

**MERCEDES S. MARASIGAN, REPRESENTED BY ATTORNEY-IN-FACT
EUGENIA S. MARASIGAN, PLAINTIFF-APPELLEE, VS. HON. AMADEO
H. CRUZ, DR. JOSE R. CRUZ AND JOSE R. REYES MEMORIAL
HOSPITAL, D...**

G.R. No. L-40648. May 20, 1987

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ace2eef9d2f/>

FELICIANO, J.:

From the decision of the Court of First Instance of Manila finding in favor of plaintiff-claimant Mercedes S. Marasigan, the government appealed to the Court of Appeals, which certified the case directly to this Court for final resolution as only questions of law are involved.

The undisputed facts are stated in the brief for the defendants-appellants:[1]

"Sometime in 1969 plaintiff Mercedes S. Marasigan, a nurse in the Dr. Jose R. Reyes Memorial Hospital since 1948, applied for optional retirement under Commonwealth Act No. 186, Section 12, Sub-section (c), as amended by Republic Act No. 1616 and 4968. The Government Service Insurance System (GSIS) approved the application for retirement effective as of June 16, 1969 and computed the retirement gratuity due plaintiff in the amount of SIX THOUSAND FOUR HUNDRED NINE & 14/100 PESOS (P6,409.14) (Exh. 'A', p. 1, Folder of Exhibits). The hospital certified that the said amount of P6,409.14 was available to cover payments of plaintiff's retirement gratuity, the same to be charged against the savings of the hospital under personnel services (Exh. 'D', p. 4, id.) and requested authority from the Secretary of Health to pay the said amount to plaintiff (Exh. 'E', p. 5, id.). The Secretary of Health endorsed the matter to the Commissioner of the Budget (Exh. 'F', p. 6, id.), who in turn forwarded the papers to the Director of Malacanang Clinic for comment and/or recommendation (Exh. 'G', p. 7, id.). In reply, the Malacanang Clinic, through Dr. F.R. Casanova, Presidential Medical Adviser, wrote back as follows:

"This pertains to the application for retirement of Miss MERCEDES S. MARASIGAN, former Supervising Nurse of the Dr. Jose R. Reyes Memorial Hospital, under R.A. No. 1616 as further amended by R.A. No. 4968 and in conjunction with Memorandum Circular No. 133 dated October 16, 1967, of the Office of the President.

"There is none among the papers submitted to show that Miss Marasigan is incapacitated for work.

"In view thereof, it is requested that she submits any medical evidence such as any record of treatment, laboratory examinations, and her present physical state wherein to base our comment and recommendation as required by Memorandum Circular No. 133, or she may come to the Clinic for evaluation.

'Unless the above is submitted or she come (sic) for evaluation, our action will be held in abeyance.'

Her claim for retirement gratuity having been denied, plaintiff thus filed an action on May 29, 1971 (pp. 1-14, Rec. on Appeal). On July 19, 1971, defendants filed their answer (pp. 14-20, Rec. on Appeal) alleging, among others, that plaintiff is not entitled as a matter of right to receive the retirement gratuity under Commonwealth Act No. 186, as amended by Republic Acts No. 1616 and 4968 for (a) non-availability of funds in the office or bureau

where applicant was employed with which to pay her retirement gratuity over and above the fund requirements of its programmed projects and activities, and (b) the plaintiff, being below 65 years of age, did not show that she was physically incapacitated to render further efficient service in the hospital. After due hearing, the lower court rendered the decision of March 27, 1972, the dispositive portion of which reads as follows:

'WHEREFORE, the Court finds for plaintiff and declares Memorandum Circular No. 133 aforesaid void and of no effect. Defendants are ordered to pay plaintiff her retirement gratuity in the amount P6,409.14 as approved by the Government Service Insurance System. No costs.

SO ORDERED.'"

In support of the present appeal, defendants-appellants rely on Memorandum Circular No. 133 issued by the Office of the President on 16 October 1967 which, in part, provides:

“ . . . all such applications (for optional retirement) shall not be recommended for approval unless funds are available in the bureau or office concerned for the payment of applicant's retirement gratuity over and above the fund requirements of its programmed projects and activities, and provided any of the following circumstances or conditions is present:

1. The employee-applicant has reached the compulsory retirement age of 65 years; or
2. The employee-applicant, if below 65 years of age, is physically incapacitated to render further efficient service. x x x "

In brief, the view taken by the appellants is that in order for plaintiff Marasigan to be entitled to retirement benefits, she should first show that (1) the Jose R. Reyes Memorial Hospital had sufficient excess funds to pay such gratuity, and (2) that she is physically incapacitated to render further efficient service in her office, having been less than sixty-five years of age at the time of her application. Compliance with the first requirement is conceded by the appellants who would, however, deny the application for failure of plaintiff to satisfy the second.

The appeal must fail.

Undoubtedly, retirement of a government employee is made "automatic and compulsory at the age of sixty-five years" under Section 12(e) of Commonwealth Act No. 186.[2] However, the same law also provides for instances where a member of the System[3] may opt to retire even before reaching the age of sixty-five years. Hence, "(upon) completion of thirty years of total service and attainment of age fifty-seven years, a member shall have the option to retire".[4] Similarly, "a member may be allowed to retire after rendering a total service of thirty years, regardless of age".[5] "Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least twenty years of service, the last three years of which are continuous".[6] Finally, "a member (may) exercise the option to retire at age sixty-three years".[7]

By and large, except where it is automatic and compulsory upon reaching the age of sixty-five, retirement under C.A. No. 186, as amended, is optional on the part of the employee concerned. The use of the phrases "may be allowed to retire" and "retirement is likewise allowed" does not mean that the employer has a right to veto an application by an employee who has qualified for optional retirement. Such phrases are merely differing ways of expressing an employee's right of option in respect of his or her retirement. Those phrases do not connote any implied authority to deny retirement to an employee who has otherwise satisfied the requirements of C.A. No. 186, as amended.

We note that the plaintiff's application for optional retirement and claim for retirement benefits under Section 12

(c) of C.A. No. 186, as amended, had already been evaluated and approved by the GSIS, the agency designated under the statute, to administer and process all such applications and claims filed by members of the System. The defendants-appellants withheld approval and payment of plaintiff's retirement gratuity solely on the strength of Memorandum Circular No. 133 of the Office of the President. This memorandum circular, however, in introducing physical incapacity as an additional condition for approval of an application for optional retirement where the applicant is below sixty-five years of age, attempts to amend C.A. No. 186, as amended. The additional condition of physical incapacity is not found in Section 12(c). The introduction of so substantive an amendment to a statute is, in accordance with the fundamental principle of the separation of powers of government, a power which is appropriately lodged with the legislative branch, and not with the executive branch, of the government. In addition, we note that Section 12(d) of C.A. 186, as amended, already covers the subject of incapacitated employees. Under Section 12(d), the government itself may request the retirement of an employee who has become incapacitated to discharge the duties of his office or of any other office to which he could be assigned. We must, therefore, assume that the legislator had no intention of making physical incapacity a condition precedent to optional retirement under Section 12(c) of the statute.

In its decision, the trial court set out the perspective that is appropriate in respect of a retirement law like C.A. No. 186, as amended:

"A retirement law such as C.A. 186 and amendatory laws is in the nature of a contract between the government and its employees. When an employee joins the government service he has a right to expect that after rendering the required length of service and fulfilled the conditions stated in the laws on retirement, he would be able to enjoy the benefits provided in said laws. He regularly pays the dues prescribed therefor. It would be cruel to deny him the benefits he had been expecting at the end of his service by imposing conditions for his retirement which are not found in the law. It is believed to be a legal duty as well as a moral obligation on the part of the government to honor its commitments to its employees when as in this case, they have met all the conditions prescribed by law and are therefore entitled to receive their retirement benefits."

We agree with the trial court in this respect.

WHEREFORE, the decision appealed from is hereby **AFFIRMED**.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, Gancayco, and Sarmiento, JJ., concur.

[1] Rollo, p. 15.

[2] Approved on 14 November 1936. Section 12 of C.A. 186 has since been amended by R.A. 660 (16 June 1951), R.A. 728 (18 June 1952), R.A. 1573 (16 June 1956), R.A. 1616 (31 May 1957), and R.A. 4968 (17 June 1967).

[3] Refers to the Government Service Insurance System (GSIS).

[4] C.A. 186, Sec. 12(a).

[5] *Id.*, Sec. 12(b).

[6] *Id.*, Sec. 12(c).

[7] *Id.* Sec. 12(e).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.