

**FILOMENO A. BAJAR (DECEASED/RETIREE), REPRESENTED BY
PROSECUTOR EMILY A. BAJAR, PETITIONER, VS. GOVERNMENT
SERVICE INSURANCE SYSTEM (GSIS), BOARD OF TRUSTEES,
RESPONDENT.**

Ponente: PAREDES, J.

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PAREDES, J.:

THE CASE

THIS IS ON THE PETITION FOR REVIEW filed by petitioner Emily A. Bajar (petitioner), as representative of her deceased/retiree husband Filomeno A. Bajar, assailing the Decision[1] dated August 20, 2008, and the Resolution[2] dated August 5, 2009 of respondent Government Service Insurance System, Board of Trustees (GSIS), in GSIS Case No. 002-08, which dismissed her petition for conversion of mode of retirement from RA 1616 to RA 8291, and the motion for reconsideration thereafter filed by petitioner, respectively.

THE ANTECEDENTS

On May 24, 2002, petitioner sent a letter to the GSIS inquiring whether the retirement/death benefits received by her and her children as heirs of the deceased, Filomeno Bajar, Sr., under RA 1616 may be converted to retirement/death benefits under the GSIS Law.[3] On August 16, 2002, Robert M. Agustin, Vice President for SIAMS 1 of the GSIS replied to petitioner in this wise:

Our records show that the Department of Justice, your late husband's last employer, indorsed your claim under RA 1616. Accordingly, the benefits thereunder were paid as admitted by you. The GSIS, in fact, refunded his retirement contributions on January 22, 2001 under check nos. 158528-158531.

In this regard, please be advised that an option to convert application for retirement benefits is available only within one (1) year from the time of payment of the benefits by GSIS. This is the requirement mandated under GSIS Board Resolution No. 79 dated February 14, 1991. In your particular case, the GSIS benefits were paid you on January 22, 2001 yet. The conversion, as intimated, should have been made up to January 22, 2002.

In view of the foregoing, we regret that the request for conversion cannot be given due course.[4]

Petitioner moved for the reconsideration[5] of the above letter-reply and sent another letter addressed to the President and General Manager of the GSIS; she did not consider the reply of Mr. Agustin as the official action of the GSIS. On February 3, 2005, Division Chief Josefina Gudani replied[6] to petitioner's letter denying her request. As a result of the said denial, petitioner appealed to Atty. Jessie Andres, a member of the Board of Trustees of GSIS who advised her to address her appeal to the Board of Trustees. On January 2, 2008, petitioner filed her appeal.

On August 20, 2008, the GSIS issued a Decision disposing the appeal as follows:

WHEREFORE, premises considered, the Petition is hereby DENIED for lack of merit.

SO ORDERED.[7]

Petitioner's subsequent motion for reconsideration was denied on August 5, 2009, as follows:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED.[8]

Thus, this petition wherein petitioner claims that:

Her husband died on August 24, 2000 when he was about 63 years old and rendered forty one years of continuous government service. As beneficiaries, petitioner and her children received benefits from the Department of Justice under RA 1616.

Petitioner argues that since her husband died while in active service and after having rendered forty one years of government service he had vested rights and qualified for retirement under RA 8291. She added that the GSIS is incorrect when it ruled that since she filed for retirement of her husband under RA 1616, then the petition for conversion of the retirement mode should be filed also under RA 1616, which is one year from the occurrence of the contingency. Petitioner claims that the period should be four years under Section 1 of RA 8291.

Petitioner claims that since her husband is clearly covered by RA 8291, the GSIS should grant them the difference of her husband's retirement benefit under RA 8291, less the amount that they received under RA 1616. Petitioner submits as issues the following:[9]

WHETHER PETITIONER'S HUSBAND HAD ACQUIRED VESTED RIGHTS AND WAS QUALIFIED TO RETIRE UNDER R.A. 8291 WHEN HE DIED ON AUGUST 24, 2000, AT ALMOST AGE 63 AFTER HAVING RENDERED ALMOST FORTY ONE YEARS OF GOVERNMENT SERVICE.

IF QUALIFIED UNDER R.A. 8291, WHETHER PETITIONER'S CLAIM FOR DIFFERENCE IN BENEFITS BETWEEN RA 1616 AND RA 8291 HAD PRESCRIBED.

In its Comment, GSIS submits that the issues in this petition are:

- 1) Whether or not the primary beneficiaries are entitled to the alleged 3.668 months difference in gratuity lumpsum since what they received under RA 1616 was lumpsum of only 56.332 months instead of 60 months under RA 8291;
- 2) Whether or not the primary beneficiaries of the deceased member, who already received their benefits under RA 1616, are entitled to receive basic monthly pension under RA 8291.

THE ISSUES

The issue in this case is whether petitioner, after receiving retirement benefits under RA 1616 can still claim benefits under RA 8291.

THE COURT'S RULING

The petition is bereft of merit.

The pertinent laws in this petition are RA 1616[10] and RA 8291[11]. Petitioner asserts that the one year prescription for exercising the option to choose under RA 1616 is not applicable because when Filomeno Bajar, Sr. died he was already qualified under RA 8291. Petitioner asserts that Section 55 of RA 8291 is the provision applicable which provides that claims under the said law prescribes within four years from the happening of the contingency.

GSIS, on the other hand, argues that since petitioner had availed of the retirement benefit of her husband under

CA 186 as amended by RA 1616, which provides that death benefits may be availed of as retirement benefits, petitioner cannot claim the difference between RA 8291 and RA 1616 because the former law has a different provision on survivorship benefits. Section 55 envisions laws with similar provisions.

We agree with the GSIS.

If We consider Article 55[12] of RA 8291, the contingency which gave rise to the claim of petitioner is death of the insured. The applicable provision would then be Section 20 which provides:

SECTION 20. Survivorship Benefits. — When a member or pensioner dies, the beneficiaries shall be entitled to survivorship benefits provided in Sections 21 and 22 hereunder subject to the conditions therein provided for. The survivorship pension shall consist of:

- (1) the basic survivorship pension which is fifty percent (50%) of the basic monthly pension; and
- (2) the dependent children's pension not exceeding fifty percent (50%) of the basic monthly pension.

However, petitioner was paid under CA 186 as amended by RA 1616, the applicable provision of which is Section 11, (b) second paragraph, which provides:

(b) Survivors benefit. — Upon death before he becomes eligible for retirement, his beneficiaries as recorded in the application for retirement annuity filed with the System shall be paid his own premiums with interest of three per centum per annum, compounded monthly. If he has served at least five years and his death is not due to his own misconduct, gross negligence, intemperate use of drugs or alcoholic liquor, vicious or immoral habits, his beneficiaries shall also be paid by the employer his one month's salary for every year of service, based on the highest rate received.

If on his death he is eligible for retirement, then the automatic retirement annuity or the annuity previously chosen by him shall be paid accordingly.

From the aforesaid provision, it is clear why petitioner sent a letter to GSIS inquiring whether the retirement benefits of Filomeno under RA 1616 can still be converted to RA 8291. We quote, with approval, the ruling of the GSIS Board of Trustees in its Decision[13], as follows:

We disagree with petitioner. CA 186, as amended, is replete with applicable provisions on the issue, viz:

An employee who retires under this subsection (c) (retirement under RA 1616) may not be eligible for retirement with gratuity or pension under subsection (a) of Section eleven of this Act, as amended, or vice-versa, unless he makes a written application therefore within one year after retirement and reimburses the retirement gratuity or pension previously received by him, as well as refunds the personal and employer's premiums as the case may be. [Section 12 (c), paragraph 2, of CA 186, as amended]

xxx That the member may change the mode of his retirement within one year from the date of his retirement in accordance with such rules and regulations as may be prescribed by the System (Section 4 of PD 1981).

Board Resolution No. 79 dated February 14, 1991 was also correctly invoked by then Vce President Robert M. Agustin, viz:

xxx That the following procedural rules recommended by the Hearing Office to be adopted in requesting for conversion of the mode of retirement, be, as they are hereby, APPROVED:

- All applicants for conversion should file with the System their written application for conversion within one (1) year from date of their retirement. xxx (Emphasis in the original)

The records show that what petitioner availed of were the benefits provided under RA 1616. The option to choose the retirement law is given to the member which should have been exercised by the member one year after he has

received his retirement benefit under said law. Obviously, said option is no longer available.

On the other hand, Section 55 of RA 8291 is intended for the member and not the member's beneficiary. Therefore, the GSIS was correct when it denied petitioner's request. The settled rule is that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts.[14] In the case at bar, petitioner has not given us any cogent reason to depart from the decision of the GSIS.

WHEREFORE, the Petition for Review is DISMISSED. The Decision dated August 20, 2008, and the Resolution dated August 5, 2009 of respondent Government Service Insurance System, Board of Trustees, in GSIS Case No. 002-08, are hereby AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Dicdican, I.P., Chairperson and Elbinias, M.P., JJ., concur.

[1] Rollo, pp. 21-6.

[2] Rollo, pp. 30-2.

[3] See Letter dated May 24, 2002 addressed to the General Manager of the GSIS, rollo, p. 47.

[4] Rollo, p. 49.

[5] Rollo, pp. 50-1.

[6] See letter dated February 3, 2005, rollo, p. 55.

[7] Rollo, p. 26.

[8] Rollo, p. 31.

[9] See Petition for Review, p. 11, rollo, p. 15.

[10] An Act Further amending Section 12 of Commonwealth Act Numbered One Hundred Eighty-Six, as amended, by prescribing two other modes of retirement and for other purposes.

[11] An Act Amending Presidential Decree No. 1146, as Amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms therein and for other Purposes.

[12] SECTION 55. Exclusiveness of Benefits. — Whenever other laws provide similar benefits for the same contingencies covered by this Act, the member who qualifies to the benefits shall have the option to choose which benefits will be paid to him. However, if the benefits provided by the law chosen are less than the benefits provided under this Act, the GSIS shall pay only the difference.

[13] See GSIS Decision, pp. 3-4, rollo, pp. 23-4.

[14] Jose Santos vs. Committee on Claims Settlement, and Government Service Insurance System, G.R. No.

158071, April 2, 2009.

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