

TIBURCIO CHAVES, SR., PETITIONER, VS. AUDITOR GENERAL ISMAEL MATHAY, RESPONDENT.

G.R. No. L-29311. February 27, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal from a decision of the Auditor General, in which we reaffirm the Court's doctrine against the payment to retirees from the government service of double pension for exactly the same services.

Petitioner had been an employee of the Bureau of Public Highways as chief clerk-administrative officer for many years. On August 21, 1959, he retired optionally under section 12(c) of Commonwealth Act 186 (the Government Service Insurance Act) as amended by Republic Act 1616 with a creditable service of 27.1398 years and was paid a gratuity in the sum of P7,010.40.

On October 31, 1962, barely three years after his retirement, petitioner was reinstated in the government service as chief clerk of the province of Cotabato. Less than five years later, on August 16, 1967, he was allowed to retire again optionally for the second time, under the same Act, as further amended by Republic Act 4968, then recently approved, which provided for greater and more extensive benefits. He was credited with a total service of 32.1250 years, i.e. including all services covered by and already counted upon his first retirement in 1959. He was therefore held entitled to a much larger retirement gratuity of P20,606.25, but the sum of P7,010.40 received upon his first retirement was debited against him and deducted, leaving a net balance of P13,595.85 which was paid to him.

Petitioner applied to respondent Auditor General for a refund of the deduction. The general manager of the Government Service Insurance System to whom petitioner's claim was duly referred, held that petitioner was not entitled to the refund claimed, stating that "(I)n determining his eligibility to retire in 1967 under Section 12(c) of CA 186, as amended by RA 1616 and further amended by RA 4968, and in computing the creditable service and the gratuity benefits due Mr. Chaves, all services prior to his reinstatement were included. For him to receive full benefits under the second retirement in addition to the gratuity he had already received would amount to allowing him to receive double compensation for exactly the same services in consideration", contrary to the doctrine of this Court against payment of double pension for exactly the same services in *Borromeo vs. GSIS*[1] and *Espejo vs. Auditor General*. [2] Respondent, concurring in this opinion of the GSIS, thereupon denied petitioner's claim for refund. Hence, this appeal.

The main issue at bar is the correctness of the Auditor General's decision applying the principle precluding government retirees from receiving double pension for exactly the same services in the absence of an express exemption provided by law.

We find no error in the decision appealed from.

Here, petitioner first retired in August, 1959 as chief clerk in the Bureau of Public Highways under the

Government Service Insurance Act, whereby under the provisions of Republic Act No. 1616 then in force,[3] he was allowed to retire with a retirement gratuity, "in addition to the return of his personal contributions plus interest ... equivalent to one month salary for every year of service based on the highest rate received, but not to exceed twenty-four months,"[4] amounting to the sum of P7,010.40. While not stated in the record, it can easily be deduced that the highest rate of service at which he was retired amounted to about P292.00 per month.[5]

Barely three years thereafter in October, 1962, petitioner was reinstated in the government service, this time as chief clerk of the province of Cotabato, and after less than five years of service was allowed to retire again for the second time on August 16, 1967 under the same Act, as further amended by Republic Act No. 4968, which had then just been enacted on June 17, 1967. Greater and more extensive benefits of the amendatory statute provided for a retirement gratuity benefit "in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums . . . without interest, . . . equivalent to one month's salary of service for every year of the first twenty years of service, plus one and one-half month's salary for every year of service over twenty but below thirty years and two months' salary for every year of service over thirty years . . . based on the highest rate received . . ."[6]

Thus, where under his first retirement petitioner received a retirement gratuity of only P7,010.40 (a maximum of 24 months salary at P292.00 per month for his then creditable service of 27 years), petitioner was held entitled under the more extensive benefits provided by the later amendatory statute, R.A. 4968, for his less than five years of additional service, to a much larger retirement gratuity of P20,606.25 (a total of 39,2500 gratuity months at the highest rate received of P525.00 per month for his total creditable service of 32 years, including the first 27 years covered by his first retirement). Plainly, no error was committed by the GSIS as upheld by respondent in requiring in accordance with law[7] the refund and deduction of petitioner's first retirement gratuity of P7,010.40, leaving a net balance of P13,595.05 which was duly paid.

The doctrine of Espejo and Borrromeo therefore clearly applies to petitioner's case, notwithstanding his contrary protestations. The "common-sense consideration" stated by Mr. Justice J. B. L. Reyes for the Court in Espejo that if a retiree is being credited with his years of service under his first retirement in computing his gratuity under his second retirement, it is but just that the retirement gratuity received by him under his first retirement should also be charged to his account, manifestly governs the case at bar. It is but in accordance with the rule consistently enunciated by the Court, as in Anciano vs. Otadoy, affirming Borrromeo, that claims for double retirement or pension such as petitioner's, "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."[8]

It should further be noted that all the above-cited jurisprudence involved retirements under two different laws or systems, and the Court held that the retiree was liable to refund the benefit received under the first retirement "unless expressly exempted by law from refunding said gratuity or pension", pursuant to the provisions of section 12(g) CA 186. Here, much less is there any doubt as to the lack of any such exemption since petitioner's two retirements were both under the Government Service Insurance Act, which does not grant such exemption but expressly provides in the same section that a reinstated employee "shall be given full credit for services rendered by him prior to his reinstatement . . . provided, however, That said credit shall not be given if the employee shall not refund the System . . . (2) any gratuity or benefit he received under any pension or retirement plan of an employer unless expressly exempted by law from refunding said gratuity or pension x x ."

The thrust of petitioner's claim is actually that the denial of his claim amounts to "unfounded discrimination" against him by respondent, in not applying to his case the action it had followed in two previous administrative retirement cases, one involving the very respondent Mathay himself and the other involving Pacifico Mescallado,

where both retirees received their gratuity in full upon their second retirement from the government service without any deduction. Respondent's brief distinguishes these two cases from that at bar as follows:

"Mr. Mathay retired on May 28, 1945 as Budget Commissioner under Act 2589, as amended, and was paid the maximum allowable gratuity under said law equivalent to twelve (12) months salary, though he had been in the service since 1919. In 1954, Mr. Mathay was reinstated in the Government service as NAMARCO General Manager, and later as Auditor of the Central Bank. He retired again as Auditor of the Central Bank in May of 1964 under RA 1616, after rendering a total creditable service of more than thirty eight (38) years, and was allowed the then maximum gratuity under said RA 1616 equivalent to twenty four (24) months salary. Hence both gratuities were well within his total creditable service of thirty eight (38) years and the payment of both gratuities did not violate the rule against double compensation for exactly the same period of service.

x x x x x x

"x x x When Mr. Mescallado was reinstated in the service, he had been retired for five years, and the monthly gratuity he was entitled to had expired. Not having any 'un expired portion' of retirement benefits under his previous retirement, it was correct not to deduct the previous gratuity received from his second retirement.

"The claim of petitioner Chaves is different because in computing the retirement gratuity due to him upon his second optional retirement under RA 1616, as amended, the services prior to reinstatement were included. Under the law, all services prior to reinstatement shall not be credited, unless the gratuity received thereunder was refunded (Sec. 12(g) CA 186, as amended.) Hence, said services were counted twice in the computation of petitioner's total creditable service, which would constitute 'double compensation' for the same years of service. That is not allowed by law."

At any rate, these two cases cited by petitioner are not before the Court. Not having been elevated to the Court in a proper case, we are not called upon to rule upon the correctness or error of the Auditor General's rulings therein. Needless to state, to the extent that said actions of the Auditor General are in conflict with the doctrine against double pension for exactly the same services in the absence of an express legal exemption, enunciated in the above-cited cases, they have no valid nor binding effect. As stated in Taylor[9] "(T)he error notwithstanding, the law must be enforced even if it prejudiced the defendant-appellee under the principle that mistakes of public officials cannot prejudice the State to the extent of violating an express provision and policy of the law."

Petitioner's plea for "liberality in interpretation of laws granting pensions and other welfare laws" is of course answered by the law's very liberality granting him much greater and more extensive benefits on his second retirement amounting to almost treble that of his first retirement for less than five years of additional service, as shown above, and the Act's express injunction and condition that reinstated employees such as petitioner shall not be given credit for service prior to reinstatement unless they have refunded to the GSIS the gratuity received for such services under their first retirement.[10]

ACCORDINGLY, the decision appealed from is hereby affirmed, with costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Barredo, and Villamor, JJ., concur.

Makasiar, J., took no part.

[1] L-11011, November 23, 1960.

[2] 97 Phil. 216 (1955).

[3] Enacted on May 31, 1957.

[4] Sec. 12(c) of C.A. 186 as amended by R.A. 1616; emphasis supplied.

[5] P7,010.40 divided by 24 months.

[6] Sec. 12(c) as amended by R.A. 4968, emphasis supplied.

[7] See Sec. 12(g) and sec. 28(b) of C.A. 186, as amended.

[8] 27 SCRA 200, 106 (Feb. 28, 1969); see also Taylor v. Gimenez, 5 SCRA 227 (1961) and Cebu Portland Cement Co. vs. de Jesus, 7 SCRA 572 (1963).

[9] Supra, fn. 8.

[10] Sec. 12(g) C.A. 186, as amended.

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