

RE: COMPUTATION OF LONGEVITY PAY UPON COMPULSORY RETIREMENT.

A.M. No. 07-8-27-SC. October 10, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us are two communications, 1) a letter,[1] dated 23 August 2007, of Hon. Cancio C. Garcia, Associate Justice of this Court; and 2) a Memorandum,[2] dated 29 August 2007 of Corazon G. Ferrer-Flores, Deputy Clerk of Court and Chief of Office, Fiscal Management and Budget Office (FMBO), also of this Court. Both communications, addressed to Chief Justice Reynato S. Puno, embody a request for clarification whether or not to tack earned leave credits in the computation of Longevity Pay upon compulsory retirement of Justices and Judges. Justice Garcia's letter reads in part -

I am ending my more than 45 years of government service by midnight of 19 October 2007, 30 years, 10 months and 26 days of which were with the judiciary x x x.

I am presently receiving monthly longevity pay computed at thirty percent (30%) of my basic salary, conformably with Sec. 42 of BP 129 which pertinently provides:

Sec. 42. Longevity Pay. - A monthly longevity pay equivalent to 5% of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years continuous, efficient and meritorious service rendered in the judiciary x x x.

As of 19 October 2007, my earned leave credits would have reached a total of 1,499.5 days which would be equivalent to 5 years, 8 months, and 3.5 days x x x.

x x x x

Under Administrative Circular No. 58-2003, my retirement pay, and God-willing, my monthly pension five (5) years later, shall have to be computed by tacking my leave credits of 5 years, 8 months and 3.5 days to my total years of service in the judiciary (30 years, 10 months and 26 days), making a total of 36 years, 6 months 29.5 days or 36.58 years, thus, increasing my monthly longevity pay to thirty six percent (36%). It will be noted that the Circular makes no distinction as to what branch of the government the leave credits were earned for purposes of increasing the longevity pay of Justices and Judges who reach the age of compulsory retirement.[3]

In connection thereto, the FMBO Chief, in her Memorandum, relates that -

Upon the request of Justice Gutierrez and Justice Garcia, we have computed their estimated retirement benefits under Republic Act No. 910 (RA 910), as amended. The computation of their retirement benefits did not consider the tacking of earned leave credits in the computation of longevity pay provided under Administrative Circular No. 58-2003. [Citation omitted.]

Associate Justice Renato C. Dacudao, who retired from the Court of Appeals on June 19, 2007, likewise requests, in his letter dated August 6, 2007 [citation omitted], that his earned leave credits be tacked for the

purpose of computing his longevity pay in accordance with Administrative Circular No. 58-2003.[4]

To recall, a similar situation arose sometime in 2003, prior to the compulsory retirement of then Senior Associate Justice Josue N. Bellosillo, also of this Court. In a letter-request[5] dated 25 September 2003, docketed as A.M. No. 03-9-20-SC entitled "Re: Request of Senior Associate Justice Josue N. Bellosillo for Computation of His Longevity Pay upon Compulsory Retirement," then Senior Associate Justice Bellosillo asked this Court that his earned leave credits be tacked to his judicial service to increase his longevity pay. In a Resolution[6] dated 7 October 2003, this Court resolved to grant said request. Consequently, on 11 November 2003, this Court approved and adopted Administrative Circular (A.C.) No. 58-2003 entitled "ALLOWING THE TACKING OF EARNED LEAVE CREDITS IN THE COMPUTATION OF LONGEVITY PAY UPON COMPULSORY RETIREMENT OF JUSTICES AND JUDGES," which, in whole, provides that:

WHEREAS, The Court has studied proposals to allow the tacking of earned leave credits to the length of judicial service for computation of the longevity pay.

WHEREAS, Section 42 of Batas Pambansa (BP) 129 provides for a monthly longevity pay equivalent to 5% of the monthly basic pay for every five years of service rendered in the judiciary;

WHEREAS, it is true that vacation and sick leave credits earned during the period of employment are, by their nature and purpose, generally enjoyed during employment; however, the law does not preclude the accumulation of these leave credits, not to be paid while one is working, but to be reserved for senior age;

WHEREAS, retirement laws are liberally interpreted in favor of the retiree because their intention is to provide for his sustenance, and hopefully even comfort, when he no longer has the stamina to continue earning his livelihood and the liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency, security, and well-being of government personnel may be enhanced;

WHEREAS, laws pertaining to retiring government personnel should be liberally construed to benefit retiring personnel, following an interpretation that rightly expresses the nation's gratitude towards the women and men who have tirelessly and faithfully served the government;

WHEREAS, earned leave credits, computed in accordance with Section 40, Rule XVI of the Omnibus Rules on Leave, should accordingly be allowed to increase the longevity pay of Justices and Judges reaching the age of compulsory retirement;

NOW, THEREFORE, the COURT RESOLVED, as it hereby RESOLVES, that earned leave credits shall be allowed to be tacked to the length of judicial service for the purpose of increasing the longevity pay of Justices and Judges who reach the age of compulsory retirement. The computation should also include the additional percentage of longevity pay that corresponds to any fraction of a five-year period in the total number of years of continuous, efficient and meritorious service rendered, considering that the retiree would no longer be able to complete the period because of his compulsory retirement.[7]

With the foregoing issuances, it is manifestly directed that earned leave credits ought to be included in the computation of the longevity pay of Justices and Judges upon their compulsory retirement.

At present, however, as the FMBO explains, the non-inclusion of earned leave credits in the computation of the longevity pay of Supreme Court Associate Justices Gutierrez and Garcia, as well as Retired Court of Appeals Associate Justice Dacdao, upon their compulsory retirement, even in the face of A.C. No. 58-2003, and the edicts by this Court in A.M. No. 03-9-20-SC, i.e., 1) Resolution[8] dated 7 October 2003, granting the request of Senior Justice Bellosillo to tack his earned leave credits; and 2) Resolution[9] dated 11 November 2003, approving and adopting A.C. No. 58-2003, is the consequence of its apprehension as to the non-sustainability of charging payments of longevity pays, computed in accordance with A.C. No. 58-2003, to the savings of the court

concerned. According to the FMBO, the longevity pay of retired Senior Associate Justice Bellosillo was charged to the savings of this Court in view of the prior refusal of the Department of Budget and Management (DBM) to pay the amount due him, computed in accordance with the subject circular, notwithstanding this Court's Resolution[10] dated 26 July 2005 in A.M. No. 03-9-20-SC, enjoining said department to disburse payment thereof, to wit:

SC Administrative Circular No. 58-2003 allows earned leave credits of Justices and Judges who reach the age of compulsory retirement to be tacked to the length of judicial service for the purpose of increasing their longevity pay, on the basis of a liberal interpretation of retirement legislation in line with previous jurisprudence for the benefit of deserving retirees. The observations of the Secretary of Budget and Management are, therefore, noted but she is enjoined to pay the amount due to retired Senior Associate Justice Josue N. Bellosillo in the implementation of said Circular.

WHEREFORE, the payment of longevity pay in accordance with Administrative Circular No. 58-2003 to retired Justice Josue N. Bellosillo is hereby DIRECTED. (Emphasis supplied.)[11]

The negative response to the implementation of A.C. No. 58-2003 by the DBM, was conveyed to this Court by way of a letter[12] dated 6 May 2004. In said letter, then Secretary of the DBM, Emilia T. Boncodin observed that:

First, Section 42 clearly states as a condition to grant longevity pay, the rendition of five years continuous service. It expressly grants longevity pay for "each" five years of continuous service. Thus, longevity pay may only be granted if the condition has been complied with, i.e., at the end of every five-year period. It cannot be granted before expiration of the five-year period.

Second, the use of the words "continuous, efficient and meritorious service" clearly refers to the actual service. Therefore, earned leave credits, not being actual service, cannot be considered as part of "continuous, efficient and meritorious service." Tacking-in of leave credits will therefore run counter to the expressed intent of the law.

Third, we are fully aware that laws pertaining to retiring government personnel should be liberally construed in favor of the retiring personnel, if the law is vague and capable of more than one construction. Section 42 of B.P. 129, however, is quite clear on its intent.

Besides, retirees are already given due recognition and award for their services to the nation under Section 42 of B.P. 129 which entitles retirees to longevity pay. Furthermore, retirees who did not avail of their leave privileges are allowed to accumulate and commute unused leave credits as terminal leave upon their retirement. The intent of the law, which is to award retirees for their untiring service to the nation, continues to be served.

For these reasons, we believe we have complied with the provisions of R.A. 910 (sic) as amended in the computation and release of funds for the retirement and terminal leave benefits of Justice Bellosillo.

Hence, the twin prayers for clarification by Supreme Court Associate Justice Garcia and FMBO Chief Corazon G. Ferrer-Flores.

The seeming necessity for clarification founded on the preceding factual milieu is declared, thus, by Supreme Court Associate Justice Garcia:

The undersigned seeks a clarificatory resolution from the Court on this matter for the future guidance of all persons, agencies, and offices concerned.[13]

Likewise, the FMBO implores, to wit:

IN VIEW THEREOF, may we respectfully request clarification if the tacking of leave credits to the length of judicial service for the purpose of computing the longevity pay as prescribed in Administrative Circular No. 58-2003 should be made applicable to all justices and judges retiring under RA 910, as amended. In the affirmative, may we respectfully recommend that the DBM be directed to comply with the provisions of Administrative Circular No. 58-2003. In case of non-compliance by the DBM, may we further respectfully recommend that the payment of the retirement benefit corresponding to the longevity pay based on tacked leave credits to be sourced from savings of the Supreme Court, the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals and the lower courts, as the case may be, be made subject to availability of savings.[14]

In fine, illumination is allegedly needed respecting the issue of whether or not longevity pay of Justices and Judges upon compulsory retirement shall be computed in accordance with A.C. No. 58-2003, which provides for the tacking of earned leave credits.

The foregoing letter of the DBM notwithstanding, this Court is of the view that the uncertainty is more ostensible than real. There is nothing that needs to be clarified as A.C. No. 58-2003, as well as all the other Resolutions issued by this Court in A.M. No. 03-9-20-SC, explicitly dictates the tacking or inclusion of earned leave credits to the computation of longevity pay of Justices and Judges upon their compulsory retirement. This Court agrees with Associate Justice Garcia that A.C. No. 58-2003, "just like all Court issuances which are made pursuant to its constitutional power to interpret laws, has the force and effect of law," and that, "all concerned government agencies like the Department of Budget and Management (DBM) and our very own Budget Division, included, are thereby duty-bound to comply x x x"[15] therewith exclusive of any written appeal, demand or request of its prospective beneficiaries.

Anent the recommendations of the FMBO, to quote again:

In the affirmative, may we respectfully recommend that the DBM be directed to comply with the provisions of Administrative Circular No. 58-2003. In case of non-compliance by the DBM, may we further respectfully recommend that the payment of the retirement benefit corresponding to the longevity pay based on tacked leave credits to be sourced from savings of the Supreme Court, the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals and the lower courts, as the case may be, be made subject to availability of savings.[16] (Emphasis supplied.)

This Court approves the recommendation insofar as the FMBO proposes that the DBM be directed to comply with the provisions of A.C. No. 58-2003.

The suggestion, however, that, in the event the DBM refuses to comply with a prospective directive from this Court, payment of subject retirement benefit be made subject to availability of the savings of the court concerned, is without merit. To conform thereto would make payment of such retirement benefit conditional, defeating its compulsory nature, not to mention the very wisdom behind the issuance of A.C. No. 58-2003, which is to ensure the comfort and security of retired Justices and Judges who have tirelessly and faithfully served the government. In other words, compliance by the DBM with the directive contained herein is the only option available to it, bearing in mind that this Court, after due and painstaking consideration, has sufficiently made clear its position on the matter.

NOW, THEREFORE, BE IT RESOLVED, as it is hereby Resolved, that, in accordance with Supreme Court Administrative Circular No. 58-2003 and Supreme Court En Banc Resolutions dated 7 October 2003, 11 November 2003, and 26 July 2005, in Administrative Matter No. 03-9-20-SC, henceforth, the Fiscal Management and Budget Office of this Office is DIRECTED to include in the computation of the longevity pay of Justices and Judges, upon compulsory retirement, their total earned leave credits. The Department of Budget and Management is, likewise, heretofore ENJOINED to release such payment to Justices and Judges, upon compulsory retirement,

representing their longevity pay computed on the basis of Administrative Circular No. 58-2003.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Garcia, Velasco, Jr., Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 2-3.

[2]Id. at 6-9.

[3] Id. at 2-3.

[4] Id. at 6.

[5] Id. at 18-22.

[6]Id. at 18.

[7] Id. at 10-11.

[8] Id. at 18.

[9]Id. at 10-12.

[10] Id. at 18-22.

[11]Id. at 21-22.

[12]Id. 20-21.

[13] Id. at 3.

[14] Id. at 9.

[15] Id. at 3.

[16] Id. at 9.

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