

RE: APPLICATION FOR RETIREMENT BENEFITS OF FORMER JUDGE GREGORIO G. PINEDA, COURT OF FIRST INSTANCE, BRANCH XXI, PASIG, METRO MANILA.*Adm. Matter No. 2076-RET. July 13, 1990*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/91f6ec375d84/>**PER CURIAM:**

These are petitions or motions for reconsideration filed by retired Judges asking that they be granted gratuity and/or retirement benefits under Republic Act No. 910, as amended, in addition to, or in lieu of, the benefits under Republic Act No. 1616 or Presidential Decree No. 1146.

The petitioners/movants want to take advantage of the precedents in Administrative Matter No. 5460-Ret., Re: Application for Gratuity Benefits of Associate Justice Efren I. Plana, March 24, 1988 and this Court's May 15, 1989 decision in Administrative Matter No. 6484-Ret. Re: Application for Retirement under Rep. Act No. 910 of Associate Justice Ramon B. Britanico of the Intermediate Appellate Court.

Judge Gregorio Pineda of the former Court of First Instance, Pasig, in Adm. Matter No. 2076-Ret., was granted retirement benefits effective January 17, 1983 when he resigned pursuant to the judiciary reorganization under Batas Pambansa Blg. 129 and was not reappointed. He was 59 years, 3 months and 5 days old with 19 years, 11 months and 21 days of government service when he resigned. As he was short by 9 months to complete the optional retirement age of 60, and short by 9 days to complete the 20 years required length of government service, he claims that his accumulated vacation leave of 395-1/2 days and sick leave of 122-1/2 days can cover the deficiency of a total of 279 days to meet the retirement age of 60.

Judge Paterno A. Montesclaros of the Municipal Trial Court, Cebu City in Administrative Matter No. 5794-Ret., was granted gratuity retirement benefits under Rep. Act No. 1616 effective February 4, 1987 but desires a conversion of the benefits to those under Rep. Act No. 910. The Court denied the request on November 12, 1987. He now moves for a reconsideration of that denial. Judge Montesclaros wants the Britanico ruling applied to his case. The resignation of Justice Britanico was placed in the same category as justices or judges who, after having rendered at least 20 years of service in the judiciary or in any other branch of the government, or in both, have to "resign by reason of their incapacity to discharge the duties of their office." In his case, Justice Britanico's service in the judiciary was terminated on July 31, 1986 through his courtesy resignation tendered before President Corazon C. Aquino pursuant to Proclamation No. 1 dated February 25, 1986. At the time of his resignation, Justice Britanico was 59 years, 8 months and 19 days old with more than 36 years of government service. Judge Montesclaros now claims that his case falls under the same class as Justice Britanico. He was 56 years, 10 months and 19 days old with 20 years, 6 months and 19 days of government service.

Judge Avelino Q. de Lara of the Regional Trial Court (RTC), Batanes, in Administrative Matter No. 6789-Ret., requests a conversion of the benefits granted to him under Rep. Act No. 1616 to those under Rep. Act 910 in view of the Britanico ruling. He resigned pursuant to Proclamation No. 1 of President Aquino. His service in the judiciary was terminated and retirement benefits were granted effective January 31, 1987. He was 66 years, 2

months and 21 days old with 31 years and 4 months of government service. However, he had only 4 years and 4 days of service continuously rendered in the judiciary.

Judge Juan B. Montecillo of the RTC, Branch 27, Naga City, in Administrative Matter No. 5717-Ret., was at first granted disability retirement benefits under Presidential Decree No. 1146, effective January 17, 1983 when he tendered his courtesy resignation before former President Ferdinand Marcos pursuant to Batas Pambansa Blg. 129. (Resolution dated May 28, 1987, Adm. Matter No. 526-Ret.) However, he was reappointed on December 26, 1985 as RTC Judge. Pursuant to Proclamation No. 1 of President Aquino, he again tendered his courtesy resignation on January 30, 1987. In a resolution of this Court on April 2, 1987 in Adm. Matter No. 5717-Ret., when his application for disability/retirement benefits was not yet ruled upon, he was allowed to retire under Pres. Decree No. 1146, instead of Rep. Act No. 910 effective February 1, 1987.

Hence, at the time of his second application for retirement benefits, he was 61 years, 7 months and 8 days old, with 26 years, 8 months and 17 days of government service but the last 5 years of which were not continuously rendered. He now requests that he be allowed to retire under Rep. Act No. 910.

Judge Clemente D. Paredes of the RTC, Malolos, Bulacan, in Administrative Matter No. 5698-Ret., was granted gratuity benefits effective February 1, 1987, under Rep. Act No. 1616 as approved in a Court resolution dated October 27, 1988. The Court dismissed the administrative cases against him (Adm. Matter Nos. R-148-RTJ and R-334-RTJ) on April 29, 1987 and September 13, 1988 and then granted the benefits under Rep. Act No. 1616. Paredes resigned as judge of the RTC, Branch 7, Malolos, Bulacan pursuant to Proclamation No. 1 of President Aquino. He was 54 years, 2 months and 8 days old at the time of his retirement with 27 years, 5 months and 22 days of government service. He now prays for the conversion of the approved application for gratuity benefits under Rep. Act No. 1616 to benefits available under Rep. Act No. 910.

Judge Nicolas A. Gerochi of the RTC, Makati in Administrative Matter No. 5621-Ret., appeals to us for the conversion of his approved application for gratuity benefits under Rep. Act No. 1616 to retirement benefits under Rep. Act No. 910. He wants to fall under the Britanico ruling. Gerochi resigned pursuant to Proclamation No. 1 of President Aquino effective November 4, 1986. His application for gratuity benefits was approved only after the resolution by this Court of the administrative case filed against him together with other judges for erroneous imposition of penalties. (Adm. Matter No. 226, January 20, 1987) At the time of his resignation, Gerochi was 55 years, 7 months and 2 days old with 29 years, 4 months and 24 days of government service, the last 11 years and 19 days of which were continuously rendered in the judiciary.

Section 1, paragraph (c) of Republic Act No. 1616 gives the following benefits to a retiring judge or justice:

"c) Retirement is likewise allowed to a member, regardless of age, who has rendered at least twenty years of service. The benefit shall, in addition to the return of his personal contributions plus interest, be only a gratuity equivalent to one month salary for every year of service, based on the highest rate received, not to exceed twenty four months. This gratuity is payable by the employer or office concerned which is hereby authorized to provide the necessary appropriation or pay the same from savings in its appropriations.

Meanwhile, Pres. Decree No. 1146 (the Revised Government Service Insurance Act of 1977), under the provisions of which one of the petitioners herein, Judge Montecillo, was allowed to receive retirement benefits after his second resignation from government service, provides that an old-age pension shall be paid to a member who has at least fifteen (15) years of service, is at least sixty (60) years of age, and is separated from the service. (Section 11, Pres. Decree No. 1146) Section 12 (a) states that:

Old Age Pension. - (a) A member entitled to old-age pension shall receive the basic monthly pension for life but in no case a period less than five years; Provided, - That, the member shall have the option to convert the

basic monthly salary pensions for the first five years into a lump sum as defined in this Act; x x x."

The basic monthly pension is equal to a certain percentage, i.e. 37-1/2% of the revalued average monthly compensation, plus 2-1/2% of the revalued average monthly compensation for each year of service in excess of fifteen years, but the basic monthly pension shall not exceed 90% of the average monthly compensation. (Section 9, Pres. Decree No. 1146)

The petitioners-judges now want to be entitled to retirement benefits under Rep. Act No. 910, where each of them would receive: (a) a lump sum of five [5] years gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, living and representation allowances he was receiving on the date of his retirement; and (b) thereafter upon survival after the expiration of the five-year period, to a further lifetime annuity payable monthly equivalent to the amount of the monthly salary he was receiving on the date of his retirement. (Section 3, Rep. Act No. 910)

Indeed, petitioners would receive higher benefits should their retirement be governed by Rep. Act. No. 910, as amended. However, a close scrutiny into the service record as well as the conduct of each of the judges is necessary to determine whether or not the benefits under Rep. Act. No. 910, as amended shall be extended to them in lieu of those approved under Rep. Act No. 1616 or Pres. Decree No. 1146.

The rule is that retirement laws are construed liberally in favor of the retiring employee. However, when in the interest of liberal construction the Court allows seeming exceptions to fixed rules for certain retired Judges or Justices, there are ample reasons behind each grant of an exception. The crediting of accumulated leaves to make up for lack of required age or length of service is not done indiscriminately. It is always on a case to case basis.

In some instances, the lacking element -- such as the time to reach an age limit or comply with length of service -- is de minimis. It could be that the amount of accumulated leave credits is tremendous in comparison to the lacking period of time.

More important, there must be present an essential factor before an application under the Plana or Britanico rulings may be granted. The Court allows a making up or compensating for lack of required age or service only if satisfied that the career of the retiree was marked by competence, integrity, and dedication to the public service; it was only a bowing to policy considerations and an acceptance of the realities of political will which brought him or her to premature retirement.

Where a Judge resigns to avoid the messy embarrassments of an investigation of poor performance or alleged anomalies or while never having been disciplined for want of civic-minded witnesses, his record is nonetheless marred by notoriety or scandal, or where a superior court was constrained to move fast in order to reverse or undo his rash orders and suspicious indiscretions, obviously neither the Plana nor Britanico rulings will apply. There are other instances when a Judge must content himself with the retirement benefits under less generous legislation. For those who were retired pursuant to the 1983 reorganization, similar considerations are taken into account.

It should be noted that the reorganization of the judiciary in 1983 was declared valid by this Court in *De La Llana v. Alba* (112 SCRA 294 [1982]). The non-reappointment of certain Judges as a result of the reorganization was the result of careful deliberation. Executive Order No. 611 created a Presidential Committee on Judicial Reorganization. A committee to screen the records of Judges to be appointed or reappointed was constituted.

The Court in *De La Llana* stated:

"They ignore the categorical language of this provision: The Supreme Court shall submit to the President, within thirty (30) days from the date of the effectivity of this act, a staffing pattern for all courts constituted

pursuant to this Act which shall be the basis of the implementing order to be issued by the President in accordance, with the immediately succeeding section. (Batas Pambansa Blg. 129, Section 43) x x x. In the meanwhile, the existing inferior courts affected continue functioning as before, 'until the completion of the reorganization provided in this Act as declared by the President. Upon such declaration, the said courts shall be deemed automatically abolished and the incumbents thereof shall cease to hold office.' (Batas Pambansa Blg. 129, Section 44) There is no ambiguity. The incumbents of the courts thus automatically abolished 'shall cease to hold office.' No fear need be entertained by incumbents whose length of service, quality of performance, and clean record justify their being named anew, (This Court is ready with such a list to be furnished the President) in legal contemplation without any interruption in the continuity of their service. (In the language of par. XI of the Proposed Guidelines for Judicial Reorganization: "The services of those not separated shall be deemed uninterrupted. In such cases, efficiency, integrity, length of service and other relevant factors shall be considered.") It is equally reasonable to assume that from the ranks of lawyers, either in the government service, private practice, or law professors will come the new appointees. x x x." (id. at pp. 335-337)

The Court explained in the decision's footnotes that it "is ready with such a list (of Judges recommended for re-appointment) to be furnished the President." (Footnote No. 97 at p. 336). It also added the relevant factors to be considered. If the Court did not include a Judge in its list or if the President did not appoint a Judge included in the list of the Court, it is an indication that the relevant factors were considered and the Judge was found wanting.

The Court has carefully gone over the history of the petitioners/movants in these cases. On the basis of one or more of the reasons given above, it finds them not entitled to unqualifiedly avail of the privileges given under the Plana and Britanico rulings.

WHEREFORE, the applications of the petitioners for retirement benefits under Republic Act No. 910 are hereby DENIED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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