

(RE: RETIREMENT BENEFITS OF THE LATE CITY JUDGE ALEJANDRO GALANG, JR.)

A.M. No. 1270-RET. August 31, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The late City Judge Alejandro Galang, Jr., who died of "Metastatic Retroperitorial Angiosarcoma" - a terminal disease, on August 29, 1979, while in the service, filed two days before his death, or on August 27, 1979, with the Government Service Insurance System (GSIS) an application, dated August 25, 1979, for total and permanent disability benefits "under the provisions of his insurance policy."

After his death, his widow, Ramona T. Galang, filed with this Court on November 27, 1979, a similar application for retirement benefits under "Republic Act No. 910, as amended by Republic Act No. 5095," docketed as Administrative Matter No. 1270-Ret. We approved on December 6, 1979 the payment of a five-year lump sum gratuity of P260,160.00 due the deceased.

In the meanwhile, the application for retirement with the GSIS was approved by it "effective August 28, 1979." In a letter, dated January 23, 1980, the Manager of the Survivorship Benefits Department informed the Court, through the Court Administrator, that Judge Galang was found to be totally and permanently disabled by the System "not earlier than August 28, 1979" and requested that the balance of P260,160.00 be remitted to the System so that Judge Galang's ten-year lump sum benefits may be paid to his surviving legal heirs.

By resolution dated February 14, 1980, the Court resolved to deny the payment of ten-year lump sum retirement benefits to the surviving legal heirs of Judge Galang and to advise the GSIS accordingly.

Submitted now for resolution is a Motion for Reconsideration filed by the widow based mainly on the grounds that the opinion of the GSIS on the matter, though not binding on the Court, should be accorded strong persuasive effect; that the filing of the application directly with the GSIS was simply an error of procedure; and out of humanitarian considerations, it appearing that the late Judge Galang discharged his official duties under very difficult circumstances and left a widow and eight minor children one of whom is physically disabled.

In a subsequent Motion, the widow requested for time to submit Judge Galang's complete service record before resolution of her plea for reconsideration.

Republic Act No. 910, as amended by Republic Acts Nos. 1057, 1797, 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) re-signs 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. And 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 has attained the age of sixty years and has rendered at least twenty years service in the Government, the last five of which shall have been continuously rendered in the judiciary, he shall likewise be entitled to retire and receive during the residue of his natural life, also in the manner herein-after provided; the which he was then receiving. x x x "

"Sec. 2. In case 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 of Judge, if by reason of his length of service in the Government he was already entitled to the benefit 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 in-capacitated to continue in his position."

"SEC. 3. Upon retirement, a justice of the Supreme Court or of the 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 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."

It is clear from the aforequoted Section 3 in relation to Section 1, that to be entitled to the lump sum payment of the gratuity equivalent to ten years' salary and allowances, a member of the Judiciary should have retired by reason of permanent disability contracted during his incumbency in office and prior to the date of retirement and should have rendered, at the least, twenty (20) years service in the Judiciary or in any other branch of the Government, or both.

The service record of the late Judge Galang shows that his government service commenced on August 1, 1969 to April 16, 1972 (2 years, 8 months, 15 days) as Special Assistant to Secretary Maceda, Office of the President; then from April 17, 1972 to August 28, 1979 (7 years, 14 months, 11 days) as City Judge, City Court of Manila, adding up to a period of 10 years and 26 days of government service. Additional proof of his government service submitted by his widow consisted of certified photographic copies of his appointments as Secretary I, Public Service Commission from October 7, 1958 to June 30, 1959 (8 months, 23 days), and from July 1, 1959 to September 30, 1959 (3 months); certification and affidavits to the effect that he was employed as Legal Officer III, Bureau of Customs from October 5, 1964 to November 30, 1966 (2 years, 25 days), or, an additional period of 2 years, 11 months and 48 days or 3 years and 18 days. Thus, the total period of government service of the late

Judge Galang is only thirteen (13) years, one (1) month and fourteen (14) days, which is far short of the 20 years required by law.

Judge Galang's case properly falls under Section 2 of the law, as amended, *supra*, which grants a five-year lump sum gratuity to the heirs of a member of the Judiciary, who dies while in actual service, or who, without having attained the required twenty years service under Section 1, shall have to retire upon reaching the age of 65 years or upon other causes such as illness or permanent physical disability. Judge Galang's heirs have already received the five-year lump sum gratuity to which he is entitled.

ACCORDINGLY, considering that Judge Galang's length of service in the Government falls short of the requisite twenty years, we hereby deny, much to our regret, the Motion for Reconsideration filed by his widow, Ramona T. Galang.

SO ORDERED.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.
Fernando, C.J., no part.

Teehankee, J., see brief concurrence.

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SEPARATE CONCURRING OPINION

TEEHANKEE, J.:

The applicable section of the Judiciary Retirement Act, Republic Act No. 910 as amended by Republic Act No. 5095 and P.D. No. 1438 dated June 10, 1978, is Section 2, the pertinent part of which provides that:

"Sec. 2. In case 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 high-est monthly salary plus the highest monthly aggre-gate of transportation, living and representation allowances received by him as such Justice of Judge, if by reason of his length of service in the Govern-ment 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 Crim-inal Court, Agrarian Relations, Tax Appeals, Juve-nile 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 muni-cipal judge, which render him incapacitated to continue in his position."

It will be noted that the requirement for the heirs to receive a lump sum of five years gratuity computed on the basis of the highest monthly salary and allowances received by the Justice or Judge who dies while in actual service that "by reason of his length of service in the Government [of at least twenty years service in the judiciary

or in any other branch of the Government, as provided in Section 1 of the Act] he was already entitled to the benefits of this Act", has been eliminated by the Court since the case of the late Judge Isaac Puno, Jr. who died at age 41 with only over two (2) years of service in the Government.[1] The Court's rationale was that if under the same section a Justice or Judge who, without having attained the twenty-years length of service retires because of "illness or permanent disability . . . which render him incapacitated to continue in his position" is entitled to the five years lump sum gratuity provided by the cited Section, then neither should such length of service be required of the Justice or Judge who dies or is killed in actual service, since there is no more permanent or total physical disability than death.

The heirs of the deceased Judge Galang at bar as well as of other judges who died in actual service, although with less than twenty years length of service, have been paid the five-years lump sum gratuity following the ruling in the case of Judge Puno.[2] The heirs are not entitled to receive more, even if the deceased had twenty years or over of government service. The only benefit that the Act grants the heirs of the deceased Justice or Judge who dies in actual service under the cited Section is the said five-years lump sum gratuity, regardless of the length of service.

[1] AM No. 589-Retirement, Resolution of June 28, 1977.

[2] Among them were the heirs of the deceased Court of Appeals Justice Ramon Pamatian, CFI Judges Jose Tiangco and Emilio Salas, City Judge Leovigildo Gotico and Municipal Judges Loreto Esguerra, Tanerredo Arevalo, Ramon N. Gabato, Jaime A. Villaluz and Lotus Sobejana.

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