

FRUCTUOSA L. ROSARIO, PETITIONER, VS. CHAIRMAN OF THE COMMISSION ON AUDIT, COMMISSIONER OF THE BUDGET AND DIRECTOR OF THE NATIONAL LIBRARY, RESPONDENTS.

G.R. No. L-39871. April 29, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Fructuosa L. Rosario retired on September 1, 1971 at the age of sixty-five years as Supervising Librarian I of the National Library. She alleged that she attained the rank of an Assistant Chief of Division. Inasmuch as Republic Act No. 6410, which took effect on July 1, 1971, increased the salary of an Assistant Chief of Division to P15,000 per annum, Miss Rosario claimed that she was entitled to terminal pay differential amounting to P7,741.41, corresponding to the period from October 1, 1971 to June 30, 1972, which was supposedly covered by her accumulated leave credits.

The Acting Chairman of the Commission on Audit denied Miss Rosario's claim for terminal pay differential. His decision is contained in his third indorsement dated September 27, 1973 addressed to the Director of the National Library. That decision was based on the opinion of the Commissioner of the Budget that Miss Rosario's claim for terminal leave pay based on the highest salary rate fixed in Republic Act No. 6410 was devoid of legal sanction.

The Acting Chairman of the Commission on Audit directed Miss Rosario and other employees similarly situated, who were paid salary adjustments under Republic Act No. 6410, to refund whatever amount they had received prior to July 1, 1972.

Miss Rosario received a copy of that decision on November 6, 1973. On December 5, 1973 or on the twenty-ninth day after her receipt of a copy of that decision, she filed a request for reconsideration.

The Acting Chairman of the Commission on Audit, in a letter to Miss Rosario dated October 29, 1974, denied her request for reconsideration. She received that letter by ordinary mail on November 22, 1974. On December 20, 1974 she filed her notice of appeal with the Commission on Audit. On December 23, 1974 or thirty-one days after receiving the letter denying her request for reconsideration, she filed in this Court her petition for review and certiorari.

The Solicitor General, in his comment on the petition, prayed that the petition be dismissed (1) because it was filed out of time and (2) because the salary increases under Republic Act No. 6410 were implemented only on July 1, 1972, long after Miss Rosario's retirement on September 1, 1971.

Section 2 of Commonwealth Act No. 327 provides that "the party aggrieved by the final decision of the Auditor General in the settlement of an account or claim may, within thirty days from receipt of the decision, take an appeal in writing" "to the Supreme Court of the Philippines if the appellant is a private person or entity".

The 1973 Constitution provides that "unless otherwise provided by law, any decision, order, or ruling of the Commission (on Audit) may be brought to the Supreme Court on certiorari by the aggrieved party within thirty

days from his receipt of a copy thereof" (Sec. 2, Art. XII).

Section 1, Rule 44 of the Rules of Court provides that an appeal from a decision of the General Auditing Office shall be perfected "within a period of thirty (30) days from notice of the decision.

Miss Rosario, having become a private citizen, was entitled to appeal to this Court from the decision of the Commission on Audit (Espino vs. Gimenez, L-18271, April 30, 1964, 10 SCRA 757).

While it is true that a motion for reconsideration suspends the running of the thirty-day period (Celestino vs. Auditor General, 105 Phil. 896, 900; Libuet vs. Auditor General, 101 Phil. 1245), it is equally true that the thirty-day reglementary period should be computed from the receipt of the decision of the Chairman of the Commission on Audit and not from the receipt of the resolution denying the motion or request for reconsideration. The period during which the motion or request for reconsideration was pending should be deducted (Compare with section 3, Rule 41 of the Rules of Court. See Kalitas vs. Lido, L-22452, April 25, 1969, 27 SCRA 967, 973).

Miss Rosario's contention that the thirty-day period should be computed from November 22, 1974, when she received a copy of the resolution of the Acting Chairman of the Commission on Audit, denying her request for reconsideration, is not correct.

Upon receipt by her of the resolution of the Acting Chairman of the Commission on Audit, denying her request for reconsideration, she had one (1) day to file the petition for review. She could have filed with this Court a petition for extension of the period within which to perfect her appeal, a practice often resorted to by lawyers whenever they find that the time for filing a petition for review is inadequate. In such cases, if the petition for extension is well-grounded, this Court usually grants the same by virtue of its rule-making power.

WHEREFORE, Miss Rosario's appeal is dismissed for not having been perfected within the reglementary period.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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