

EUSEBIO B. GARCIA, PETITIONER AND APPELLANT, VS. HON. ERNESTO S. MATA, SECRETARY OF NATIONAL DEFENSE, AND GENERAL MANUEL T. YAN, CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES,...

G.R. No. L-33713. July 30, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

This is a petition for certiorari to review the decision of the Court of First Instance of Quezon City, Branch IX, in civil case Q-13466, entitled "Eusebio B. Garcia, petitioner, vs. Hon. Ernesto Mata (Juan Ponce Enrile), et al., respondents," declaring paragraph 11 of the "Special Provisions for the Armed Forces of the Philippines" of Republic Act No. 1600[1] unconstitutional and therefore invalid and inoperative.

We affirm the judgment a quo.

The facts material to this case are embodied in the following stipulation submitted jointly by both parties to the lower court:

"Petitioner was a reserve officer on active duty with the Armed Forces of the Philippines until his reversion to inactive status on 15 November 1960, pursuant to the provisions of Republic Act No. 2334. At the time of reversion, Petitioner held the rank of Captain with a monthly emolument of P478.00, comprising his base and longevity pay, quarters and subsistence allowances;

"On June 18, 1955, the date when Republic Act No. 1382 took effect, petitioner had a total of 9 years, 4 months and 12 days of accumulated active commissioned service in the Armed Forces of the Philippines;

"On July 11, 1956, the date when Republic Act 1600 took effect, petitioner had an accumulated active commissioned service of 10 years, 5 months and 5 days in the Armed Forces of the Philippines;

"Petitioner's reversion to inactive status on 15 November 1960 was pursuant to the provisions of Republic Act 2334, and such reversion was neither for cause, at his own request, nor after court-martial proceedings;

"From 15 November 1960 up to the present, petitioner has been on inactive status and as such, he has neither received any emoluments from the Armed Forces of the Philippines, nor was he ever employed in the Government in any capacity;

"As a consequence of his reversion to inactive status, petitioner filed the necessary petitions with the offices of the AFP Chief of Staff, the Secretary of National Defense, and the President, respectively, but received reply only from the Chief of Staff through the AFP Adjutant General."

On September 17, 1969 the petitioner brought an action for "Mandamus and Recovery of a Sum of Money" in the court a quo to compel the respondents Secretary of National Defense and Chief of Staff of the Armed Forces of the Philippines[2] to reinstate him in the active commissioned service of the Armed Forces of the Philippines, to

readjust his rank, and to pay all the emoluments and allowances due to him from the time of his reversion to inactive status. On December 2, 1970 the trial court dismissed the petition. The court ruled that paragraph 11 of the "Special Provisions for the Armed Forces of the Philippines" in Republic Act 1600 is "invalid, unconstitutional and inoperative."

The petitioner had a total of 9 years, 4 months and 12 days of accumulated active commissioned service in the AFP when Republic Act 1382 took effect on June 18, 1955. Section 1 of this law provided:

"Reserve officers with at least ten years of active accumulated commissioned service who are still on active duty at the time of the approval of this Act shall not be reverted into inactive status except for cause after proper court-martial proceedings or upon their own request: Provided, That for purposes of computing the length of service, six months or more of active service shall be considered one year." (Italics supplied)

The petitioner's accumulated active commissioned service was thus short of the minimum service requirement prescribed in the aforequoted provision of R.A. 1382.

On July 11, 1956,[3] while the petitioner was yet in the active service, Republic Act 1600 was enacted into law. Paragraph 11 of the SPECIAL PROVISIONS FOR THE ARMED FORCES OF THE PHILIPPINES (on page 892 of the Act) provided as follows:

"11. After the approval of this Act, and when there is no emergency, no reserve officer of the Armed Forces of the Philippines may be called to a tour of active duty for more than two years during any period of five consecutive years: PROVIDED, That hereafter reserve officers of the Armed Forces of the Philippines on active duty for more than two years on the date of the approval of this Act except those whose military and educational training, experience and qualifications are deemed essential to the needs of the service, shall be reverted to inactive status within one year from the approval of this Act: PROVIDED, FURTHER, That reserve officers with at least ten years of active accumulated commissioned service who are still on active duty at the time of the approval of this Act shall not be reverted to inactive status except for cause after proper court-martial proceedings or upon their request; PROVIDED, FURTHER, That any such reserve officer reverted to inactive status who has at least five years of active commissioned service shall be entitled to a gratuity equivalent to one month's authorized base and longevity pay in the rank held at the time of such reversion for every year of active commissioned service; PROVIDED, FURTHER, That any reserve officer who receives a gratuity under the provisions of this Act shall not except during a National emergency or mobilization, be called to a tour of active duty within five years from the date of reversion: PROVIDED, FURTHER, That the Secretary of National Defense is authorized to extend the tour of active duty of reserve officers who are qualified military pilots and doctors: PROVIDED, FURTHER, That any savings in the appropriations authorized in this Act for the Department of National Defense notwithstanding any provision of this Act to the contrary and any unexpended balance of certification to accounts payable since 1 July 1949 regardless of purpose of the appropriation shall be made available for the purpose of this paragraph: AND PROVIDED, FINALLY, That the Secretary of National Defense shall render a quarterly report to Congress as to the implementation of the provisions of this paragraph." (pp. 892-893, RA 1600) (Italics supplied)

The petitioner consequently argues that his reversion to inactive status on November 15, 1960 was in violation of the abovequoted provision which prohibits the reversion to inactive status of reserve officers on active duty with at least ten years of accumulated active commissioned service.

On the other hand, the respondents contend that the said provision has no relevance or pertinence whatsoever to the budget in question or to any appropriation item contained therein, and is therefore proscribed by Art. VI, Sec. 19, par. 2[4] of the 1935 Constitution of the Philippines, which reads:

"No provision or enactment shall be embraced in the general appropriation bill unless it relates specifically to some particular appropriation therein; and any such provision or enactment shall be limited in its operation to

such appropriation."

A perusal of the challenged provision of R.A. 1600 fails to disclose its relevance or relation to any appropriation item therein, or to the Appropriation Act, as a whole. From the very first clause of paragraph 11 itself, which reads,

"After the approval of this Act, and when there is no emergency, no reserve officer of the Armed Forces of the Philippines may be called to a tour of active duty for more than two years during any period of five consecutive years:"

the incongruity and irrelevancy are already evident. While R.A. 1600 appropriated money for the operation of the Government for the fiscal year 1956-1957, the said paragraph 11 refers to the fundamental governmental policy matters of the calling to active duty and the reversion to inactive status of reserve officers in the AFP. The incongruity and irrelevancy continue throughout the entire paragraph.

In the language of the respondents-appellees, "it was a non-appropriation item inserted in an appropriation measure in violation of the constitutional inhibition against 'riders' to the general appropriation act." It was indeed a new and completely unrelated provision attached to the Appropriation Act.

The paragraph in question also violated Art. VI, Sec. 21, par. 1[5] of the 1935 Constitution of the Philippines which provided that "No bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill." This constitutional requirement nullified and rendered inoperative any provision contained in the body of an act that was not fairly included in the subject expressed in the title or was not germane to or properly connected with that subject.

In determining whether a provision contained in an act is embraced in the subject and is properly connected therewith, the subject to be considered is the one expressed in the title of the act, and every fair intendment and reasonable doubt should be indulged in favor of the validity of the legislative enactment. But when an act contains provisions which are clearly not embraced in the subject of the act, as expressed in the title, such provisions are inoperative and without effect.

We are mindful that the title of an act is not required to be an index to the body of the act. Thus, in *Sumulong vs. Comelec*, 73 Phil. 288, 291, this Court held that it is "a sufficient compliance with such requirement if the title expresses the general subject and all the provisions of the statute are germane to that general subject." The constitutional provision was intended to preclude the insertion of riders in legislation, a rider being a provision not germane to the subject-matter of the bill.[6]

The subject of R.A. 1600, as expressed in its title, is restricted to "appropriating funds for the operation of the government." Any provision contained in the body of the act that is fairly included in this restricted subject or any matter properly connected therewith is valid and operative. But, if a provision in the body of the act is not fairly included in this restricted subject, like the provision relating to the policy matters of calling to active duty and reversion to inactive duty of reserve officers of the AFP, such provision is inoperative and of no effect.

To quote the respondents-appellees on this point:

"It is obvious that the statutory provision in question refers to security of reserve officers from reversion to inactive status, whereas the subject or title of the statute from which it derives its existence refers to appropriations. Verily, it runs contrary to or is repugnant to the above-quoted injunctive provision of the Constitution. Where a conflict arises between a statute and the Constitution, the latter prevails. It should be emphasized that a Constitution is superior to a statute and is precisely called the 'supreme law of the land' because it is the fundamental or organic law which states the general principles and builds the substantial

foundation and general framework of law and government, and for that reason a statute contrary to or in violation of the Constitution is null and void (Talabon vs. Iloilo Provincial Warden, 78 Phil. 599). If a law, therefore, happens to infringe upon or violate the fundamental law, courts of justice may step in to nullify its effectiveness (Mabanag vs. Lopez Vito, 78 Phil. 1)."

Upon the foregoing dissertation, we declare Paragraph 11 of the SPECIAL PROVISIONS FOR THE ARMED FORCES OF THE PHILIPPINES as unconstitutional, invalid and inoperative. Being unconstitutional, it confers no right and affords no protection. In legal contemplation it is as though it has never been passed.[7]

Verily, not having shown a clear legal right to the position to which he desires to be restored, the petitioner cannot compel the respondents to reinstate and/or call him to active duty, promote or readjust his rank, much less pay him back emoluments and allowances.

ACCORDINGLY, the instant petition is denied, and the decision of the lower court dismissing the complaint is hereby affirmed. No pronouncement as to costs.

Makalintal, C.J., Fernando, Makasiar, Esguerra, Muñoz Palma, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Barredo, J., concurs with a separate opinion.

Teehankee, J., is on leave.

Antonio, J., took no part.

[1] Otherwise known as the Appropriation Act for the Fiscal Year 1956-1957.

[2] Then incumbent were Hon. Ernesto S. Mata and General Manuel T. Yan. At present Hon. Juan Ponce Enrile is the Secretary of National Defense, General Romeo Espino is the Chief of Staff.

[3] As of this date, the petitioner had an accumulated active commissioned service of 10 years, 5 months and 5 days.

[4] Art. VIII, Sec. 16, par. 2 of the 1973 Constitution of the Philippines.

[5] Art. VIII, Sec. 19, par. 1 of the 1973 Constitution of the Philippines.

[6] Alalayan, et al., vs. National Power Corporation and Administrator of Economic Coordination, L-24396, July 29, 1968, 24 SCRA 172, 179.

[7] Municipality of Malabang, et al., vs. Benito, et al., L-28113, 27 SCRA, 533, 539.

CONCURRING OPINION

BARREDO, J., :

I cannot but concur in the able and scholarly opinion of Mr. Justice Castro. There is indeed constant need to make it emphatically clear that the Constitution proscribes the insertion of riders in the Budget, the pernicious implications of which are too plain and well-known to call for further elucidation. I am adding a few words here, only to bolster, if I may, the conclusion that petitioner's pose would still be unsustainable even if it could be assumed that the Special Provisions invoked by him were constitutional.

According to the stipulation of facts submitted jointly by both parties to the lower court, "(p)etitioner's reversion

to inactive status on 15 November 1960 was pursuant to provisions of Republic Act 2334, and such reversion was neither for cause, at his own request, nor after court martial proceedings" and that "(o)n June 18, 1955, the date when Republic Act 1382 took effect, petitioner had a total of (only) 9 years, 4 months and 12 days of accumulated active commission service in the Armed Forces of the Philippines." In other words, indisputably petitioner is not in a position to invoke Republic Act 13 82 which provides as follows:

"SECTION 1. Reserve Officers with at least ten years of active accumulated commissioned service who are still on active duty at the time of the approval of this Act shall not be reverted into inactive status except for cause after proper court martial proceedings or upon their own request: Provided, That for purposes of computing the length of service, six months or more of active service shall be considered one year."

for the simple reason that he lacked, as of the date of the approval of this law, the 10-year accumulated active commissioned service required thereby.

On June 19, 1959, Republic Act 2334 was enacted containing the following pertinent provisions:

"SEC. 2. After the approval of this Act, and except in time of emergency, no reserve officer shall be called to extended tours of active duty exceeding a total of two years within any period of five consecutive years: Provided, That reserve officers on active duty for more than two years on the date of approval of this Act, with the exception of those covered by section three of this Act, shall be reverted to inactive status within three years from the approval of this Act: Provided, further, That hereafter calls to extended tours of active duty of reserve officers shall be in proportion to the officers requirement of each major service in the reserve force build-up program of the Armed Forces of the Philippines and the priority for selecting such reserve officers within each major service shall follow the order of age groupings for the reserve force as defined in section fifty-two of the National Defense Act, as amended.

SEC. 3. The provisions of section two of this Act shall not apply to reserve officers covered by the provisions of Republic Act Numbered Thirteen hundred eighty-two nor to those possessing technical qualifications, skills, and competence which are indispensable to the needs of the Armed Forces of the Philippines and for whom there are no satisfactory replacements from among reserve officers in the inactive status: Provided, That the selection of such officers shall be as determined by a Board of Officers to be appointed by the Chief of Staff."

Having the foregoing provisions in mind, it is clear to me that in reverting petitioner to inactive status on November 15, 1960, the Armed Forces authorities and original respondents herein, now substituted respectively by the present incumbents, acted properly and were merely complying with the injunction of Section 2 above that "(r)eserve officers on active duty for more than two years on the date of the approval of this Act, with the exception of those covered by section three of this Act, shall be reverted to inactive status within three years from the approval of this Act." As already stated, it is definite that petitioner is not covered by the provisions of Republic Act 1382 and there is no evidence here whatsoever that petitioner comes within the other exception of the Act. We have not been shown that, if he possesses the indispensable technical qualifications, skills, etc. mentioned in Section 3, he has been selected by the Board of Officers appointed by the Chief of Staff for the purpose.

Now, under the Special Provision in question contained in the National Budget for the fiscal year 1955-56 (Republic Act 1600), reserve officers with at least ten tears of active accumulated commissioned service up to July 11, 1956, the date of its enactment, and who were still on active duty on said date "shall not be reverted to inactive status except for cause after proper court martial proceedings or upon their request." Upon the other hand, as already stated, under the subsequent law, Republic Act 2334, "(r)eserve officers on active duty for more than two years on the date of the approval of this Act" (June 19, 1959), with the exceptions already noted which do not apply to petitioner, "shall be reverted to inactive status within three years from the approval of this Act." To my

mind, there is irreconcilable repugnance between these two legal provisions. The first prohibited reversion while the second ordains it under practically identical circumstances. Accordingly, it is my considered view that Republic Act 2334 has repealed the Special Provision relied upon by petitioner, assuming its validity, notwithstanding the absence of any specific repealing clause in this later legislation. As I see it, the inconsistency between the two is so clear and definite that one cannot stand together with the other. What the first says should not be done (reversion), the later one enjoins mandatorily to be accomplished.

As to the possible contention that petitioner had acquired a vested right to a permanent status under the prior law, I believe it is plainly within the power of the legislature to adjust the rights and status of reserve officers of the Armed Forces. No member of the army has a vested right in his employment, status or rank therein. One can easily imagine the difficulties and complications, which can affect the national security or the fiscal resources of the government, if the legislature were deprived of the authority to adjust the tours of duty of reserve officers according to the demands of the prevailing situation. After all, from the very nature of things, every member of the reserve force should be under constant notice that his status as such member is subject to legislative control. Moreover, reversion cannot be considered as depriving the officer concerned totally of his employment and benefits, for Section 4 of Republic Act 2334 provides in this connection as follows:

"SEC. 4. Any reserve officer who is reverted to inactive duty under the provisions of this Act after having completed an accumulated period of active commissioned service of between five years and twenty years shall, unless he is already entitled to the retirement benefits under Republic Act Numbered Three hundred forty, as amended, be entitled upon reversion to receive a gratuity equivalent to one month's authorized base and longevity pay in the permanent rank held at the time of such reversion multiplied by his years of active commissioned service: Provided, That such reversion is not as a result of court martial action or due to the officer's gross misconduct, the intemperate use of drugs or alcoholics, or inefficiency: Provided, however, That if a reserve officer is reemployed in a civilian office of the government or government-owned or controlled corporation, he shall not be made to reimburse the amounts received by him as gratuity under this Act: Provided, further, That if a reserve officer who has received gratuity under this Act reenters the active service, he shall not be eligible for a new gratuity until he has completed at least five years of active commissioned service from the date of such reentry, and no subsequent gratuity shall be paid covering any period of active commissioned service for which he has already received gratuity under this Act: Provided, further, That in case a reserve officer who has received gratuity under this Act subsequently reenters the active service and is retired pursuant to Republic Act Numbered Three hundred forty, such gratuity shall be deducted from his retirement gratuity or pensions: And provided, finally, That for purposes of this section, any period of service amounting to six months or more shall be counted as one year."

In conclusion, whether the Special Provision in question is constitutional or not, petitioner cannot complain about his reversion to inactive duty, considering the provisions of Republic Act 2334 by virtue of which, according to the stipulation of facts, it was ordered by respondents. Hence, the herein petition should be dismissed.

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