

ANITA DELEÑA, PETITIONER-APPELLANT, VS GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), RESPONDENT-APPELLEE.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

The present appeal seeks to nullify the July 14, 2010 Decision[1], issued by Regional Trial Court, Branch 14, Cebu City (RTC-Branch 14) in Civil Case No. OS-08-145 for Declaratory Relief and Mandamus with TRO/Preliminary Injunction.

THE ANTECEDENTS

On May 17, 2001, the Office of the Ombudsman - Visayas (Ombudsman) issued a Decision dated February 23, 2001,[2] finding appellant guilty of dishonesty, in an administrative case entitled, “Commission on Audit v. Deleña, et al.,” docketed as OMB-VIS-ADM-98-0609. The dispositive portion of the decision reads:

WHEREFORE, finding the respondents guilty of dishonesty, the penalty of dismissal from service with forfeiture of all benefits is hereby imposed.

Appellant filed a motion for reconsideration.[3]

On May 12, 2002, appellant retired[4] as Municipal Treasurer of Oslob, Cebu.[5] She received from the appellee GSIS, the amount of P739,171.80, representing her 5-year lump sum retirement benefit under RA 8291.[6]

On July 10, 2002, the Ombudsman issued the Order dated March 4, 2002,[7] denying appellant’s motion for reconsideration to the February 23, 2001 Decision. Its dispositive portion states:

WHEREFORE, finding respondents’ Motion for Reconsideration insufficient to modify and/or reverse the Decision of this office dated February 23, 2001, the same is hereby DENIED.

Appellant did not appeal the decision and order of the Ombudsman.[8]

Meanwhile, on March 8, 2004, the Regional Trial Court, Branch 62, Oslob, Cebu (RTC-Branch 62), in a criminal case[9] involving the same acts committed as those in the administrative case, issued the Decision,[10] acquitting appellant of the crime charged, the dispositive portion thereof reads:

WHEREFORE, for want of criminal intent or gross negligence on the part of the accused persons, judgment is hereby rendered acquitting both accused of the crime charged.

x x x

On August 28, 2007, the GSIS, received a written protest against appellant’s claim for retirement benefit and was informed of appellant’s case before the Ombudsman for which she was meted the penalty of dismissal from service with forfeiture of benefits.[11] Consequently, the GSIS suspended the payment of appellant’s monthly pension and sent to appellant several demand letters dated December 13, 2007,[12] and January 28, 2008,[13] requiring her to refund the P739,171.80, plus interest representing the five-year lump sum retirement benefits she

received under RA 8291.[14]

On February 5, 2008, appellant wrote a letter[15] essentially saying that because she has been acquitted in the criminal case she cannot be compelled to return the benefits she already received.

On February 7, 2008, the GSIS reiterated its demand[16] for refund contending that it is based not in the criminal but the administrative case, where appellant was dismissed from service with forfeiture of benefits.

On February 26, 2008, appellant filed the instant case,[17] seeking to stop the GSIS from making demands for a refund and to compel it to pay her monthly pension.

On March 14, 2008, the GSIS filed its Answer with Counterclaim,[18] praying among others, that appellant should be ordered to refund the P739,171.80.

On July 14, 2010, the RTC-Branch 14 issued the assailed Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is rendered in favor of respondent GSIS DISMISSING the petition for lack of cause of action and petitioner's failure to exhaust administrative remedies in violation of the principle of primary jurisdiction; and ordering petitioner to refund to the GSIS the amount of SEVEN HUNDRED THIRTY-NINE THOUSAND, ONE HUNDRED SEVEN(TY)-ONE PESOS and 80/100 (PHP739,171.80) with TWELVE PERCENTUM (12%) PER ANNUM INTEREST.

Petitioner is also ordered to pay the costs of these proceedings.

SO ORDERED.

Hence, this appeal.[19]

ISSUES

- WHETHER AN ACTION FOR DECLARATORY RELIEF AND MANDAMUS IS PROPER IN THE PRESENT CASE;
- WHETHER THERE IS LACK OF CAUSE OF ACTION FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES UNDER THE PRINCIPLE OF PRIMARY JURISDICTION;
- III. WHETHER THE DECISION OF THE RTC-Branch 62 IN CRIMINAL CASE NOS. OS-01-185 AND OS-01-186 ENTITLED "PEOPLE V. ANITA DELENA, ET AL.," SHOULD BE GIVEN PROBATIVE VALUE IN THE JUDGMENT OF THE PRESENT CASE;
- WHETHER APPELLANT IS BOUND TO REFUND APPELLEE P739,171.80 REPRESENTING HER FIVE-YEAR LUMP SUM RETIREMENT BENEFIT UNDER RA 8291 IN VIEW OF HER RETIREMENT ON MAY 12, 2002;
- WHETHER APPELLANT IS STILL ENTITLED TO HER MONTHLY PENSION BENEFITS UNDER RA 8291.

In dismissing the instant case, the RTC-Branch 14 ruled among others, that the final order of the Ombudsman cannot be the subject of an action for declaratory relief because only a deed, will, contract or other written instruments may be a subject thereof.

Appellant, however, says that she filed the instant action for declaratory relief not to seek the reversal of the ruling of the Ombudsman but to establish her rights under RA 8291 in view of the conflicting findings of the Ombudsman in the administrative case and the RTC-Branch 62 in the criminal case. Moreover, she says that the

action for declaratory relief was coupled with an action for mandamus which is within the jurisdiction of the RTC-Branch 14.

This latter court also dismissed the instant case, ruling that appellant should have first brought the matter before the GSIS, under the doctrine of exhaustion of administrative remedies, as it has exclusive jurisdiction over the application and interpretation of RA 8291. The appellant contends otherwise, arguing that the issue involves a pure legal question, which is an exception to the above doctrine.

Appellant likewise insists that RTC-Branch 14 should have given the criminal case probative value. Citing the case of *Larin v. Executive Secretary*,^[20] she stresses that since she was acquitted in the criminal case, the separate and independent administrative case arising out of the same act should be adjudged without basis.

Finally, appellant argues that RTC-Branch 14 committed serious error in directing her to refund the lump sum she received. She asserts that retirements benefits due to her are exempt from legal processes, including the decision of the Ombudsman.

In its comment, the GSIS points out that appellant's brief did not contain a subject index, thus, this Court should dismiss this case, citing *Mendoza v. United Coconut Planters Bank, Inc.*^[21] Likewise the GSIS said that the dismissal of this case is inevitable because the decision of the Ombudsman cannot be a subject of a petition for declaratory relief, especially since it has attained finality. Appellant should have interposed an appeal if she felt aggrieved by it.

In addition, the GSIS also argues that the acquittal in the criminal case does not carry with it relief from administrative liability, and in the absence of a declaration from a higher court, the decisions of the Ombudsman remains valid and binding. Considering that the forfeiture of benefits in the administrative case was not modified, it remains valid and effective even if appellant had already been acquitted in the criminal case.

Lastly, the GSIS contends that it has original and exclusive jurisdiction over issues relating to retirement benefits of GSIS members, thus, the RTC-Branch 14 was correct when it ruled that appellant failed to exhaust administrative remedies.

THE COURT'S RULING

The appeal is DISMISSED.

At the outset, We find that the ultimate issue in this case is whether appellant is entitled to the retirement benefits under RA 8291, in view of the supposedly "conflicting" findings of the Ombudsman in the administrative case and RTC-Branch 62 in the criminal case; and if not, whether the GSIS can compel appellant to refund the retirement benefits she received five years^[22] ago. To Us, these issues are novel in light of the ruling of the Supreme Court in *Lledo v. Lledo*,^[23] decided on February 9, 2010, more or less two years after the GSIS made demands for refund from appellant. Therein, the Supreme Court ruled that government employees dismissed from the service for cause,^[24] are allowed to recover the personal contributions paid to the GSIS.

We also find the instant case perplexing because even as the RTC-Branch 14 invoked the primary jurisdiction of the GSIS to resolve the issues presented, it proceeded to make a ruling that appellant is not entitled to the retirement benefits and directed appellant to refund the amount she received. In other words, while the RTC-Branch 14 held that it cannot take cognizance of the case,^[25] it still granted GSIS' counterclaim for refund.

These observations, however, though it stirs the Court's interest, do not provide the master key which would lead Us to open the case for its proper resolution.

Under Section 2, Rule 41 of the Rules of Court, there are two (2) modes of appealing a judgment or final order of the RTC in the exercise of its original jurisdiction:[26]

(1)

If the issues raised involve questions of fact or mixed questions of fact and law, the proper recourse is an ordinary appeal to the CA in accordance with Rule 41 in relation to Rule 44 of the Rules of Court; and

(2)

If the issues raised involve only questions of law, the appeal shall be to the Court by petition for review on certiorari in accordance with Rule 45 of the Rules of Court.

Corollary thereto, should a party raise only questions of law through an ordinary appeal taken under Rule 41, Section 2, Rule 50 of the Rules of Court provides that the said appeal shall be dismissed,[27] thus:

Sec. 2. Dismissal of improper appeal to the Court of Appeals.

An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

An examination of the instant appeal reveals that its resolution does not call for the appreciation of evidence. The decision of the Ombudsman and RTC-Branch 62, and the receipt of appellant of her retirement benefits from the GSIS are admitted. The question in this case is the interpretation of RA 8291 in light of these admitted facts. There is only doubt as to the correct application of law and jurisprudence under the circumstance, and one need not examine the probative value of evidences presented to resolve this. This appeal therefore raises only a question of law,[28] a fact that is even admitted by appellant when she argued that the doctrine of exhaustion of administrative remedy is not applicable here because the issue involve is purely legal.

This being the case, appellant should have filed an appeal by certiorari directly to the Supreme Court.

WHEREFORE, the appeal is DISMISSED.

SO ORDERED.

Lagura-Yap, & Quijano-Padilla,* JJ., concur.

* Acting Junior Member per Office Order No. 472-13-ABR dated December 12, 2013.

[1] Records, p. 206.

[2] Records, p. 18.

[3] Records, p. 2.

[4] Rollo, p. 47.

[5] Records, p. 1.

[6] The GSIS Act of 1997.

- [7] Records, p. 15.
- [8] Records, p. 3.
- [9] Entitled, “People v. Delena, et al.,” docketed as OS-01-185 and OS-01-186 for Malversation of Public Funds.
- [10] Records, p. 17.
- [11] Rollo, p. 47.
- [12] Rollo, p. 73.
- [13] Rollo, p. 74.
- [14] Rollo, p. 48.
- [15] Records, p. 27
- [16] Rollo, p. 75; Records, p. 28.
- [17] Records, p. 1.
- [18] Records, p. 38.
- [19] Records, p. 213.
- [20] G.R. No. 112745, October 16, 1997.
- [21] G.R. No. 165575, February 2, 2011.
- [22] Counting from 2002, when appellant retired as Municipal Treasurer and received the amount of P739,171.80 to 2007, when GSIS made demands for refund.
- [23] A.M. No. P-95-1167.
- [24] In said case, Atty. Cesar Lledo was dismissed from service with forfeiture of benefits, through the Supreme Court Decision dated December 21, 1998, the dispositive portion of which states:

WHEREFORE, Cesar V. Lledo, branch clerk of court of RTC, Branch 94, Quezon City, is hereby DISMISSED from the service, with forfeiture of all retirement benefits and leave credits and with prejudice to reemployment in any branch or instrumentality of the government, including any government-owned or controlled corporation. This case is REFERRED to the IBP Board of Governors pursuant to Section 1 of Rule 139-B of the Rules of Court.

SO ORDERED.

Atty. Lledo’s son wrote to the Supreme Court asking for refund of his father’s personal contributions to GSIS.

The Supreme Court granted the request. It ruled, among others, that:

x x x, it should be remembered that the GSIS laws are in the nature of social legislation, to be liberally construed in favor of the government employees. The money subject of the instant request consists of personal contributions made by the employee, premiums paid in anticipation of benefits expected upon retirement. The occurrence of a contingency, i.e., his dismissal from the service prior to reaching retirement age, should not deprive him of the money that belongs to him from the outset. To allow forfeiture of these personal contributions in favor of the GSIS would condone undue enrichment.

Pursuant to the foregoing discussion, Cesar is entitled to the return of his premiums and voluntary deposits, if

any, with interest of three per centum per annum, compounded monthly.

[25] Decision, p. 5; Records, p. 210.

[26] Bases Conversion Development Authority v. Reyes, et al., G.R. No. 194247, June 19, 2013.

[27] Bases Conversion Development Authority v. Reyes, et al., *supra*.

[28] See New Regent Sources, Inc. v. Tanjuatco, et al., G.R. No. 168800, April 16, 2009

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