

EUSEBIO G. DIMAANO, PETITIONER, VS. THE AUDITOR GENERAL AND THE GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENTS.

G.R. No. L-15436. December 30, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition to review under Rule 45 of the Rules of Court a decision of the Auditor General denying Eusebio G. Dimaano's claim for refund of the sum of P1,012.68 deducted from the proceeds of the total value of his annuity for the first five years of his compulsory retirement from the service of the Government.

On 6 October 1958 the petitioner wrote to the General Manager of the Government Service Insurance System claiming that on 16 January 1953 he retired under the provisions of Commonwealth Act No. 186, as amended by Republic Act No. 660, as a Supervising Treasurer in the Department of Finance and was awarded the total sum of P20,500.80 as annuity for the first five years of retirement; that from that amount P1,012.68 was deducted and only P19,488.12 was paid to him on February 1953; and that pursuant to the decision of the Supreme Court in the case of *Bautista vs. The Auditor General* 104 Phil., 428; 55 Off. Gaz, 8119, the said deduction had been illegally made. He asked that the amount of P1,012.68 deducted from his annuity be refunded to him (Exhibit A).

On 12 November 1958 the General Manager answered the petitioner that only the sum of P990 and not P1,012.68 had been deducted from the proceeds of his annuity for the first five years of retirement; that the said deduction was made pursuant to the provisions of section 12 (a), Commonwealth Act No. 186, as amended, which provides that the retiree must have made contributions for at least five years, which contributions may, upon his request approved by the Board, be deducted from his life annuity under such terms and conditions as the Board may prescribe;" and that unlike in the case of *Flaviano Bautista* the amount of P990 represents a deduction from his annuity in accordance with law (Exhibit B).

On 21 November 1958 the petitioner replied to the General Manager's answer that the System, is not authorized by law to make such a deduction from his annuity; that Republic Act No. 1573, which took effect on 16 June 1956, the amendatory act, relied upon by the General Manager, does not apply to him (the petitioner); that it is Republic Act No. 660, which took effect on 16 June 1953 which governs his case, it being the law force at the time he retired; and that as it appears in the computation and proceeds sheet, GSIS Form No. 14-3, the amount P1,012.68 had been deducted from the petitioner's annuity (Exhibit C).

On 19 December 1958 the petitioner again wrote to the General Manager pressing his request for refund (Exhibit D).

On 20 December 1958 the General Manager answered the petitioner reiterating his previous stand on the matter (Exhibit E).

On 27 December 1958 the petitioner requested the General Manager for a reconsideration (Exhibit F). On 31

January 1959 the General Manager denied the petitioner's request (Exhibit G).

On 12 February 1959 the petitioner appealed to the Auditor General. On 17 April 1959 the Auditor General upheld the decision of the General Manager and denied the petitioner's claim. On 30 April 1959 the petitioner received notice of the decision of the Auditor General. On 2 May 1959 the former gave notice to the latter of his intention to appeal to the Supreme Court from the decision denying his claim. On 13 May 1959 the petitioner sent by registered mail to this Court his petition for review.

The petitioner contends that Commonwealth Act No. 186, as amended by Republic Act No. 660, the law in force at the time of his compulsory retirement on 16 January 1953, did not authorize any deduction or discount from the lump sum annuity of those who compulsorily retired upon reaching the age of 65 years; that that is so because on 16 June 1956 Congress further amended Commonwealth Act No. 186, by enacting into law Republic Act No. 1573, expressly providing that "In all cases of retirement under this act, * * * he (the retiree) must have made contributions for at least five years, which contribution may, upon his request approved by the Board, be deducted from his life annuity under such terms and conditions as the Board may prescribe;" and that this Court in the case of *Bautista vs. The Auditor General*, supra, has abandoned the rule in the case of *Espejo vs. The Auditor General* (17 June 1955), 97 Phils., 216; 51 Off. Gaz., 2862, that the requirement in section 12 of Commonwealth Act No. 186, as amended, that a retiree must have contributed to the retirement fund for at least five years, applies to all employees of the Government retiring under the said Act.

The petitioner's contentions are untenable. Section 12, Commonwealth Act No. 186, as amended by Republic Act No. 660, the law in force at the time the petitioner retired on 16 January 1953, provides:

(a) On completion of thirty years of total service and attainment of age fifty-seven years, a member shall have the option to retire. In all cases, the last three years of service before retirement must be continuous, and he has made contributions for at least five years, which contributions may, upon his request approved by the Board, be deducted from his life annuity under such terms and conditions as the Board may prescribe.

"* * * * *

(c) Retirement shall be automatic and compulsory at the age of sixty-five years, if he has completed fifteen years of service, and if he has not, he shall be allowed to continue in the service until he shall have completed fifteen years unless he is otherwise eligible for disability retirement. *** (Italics supplied.)

In *Espejo vs. The Auditor General*, supra, this Court, overruling the "petitioner's contention that the 5 years' contributions are required only for those who exercise the option to retire at age 57, but not those compulsorily retired at age 65," said:

* * * This position is untenable. The fact that the condition (that the member must make 5 year contributions at least) is not repeated in paragraph (c), does not alter its character of general condition precedent to retirement benefits; the preceding expression in paragraph (a), "In all cases, *** contributions for at least five years" makes it clear that the contributions must have been made whether retirement is optional or compulsory.

Republic Act No. 660, enacted into law on 16 June 1951, amendatory to Commonwealth Act No. 136, establishes a retirement system for employees of the Government.[1] To meet the Government's obligation to retiring employees, the Act requires an employee who is a member of the System and his employer to pay retirement premiums and establishes a retirement insurance fund consisting "of all contributions for retirement insurance benefit and of earnings and savings therefrom"[2] At the time of the establishment of the retirement system, it was foreseen that many employees would at once be eligible for retirement but the fund from which the System could meet its obligations would not be enough to pay the retiring employees. Member employees and their employers would start contributing to the fund only "on the last day of the third calendar following the month this Act was

approved,"[3] and the return, if any, on the investments to be made by the System would not suffice. That is the reason why the retirement law provides that a retiree the investments to be made by the System "would not suffice. That is the reason why the retirement law provides that a retiree irrespective of whether or not he retires under the optional or compulsory plan should, upon retirement, have contributed to the retirement fund for at least five years and if he has not, authorizes the Board of Trustees of the System to deduct from the retiree's annuity the necessary amount. The further amendment to the retirement law, Republic Act No. 1573, on 16 June 1956, expressly providing that "In all cases of retirement under this Act, * * * he (the retiree) must have made contributions for at least five years, * * *," merely clarifies an ambiguity in the original Act brought about by the absence in paragraph (c), section 12, providing for automatic and compulsory retirement, of the provision that "In all cases, the last three years of service before retirement must be continuous, and he has made contributions for at least five years, * * *" appearing in paragraph (a) of the same section, providing for optional retirement. It is not true that this Court in the case of *Bautista vs. The Auditor General*, supra, has abandoned the rule in *Espejo vs. The Auditor General*, supra. The *Bautista* case which involved only a question of discounting or deducting a sum equivalent to 5% a year compounded annually from the present value of the retiree's lump sum annuity did not involve a question of deduction to be paid to the retirement fund similar to the *Espejo* case. Moreover, in the *Bautista* case it was precisely said that "There is no cogent reason for abandoning the foregoing rule" (that the annuity of one who compulsorily retires at the age of 65 years and elects a lump sum payment of his annuity for the first five years is not subject to discount or deduction).

In view of the conclusion arrived at the two issues raised by the Solicitor General, to wit: that the petitioner's failure to seek a reconsideration of the decision of the Auditor General is fatal to his case and that the petitioner's claim for refund having been brought more than five years after his cause of action had accrued, he is guilty of laches, need not be passed upon.

The decision under review is affirmed, with costs against the petitioner.

Bengzon, C.J., Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[1] *Bautista vs. The Auditor General*, supra.

[2] Sections 5 (a) and 24 (b), Commonwealth Act No. 660 as amended by Republic Act No. 660.

[3] Republic Act No. 660 was approved on 16 June 1951. So the member employees and their employers started contributing to the retirement insurance fund only on September 1951.

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