

RE: APPLICATION FOR RETIREMENT OF JUDGE MOSLEMEN T. MACARAMBON UNDER REPUBLIC ACT NO. 910, AS AMENDED BY REPUBLIC ACT NO. 9946.

A.M. No. 14061- Ret. June 19, 2012

Ponente: BRION, J.

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BRION, J.:

For consideration are: (1) the letter dated September 15, 2011 of Judge Moslemen T. Macarambon (Judge Macarambon); and (2) the Memorandum of Court Administrator Jose Midas P. Marquez (Court Administrator), both addressed to former Chief Justice Renato C. Corona regarding the request of Judge Macarambon to retire under Republic Act (RA) No. 910, as amended by RA No. 9946.

Judge Macarambon was a judge of the Regional Trial Court (RTC) for a period of 18 years, 1 month and 16 days. Before reaching the optional retirement age of 60, Judge Macarambon transferred to the Commission on Elections (COMELEC) having been appointed as Commissioner by then President Gloria Macapagal Arroyo (President Arroyo). He served as COMELEC Commissioner for less than a year and was no longer re-appointed after having been bypassed thrice by the Commission on Appointments. Judge Macarambon was subsequently appointed by President Arroyo as President/CEO of the National Transmission Corporation but he resigned from the position less than a year after when he failed to receive a reappointment from President Benigno C. Aquino III.

In his letter, Judge Macarambon requests that he be allowed to retire under Section 1 of RA No. 910, as amended, the pertinent portions of which read:

SECTION 1. When a Justice of the Supreme Court, the Court of Appeals, the Sandiganbayan, or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established who has rendered at least fifteen (15) 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/her incapacity to discharge the duties of his/her office as certified by the Supreme Court, he/she shall receive during the residue of his/her natural life, in the manner hereinafter provided, the salary which plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance which he/she was receiving at the time of his/her retirement, or resignation, and non-wage benefit in the form of education scholarship to one (1) child of all Justices and Judges to free tuition fee in a state university or college: Provided, That such grant will cover only one (1) bachelor's degree. When a Justice of the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established has attained the age of sixty (60) years and has rendered at least fifteen (15) years service in the Government, the last three (3) of which shall have been continuously rendered in the Judiciary, he/she shall likewise be entitled to retire and receive during the residue of his/her natural life also in the manner hereinafter provided, the salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional

compensation allowance which he/she was then receiving and the non-wage benefit in the form of education scholarship to one (1) child of all Justices and Judges to free tuition fee in a state university or college: x x x .

Judge Macarambon asserts that Section 1 allows the payment of retirement benefits to a judge of the RTC who resigns by reason of incapacity to discharge the duties of his office. Citing the case of *Re: Application for Retirement* under R.A. No. 910 of Associate Justice Ramon B. Britanico of the Intermediate Appellate Court, he posits that his appointment as COMELEC Commissioner incapacitated him to discharge his duties as an RTC judge on account of his “submission to the will of the political authority and appointing power.”

As an alternative, he appeals that he be allowed to retire under the second sentence of Section 1 considering that he has rendered a total of 18 years, 1 month and 16 days of judicial service and a total of 35 years of government service. Judge Macarabon claims that while he was short of the minimum age requirement of 60, he believes that the Court’s ruling in *Re: Gregorio G. Pineda*[1] is applicable to his case where the Court brushed aside such requirement and considered the retiree’s career which was marked with competence, integrity, and dedication to public service.

In his Memorandum, the Court Administrator disagreed with Judge Macarambon’s position. The Court Administrator averred:

We humbly submit that Judge Macarambon’s case is different from that of Justice Britanico’s. Justice Britanico, together with the other Members of the Judiciary at that time, was ordered by then President Corazon C. Aquino, through Proclamation No. 1, to tender their courtesy resignations. The decision as to whether or not they would stay in their office was the prerogative of then President Aquino. On the contrary, the prerogative to accept the appointment as a COMELEC Commissioner depended entirely on Judge Macarambon. He had the choice of whether or not to accept the appointment of being a Commissioner or to stay as a RTC Judge. Therefore, his appointment as a COMELEC Commissioner did not render him incapacitated to discharge the duties of his office as a RTC Judge.

Nonetheless, based on the documents submitted, Judge Macarambon may retire under R.A. No. 1616, as he meets all the requirements for retirement under the said law, i.e., has been in the government service as of 01 June 1977 and has rendered at least twenty (20) years government service, the last three (3) years of which have been continuous.

The sole issue is whether we can allow a judge who voluntarily resigned from his judicial office before reaching the optional retirement age to receive retirement benefits under RA No. 910, as amended.

Resignation and retirement are two distinct concepts carrying different meanings and legal consequences in our jurisdiction. While an employee can resign at any time, retirement entails the compliance with certain age and service requirements specified by law and jurisprudence. Resignation stems from the employee’s own intent and volition to resign and relinquish his/her post.[2] Retirement takes effect by operation of law. In terms of severance to one’s employment, resignation absolutely cuts-off the employment relationship in general; in retirement, the employment relationship endures for the purpose of the grant of retirement benefits.

RA No. 910, as amended allows the grant of retirement benefits to a justice or judge who has either retired from judicial service or resigned from judicial office.

In case of retirement, a justice or judge must show compliance with the age and service requirements as provided in RA No. 910, as amended. The second sentence of Section 1 imposes the following minimum requirements for optional retirement:

(a)

must have attained the age of sixty (60) years old; and

(b)

must have rendered at least fifteen (15) years service in the Government, the last three (3) of which shall have been continuously rendered in the Judiciary.

Strict compliance with the age and service requirements under the law is the rule and the grant of exception remains to be on a case to case basis.[3] We have ruled that the Court allows seeming exceptions to these fixed rules for certain judges and justices only and whenever there are ample reasons to grant such exception.[4]

On the other hand, resignation under RA No. 910, as amended must be “by reason of incapacity to discharge the duties of the office.” In *Britanico*, we held that the resignation contemplated under RA No. 910, as amended must have the element of involuntariness on the part of the justice or judge. More than physical or mental disability to discharge the judicial office, the involuntariness must spring from the intent of the justice or judge who would not have parted with his/her judicial employment were it not for the presence of circumstances and/or factors beyond his/her control.

In either of the two instances above-mentioned, Judge Macarambon’s case does not render him eligible to retire under RA No. 910, as amended.

First, Judge Macarambon failed to satisfy the age requirement as shown by the records and by his own admission that he was less than 60 years of age when he resigned from his judicial office before transferring to the COMELEC. Likewise, he failed to satisfy the service requirement not having been in continuous service with the Judiciary for three (3) years prior to his retirement.

Second, Judge Macarambon’s resignation was not by reason of incapacity to discharge the duties of the office. His separation from judicial employment was of his own accord and volition. Thus, our ruling in *Britanico* cannot be properly applied to his case since his resignation was voluntary.

Third, we find no exceptional reasons to justify Judge Macarambon’s request. In *Re: Gregorio Pineda*, the case cited by Judge Macarambon, the Court fully explained how a liberal approach in the application of retirement laws should be construed, thus:

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.[5]

In this case, Judge Macarambon failed to present similar circumstances, i.e., the presence of available and sufficient accumulated leave credits which we may tack in to comply with the age requirement. A verification from the Leave Division, OCA shows that at the time he left the Court on November 5, 2007, Judge Macarambon

only had 514 vacation leaves and 79 sick leaves which are insufficient to cover the gap in the age of retirement. Moreover, these accumulated leave credits were all forwarded to the COMELEC upon his transfer. Further, we already stated that unlike in Britanico, the nature of his separation from his judicial office was voluntary.

All told, we are not unmindful of Judge Macarambon's long and dedicated service in the government for which he is undeniably entitled to be rewarded. We agree with the Court Administrator that although Judge Macarambon is not qualified to retire under RA No. 910, as amended, he may retire under RA No. 1616 based on the documents he had presented before the Court which meets the age and service requirements under the said law.

WHEREFORE, premises considered, we resolve to:

(1)

NOTE the Memorandum dated April 3, 2012 of Court Administrator Jose Midas P. Marquez; and

(2)

DENY the letter-request dated September 15, 2011 of Judge Moslemen T. Macarambon to retire under Republic Act No. 910, as amended by Republic Act No. 9946 for lack of legal basis.

Judge Macarambon is hereby ADVISED to file an application for optional retirement under Republic Act No. 1616 with the Government Service Insurance System, subject to the submission of the requirements for retirement, and to the deduction of the retirement gratuity he received from his previous retirement, if there be any, and subject finally to the availability of funds and the usual clearance requirements.

SO ORDERED.

Carpio, Senior Associate Justice (Per Section 12, R.A. 296, The Judiciary Act of 1948, as amended), Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.

Velasco, Jr., J., on official leave)

[1] A.M. No. 6789, July 13, 1990, 187 SCRA 469,475.

[2] Joseph E. Estrada v. Aniano Desierto, G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452, 496.

[3] Cena v. Civil Service Commission, G.R. No. 97419 July 3, 1992, 211 SCRA 179, 187, citing Re: Application for Retirement Benefits of Former Judge Gregorio G. Pineda, supra note 1.

[4] Ibid.

[5] Ibid.

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