

REQUEST OF CLERK OF COURT TESSIE L. GATMAITAN, COURT OF APPEALS, FOR PAYMENT OF RETIREMENT BENEFITS OF HON. COURT OF APPEALS ASSOCIATE JUSTICE JORGE S. IMPERIAL (ACTING PRESIDIN...

A.M. No. 9777-Ret. August 26, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a question of utmost importance not only to retired Associate Justice Jorge S. Imperial of the Court of Appeals but to the entire Court of Appeals, the second highest Court of this Republic, as well.

On January 25, 1999, Atty. Tessie L. Gatmaitan, Clerk of Court of the Court of Appeals, addressed the following letter to the Honorable Chief Justice, to wit:

"This letter refers to the forthcoming retirement of February 4, 1999 of Acting Presiding Justice Jorge S. Imperial.

Upon the promotion of Justice Arturo B. Buena to the Supreme Court on January 5, 1999, the most senior Associate Justice Jorge S. Imperial assumed the position of Acting Presiding Justice of this Court, by operation of law, pursuant to Section 8-a, Rule 1 of the Revised Internal Rules of the Court of Appeals which provides:

"Sec. 8. Application of the Rule on Precedence. - The rule on precedence shall be observed and applied in the following instances:

a. In case of vacancy in the office of the Presiding Justice or in the event of his absence or inability to perform the powers, functions and duties of his office, the Associate Justice who is first in precedence shall perform his powers, functions, and duties until such disability is removed or another Presiding Justice is appointed and has qualified."

Consequently, Acting Presiding Justice Imperial now receives the salary and allowance of the Presiding Justice.

Moreover, Sec. 3, Presidential Decree 1438 amending R.A. 910 as amended by R.A. 5095 states that upon retirement, a justice of the Court of Appeals `xxx 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 xxx.'

Considering the foregoing, advice is therefore respectfully requested on the propriety/validity of computing Justice Imperial's compulsory retirement benefits based on the salary and allowances of a Presiding Justice.

xxx"

On February 1, 1999, there was received by the Court from Court Administrator Alfredo L. Benipayo a memorandum for the Chief Justice, recommending that the aforesaid request of Atty. Tessie L. Gatmaitan on the

"propriety/validity of computing the compulsory retirement benefits of Justice Jorge S. Imperial on the basis of the salary and allowances of a Presiding Justice", be denied.

In the same memorandum, the Court Administrator quoted in part Section 9 of Executive Order No. 964 dated June 22, 1984, thus:

"Section 9 - HIGHEST BASIC SALARY RATE

The compensation of salary or pay which may be used in computing retirement benefits shall be limited to the highest basic salary rate actually received by an official/employee as fixed by law and/or indicated in his duly approved appointment xxx."

and Section 259 of Government Auditing Rules and Regulations which reads:

"Section 259. Retirement - Government employees holding two or more positions retire only from his regular or main position and not from his additional position or positions and consequently, the salaries attached to the additional positions will not be included in the computation of the gratuity or annuity of the employee (CSC MC 40, s. 1989)."

After a careful study, it is submitted that the provisions of law cited by the Court Administrator are not applicable to the case under consideration.

To begin with, it is undisputed that on January 5, 1999, upon the promotion of the then Acting Presiding Justice Arturo B. Buena to this Court, Justice Imperial became the Acting Presiding Justice of the Court of Appeals, performed the duties and received the salary of Presiding Justice of the Court of Appeals, pursuant to Section 5 of BP Blg. 129 otherwise known as The Judiciary Reorganization Act of 1980, and Section 8(a), Rule 1 of the Revised Internal Rules of the Court of Appeals (RIRCA).

Section 5 of BP 129 reads:

"Sec. 5. Succession to Office of Presiding Justice. - In case of a vacancy in the Office of the Presiding Justice or in the event of his absence or inability to perform the powers, functions, and duties of his office, the Associate Justice who is first in precedence shall perform his powers, functions, and duties until such disability is removed, or another Presiding Justice is appointed and has qualified."

Section 8 (a) of the RIRCA provides:

"Section 8. Application of the Rule on Precedence - The rule on precedence shall be observed and applied in the following instances:

a. In case of vacancy in the office of the Presiding Justice or in the event of his absence or inability to perform the powers, functions, and duties of his office the Associate Justice who is first in precedence shall perform his powers, functions, and duties until such disability is removed or another Presiding Justice is appointed and has qualified."

It bears stressing, in this connection, that the said RIRCA was adopted by the Court of Appeals in a session En Banc, pursuant to the pertinent provision of Section 12 of BP Blg. 129 and became effective on August 18, 1988, fifteen (15) days after submission thereof to this Supreme Court. It is therefore decisively clear that Justice Imperial became Acting Presiding Justice of the Court of Appeals by operation of law, at a time when the position of Presiding Justice of the Court of Appeals was vacant. He served, as such, from January 5 to February 4, 1999, upon reaching the compulsory retirement age of seventy years, and after serving the judiciary for a period of 36 years, 3 months and 29 days, as City Judge of Legaspi City, Judge of the Court of First Instance of Albay, Judge of the Regional Trial Court of Manila and Associate Justice of the Court of Appeals, respectively. From January 5

to February 4, 1999, he received the full salary, emolument and allowances of a Presiding Justice, which the COA allowed in audit.

Justice Imperial was not the only Acting Presiding Justice of the Court of Appeals who was paid the salary, emolument and allowances of a Presiding Justice. Records of the Court of Appeals, as certified to by the Chief of the Fiscal Management and Budget Division and Chief of Management Audit Division, indubitably show that the following justices also served as Acting Presiding Justice and were paid the salary, emolument and allowances of a Presiding Justice, namely:

- Justice Ramon G. Gaviola, Jr. - 04-22-80 to 01-17-83
- Justice Oscar R. Victoriano - 02-02-88 to 04-19-88
- Justice Jose A.R. Melo - 12-03-91 to 08-09-92
- Justice Santiago M. Kapunan - 08-10-99 to 09-06-93
- Justice Vicente V. Mendoza - 01-11-94 to 03-21-94
- Justice Fidel P. Purisima - 08-04-97 to 01-26-98
- Justice Arturo B. Buena - 01-27-98 to 01-04-99

Indeed, from 1980 to the present, the Commission on Audit has consistently allowed in audit the payment of the salary, emolument and allowances of a Presiding Justice to the above-named justices while serving as acting Presiding Justice of the Court of Appeals.

Then, too, under Rep. Act No. 910 otherwise known as AN ACT TO PROVIDE FOR THE RETIREMENT OF JUSTICES OF THE SUPREME COURT AND OF THE COURT OF APPEALS, FOR THE ENFORCEMENT OF THE PROVISIONS HEREOF BY THE GOVERNMENT SERVICE INSURANCE SYSTEM, AND TO REPEAL COMMONWEALTH ACT NUMBERED FIVE HUNDRED AND THIRTY-SIX, it is expressly provided that a retiring justice of the Supreme Court or of the Court of Appeals is entitled to computation of his retirement pay on the basis of his salary, at the time of retirement. And to repeat, under Section 3 of PD 1438, amending Rep. Act 910, as amended by RA 5095, a justice of the Court of Appeals:

"xxx shall be automatically entitled to a lump sum payment 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 xxx."

It is thus beyond cavil that the right of Justice Imperial and the other justices above-mentioned as Acting Presiding Justice of the Court of Appeals, to receive the salary, emolument and allowances of a Presiding Justice during their acting incumbency, as such, is of statutory origin and not by mere designation, as contended by the Court Administrator.

Memorandum Circular No. 3-97 issued on July 7, 1997 by the Government Service Insurance System (GSIS) also buttress the submission that a retiring justice of the Court of Appeals, like former Justice Jorge S. Imperial, is entitled to retirement benefits computed on the basis of the highest salary, emolument and allowances received. The said GSIS Memorandum Circular succinctly directs that in the processing and adjudication of retirement claims under Section 12 (c) of RA 1616, as further amended by RA 4968, the computation of the gratuity payable to a retiring government official or employee shall be on the basis of highest salary received.

Verily, retirement benefits, gratuity and separation pay in the government service are invariably computed on the basis of the highest salary, emolument and allowances received. There is no valid reason why the retirement

benefits of Justice Jorge S. Imperial who, as earlier mentioned, spent more than thirty-six (36) years of the best years of his life in the judiciary, should not be computed on the basis of the highest salary, emolument and allowances he received as Acting Presiding Justice of the Court of Appeals.

It is well-settled that:

"xxx 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. The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security and well-being of government employees may be enhanced." [1]

WHEREFORE, the Court hereby grants the request of Atty. Tessie L. Gatmaitan, Clerk of Court of the Court of Appeals, to compute and pay the retirement benefits of former Justice Jorge S. Imperial on the basis of the highest salary, emolument and allowances received by him, as of the time of his retirement from the judiciary on February 4, 1999.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

[1] In re: Monthly Pension of Judges and Justices, 190 SCRA 315; Bengson vs. Drilon, 208 SCRA 133 and Profeta vs. Drilon, 216 SCRA 777, 783.

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