

FILOMENO ANCIANO, PETITIONER-APPELLANT, VS. MOISES G. OTADOY, AS MAYOR, TEOFILO OTADOY, AS VICE-MAYOR, ALL SIX MEMBERS OF THE MUNICIPAL COUNCIL, AND/OR INDIVIDUALLY OR COLLECTIV...

G.R. No. L-21267. February 28, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from the decision of February 6, 1963 of the Court of First Instance of Cebu in civil case R-7613, which was an action for mandamus with damages.

The antecedent facts are not disputed.

From August 6, 1917 until his retirement on December 19, 1958, the appellant Filomeno Anciano had been continuously in the government service: temporary clerk in the office of the municipal treasurer of Catarman, Misamis, from August 6, 1917; acting principal clerk in the office of the municipal treasurer of Bogo, Cebu, from June 16, 1919; acting municipal treasurer and postmaster of Tudela, Cebu, from July 24, 1920; permanent treasurer and postmaster of Tudela, Cebu, from March 1, 1924; municipal treasurer and postmaster of Poro, Cebu, from March 3, 1930; municipal treasurer of San Francisco, Cebu, from August 16, 1947; municipal treasurer of Tudela, Cebu, from February 28, 1949; municipal treasurer and postmaster of Poro, Cebu, from January 11, 1953. As municipal treasurer, he was ex officio deputy provincial treasurer with respect to the collection of revenues, pursuant to sec. 2208 of the Revised Administrative Code.

On May 6, 1928 he applied for the benefits of Act 2589, as amended, otherwise known as the Osmeña Retirement Law. His application was acknowledged on June 7, 1928 by the Office of the Governor-General.

On November 14, 1936 Commonwealth Act 186, more commonly known as the Government Service Insurance Act, was approved. Pursuant to the said act, the province of Cebu automatically became a member of the Government Service Insurance System (hereinafter referred to as the GSIS). The municipality of Poro, Cebu (hereinafter referred to as the Municipality) did not, however, become a member, because municipalities, other than first class, are not compulsorily covered by the said law. As deputy provincial treasurer and postmaster, Anciano paid retirement premiums to the GSIS, while the province of Cebu paid the counterpart employer's contributions. He did not, however, remit any retirement premiums as municipal treasurer because, as earlier stated, the Municipality was then and until now is not a member of the GSIS, and therefore his salary as such official was exempt from any deduction of retirement premiums.

When he retired in 1958, he was granted retirement insurance benefits by the GSIS as deputy provincial treasurer and postmaster. His application for retirement compensation as municipal treasurer was, however, predictably disapproved on the ground that the Municipality was not a member of the GSIS.

Consequently, he pursued his application for the benefits provided by the Osmeña Retirement Law, as amended.

On February 11, 1960 the Civil Service Commission - the office charged with the determination of whether an employee has established his right to retirement gratuity under Act 2589[1] - ruled "that the petitioner had established his right to retirement under Section 1 of Act 2589, as amended, within the statutory period." Thereafter in reply to a query sent to the provincial treasurer of Cebu regarding the highest salary received by Anciano as municipal treasurer of Poro, the Deputy Commissioner of Civil Service was informed that Anciano's highest salary as deputy provincial and municipal treasurer was P1,860 per annum, P960 of which was paid from provincial funds and P900 from municipal funds.

The provincial treasurer of Cebu, acting under the impression that the retirement pay of Anciano is a statutory obligation of the Municipality pursuant to sec. 1 of Rep. Act 2264, recommended to the council of the Municipality the inclusion of his (Anciano's) retirement pay in the general budget for the fiscal year 1962-1963. Anciano and his counsel also made similar requests to the municipal council and the mayor, to no avail.

Thus, unable to collect what he believed was rightfully his, Anciano on July 27, 1962 filed with the Court of First Instance of Cebu civil case R-7613, for mandamus with damages, against the Mayor, vice-mayor, members of the municipal council and the treasurer of the Municipality, in their official as well as private capacities.

On February 6, 1963 the lower court rendered judgment dismissing Anciano's petition.

In his appeal before us, he maintains that the lower court erred

- (1) In deciding that since the Municipality is not a member of the GSIS, it cannot be made to pay the gratuity provided for in Act 2589, as amended;
- (2) In ruling that there is no law which makes it obligatory upon a non-member municipality to pay out of its funds the said gratuity;
- (3) In not granting the writ and damages prayed for and in dismissing the petition.

We affirm the judgment a quo for the reasons hereinbelow stated.

1. The lower court correctly held that the gratuity claimed by the appellant under sec. 1 of Act 2589 is not a liability of the Municipality. But it erroneously anchored its ruling on the fact that the Municipality is not a member of the GSIS, which has no relevance to the resolution of this issue. What is pertinent is that pursuant to sec. 4 of Act 2589, the sums necessary to implement its provisions were appropriated out of funds in the Insular (now National) Treasury not otherwise appropriated.[2] Thus, assuming arguendo that the appellant is entitled to gratuity under Act 2589, he should look to the National Government for payment and not to the Municipality.

At all events, it is not denied that the appellant was retired as deputy provincial treasurer and postmaster of the Municipality and granted the corresponding retirement insurance benefits under the provisions of the GSIS Act. Having thus availed himself of the retirement benefits under the GSIS law, he cannot now legally be granted further gratuity under Act 2589 because section 28(b) of the GSIS Act, as amended, provides that "... no gratuity or benefit shall be paid by an employer to an employee entitled to the retirement benefit of this Act." Indeed, we ruled in *Gabriel vs. Government Service Insurance System* (L-11580, May 9, 1958) and emphasized in *Lacson vs. Auditor General* (L-12538, April 29, 1960), that under the second paragraph of section 28 of the GSIS Act, as amended, any gratuity is excluded by the enjoyment of retirement insurance benefits. Consequently, the appellant - by receiving retirement insurance benefits under the GSIS law - has, by his own voluntary act, divested himself of his right to gratuity under Act 2589.

In *Cebu Portland Cement Co. vs. De Jesus* (L-18146, March 30, 1963), this Court, speaking through Justice Alejo Labrador, held that

"[C]ommonwealth Act No. 186, as amended, prohibits the grant of gratuity or benefit to an employee who has already received the retirement benefits granted under the law. The policy of the law is to grant only one gratuity or retirement benefit." (Underscoring supplied)

In truth, this policy merely echoes that enunciated in the very law (Act 2589) upon which the appellant bases his claim to further gratuity. For section 1 thereof provides, *inter alia*, that -

"[A]ny officer or employee entitled to the benefits of this Act, and who is entitled to any, benefits from any pension fund created by authority of the Philippine Legislature, shall be required to designate which of such benefits he desires to take advantage of, and in such case he shall be entitled only to the benefits so chosen. ..."

It is beyond cavil that Commonwealth Act 186, as amended by Republic Act 660, constituted or created a pension fund or plan. And when the appellant applied for and received the benefits provide for in the said Act, he must be deemed to have waived the benefits available under Act 2589.

The appellant of course argues that he was granted under the GSIS Act only the retirement benefits corresponding to his positions as deputy provincial treasurer and postmaster, respectively; ergo, he should be awarded retirement gratuity as municipal treasurer.

The foregoing argument completely ignores the overriding consideration that although he was simultaneously discharging the duties of postmaster, municipal treasurer and deputy provincial treasurer, he was rendering service to only one Government. The gratuity received by him under the GSIS Act, as amended, was obviously in consideration of his entire services rendered to the Government as of his retirement in 1958. It is equally clear that the retirement benefits he claims under section 1 of Act 2589 are in consideration of the same services. Evidently, if he were allowed to receive full benefits under the Osmeña Retirement Law, in addition to the retirement insurance benefits he had already received under the GSIS Act, he would receive double pension for exactly the same services. This eventuality would run roughshod over the well-settled rule that in the absence of an express legal exception, pension and gratuity laws should be so construed as to preclude any person from receiving double pension.[3]

In fine, although the appellant had established his right to gratuity under Act 2589, when he opted to receive gratuity benefits under the GSIS Act, he thereby waived the benefits available under the former law.

2. We agree with the lower court that there is no statute which makes it obligatory for the Municipality to pay out of its funds the gratuity which the appellant demands under Act 2589. The appellant, however, cites sections 2184 and 2242(a) of the Revised Administrative Code and section 1 of Rep. Act 2264.

Sec. 2184 of the Revised Administrative Code does indeed command that two-thirds of the salary of the municipal treasurer be paid from municipal funds and one-third thereof from provincial funds. But from this insufficient premise one cannot derive the conclusion that the Municipality is duty bound to pay the appellant the gratuity receivable under Act 2589, for section 4 of the said Act designates in no uncertain terms the source of the sums necessary to implement its provisions - i.e., the Insular (now the National) Treasury. Assuming therefore that the appellant is additionally entitled to gratuity under Act 2589, this would be a financial liability not of the Municipality but of the National Government.

Section 2242(a) of the Revised Administrative Code specifies the duties of a municipal council, conformably with law, to fix the salaries of municipal officers and employees (except the treasurer and the teachers in the public schools) and to provide for such expenditures as are necessary in the proper conduct of the lawful activities of the various branches of the municipal government. Verily, this provision of law cannot avail the appellant any, since the payment of the gratuity which he claims, as we have already stated, would by law be an obligation of

the National Treasury.

Section 1 of Rep. Act 2264 has no relevance in this case because it merely requires a province, city, municipality and a regularly organized municipal district to include in their respective budgets provisions for their statutory and/or current contractual obligations. No statutory or decisional law supports the position that the gratuity which the appellant claims is a statutory or current contractual obligation of the Municipality.

3. The appellant has thus failed to establish his cause of action. We have searched in vain for any statutory provision on the basis of which the Municipality may be compelled to pay the gratuity to which he claims he is entitled under Act 2589. The lower court did not therefore err in disallowing the writ of mandamus and the damages prayed for by him, and in consequently dismissing his petition below.

ACCORDINGLY, the judgment a quo is affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] See Part II, no. 11(a) of the 1963 GSIS Handbook of Information.

[2] "Sec. 4. Such sums as may be necessary to carry into effect the provisions of this Act are hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated: x x x" (Act 2589; emphasis supplied).

[3] See *Borromeo vs. Government Service Insurance System*, G.R. No. L-11001, Nov. 23, 1960, citing 70 CJS, sec. 5, p. 429.

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