of Republic Act No. 5967 which provided for salary increases for city judges under the qualifying provisos therein embodied^[3] and questioning the adverse ruling of respondent Auditor General as based on the opinion of the Secretary of Justice. The basic and prejudicial question noted by the Court, however, is the jurisdictional one of whether this Court may take cognizance of the petitioners-city judges' appeal from the adverse ruling of the Auditor General on the annual salary to which they are entitled under the Act, in the light of the fact that they are not a "private party or entity" who is entitled under the Constitution and the implementing Act, Commonwealth Act No. 327, to appeal said respondent's decision directly to this Court.

Petitioners' appeals at bar from the adverse ruling of the Auditor General, having been filed on March 1, 1971 and September 7, 1971, respectively, are governed by the provisions of the 1935 Constitution (section 3, Article XI^[4]) and by the implementing Act, Commonwealth Act No. 327, whereunder only a "private party or entity" may appeal from the Auditor-General's decision directly to the Supreme Court; otherwise the appeal should be taken to the President, whose action shall be final. This was but recently affirmed by the Court in *PEMA vs. Auditor General*, supra, wherein the therein petitioner-union's appeal to this Court was dismissed "since the members of petitioner-union are employees of the Philippine National Bank, which is a government-owned and controlled corporation, they are government employees and not private persons or entities," who may appeal the Auditor-General's ruling "directly to the Supreme Court instead of to the President."

Since petitioners-city judges are manifestly not private persons or entities who could appeal the Auditor General's decision directly to the Supreme Court rather than to the President, the present petitions are beyond the jurisdiction of this Court.

Their claims as public officers are money claims against the refund of overpayments ordered by the Auditor-General and for an increased payment of salary beyond that fixed by him which are appealable to the President and not to this Court. No question of constitutionality of Republic Act 5967 is herein involved. Since the acts complained of appear to be within the competence and jurisdiction of respondent Auditor-General and no clear and imperative duty on his part to perform the acts required has been shown, neither certiorari or prohibition nor mandamus properly lies in the cases at bar.

The Court has taken note of the counterpart provision of the 1973 Constitution (section 2(2), Article XII, sub-article D^[5]) which provides for appeals from the decision or ruling of the Commission on Audit (not yet organized) by the aggrieved party directly to the Supreme Court on certiorari (in view of the contemplated transition from the presidential to the parliamentary system^[6]). The question of whether such counterpart provision may be deemed now in force and as to its effect, if any, on the previous implementing Act, Commonwealth Act No. 327, i. e. whether public officers and employees like private parties may now after the effectivity of the 1973 Constitution appeal directly to this Court, is not herein involved and its determination will have to await an appropriate case. As above stated, petitioners' appeals were filed in 1971 and are governed by the 1935 Constitution and the implementing Act, Commonwealth Act No. 327, which bar the appeal taken by them to this Court.

ACCORDINGLY, the two petitions at bar are dismissed, the adverse decision of respondent Auditor-General being appealable to the President of the Philippines and not to this Court. No cost.

Makalintal, Acting C.J., Ruiz Castro, Fernando, Makasiar, and Esguerra, JJ., concur.

Zaldivar and Barredo, JJ., are on leave.
Antonio, J., did not take part.

[1] Entitled "An Act raising the status of city judges, enlarging the jurisdiction of the city court and for other purposes."

[2] G.R. No. L-30137, promulgated June 25, 1973.

[3] The pertinent salary and qualifying provisions of the Act read:

"SEC. 7. Unless the City Charter or any special law provides higher salary, the city judge in chartered cities shall receive a basic salary which shall not be lower than the sums as provided hereinbelow:

(a)

For the City of Manila, twenty-two thousand pesos per annum;

(b)

For the cities of Baguio, Quezon, Pasay, Cebu, Caloocan and other first class cities, nineteen thousand pesos per annum;

(c)

For second and third class cities, eighteen thousand pesos per annum;

(d)

For other cities, sixteen thousand pesos per annum: xxx xxx xxx

"Henceforth, unless the city charter or any special law provides higher salary, and subject to the implementation of the respective city government, the salary of the city judges of chartered cities may be raised by the City Council, if and when the salary of the district judge of the Court of First Instance is likewise raised, as follows:

"For the City of Manila, the city judge shall receive one thousand pesos, less, than the salary fixed for the district judge;

"For the cities of Baguio, Quezon, Pasay and other first class cities, the city judge shall receive one thousand pesos less than that fixed for the district judge, and for second and third class cities, the city judge shall receive one thousand five hundred pesos less than that fixed for the district judge, and for other cities, the city judge shall receive two thousand pesos less than that fixed for the district judge: Provided, however, That the salary of a city judge shall be at least one hundred pesos per month less than that of the city mayor." (Rep. Act 5967; emphasis furnished).

[4] "SEC. 3. The decisions of the Auditor General shall be rendered within the time fixed by law, and the same may be appealed to the President whose action shall be final. When the aggrieved party is a private person or entity, an appeal from the decision of the Auditor General may be taken directly to a court of record in the manner provided by law." (1935 Cons-titution).

[5] "SEC. 2. The Commission on Audit shall have the following powers and functions:

"xxx xxx xxx

"(2) Decide any case brought before it within sixty days from the date of its submission for resolution. Unless otherwise provided by law, any decision, order, or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof." (1973 Constitution)

[6] See Art. XVII, sec. 5, 1973 Constitution.

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