

JUDGE RODOLFO T. ALLARDE, PETITIONER, VS. THE COMMISSION ON AUDIT AND THE MUNICIPAL TREASURER OF MUNTINLUPA, RESPONDENTS.

G.R. No. 103578. January 29, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for certiorari and/or mandamus seeking to annul and set aside the decisions dated June 5, 1991, November 5, 1991, August 20, 1991 and January 27, 1992 of the Commission on Audit (COA) which denied petitioner's request for inclusion of the monthly allowance he had been receiving from the Municipality of Muntinlupa as Metropolitan Trial Court Judge, as part of his retirement benefits.

Petitioner Rodolfo T. Allarde was the Presiding Judge of Branch LXXX, Metropolitan Trial Court in Muntinlupa, Metro Manila, until his courtesy resignation was accepted on January 13, 1987. He applied for retirement under Republic Act No. 910, as amended by Presidential Decree No. 1438, which this Court approved on July 11, 1989.

In computing his total retirement pay, the Government Service Insurance System (GSIS) included the amount of P240,000.00 representing the five-year lump sum of the P4,000.00-monthly allowance which he had been receiving from the Municipality of Muntinlupa during his incumbency therein as judge, provided said lump sum of P240,000.00 should be charged to the funds of the municipality pursuant to Section 30 of Batas Pambansa Blg. 866 and subject to the availability of funds. On April 16, 1990, the Sangguniang Bayan of Muntinlupa, by Resolution No. 90-145, appropriated and awarded the amount of P240,000.00 in favor of the petitioner.

However, petitioner's claim for payment of that additional retirement benefit reached the Metro Manila Authority which denied it on the ground that:

"x x x the Commission on Audit who is the final authority on questions of money claims against the government has already ruled (in similar cases as the one at bar) that (like) allowances formerly granted you by the Municipal Government of Muntinlupa, by the very nature and intent of the grant, 'are expense items not to be equated with compensation for purposes of computing retirement benefits.'" (p. 49, Rollo.)

On April 4, 1991, the petitioner filed his claim with the Commission on Audit (COA). On June 5, 1991, the COA rendered Decision No. 1877 denying the claim.

On September 9, 1991, petitioner filed a Memorandum/Motion for Reconsideration of the decision, but the COA issued Decision No. 1983 dated November 5, 1991, reiterating its denial of the petitioner's claim.

A second reconsideration met the same fate (COA Decision No. 2159, dated January 27, 1992). Hence, this petition for review.

The sole issue in this case is: whether or not the P4,000.00 monthly allowance that the petitioner had been

receiving from the Municipality of Muntinlupa should be included in the computation of his retirement benefits under Republic Act 910, as amended by Presidential Decree No. 1438.

Petitioner's claim is anchored on Section 3 of Republic Act 910. An Act Providing For The Retirement of Justices and All Judges in the Judiciary, as amended by P.D. No. 1438 which 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 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."

As clearly specified in the law, only transportation, living and representation allowances may be included in the computation of the first five-year lump sum retirement benefits for members of the judiciary.

It is an elementary principle of statutory construction that where the words and phrases of a statute are not obscure or ambiguous, the meaning and intention of the legislature should be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction (*Provincial Board of Cebu vs. Presiding Judge of Cebu, CFI, Branch IV, 171 SCRA 1*).

Accordingly, the provisions of Section 3, P.D. No. 1438, which are clear and unambiguous, should be given their plain and natural meaning. Inasmuch as the law limits the computation of the lump sum of 5 years' gratuity to "the highest monthly salary plus the highest monthly aggregate of transportation, living and representation allowances that the judge was receiving on the date of his retirement," it is understood that other allowances are excluded, *Inclusio unius est exclusio alterius*.

The petitioner failed to prove that the P4,000.00 additional monthly allowance that he was receiving from the Municipal Government of Muntinlupa was a representation, living or transportation allowance, for as indicated in the sample disbursement voucher that he used to fill up whenever he claimed such allowance, the amount was in the nature of reimbursement for expenses which Judge Allarde certified "were incurred by me while performing my duties." (p. 52, Rollo.)

The pertinent observations of the COA in its decision dated June 5, 1991 are quoted as follows:

"Upon a close scrutiny and examination of PD 1438, we note that the allowances contemplated therein are 'transportation, living and representation allowances' being granted to Justices and Judges from national and/or local funds as authorized by existing laws, rules and regulations which constitute integral part of their remuneration. (Vide. WHEREAS clauses) That being so, these allowances are deemed as commutable in character and, hence, partake of the nature of additional compensation. For this reason, they are included in the computation of the retirement benefits of Justices and Judges as provided in the said law.

"In your case, however, it appears that the allowances you have been collecting from the Municipality of Muntinlupa during your stint therein as Municipal Trial Court Judge were non-commutable or reimbursable in nature, let alone the fact that there is no indication as to whether they were transportation, living or representation allowances. This conclusion can be readily drawn from the copy of a sample voucher forming part of the set of papers accompanying your present claim whereby you sought to collect 'payment of the allowance of P4,000.00 a month for the period January 1-31, 1985' from the Municipality of Muntinlupa, and whereon you had to 'certify that the expenses were incurred by me (you) while performing my (your) duties

covering the period 'heretofore cited,' thereby signifying the reimbursable nature thereof. (Emphasis and words in parenthesis ours) Evidently then, the allowances that you now seek to collect as part of your retirement gratuity are expense items that cannot be equated with salary or compensation. On this score, it was patent error for the GSIS to identify such allowances as 'RATA' and to include the aggregate amount thereof corresponding to a 60-month period in its computation of your retirement gratuity as the local share of the Municipality of Muntinlupa." (p. 52, Rollo.)

Letter of Instruction No. 1418 which authorizes local governments to pay additional allowances to judges of the courts within their territorial jurisdiction, limits the amount of such allowance and does not provide that it shall be treated as part of the judge's remuneration in computing his retirement benefits.

"WHEREAS, some local government units are ready, willing and able to pay additional allowances to Judges of the various courts within their respective territorial jurisdiction;

"xxx xxx xxx.

"3. The allowances provided in this letter shall be borne exclusively by the National Government. However, provincial city and municipal governments may pay additional allowances to the members and personnel of the Judiciary assigned in their respective areas out of available local funds but not to exceed P1,500.00; Provided, that in Metropolitan Manila, the city and municipal governments therein may pay additional allowances not exceeding P3,000.00. (Emphasis ours)." (pp. 42-43, Rollo.)

As observed by the Solicitor General the use of the word "may" signifies that the allowance may not be demanded as a matter of right, but is entirely dependent on the will of the municipality concerned (p. 43, Rollo). It should be treated as an honorarium, an amount that is "given not as a matter of obligation but in appreciation for services rendered, a voluntary donation in consideration for services which admit of no compensation in money" (Santiago vs. Commission on Audit, 199 SCRA 128, 130).

As the Solicitor General aptly observed: such additional allowance does not constitute an integral part of the judge's remuneration for it may or may not be given by the local government and it is dependent on the liberality of the latter. If said allowance were to be included in the computation of the retirement benefits of judges, the result would be inequality and disparity in their retirement benefits. For there are rich municipalities that can give generous allowances to the judges of the courts within their territorial jurisdiction, and there are poorer municipalities that can give less substantial amounts or none at all. The result would be an unseemly jockeying among the trial judges for assignment in the wealthy municipalities, and injustice to those who may be assigned to the less affluent regions, for while they may have the same rank and perform essentially the same tasks, their more fortunate colleagues would be enjoying more benefits. The retirement law was not intended to deal unequally and unfairly with the judges.

WHEREFORE, finding no grave abuse of discretion in the decision of the Commission on Audit, the petition for review is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

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