

RE: REQUEST OF JUDGE TITO G. GUSTILO THAT THE SECOND 25% GRANT OF THE SPECIAL ALLOWANCE FOR JUDGES BE INCLUDED IN THE COMPUTATION OF HIS RETIREMENT BENEFITS.

A.M. No. RTJ-04-1868 (formerly A.M. No. 04-7-359-RTC). August 13, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

In his Letter dated May 26, 2004 addressed to Chief Justice Hilario G. Davide, Jr., Judge Tito G. Gustilo of the Regional Trial Court of Iloilo City, Branch 23, avers that he is due to retire at the age of 70 (compulsory retirement) on September 29, 2004. By then, he would have served the Judiciary for 21 years; 7 years and 11-and-1/2 months of which as Executive Judge of the RTC of Iloilo City. Judge Gustilo requests that, considering his retirement is “barely one month from November 2004,” the second tranche of the Special Allowance granted to judges under Republic Act No. 9227[1] be included in the computation of his retirement benefits.

To recall, Rep. Act No. 9227, which took effect on November 11, 2003,[2] granted additional compensation in the form of Special Allowance to justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court. Section 2 thereof reads:

Sec. 2. Grant of Special Allowances. – All justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws shall be granted special allowances equivalent to one hundred percent (100%) of the basic monthly salary specified for their respective salary grades under Republic Act No. 6758, as amended, otherwise known as the Salary Standardization Law, to be implemented for a period of four (4) years.

The grant of special allowances shall be implemented uniformly in such sums or amounts equivalent to twenty-five percent (25%) of the basic salaries of the positions covered hereof. Subsequent implementation shall be in such sums and amounts and up to the extent only that can be supported by the funding source specified in Section 3 hereof.

Further, Section 5 of the same law provides:

Sec. 5. Inclusion in the Computation of Retirement Benefits. – For purposes of retirement, only the allowances actually received and the tranche or tranches of the special allowance already implemented and received pursuant to this Act by the justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws shall, at the date of their retirement, be included in the computation of their respective retirement benefits.

On March 9, 2004, in A.M. No. 03-12-04-SC (Re: Possible Means to Implement the Special Allowance under R.A. 9227 and to Increase the Judiciary Development Fund), the Court promulgated the GUIDELINES ON THE GRANT OF ADDITIONAL COMPENSATION IN THE FORM OF SPECIAL ALLOWANCE FOR JUSTICES AND JUDGES IN THE JUDICIARY AND ALL OTHER OFFICIALS WITH THE EQUIVALENT RANK OF

JUSTICES OF THE COURT OF APPEALS AND JUDGES OF THE REGIONAL TRIAL COURT. The Guidelines provide for the manner of the implementation in this wise:

4.1 The Special Allowance shall be implemented uniformly in such sums or amounts equivalent to twenty-five percent (25%) of the actual basic monthly salaries for the positions covered starting 11 November 2003 until the one hundred percent (100%) special allowance is fully implemented.

If the source of fund is insufficient to cover the twenty-five percent (25%) special allowance for any year, it shall be granted in such sums and amounts and up to the extent only that can be supported by the funding source specified in Section 3 of Rep. Act No. 9227; provided that annually the special allowance shall always be twenty-five percent (25%) of the actual "basic monthly salary."

The Guidelines, likewise, reiterate that:

4.2 For purposes of computing the retirement benefits, only the special allowance actually received and that which has accrued at the time of retirement shall be included.

Paragraph 7.0 thereof states that cases not covered thereby shall be referred to the Chief Justice for resolution.

Judge Gustilo claims that pursuant to OCA Circular No. 48-2004 dated March 3, 2004, the first tranche of the Special Allowance equivalent to 25% was implemented starting November 11, 2003. The next 25% (second tranche) will be implemented on November 11, 2004. In this connection, Judge Gustilo appeals to the Chief Justice that, in the computation of his retirement benefits, the second tranche of the Special Allowance be included since his retirement is only one (1) month and twelve (12) days before its implementation on November 11, 2004.

In support thereof, Judge Gustilo points out that "in the past, Judges who retire in October are included in the grant of the December 13th month pay." He, thus, invokes the "liberal policy" of the Court "in granting benefits to the underpaid Trial Court Judges."

In the Memorandum dated June 18, 2004 for the Chief Justice, the Office of the Court Administrator (OCA)[3] recommends that the request of Judge Gustilo be granted. The OCA cites Judge Gustilo's service record in the Judiciary, which started on January 18, 1983, including his exemplary record of disposing cases at an average of 2.25 cases each month. It also mentions that Judge Gustilo, as Executive Judge, introduced several innovations in the Iloilo City courts and was able to manage well the 17 judges under his administrative supervision. Further, Judge Gustilo was the recipient of several "awards and recognitions." [4] Considering the foregoing, the OCA concludes that "it is but just and fair that the second additional Special Allowance of 25% be granted to him and included in the computation of his retirement benefits." [5]

In compliance with the Court's Resolution dated July 6, 2004, referring Judge Gustilo's letter and the OCA's memorandum to her for study and recommendation, Chief Attorney Edna E. Diño submitted her Report dated July 15, 2004. The Chief Attorney recommends that Judge Gustilo's request be denied for not being in accord with Rep. Act No. 9227 and the Guidelines promulgated by the Court.

After a careful evaluation of Judge Gustilo's letter, the OCA's memorandum and the Chief Attorney's report, the Court, regrettably, cannot grant the request of Judge Gustilo.

It is axiomatic that when the law is clear, the function of the courts is simple application, not interpretation or circumvention.[6] With respect to the manner of computation of the retirement benefits in light of the Special Allowance granted under Rep. Act No. 9227, Section 5 thereof, quoted anew below, could not be any clearer:

Sec. 5. Inclusion in the Computation of Retirement Benefits. – For purposes of retirement, only the allowances

actually received and the tranche or tranches of the special allowance already implemented and received pursuant to this Act by the justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws shall, at the date of their retirement, be included in the computation of their respective retirement benefits.

A plain reading of the above provision shows that, for purposes of retirement, only the allowances “actually received” and the tranche or tranches “already received and implemented,” upon the date of retirement, shall be included in the computation of the retirement benefits. Otherwise put, before the Special Allowance could be considered in the computation of retirement benefits, it should have been “actually received” and the tranche or tranches thereof should have been “already implemented and received” at the date of retirement.

Section 5 of Rep. Act No. 9227 is clear and unambiguous. There is no room for its interpretation. Further, the foregoing exchange among the members of the Bicameral Conference Committee[7] on the Disagreeing Provisions of Senate Bill (SB) No. 2018 and House Bill (HB) No. 5178[8] is particularly instructive:

...

THE CHAIRMAN (SEN. PANGILINAN). Accepted.

Section 4. No questions? (Silence)

Section 5. (Silence)

Just again for purposes of record and clarification, Section 5, lines 3 and 4, “For purposes of retirement, only the allowances actually received...,” and so forth and so on, I just like to make it clear that the computation of retirement would include the salary already being received, plus the special allowance.

THE CO-CHAIRMAN (REP. ANDAYA). Yes.

THE CHAIRMAN (SEN. PANGILINAN). Because this seems to suggest that you compute, rather the computation of retirement will be on the basis only of the special allowance. So, at least, let’s make that on record.

THE CO-CHAIRMAN (REP. ANDAYA). Yes. On record, yes.

And I think that first word in the title of Section 5, “Inclusion” also explains that.

REP. LIBANAN. Mr. Chairman.

THE CO-CHAIRMAN (REP. ANDAYA). Congressman Libanan.

REP. LIBANAN. For the sake of further clarification, would it mean that if, for example, a judge retires on the second year of the implementation, so his retirement benefits would be only computed....

THE CHAIRMAN (SEN. PANGILINAN). On the basis of what he is already receiving.

REP. LIBANAN. ... on the basis of [what] he is receiving, not on the 100 percent.

THE CO-CHAIRMAN (REP. ANDAYA). Actually receiving. That is correct.

REP. LIBANAN. Thank you, Mr. Chairman.

...

THE CHAIRMAN (SEN. PANGILINAN). Can we now go back to Section 5?

THE CHAIRMAN (REP. ANDAYA). Section 5, Mr. Chairman, just a suggestion but in the House panel ...

SEN. ARROYO. Kasi kung mandatory, doon sa voluntary, hindi naman dapat iyon.

THE CHAIRMAN (REP. ANDAYA). I'll be constrained to withdraw my proposal.

SEN. ARROYO. But your idea is very attractive.

SEN. VILLAR. In fact, it's too attractive. In the first place, iyong allowance is already part of the retirement benefit. Iyon, malaking bagay na iyon, eh.

Mr. Chairman, may add-on pa. Medyo sobra naman yata na iyon.

SEN. ARROYO. No, because by the accident of birth, when they retire, they retire on the second year, halimbawa, 68 sila ngayon. Pagkatapos, mandatorily they have to retire at the age of 70, di iyong benefits nila is ...

THE CHAIRMAN (SEN. PANGILINAN). For those born in 1934 up to 1937.

THE CHAIRMAN (REP. ANDAYA). But the fact here remains, the allowances they have been receiving so far which is over and above, kasama na talaga sa retirement. I mean, sobra-sobra na, eh. Lahat na lang ng allowance na puwedeng gawin, nandoon na, eh. At saka nagre-retire pa sila sa 70, ibig sabihin talagang marami na iyan.

THE CHAIRMAN (SEN. PANGILINAN). Okay?

THE CHAIRMAN (REP. ANDAYA). Okay.

THE CHAIRMAN (SEN. PANGILINAN). So, as is?

THE CHAIRMAN (REP. ANDAYA). Nandoon na, eh.

THE CHAIRMAN (SEN. PANGILINAN). So, whether they retire at 60 or 70, whether they opt for early retirement or mandatory retirement, they will receive the actual. Would it not be a good idea to encourage them to stay on ...[9]

Thus, the congressional records as well as the text itself of Rep. Act No. 9227 reveal the unequivocal intention of the lawmakers that only the Special Allowance actually received at the date of retirement shall be included in the computation of the retirement benefits.

The Guidelines promulgated by this Court pursuant to Rep. Act No. 9227 is even more definite as it used the term "accrued" in this wise: "only the special allowance actually received and that which has accrued at the time of retirement shall be included." As correctly reasoned by the Chief Attorney:

Notably, the phrase "has accrued at the time of retirement" is used in the Guidelines instead of "the tranche or tranches of the special allowance already implemented and received" which is used in Section 5 of Rep. Act No. 9227. Nevertheless, the same meaning is conveyed. The word "accrue" means "to come into existence as an enforceable claim: vest as a right" or "to come by way of increase or addition: arise as a growth or result" or "to be periodically accumulated in the process of time whether as an increase or a decrease." Hence, a Special Allowance that has not yet come into existence as an enforceable claim or has not yet vested on the recipient judge as a matter of right cannot be considered in the computation of retirement benefits.[10]

Indeed, "accrue" in its past tense is "in sense of due and demandable; vested." [11] In the case of Judge Gustilo, on the date of his retirement, the second tranche of the Special Allowance has not accrued as yet; hence, it cannot be said that the same is due and demandable or that it has vested insofar as he is concerned.

The Chief Attorney, likewise, correctly posits that the strict application of Section 5 of Rep. Act No. 9227 is called for by the fact that, under Section 3 thereof, [12] the source for the Special Allowance is the Judiciary Development Fund (JDF), established under Presidential Decree No. 1949, which basically comes from the

docket fees paid by litigants:

... As such, the JDF as a fund source is not constant or fixed in amount, as its amount depends on the amount collected by the courts and the amount of increase in docket fees that the Court would impose. The fact of the JDF becoming insufficient has been foreseen by the Court and is reflected in the second paragraph of 4.1 of the Guidelines quoted above. It is worth noting that until now, the first tranche of the Special Allowance has been received only for the months of 11 November 2003 until February 2004. The delay in receipt thereof may continue if courts nationwide do not timely transmit the reports of collections to the OCA, as the JDF should be disbursed only if the reports of collections and the deposits under the JDF account for the Special Allowance tally in accordance with accounting and auditing rules.[13]

While this Court had, in certain cases,[14] adopted a liberal stance in interpreting retirement laws in favor of the retiree, it cannot do so in this case because, as earlier stated, Section 5 of Rep. Act No. 9227 is quite clear and unambiguous. In other words, there is no room for interpretation but only simple application of the law.

ACCORDINGLY, the request of Judge Tito G. Gustilo that the second 25% or second tranche of the Special Allowance granted under Rep. Act No. 9227 be included in the computation of his retirement benefits is DENIED.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, and Chico-Nazario, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[1] An Act Granting Additional Compensation in the Form of Special Allowances for Justices, Judges and all Other Positions in the Judiciary with the Equivalent Rank of Justices of the Court of Appeals and Judges of the Regional Trial Court, and For Other Purposes.

[2] Section 10 of Republic Act No. 9227 provides that it “shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.” It was published in Today on October 25, 2003 and the Times on October 27, 2003.

[3] Signed by Court Administrator Presbitero J. Velasco, Jr. and Senior Deputy Court Administrator Zenaida N. Elepaño.

[4] These awards are: (1) National Awardee of the 3rd PNP Anniversary on January 29, 1994 at Camp Crame, Quezon City; (2) Plaque of Recognition for his services as Executive Judge given on March 4, 1991; (3) Plaque of Appreciation given by the IBP, Iloilo Chapter, on April 4, 1997; (4) Certificate of Appreciation given at the Forum with Educators, Media and other Concerned Sectors on Enhancing Communication Between the Judiciary and the Citizenry, given at the Days Hotel, Iloilo City, on September 11, 1998; and (5) Certificate of Recognition for his assistance to the Supreme Court Centenary Celebrations Executive Committee, given on June 11, 2001.

[5] Memorandum of the Office of the Court Administrator, p. 2.

[6] AB Leasing and Finance Corporation v. Commissioner of Internal Revenue, 405 SCRA 380 (2003).

[7] The Senate Conferees were Senators Francis Pangilinan, Manuel Villar, Jr., Joker Arroyo, Edgardo Angara and John Osmeña.

The House of Representatives Conferees were Representatives Rolando Andaya, Jr., Marcelino Libanan, Rodolfo

Albano, Jr., Danton Bueser, Rolex Suplico, Gilbert Remulla and Bellaflor Angara-Castillo.

[8] SB No. 2018 and HB No. 5178 became Rep. Act No. 9227.

[9] Deliberations of the Bicameral Conference Committee on the Disagreeing Provisions of SB No. 2018 and HB No. 5178, September 3, 2003, pp. 17-32.

[10] Report of the Chief Attorney dated July 15, 2004, p. 5.

[11] BLACK'S LAW DICTIONARY, 5th ed., p. 19.

[12] The said provision states:

Sec. 3. Funding Source. – The amount necessary to implement the additional compensation in the form of special allowances granted under this Act shall be sourced from, and charged against, the legal fees originally prescribed, imposed and collected under Rule 141 of the Rules of Court prior to the promulgation of the amendments under Presidential Decree No. 1949, dated July 18, 1984, and from the increases in current fees and new fees which may be imposed by the Supreme Court of the Philippines after the effectivity of this Act.

In the event that the said amounts are insufficient to cover the grant of allowances on the last year of implementation of this Act, the National Government shall subsidize the special allowance granted for justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws in an amount not exceeding One hundred sixty-five million pesos (Php165,000,000.00) per annum.

If the collections from any increase in current fees and any new fees imposed after the effectivity of this Act exceed the amount needed to fund the special allowances granted to justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws, the surplus may be used by the Chief Justice of the Supreme Court to grant additional allowances exclusively to other court personnel not covered by the benefits granted under this Act.

[13] *Id.* at 6.

[14] See for example *In re: Ruperto G. Martin*, 187 SCRA 477 (1990).

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