

LEANDRO ESPEJO, PETITIONER VS. THE AUDITOR GENERAL AND THE GENERAL MANAGER, GSIS, RESPONDENTS.

G.R. No. L-7123. June 17, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioner, Leandro Espejo, was a Civil Engineer in the Government service who was retired on April 4, 1933, under the provisions of Act 4051 of the Philippine Legislature. At the time of his retirement, he received a gratuity under said Law in the amount of P5,957.92, payable monthly until March 20, 1938.

On June 14, 1945, petitioner was reemployed as Engineer in the Bureau of Public Works without refunding the gratuity received. On June 16, 1952, he was again retired under Com. Act No. 186, as amended by section 12 (e) of Republic Act 660 (Government Service Insurance) at the age of 65 years, 3 months and 19 days. He applied for a retirement annuity, which the Service Insurance System computed at P10,983.82, but was actually paid P4,035.90 only, on account of certain deductions made. Petitioner questioned the deductions and appealed to the Auditor General, who sustained the management of the Insurance System. Still not satisfied, the petitioner appealed to this Court under Rule 45.

In the first error assigned, petitioner questions the deduction of the P5,957.92 gratuity he received when he first retired in 1933, claiming that under the law he was exempted from refunding the same. He premises his arguments upon the provisions of section 12 (e) of Rep. No. 660;

"If an employee who is not receiving the annuity mentioned in the next preceding subsection be reinstated in the service, he shall be given full credit for services rendered by him prior to the approval of this Act for the purpose of determining the amount of annuity under section eleven hereof to which he may be entitled: Provided, however, that said credit shall not be given if the employee shall not refund to the System * * * (or any gratuity or benefit he received under any pension or retirement plan of an employer unless expressly exempted by law from refunding said gratuity or pension: * * *." (2nd Indorsement, p. 1)

and alleges that he was exempted from refunding the gratuity under section 6 of Act 4051, as follows:

"Sec. 6. A person separated or retired under the provisions of this Act may be reappointed to any position in the Insular Government but by accepting such reappointment he shall forever waive all future gratuity payments and/or claims under the provisions of this Act. Similarly, a retired person who, under the provisions of section three hereof, has discounted the gratuity payments to which he is entitled shall, upon his reappointment to any position in the Insular Government, first refund to the investment fund or the bank to which he has ceded his rights to the gratuity the total discounted value of all the gratuity payments which he would not yet have received had these been made to him in monthly installments." (Act No. 4051).

This contention can not be sustained. The exemption claimed by petitioner is only inferable from sec. 6 aforesaid on the basis that when petitioner reentered the government service in 1945, his monthly gratuity payments under Act 4051 expired in March 1938 (Exhibit B). But such exemption is only by implication from the terms of the

law, and falls short of the "express" exemption required by sec. 12 (e) of Republic Act No. 660. The strict interpretation of these words by the Auditor General appears justified by the common sense consideration that if the petitioner is being credited with his service prior to 1945 in computing his retirement annuity, it is but just that all retirement benefits received by him prior to that date should also be charged to his account. Otherwise the petitioner would benefit both under Act 4051 and Republic Act No. 660, which is contrary to the plain intent of the law. Precisely sec. 28 of Com. Act 186, as amended by sec. 23 of Republic Act 660, establishes that only those who do not desire to be retired under the Insurance system preserve gratuity rights under previous retirement or pension plans. The funds of the Government Insurance System being mainly drawn from contributions of employee members, it would be unjust to the others that any member like petitioner should receive greater benefits than other employees of equal salary and term of service, who remained continuously in the employ of the Government. The petitioner's first assignment of error, therefore, must be overruled.

The averment that petitioner was retired without his consent lacks merit, since no distinction is made in the law between optional and compulsory retirement for refund purposes.

The second error assigned concerns the action of the Insurance System Management in deducting from petitioner's annuity P990 for premiums under section 12 of Commonwealth Act 186, as amended by Republic Act 660.

The law provides:

"Sec. 12. Conditions for retirement.—(a) On completion of 30 years of total service and attainment of age 57 years, a member shall have option to retire. In all cases, the last three years of service before retirement must be continuous, and he has made contributions for at least five years, which contributions may, upon his request, approved by the Board, be deducted from his life annuity under such terms and conditions as the Board may prescribe. * * *.

(c) Retirement shall be automatic and compulsory at the age of 65 years, if he has completed fifteen years of service, and if he has not, he shall be allowed to continue in the service until he shall have completed 15 years unless he is otherwise eligible for retirement."

It is petitioner's contention that the 5 years' contributions are required only for those who exercise the option to retire at age 57, but not those compulsorily retired at age 65. This position is untenable. The fact that the condition (that the member must make 5 year contributions at least) is not repeated in paragraph (c), does not alter its character of general condition precedent to retirement benefits; the preceding expression in paragraph (b), "In all cases, * * * contributions for at least five years..... makes it clear that the contributions must have been made whether retirement is optional or compulsory..

Of course, if the contribution was already deducted from the monthly salary paid to petitioner, the deduction from his gratuity would be improper, since it would double the petitioner's contribution. This is, however, recognized by the management of the System, since their ruling states:

"This office will, therefore, verify whether said premiums have actually been deducted from his salary, and accordingly remitted to this office. If so, Mr. Espejo is entitled to an adjustment of the correct amount of retirement premiums deductible from the proceeds of his retirement annuity".

Petitioner next complains (3rd assignment of error) that his gratuity was arbitrarily diminished by failing to compute on his service term his employment in the Bureau of Lands from July 1, 1907 to October 10, 1909. The records show, however, that such action was due to the petitioner's inability to furnish satisfactory evidence of such service. The System management insisted on affidavits to establish such service, and the petitioner merely submitted an unsworn certification. We do not believe the requirement was unreasonable, since an unsworn

certification carries no guaranty of truthfulness. At any rate, the System and the Auditor General have expressed willingness to credit the disputed period to petitioner upon submission of the requisite affidavits.

The last issue posed by petitioner-appellant is whether the Government Service Insurance System had the right to subject the lump payment of the first five years of his gratuity to a discount of 5 per cent compounded annually, amounting in this case to P1,436.18. The appellee Auditor General defends the action of the Insurance System by invoking Section 11 (a) (3), of Republic Act No. 728, amendatory of Commonwealth Act 186 and Republic Act No. 660, to the effect that employees retiring are entitled—

"(3) For those who are at least 65 years of age, lump sum payment of present value of annuity for first five years and future annuity to be paid monthly: Provided, however, That there shall be no discount from the annuity for the first five years of those who are 65 years of age or over on the date of approval of Republic Act 660",

and it is not denied that when Republic Act 660 was approved on June 16, 1951, petitioner Espejo was not yet 65 years old.

It is a fact, however, that Espejo did reach the age of compulsory retirement before Republic Act 728 was enacted, and that at such time, Republic Act 660 merely provided for lump sum payment of the annuity for the first five years, without any mention whatsoever of discounts. When the retirement rights of petitioner became vested, therefore, he became entitled to a full payment of the first five years of his annuity, and the proviso inserted by Republic Act No. 728 (restricting no discount privileges) could not operate retroactively to the prejudice of the vested rights of petitioner herein. Hence, his appeal from the order imposing the discount should be sustained.

Wherefore, the decision of the Auditor General, object of this appeal, is modified by declaring petitioner Leandro Espejo entitled to reimbursement of the P1,436.18 improperly discounted from the lump sum payment of his annuity for the first five years. In all other respects, the decision of the Auditor General is affirmed. Without costs.

Bengzon, Acting C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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