

IN RE: AMOUNT OF THE MONTHLY PENSION OF JUDGES AND JUSTICES STARTING FROM THE SIXTH YEAR OF THEIR RETIREMENT AND AFTER THE EXPIRATION OF THE INITIAL FIVE-YEAR PERIOD OF RETIREMENT.

A.M. No. 90-9-019-SC. October 04, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

The matter of the financial components of the monthly pension to be paid retired judges and justices was brought before the Court en banc by the Office of the Court Administrator in a memorandum filed by Court Administrator Meynardo A. Tiro on February 14, 1990 and in an urgent memorandum filed on August 16, 1990.

Republic Act No. 910, otherwise known as the Special Retirement Law of Judges and Justices and which took effect in 1935, granted a monthly pension for life to a judge or justice qualified to retire from the service. Under Section 3 thereof, upon retirement the retiree shall receive a five-year lump sum and upon survival of the five-year period, the retiree shall receive a monthly pension during the rest of his natural life. Under Republic Act No. 5095, which amended Republic Act No. 910 and took effect on June 17, 1967, the amount of the monthly pension was fixed at the value of the monthly salary of the retiree at the time of retirement.

On June 10, 1978, Republic Act No. 910 was again amended by Presidential Decree No. 1438. However, it appears that two versions of said decree were published in the Official Gazette, although both were dated June 10, 1978 and bore exactly the same number.

In Volume 74 of the Official Gazette, No. 30, Section 1 of Presidential Decree No. 1438 reads in part as follows:

"Section 1. Section 2 and 3 of R.A. 910 as amended by R.A. 5095 are hereby amended further to read as follows:

x x x

"Section 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: 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."

The above-quoted provision appears exactly as worded in the Vital Documents on the Declaration of Martial Law published by the Malacañang Records Office.

However, in Volume 74 of the Official Gazette, No. 41, Section 3 of Republic Act No. 910, as amended by Presidential Decree No. 1438, provides:

"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 and 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 expiration of this period of five years, to 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" (Emphasis supplied).

It will be noted that the version of Presidential Decree No. 1438 appearing in the earlier publication of the Official Gazette (74 O.G. No. 30) is silent as to the components of the monthly pension payable starting with the sixth year of retirement.

It is significant, however, that based on the copy of Presidential Decree No. 1438 as published in 74 O.G. No. 30 and in the aforesaid publication of Vital Documents on the Declaration of Martial Law, since 1978 the Government Service Insurance System (GSIS) had always computed the first five-year lump sum retirement as follows: (1) highest salary, plus (2) highest representation and transportation allowances (RATA) and longevity pay at the rate of five percent (5%) additional for every five (5) years of continuous service as a judge or justice. After the five-year lump sum period, that is, on the sixth year of retirement, the GSIS computed the monthly pension for the rest of the retiree's natural life as follows: (1) highest salary, plus (2) highest RATA, plus (3) longevity pay. Parenthetically, longevity pay was granted by Section 42, Batas Pambansa Blg. 129 starting in 1983 and, by the Court's resolution, is considered part of the salary.

The present question arose when the Commission on Audit (COA), thru its corporate auditor assigned to the GSIS, issued a memorandum dated December 6, 1989, addressed to Mrs. Lourdes Patag, Vice-President, Social Insurance Group II, of the GSIS, informing the latter that, pursuant to Presidential Decree No. 1438 amending Section 3 of Republic Act No. 910, after the expiration of the initial five-year period of retirement, that is, at the beginning of the sixth year of retirement, the monthly pension of judges and justices shall consist only of the monthly salary which the retiree was receiving on the date of his retirement. In other words, the representation and transportation allowances shall not form part of the monthly pension of a retiree. Obviously, the COA was relying on the version of Presidential Decree No. 1438 as published in 74 O.G. No. 41.

In his aforesaid memorandum, Court Administrator Tiro recommends that the GSIS be allowed to continue paying the monthly pension consisting of the highest salary, highest longevity pay, and highest representation and transportation allowances (RATA) which, as aforesaid, had always been the bases and components of the pension payments it had been making since 1978 when the amendatory decree took effect. He invokes the liberal interpretation of the law adopted by the court and the reasons given therefor in "In Re: Application for Life Pension Under Rep. Act 910, RUPERTO G. MARTIN, Applicant," (A.M. No. 747-Ret., July 13, 1990), the decision wherein entitled former Justice Ruperto G. Martin "to receive a monthly pension for the rest of his natural life, as provided by law, based on his highest monthly salary plus the highest monthly aggregate of transportation, living and representation allowances he was receiving on the date of his retirement" (Emphasis ours). It will be recalled that Justice Martin was granted a ten-year lump sum gratuity by reason of permanent disability under the aforementioned provisions of Section 3 of Republic Act No. 910, as amended by Presidential

Decree No. 1438, which even provides for "no further annuity payable monthly during the rest of the retiree's life."

The most that can be said for the hereinbefore quoted provisions of the second version of Presidential Decree No. 1438 subsequently published in 74 O.G. No. 41 and cited by the COA is that it gives the seeming impression of having impliedly repealed in part or amended the first version of the same decree published in 74 O.G. No. 30. Aside from the well-known rule which disfavors implied repeals, the indisputable fact that both versions of said decree were singularly dated June 10, 1978 and were identified by the very same number would necessarily reject such a construction. Had the issuing authority intended such a repeal or modification, an express statement to effect or a different number for the supposed repealing decree or even a subsequent date of effectivity therefor could have been resorted to with facility.

Furthermore, it is both unknown and unclear as to why one version was published ahead of the other, and not the other way around. Hence, to draw any conclusion from what appears as a mechanically adopted sequential printing would necessarily be an unwarranted inference drawn from an obvious uncertainty. When we pause and consider the purpose and the intended beneficiaries of said pension scheme, we cannot in conscience thereby subject their rights to such a tenuous thread of circumstance.

We find it more logical, just and equitable, under the circumstances, to hold that the monthly pension for retired judges and justices starting on the sixth year of their retirement should include the highest monthly aggregate of transportation, living and representation allowances the retiree was receiving on the date of his retirement. This is definitely more in keeping with and gives substance to the elementary rule of statutory construction that, being remedial in character, retirement laws should be liberally construed and administered in favor of the persons intended to be benefited and all doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes (*Bautista vs. Auditor General, etc., et al.*, 104 Phil. 428 [1958]; *Ortiz vs. Commission on Elections, et al.*, 162 SCRA 812 [1988]). Retirement laws are intended to entice competent men and women to enter the government service and to permit them to retire therefrom with relative security, not only for those who have retained their vigor but, more so, for those who have been incapacitated by illness or accident (See *Abad Santos vs. Auditor General, et al.*, 79 Phil. 176 [1947]).

We are, therefore, firmly convinced and so rule that the present computation heretofore adopted by the GSIS and followed for around twelve (12) years now, without any objection or reprobation by the then lawmaking authority and any other functionary or entity, is correct and consonant with the avowed policy of the law on retirement, especially when it is considered that a pension is a form of deferred compensation for services performed.

WHEREFORE, the Government Service Insurance System is hereby directed to continue implementing Republic Act No. 910, as amended by Presidential Decree No. 1438, in the same manner and on the same bases of computation as it has done since 1978, so that on the sixth year of retirement the monthly pension to be paid to the retiree shall consist of the highest salary, the highest longevity pay, and the highest representation and transportation allowances (RATA) the retiree was receiving on the date of retirement.

Let copies of this resolution be furnished to both the Commission on Audit and the Department of Budget and Management.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, and Medialdea, JJ., concur.

Fernan, C.J., Paras, and Feliciano, JJ., on leave.

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