

IN RE CLAIM OF CAR JUDGE ALFREDO L. NOEL FOR MONTHLY PENSION IN ADDITION TO FIVE-YEAR LUMP-SUM RETIREMENT PAY.

A.M. No. 1155-CAR. August 31, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

Judge Alfredo L. Noel of the Court of Agrarian Relations reached the age of seventy years on November 16, 1974. In his application for retirement, he stated that he had served the government for nineteen years.

Clerk of Court Romeo D. Mendoza in his letter to the Government Service Insurance System transmitting Judge Noel's application for compulsory retirement said that Judge Noel had more than eighteen years of creditable service in the government.

He served the government continuously as city fiscal of Davao City and CAR Judge from June 16, 1956 to November 15, 1974, a period of 18 years and five months.

He was a temporary clerk in the House of Representatives from August 2 to September 30, 1926 (59 days). He served as a technical assistant in the National Assembly from July 1, 1939 to January 31, 1940 or for seven months. His total period of government service was 19 years and 59 days or, as computed by the GSIS: 19.16393.

As his salary as CAR Judge was P42,400, he was entitled to a five-year lump-sum payment of P212,000. Deducting from that amount the unpaid premiums of P7,506, the balance amounted to P204,500 which was paid to him on February 25 and June 6, 1975.

Last year, Judge Noel requested the GSIS to credit him with his alleged service as clerk in the office of Assemblyman Jose Ozamiz from July 1, 1936 to June 30, 1939, a period of three years.

The GSIS in a letter dated August 5, 1980 informed him that his claim was disapproved because he failed to submit his reconstructed record of service on or before June 21, 1965, as required by Republic Act No. 3544 which amended section 13-A of Commonwealth Act No. 186.

The GSIS said that appointment papers and other incontestable proofs (not affidavits) would be sufficient to establish the claim for services rendered to the government.

Judge Noel was informed that the disapproval of his claim was final "considering that the alleged service is not reflected in existing record of the Civil Service Commission".

Not satisfied with the verdict of the GSIS, Judge Noel in his letter to the Chief Justice dated February 24, 1981 pleaded that his alleged three-year service in the office of Assemblyman Ozamiz be added to his documented years of government service and that he be allowed to receive a monthly pension as provided for in Republic Act No. 910.

He attached to his letter a carbon copy of the affidavit of Lourdes H. Ozamiz dated July 8, 1980 wherein she

swore that Judge Noel worked in the office of her husband from July 1, 1936 to June 30, 1939.

We agree with the GSIS that Judge Noel's alleged three-year service in the office of Assemblyman Ozamiz, which is not reflected in the records of the Civil Service Commission, cannot be credited in his favor.

Republic Act No. 910, as amended by Republic Acts Nos. 2614, 4627 and 5095 and by Presidential Decree No. 1438, provides:

"SECTION 1. When a Justice of the Supreme Court or of the Court of Appeals, a judge of Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, Juvenile and Domestic Relations, or a city or municipal judge who has rendered at least twenty years service in the judiciary or in any other branch of the government, or in both, (a) retires for having attained the age of seventy years, or (b) resigns by reason of his incapacity to discharge the duties of his office, he shall receive during the residue of his natural life, in the manner hereinafter provided, the salary which he was receiving at the time of his retirement or resignation. x x x."

"SEC. 2. In case of a Justice of the Supreme Court or Court of Appeals or a judge of the Court of First Instance, Circuit Criminal Court, Agrarian Relations, Tax Appeals, Juvenile and Domestic Relations, city or municipal court, or any other court hereafter established, dies while in actual service, his heirs shall receive a lump sum of five years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, living and representation allowances received by him as such Justice or Judges, if by reason of his length of service in the Government he was already entitled to the benefits of this Act. The same benefits provided for in this section shall be extended to any incumbent Justice of the Supreme Court or the Court of Appeals, or a judge of the Court of First Instance, Circuit Criminal Court, Agrarian Relations, Tax Appeals, Juvenile and Domestic Relations, or city or municipal court, or any other court hereafter established, as the case may be, who, without having attained the length of service required in Section one hereof, shall have to retire upon reaching the age of sixty-five years, or upon other causes, such as illness or permanent physical disability, to be certified to by the tribunal to which the Justice concerned belongs, or by the Supreme Court in the case of an incumbent judge of the Court of First Instance, and other similar courts of record, or a city or municipal judge, which render him incapacitated to continue in his position."

"SEC. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals, of a judge of the Court of First Instance, Circuit Criminal Court, Agrarian Relations, Tax Appeals, Juvenile and Domestic Relations, city or municipal court, or any other court hereafter established shall be automatically entitled to a lump sum of five 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 thereafter upon survival after the expiration of this period of five years, to a further annuity payable monthly during the residue of his natural life equivalent to the amount of the monthly salary he was receiving on the date of his retirement; Provided, however, That if the reason for the retirement be any permanent disability contracted during his incumbency in office and prior to the date of retirement he shall receive only a gratuity equivalent to ten years' salary and allowances aforementioned with no further annuity payable monthly during the rest of the retiree's natural life."

Republic Act No. 910 requires that a judge, to be entitled to a monthly pension or annuity after the expiration of five years from the date of his retirement, should have rendered "at least twenty years service in the judiciary or in any other branch of the Government or in both".

If he has not served the government for at least twenty years, his retirement pay amounts only to a lump-sum payment of five years' salary based upon the highest annual salary that he has received. (Allowances are included under Presidential Decree No. 1438 which took effect on June 10, 1978.)

Considering that Judge Noel's length of government service falls short of twenty years, the Court, much to its

regret, cannot authorize the payment to him of a monthly annuity.

WHEREFORE, his claim is denied.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Abad Santos, J., on leave.

Teehankee, J., no part.

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