

CESAR BENGZON, QUERUBE MAKALINTAL, LINO M. PATAJO, JOSE LEUTERIO, ET AL., PETITIONERS, VS. HON. FRANKLIN N. DRILON IN HIS CAPACITY AS EXECUTIVE SECRETARY; HON. GUILLERMO CARAGUE...

G.R. No. 103524. April 15, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The issue in this petition is the constitutionality of the veto by the President of certain provisions in the General Appropriations Act for the Fiscal Year 1992 relating to the payment of the adjusted pensions of retired Justices of the Supreme Court and the Court of Appeals.

The petitioners are retired Justices of the Supreme Court and Court of Appeals who are currently receiving monthly pensions under Republic Act No. 910 as amended by Republic Act No. 1797. They filed the instant petition on their own behalf and in representation of all other retired Justices of the Supreme Court and the Court of Appeals similarly situated.

Named respondents are Hon. Franklin Drilon the Executive Secretary, Hon. Guillermo Carague as Secretary of the Department of Budget and Management, and Hon. Rosalina Cajucom, the Treasurer of the Philippines. The respondents are sued in their official capacities, being officials of the Executive Department involved in the implementation of the release of funds appropriated in the Annual Appropriations Law.

We treat the Comments of the Office of the Solicitor General (OSG) as an Answer and decide the petition on its merits.

The factual backdrop of this case is as follows:

On June 20, 1953, Republic Act No. 910 was enacted to provide the retirement pensions of Justices of the Supreme Court and of the Court of Appeals who have rendered at least twenty (20) years service either in the Judiciary or in any other branch of the Government or in both, having attained the age of seventy (70) years or who resign by reason of incapacity to discharge the duties of the office. The retired Justice shall receive during the residue of his natural life the salary which he was receiving at the time of his retirement or resignation.

Republic Act No. 910 was amended by Republic Act No. 1797 (approved on June 21, 1957) which provided that:

"Sec. 3-A In case the salary of Justices of the Supreme Court or of the Court of Appeals is increased or decreased, such increased or decreased salary shall, for purposes of this Act, be deemed to be the salary or the retirement pension which a Justice who as of June twelve, nineteen hundred fifty-four had ceased to be such to accept another position in the Government or who retired was receiving at the time of his cessation in office. Provided, that any benefits that have already accrued prior to such increase or decrease shall not be affected thereby".

Identical retirement benefits were also given to the members of the Constitutional Commissions under Republic Act No. 1568, as amended by Republic Act No. 3595. On November 12, 1974, on the occasion of the Armed Forces Loyalty Day, President Marcos signed Presidential Decree 578 which extended similar retirement benefits to the members of the Armed Forces giving them also the automatic readjustment features of Republic Act No. 1797 and Republic Act No. 3595.

Two months later, however President Marcos issued Presidential Decree 644 on January 25, 1975 repealing Section 3-A of Republic Act No. 1797 and Republic Act No. 3595 (amending Republic Act No. 1568 and Presidential Decree No. 578) which authorized the adjustment of the pension of the retired Justices of the Supreme Court, Court of Appeals, Chairman and members of the Constitutional Commissions and the officers and enlisted members of the Armed Forces to the prevailing rates of salaries.

Significantly, under Presidential Decree 1638 the automatic readjustment of the retirement pension of officers and enlisted men was subsequently restored by President Marcos. A later decree Presidential Decree 1909 was also issued providing for the automatic readjustment of the pensions of members of the Armed Forces who have retired prior to September 10, 1979.

While the adjustment of the retirement pensions for members of the Armed Forces who number in the tens of thousands was restored, that of the retired Justices of the Supreme Court and Court of Appeals who are only a handful and fairly advanced in years, was not.

Realizing the unfairness of the discrimination against the members of the Judiciary and the Constitutional Commissions, Congress approved in 1990 a bill for the reenactment of the repealed provisions of Republic Act No. 1797 and Republic Act No. 3595. Congress was under the impression that Presidential Decree 644 became law after it was published in the Official Gazette on April 7, 1977. In the explanatory note of House Bill No. 16297 and Senate Bill No. 740, the legislature saw the need to reenact Republic Act Nos. 1797 and 3595 to restore said retirement pensions and privileges of the retired Justices and members of the Constitutional Commissions in order to assure those serving in the Supreme Court, Court of Appeals and Constitutional Commissions adequate old age pensions even during the time when the purchasing power of the peso has been diminished substantially by worldwide recession or inflation. This is underscored by the fact that the petitioner retired Chief Justice, a retired Associate Justice of the Supreme Court and the retired Presiding Justice are presently receiving monthly pensions of P3,333.33, P2,666.66 and P2,333.33 respectively.

President Aquino, however vetoed House Bill No. 16297 on July 11, 1990 on the ground that according to her "it would erode the very foundation of the Government's collective effort to adhere faithfully to and enforce strictly the policy on standardization of compensation as articulated in Republic Act No. 6758 known as Compensation and Position Classification Act of 1989." She further said that "the Government should not grant distinct privileges to select group of officials whose retirement benefits under existing laws already enjoy preferential treatment over those of the vast majority of our civil service servants".

Prior to the instant petition, however, Retired Court of Appeals Justices Manuel P. Barcelona, Juan P. Enriquez, Juan O. Reyes, Jr. and Guardson R. Lood filed a letter/petition dated April 22, 1991 which we treated as Administrative Matter No. 91-8-225-CA. The petitioners asked this Court for a readjustment of their monthly pensions in accordance with Republic Act No. 1797. They reasoned out that Presidential Decree 644 repealing Republic Act No. 1797 did not become law as there was no valid publication pursuant to *Tañada v. Tuvera*, (136 SCRA 27 [1985] and 146 SCRA 446 [1986]). Presidential Decree 644 promulgated on January 24, 1975 appeared for the first time only in the supplemental issue of the Official Gazette, (Vol. 74 No. 14) purportedly dated April 4, 1977 but published only on September 5, 1983. Since Presidential Decree 644 has no binding force and effect

of law, it therefore did not repeal Republic Act No. 1797.

In a Resolution dated November 28, 1991 the Court acted favorably on the request. The dispositive portion reads as follows:

"WHEREFORE, the requests of retired Justices Manuel P. Barcelona, Juan P. Enriquez, Juan O. Reyes and Guardson Lood are GRANTED. It is hereby AUTHORIZED that their monthly pensions be adjusted and paid on the basis of RA 1797 effective January 1, 1991 without prejudice to the payment of their pension differentials corresponding to the previous years upon the availability of funds for the purpose."

Pursuant to the above resolution, Congress included in the General Appropriations Bill for Fiscal Year 1992 certain appropriations for the Judiciary intended for the payment of the adjusted pension rates due the retired Justices of the Supreme Court and Court of Appeals.

The pertinent provisions in House Bill No. 34925 are as follows:

"XXVIII. THE JUDICIARY

A. Supreme Court of the Philippines and the Lower Courts.

"For general administration, administration of personnel benefits, supervision of courts, adjudication of constitutional questions appealed and other cases, operation and maintenance of the Judicial and Bar Council in the Supreme Court, and the adjudication of regional court cases, metropolitan court cases, municipal trial court cases in Cities, municipal circuit court cases, municipal court cases, Shari'a district court cases and Shari'a circuit court cases as indicated hereunder....P2,095,651,000

x x x x x x x x

"Special Provisions.

"1. Augmentation of any Item in the Court's Appropriations. Any savings in the appropriation for the Supreme Court and the Lower Courts may be utilized by the Chief Justice of the Supreme Court to augment any item of the Court's appropriations for: (a) printing of decisions and publications of Philippine Reports; (b) 'commutable terminal leaves of Justices and other personnel of the Supreme Court and payment of adjusted pension rates to retired Justices entitled thereto pursuant to Administrative Matter No. 91-8-225-C.A; (c) repair, maintenance, improvement, and other operating expenses of the courts' books and periodicals; (d) purchase, maintenance and improvement of printing equipment; (e) necessary expenses for the employment of temporary employees, contractual and casual employees, for judicial administration; (f) maintenance and improvement of the Court's Electronic Data Processing (g) extraordinary expenses of the Chief Justice, attendance in international conferences and conduct of training programs; (h) commutable transportation and representation allowances and fringe benefits for Justices, Clerks of Court, Court Administrator, Chief of-Offices and other Court personnel in accordance with the rates prescribed by law; and (i) compensation of attorneys-de-oficio: PROVIDED, that as mandated by LOI No. 489 any increases in salary and allowances shall be subject to the usual procedures and policies as provided for under P.D. No. 985 and other pertinent laws." (page 1071, General Appropriations Act, FY 1992; Emphasis supplied)

x x x x x x x x

"4. Payment of Adjusted Pension Rates to Retired Justices. The amount herein appropriated for payment of pensions to retired judges and justices shall include the payment of pensions at the adjusted rates to retired justices of the Supreme Court entitled thereto pursuant to the ruling of the court in Administrative Matter No. 91-8-225-C.A. page 1071, General Appropriations Act, FY 1992)."

x x x x x x x x

Activities and Purposes

"1. General Administration and Support Services.

a. General administrative

services P43,515,000

b. Payment of retirement gratuity of national government

officials and employees P206,717,000

c. Payment of terminal leave benefits to officials and

employees entitled thereto P 55,316,000

d. Payment of pensions to retired judges and justices entitled

thereto P 22,500,000

(page 1071, General Appropriations Act, FY 1992)

"C. COURT OF APPEALS

"For general administration, administration of personnel benefits and the adjudication of appealed and other cases as indicated hereunder P114,615,000

Special Provisions.

1. Authority to Use Savings. Subject to the approval of the Chief Justice of the Supreme Court in accordance with Section 25(5), Article VI of the Constitution of the Republic of the Philippines, the Presiding Justice may be authorized to use any savings in any item of the appropriation for the Court of Appeals for purposes of: (1) improving its compound and facilities; and (2) for augmenting any deficiency in any item of its appropriation including its extraordinary expenses and payment of adjusted pension rates to retired justices entitled thereto pursuant to Administrative Matter No. 91-8-225-C.A. (page 1079, General Appropriations Act, FY 1992; Emphasis supplied)

2. Payment of Adjusted Pension Rates to Retired Justices. The amount herein appropriated for payment of pensions to retired judges and justices shall include the payment of pensions at the adjusted rates to retired justices of the Court of Appeals entitled thereto pursuant to the Ruling of the Supreme Court in Administrative Matter No. 91-8-225-C.A. (page 1079 General Appropriations Act, FY 1992).

"XL. GENERAL FUND ADJUSTMENT

For general fund adjustment for operational and special requirements as indicated

hereunder P500,000,000

x x x x x x x x

Special Provision

1. Use of the Fund. This fund shall be used for:

x x x x x x x x

1.3. Authorized overdrafts and/or valid unbooked obligations, including the payment of back salaries and related personnel benefits arising from decision of competent authority including the Supreme Court decision

in Administrative Matter No. 91-8-225-C.A. and COA decision in No. 1704." (page 1164, Gen. Appropriations Act, FY 1992; Emphasis supplied)

On January 15, 1992, the President vetoed the underlined portions of Section 1 and the entire Section 4 of the Special Provisions for the Supreme Court of the Philippines and the Lower Courts (General Appropriations Act, FY 1992, page 1071) and the underlined portions of Section 1 and the entire Section 2, of the Special Provisions for the Court of Appeals (page 1079) and the underlined portions of Section 1.3 of Article XLV of the Special Provisions of the General Fund Adjustments (page 1164, General Appropriations Act, FY 1992).

The reason given for the veto of said provisions is that "the resolution of this Honorable Court in Administrative Matter No. 91-8-225-CA pursuant to which the foregoing appropriations for the payment of the retired justices of the Supreme Court and the Court of Appeals have been enacted effectively nullified the veto of the President of House Bill No. 16297, the bill which provided for the automatic increase in the retirement pensions of the Justices of the Supreme Court and the Court of Appeals and chairmen of the Constitutional Commissions by re-enacting Republic Act No. 1797 and Republic Act No. 3595. The President's veto of the aforesaid provisions was further justified by reiterating the earlier reasons for vetoing House Bill No. 16297: "they would erode the very foundation of our collective effort to adhere faithfully to and enforce strictly the policy on standardization of compensation. We should not permit the grant of distinct privileges to select group of officials whose retirement pensions under existing laws already enjoy preferential treatment over those of the vast majority of our civil servants."

Hence, the instant petition filed by the petitioners with the assertions that:

- 1) The subject veto is not an item veto;
- 2) The veto by the Executive is violative of the doctrine of separation of powers;
- 3) The veto deprives the retired Justices of their rights to the pensions due them;
- 4) The questioned veto impairs the Fiscal Autonomy guaranteed by the Constitution.

Raising similar grounds, the petitioners in AM-91-8-225-CA, brought to the attention of this Court that the veto constitutes no legal obstacle to the continued payment of the adjusted pensions pursuant to the Court's resolution.

On February 14, 1992, the Court resolved to consolidate Administrative Matter No. 91-8-225-CA with G.R. No. 103524.

The petitioners' contentions are well-taken.

I

It cannot be overstressed that in a constitutional government such as ours, the rule of law must prevail. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest official of this land, must defer. From this cardinal postulate, it follows that the three branches of government must discharge their respective functions within the limits of authority conferred by the Constitution. Under the principle of separation of powers, neither Congress, the President, nor the Judiciary may encroach on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws and the judiciary to their interpretation and application to cases and controversies.

The Constitution expressly confers on the judiciary the power to maintain inviolate what it decrees. As the guardian of the Constitution we cannot shirk the duty of seeing to it that the officers in each branch of government

do not go beyond their constitutionally allocated boundaries and that the entire Government itself or any of its branches does not violate the basic liberties of the people. The essence of this judicial duty was emphatically explained by Justice Laurel in the leading case of *Angara v. Electoral Commission*, (63 Phil. 139 [1936]) to wit:

"The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other department, it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them." (Emphasis supplied)

The act of the Executive in vetoing the particular provisions is an exercise of a constitutionally vested power. But even as the Constitution grants the power, it also provides limitations to its exercise. The veto power is not absolute.

The pertinent provision of the Constitution reads:

"The President shall have the power to veto any particular item or items in an appropriation, revenue or tariff bill but the veto shall not affect the item or items to which he does not object." (Section 27(2), Article VI, Constitution)

The OSG is correct when it states that the Executive must veto a bill in its entirety or not at all. He or she cannot act like an editor crossing out specific lines, provisions, or paragraphs in a bill that he or she dislikes. In the exercise of the veto power, it is generally all or nothing. However, when it comes to appropriation, revenue or tariff bills, the Administration needs the money to run the machinery of government and it can not veto the entire bill even if it may contain objectionable features. The President is, therefore, compelled to approve into law the entire bill, including its undesirable parts. It is for this reason that the Constitution has wisely provided the "item veto power" to avoid inexpedient riders being attached to an indispensable appropriation or revenue measure.

The Constitution provides that only a particular item or items may be vetoed. The power to disapprove any item or items in an appropriate bill does not grant the authority to veto a part of an item and to approve the remaining portion of the same item. (*Gonzales v. Macaraig, Jr.*, 191 SCRA 452, 464 [1990])

We distinguish an item from a provision in the following manner:

"The terms item and provision in budgetary legislation and practice are concededly different. An item in a bill refers to the particulars, the details, the distinct and severable parts x x x of the bill (*Bengzon*, supra, at 916.) It is an indivisible sum of money dedicated to a stated purpose (*Commonwealth v. Dodson*, 11 S.E., 2d 120, 124, 125, etc., 176 Va. 281). The United States Supreme Court, in the case of *Bengzon v. Secretary of Justice* (299 U.S. 410, 414, 57 Ct 252, 81 L. Ed., 312) declared 'that an 'item' of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law, which happens to be put into an appropriation bill.'" (id. at page 465)

We regret having to state that misimpressions or unfortunately wrong advice must have been the basis of the disputed veto.

The general fund adjustment is an item which appropriates P500,000,000.00 to enable the Government to meet certain unavoidable obligations which may have been inadequately funded by the specific items for the different branches, departments, bureaus, agencies, and offices of the government.

The President did not veto this item. What were vetoed were methods or systems placed by Congress to insure

that permanent and continuing obligations to certain officials would be paid when they fell due.

An examination of the entire sections and the underlined portions of the law which were vetoed will readily show that portions of the item have been chopped up into vetoed and unvetoed parts. Less than all of an item has been vetoed. Moreover, the vetoed portions are not items. They are provisions.

Thus, the augmentation of specific appropriations found inadequate to pay retirement payments, by transferring savings from other items of appropriation is a provision and not an item. It gives power to the Chief Justice to transfer funds from one item to another. There is no specific appropriation of money involved.

In the same manner, the provision which states that in compliance with decisions of the Supreme Court and the Commission on Audit, funds still undetermined in amount may be drawn from the general fund adjustment is not an item. It is the "general fund adjustment" itself which is the item. This was not touched. It was not vetoed.

More ironic is the fact that misinformation led the Executive to believe that the items in the 1992 Appropriations Act were being vetoed when, in fact, the veto struck something else.

What were really vetoed are:

(1) Republic Act No. 1797 enacted as early as June 21, 1957; and

(2) The Resolution of the Supreme Court dated November 28, 1991 in Administrative Matter No. 91-8-225-CA.

We need no lengthy justifications or citations of authorities to declare that no President may veto the provisions of a law enacted thirty-five (35) years before his or her term of office. Neither may the President set aside or reverse a final and executory judgment of this Court through the exercise of the veto power.

A few background facts may be reiterated to fully explain the unhappy situation.

Republic Act No. 1797 provided for the adjustment of pensions of retired Justices which privilege was extended to retired members of Constitutional Commissions by Republic Act No. 3595.

On January 25, 1975, President Marcos issued Presidential Decree No. 644 which repealed Republic Acts 1797 and 3595. Subsequently, automatic readjustment of pensions for retired Armed Forces officers and men was surreptitiously restored through Presidential Decree Nos. 1638 and 1909.

It was the impression that Presidential Decree No. 644 had reduced the pensions of Justices and Constitutional Commissioners which led Congress to restore the repealed provisions through House Bill No. 16297 in 1990. When her finance and budget advisers gave the wrong information that the questioned provisions in the 1992 General Appropriations Act were simply an attempt to overcome her earlier 1990 veto, she issued the veto now challenged in this petition.

It turns out, however, that P. D. No. 644 never became valid law. If P. D. No. 644 was not law, it follows that Rep. Act No. 1797 was not repealed and continues to be effective up to the present. In the same way that it was enforced from 1957 to 1975, so should it be enforced today.

House Bill No. 16297 was superfluous as it tried to restore benefits which were never taken away validly. The veto of House Bill No. 16297 in 1990 did not also produce any effect. Both were based on erroneous and non-existent premises.

From the foregoing discussion, it can be seen that when the President vetoed certain provisions of the 1992 General Appropriations Act, she was actually vetoing Republic Act No. 1797 which, of course, is beyond her power to accomplish.

Presidential Decree No. 644 which purportedly repealed Republic Act No. 1797 never achieved that purpose because it was not properly published. It never became a law.

The case of *Tañada v. Tuvera* (136 SCRA 27 [1985] and 146 SCRA 446 [1986]) specifically requires that "all laws shall immediately upon their approval or as soon thereafter as possible, be published in full in the Official Gazette, to become effective only after fifteen days from their publication, or on another date specified by the legislature, in accordance with Article 2 of the Civil Code". This was the Court's answer to the petition of Senator Lorenzo Tañada and other opposition leaders who challenged the validity of Marcos' decrees which, while never published, were being enforced. Secret decrees are anathema in a free society.

In support of their request, the petitioners in Administrative Matter No. 91-8-225-CA secured a certification from Director Lucita C. Sanchez of the National Printing Office that the April 4, 1977 Supplement to the Official Gazette was published only on September 5, 1983 and officially released on September 29, 1983.

On the issue of whether or not Presidential Decree 644 became law, the Court has already categorically spoken in a definitive ruling on the matter, to wit:

x x x x x x x x

"PD 644 was promulgated by President Marcos on January 24, 1975, but was not immediately or soon thereafter published although preceding and subsequent decrees were duly published in the Official Gazette. It now appears that it was intended as a secret decree "NOT FOR PUBLICATION" as the notation on the face of the original copy thereof plainly indicated (Annex B). It is also clear that the decree was published in the back-dated Supplement only after it was challenged in the Tanada Case as among the presidential decrees that had not become effective for lack of the required publication. The petition was filed on May 7, 1983, four months before the actual publication of the decree.

It took more than eight years to publish the decree after its promulgation in 1975. Moreover, the publication was made in bad faith insofar as it purported to show that it was done in 1977 when the now demonstrated fact is that the April 4, 1977 supplement was actually published and released only in September 1983. The belated publication was obviously intended to refute the petitioner's claim in the Tanada Case and to support the Solicitor General's submission that the petition had become moot and academic.

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xxx xxx xxx

We agree that PD 644 never became a law because it was not validly published and that, consequently, it did not have the effect of repealing RA 1797. The requesting justices (including Justice Lood, whose request for the upgrading of his pension was denied on January 15, 1991) are therefore entitled to be paid their monthly pensions on the basis of the latter measure, which remains unchanged to date."

The Supreme Court has spoken and it has done so with finality, logically and rightly so as to assure stability in legal relations, and avoid confusion. (see *Ver v. Quetullo*, 163 SCRA 80 [1988]) Like other decisions of this Court, the ruling and principles set out in the Court resolution constitute binding precedent. (*Bulig-Bulig Kita Kamaganak Association, et al. v. Sulpicio Lines, Inc. and Regional Trial Court, etc.* G.R. 84750, 16 May 89, En Banc, Minute Resolution)

The challenged veto has far-reaching implications which the Court can not countenance as they undermine the principle of separation of powers. The Executive has no authority to set aside and overrule a decision of the Supreme Court.

We must emphasize that the Supreme Court did not enact Rep. Act No. 1797. It is not within its powers to pass

laws in the first place. Its duty is confined to interpreting or defining what the law is and whether or not it violates a provision of the Constitution.

As early as 1953, Congress passed a law providing for retirement pensions to retired Justices of the Supreme Court and the Court of Appeals. This law was amended by Republic Act 1797 in 1957. Funds necessary to pay the retirement pensions under these statutes are deemed automatically appropriated every year.

Thus, Congress included in the General Appropriations Act of 1992, provisions identifying funds and savings which may be used to pay the adjusted pensions pursuant to the Supreme Court Resolution. As long as retirement laws remain in the statute book, there is an existing obligation on the part of the government to pay the adjusted pension rate pursuant to RA 1797 and AM-91-8-225-CA.

Neither may the veto power of the President be exercised as a means of repealing RA 1797. This is arrogating unto the Presidency legislative powers which are beyond its authority. The President has no power to enact or amend statutes promulgated by her predecessors much less to repeal existing laws. The President's power is merely to execute the laws as passed by Congress.

II

There is a matter of greater consequence arising from this petition. The attempt to use the veto power to set aside a Resolution of this Court and to deprive retirees of benefits given them by Rep. Act No. 1797 trenches upon the constitutional grant of fiscal autonomy to the Judiciary.

Sec. 3 Art. VIII mandates that:

"Sec. 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released."

We can not overstress the importance of and the need for an independent judiciary. The Court has on various past occasions explained the significance of judicial independence. In the case of *De la Llana v. Alba* (112 SCRA 294 [1982]), it ruled:

"It is a cardinal rule of faith of our constitutional regime that it is the people who are endowed with rights, to secure which a government is instituted. Acting as it does through public officials, it has to grant them either expressly or implicitly certain powers. These they exercise not for their own benefit but for the body politic. x x x

"A public office is a public trust. That is more than a moral adjuration. It is a legal imperative. The law may vest in a public official certain rights. It does so to enable them to perform his functions and fulfill his responsibilities more efficiently. x x x It is an added guarantee that justices and judges can administer justice undeterred by any fear of reprisal or untoward consequence. Their judgments then are even more likely to be inspired solely by their knowledge of the law and the dictates of their conscience, free from the corrupting influence of base or unworthy motives. The independence of which they are assured is impressed with a significance transcending that of a purely personal right." (At pp. 338-339)

The exercise of the veto power in this case may be traced back to the efforts of the Department of Budget and Management (DBM) to ignore or overlook the plain mandate of the Constitution on fiscal autonomy. The OSG Comment reflects the same truncated view of the provision.

We have repeatedly in the past few years called the attention of DBM that not only does it allocate less than one percent (1%) of the national budget annually for the 22,769 Justices, Judges, and court personnel all over the

country but it also examines with a fine-toothed comb how we spend the funds appropriated by Congress based on DBM recommendations.

The gist of our position papers and arguments before Congress is as follows:

"The DBM requires the Supreme Court, the Constitutional Commissions, and the Ombudsman to submit budget proposals in accordance with parameters it establishes. DBM evaluates the proposals, asks each agency to defend its proposals during DBM budget hearings, submits its own version of the proposals to Congress without informing the agency of major alterations and mutilations inflicted on their proposals, and expects each agency to defend in Congress proposals not of the agency's making.

After the general appropriations bill is passed by Congress and signed into law by the President, the tight and officious control by DBM continues. For the release of appropriated funds, the Judiciary, Constitutional Commissions, and Ombudsman are instructed through 'guidelines', how to prepare Work and Financial Plans and requests for monthly allotments. The DBM evaluates and approves these plans and requests and on the basis of its approval authorizes the release of allotments with corresponding notices of cash allocation. These notices specify the maximum withdrawals each month which the Supreme Court, the Commissions, and the Ombudsman may make from the servicing government bank. The above agencies are also required to submit to DBM monthly, quarterly, and year-end budget accountability reports to indicate their performance, physical and financial operations, and income.

The DBM reserves to itself the power to review the accountability reports and, when importuned for needed funds, to release additional allotments to the agency. Since DBM always prunes the budget proposals to below subsistence levels and since emergency situations usually occur during the fiscal year, the Chief Justice, Chairmen of the Commissions, and Ombudsman are compelled to make pilgrimages to DBM for additional funds to tide their respective agencies over the emergency."

What is fiscal autonomy?

As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.

The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. In the interest of comity and cooperation, the Supreme Court, Constitutional Commissions, and the Ombudsman have so far limited their objections to constant reminders. We now agree with the petitioners that this grant of autonomy should cease to be a meaningless provision.

In the case at bar, the veto of these specific provisions in the General Appropriations Act is tantamount to

dictating to the Judiciary how its funds should be utilized, which is clearly repugnant to fiscal autonomy. The freedom of the Chief Justice to make adjustments in the utilization of the funds appropriated for the expenditures of the judiciary, including the use of any savings from any particular item to cover deficits or shortages in other items of the judiciary is withheld. Pursuant to the Constitutional mandate, the Judiciary must enjoy freedom in the disposition of the funds allocated to it in the appropriations law. It knows its priorities just as it is aware of the fiscal restraints. The Chief Justice must be given a free hand on how to augment appropriations where augmentation is needed.

Furthermore, in the case of *Gonzales v. Macaraig* (191 SCRA 452 [1990]), the Court upheld the authority of the President and other key officials to augment any item or any appropriation from savings in the interest of expediency and efficiency. The Court stated that:

"There should be no question, therefore, that statutory authority has, in fact, been granted. And once given, the heads of the different branches of the Government and those of the Constitutional Commissions are afforded considerable flexibility in the use of public funds and resources (*Demetria v. Alba*, *supra*). The doctrine of separation of powers is in no way endangered because the transfer is made within a department (or branch of government) and not from one department (branch) to another."

The Constitution, particularly Article VI Section 25(5) also provides:

"Sec. 25. (5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations."

In the instant case, the vetoed provisions which relate to the use of savings for augmenting items for the payment of the pension differentials, among others, are clearly in consonance with the abovementioned pronouncements of the Court. The veto impairs the power of the Chief Justice to augment other items in the Judiciary's appropriation, in contravention of the constitutional provision on "fiscal autonomy".

III

Finally, it can not be denied that the retired Justices have a vested right to the accrued pensions due them pursuant to RA 1797.

The right to a public pension is of statutory origin and statutes dealing with pensions have been enacted by practically all the states in the United States (*State ex rel. Murray v. Riley*, 44 Del 505, 62 A2d 236), and presumably in most countries of the world. Statutory provisions for the support of Judges or Justices on retirement are founded on services rendered to the state. Where a judge has complied with the statutory prerequisite for retirement with pay, his right to retire and draw salary becomes vested and may not, thereafter, be revoked or impaired. (*Gay v. Whitehurst* 44 So ad 430)

Thus, in the Philippines, a number of retirement laws have been enacted, the purpose of which is to entice competent men and women to enter the government service and to permit them to retire therefrom with relative security, not only those who have retained their vigor but, more so, those who have been incapacitated by illness or accident. (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, (190 SCRA 315 [1990])

As early as 1953, Rep. Act No. 910 was enacted to grant pensions to retired Justices of the Supreme Court and Court of Appeals.

This was amended by RA 1797 which provided for an automatic adjustment of the pension rates. Through the years, laws were enacted and jurisprudence expounded to afford retirees better benefits.

P. D. No. 1438, for one, was promulgated on June 10, 1978 amending RA 910 providing that the lump sum of 5 years gratuity to which the retired Justices of the Supreme Court and Court of Appeals were entitled was to be computed on the basis of the highest monthly aggregate of transportation, living and representation allowances each Justice was receiving on the date of his resignation. The Supreme Court in a resolution dated October 4, 1990, stated that this law on gratuities covers the monthly pensions of retired Judges and Justices which should include the highest monthly aggregate of transportation, living and representation allowances the retiree was receiving on the date of retirement. (In Re: Amount of the Monthly Pension of Judges and Justices, *supra*)

The rationale behind the veto which implies that Justices and Constitutional officers are unduly favored is, again, a misimpression.

Immediately, we can state that retired Armed Forces officers and enlisted men number in the tens of thousands while retired Justices are so few they can be immediately identified. Justices retire at age 70 while military men retire at a much younger age - some retired Generals left the military at age 50 or earlier. Yet, the benefits in Rep. Act No. 1797 are made to apply equally to both groups. Any ideas arising from an alleged violation of the equal protection clause should first be directed to retirees in the military or civil service where the reason for the retirement provision is not based on indubitable and constitutionally sanctioned grounds, not to a handful of retired Justices whose retirement pensions are founded on constitutional reasons.

The provisions regarding retirement pensions of Justices arise from the package of protections given by the Constitution to guarantee and preserve the independence of the Judiciary.

The Constitution expressly vests the power of judicial review in this Court. Any institution given the power to declare, in proper cases, that acts of both the President and Congress are unconstitutional needs a high degree of independence in the exercise of its functions. Our jurisdiction may not be reduced by Congress. Neither may it be increased without our advice and concurrence. Justices may not be removed until they reach age 70 except through impeachment. All courts and court personnel are under the administrative supervision of the Supreme Court. The President may not appoint any Judge or Justice unless he or she has been nominated by the Judicial and Bar Council which, in turn, is under the Supreme Court's supervision. Our salaries may not be decreased during our continuance in office. We cannot be designated to any agency performing administrative or quasi-judicial functions. We are specifically given fiscal autonomy. The Judiciary is not only independent of, but also co-equal and coordinate with the Executive and Legislative Departments. (Article VIII and Section 30, Article VI, Constitution)

Any argument which seeks to remove special privileges given by law to former Justices of this Court on the ground that there should be no "grant of distinct privileges" or "preferential treatment" to retired Justices ignores these provisions of the Constitution and, in effect, asks that these Constitutional provisions on special protections for the Judiciary be repealed. The integrity of our entire constitutional system is premised to a large extent on the independence of the Judiciary. All these provisions are intended to preserve that independence. So are the laws on retirement benefits of Justices.

One last point.

The Office of the Solicitor General argues that:

"xxx Moreover, by granting these benefits to retired Justices implies that public funds, raised from taxes on other citizens, will be paid off to select individuals who are already leading private lives and have ceased

performing public service. Said the United States Supreme Court, speaking through Mr. Justice Miller: 'To lay with one hand the power of the government on the property of the citizen, and with the other to bestow upon favored individuals ... is nonetheless a robbery because it is done under the forms of law x x x.' (Law Association v. Topeka, 20 Wall 655)" (Comment, p. 16)

The above arguments are not only specious, impolite and offensive; they certainly are unbecoming of an Office whose top officials are supposed to be, under their charter, learned in the law.

Chief Justice Cesar Bengzon and Chief Justice Querube Makalintal, Justices J.B.L. Reyes, Cecilia Munoz Palma, Efren Plana, Vicente Abad Santos, and, in fact, all retired Justices of the Supreme Court and the Court of Appeals may no longer be in the active service. Still, the Solicitor General and all lawyers under him who represent the Government before the two courts and whose predecessors themselves appeared before these retirees, should show some continuing esteem and good manners toward these Justices who are now in the evening of their years.

All that the retirees ask is to be given the benefits granted by law. To characterize them as engaging in "robbery" is intemperate, abrasive, and disrespectful more so because the argument is unfounded.

If the Comment is characteristic of OSG pleadings today, then we are sorry to state that the then quality of research in that institution has severely deteriorated.

In the first place, the citation of the case is wrong. The title is not LAW Association v. Topeka but Citizen's Savings and Loan Association of Cleveland, Ohio v. Topeka City, (20 Wall. 655; 87 U.S. 729; 22 Law. Ed. 455 [1874]. Second, the case involves the validity of a statute authorizing cities and counties to issue bonds for the purpose of building bridges, waterpower, and other public works to aid private railroads improve their services. The law was declared void on the ground that the right of a municipality to impose a tax cannot be used for private interests.

The case was decided in 1874. The world has turned over more than 40,000 times since that ancient period. Public use is now equated with public interest. Public money may now be used for slum clearance, low-cost housing, squatter resettlement, urban and agrarian reform where only private persons are the immediate beneficiaries. What was "robbery" in 1874 is now called "social justice." There is nothing about retirement benefits in the cited case. Obviously, the OSG lawyers cited from an old textbook or encyclopedia which could not even spell "loan" correctly. Good lawyers are expected to go to primary sources and to use only relevant citations.

The Court has been deluged with letters and petitions by former colleagues in the Judiciary requesting adjustments in their pensions Just so they would be able to cope with the everyday living expenses not to mention the high cost of medical bills that old age entails. As Justice Cruz aptly stated in Teodoro J. Santiago v. COA, (G.R. No. 92284, July 12, 1991):

"Retirement laws should be interpreted liberally 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. After devoting the best years of his life to the public service, he deserves the appreciation of a grateful government as best concretely expressed in a generous retirement gratuity commensurate with the value and length of his services. That generosity is the least he should expect now that his work is done and his youth is gone. Even as he feels the weariness in his bones and glimpses the approach of the lengthening shadows, he should be able to luxuriate in the thought that he did his task well, and was rewarded for it."

For as long as these retired Justices are entitled under laws which continue to be effective, the government can not deprive them of their vested right to the payment of their pensions.

WHEREFORE, the petition is hereby GRANTED. The questioned veto is SET ASIDE as illegal and

unconstitutional. The vetoed provisions of the 1992 Appropriations Act are declared valid and subsisting. The respondents are ordered to automatically and regularly release pursuant to the grant of fiscal autonomy the funds appropriated for the subject pensions as well as the other appropriations for the Judiciary. The resolution in Administrative Matter No. 91-8-225-CA dated November 28, 1991 is likewise ordered to be implemented as promulgated.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, and Nocon, JJ., concur.
Bellosillo, J., on leave.

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