

## **LYDIA M. PROFETA, PETITIONER, VS. HON. FRANKLIN M. DRILON, IN HIS CAPACITY AS EXECUTIVE SECRETARY, OFFICE OF THE PRESIDENT OF THE PHILIPPINES, RESPONDENT.**

*G.R. No. 104139. December 22, 1992*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

This is a petition for review on certiorari assailing a portion of the decision of the Office of the President, dated 23 October 1991, declaring petitioner as compulsorily retired as of 15 October 1991 and the resolution dated 31 January 1992 denying petitioner's motion for reconsideration of said decision.

The antecedents are the following:

Petitioner, Dr. Lydia M. Profeta, served as Executive Dean of the Rizal Technological Colleges from 24 October 1974 to 15 October 1978. From 16 October 1978 to 30 April 1979, petitioner was the appointed Acting President of said College until her promotion to President of the same college on 1 May 1979.

After the 1986 EDSA revolution or on 5 March 1986, petitioner filed her courtesy resignation as President of the Rizal Technological Colleges and the same was accepted on 21 March 1986. A day before the acceptance of her courtesy resignation, petitioner applied for sick leave.

On 4 November 1988, petitioner was appointed Acting President of Eulogio "Amang" Rodriguez Institute of Science and Technology (hereinafter referred to as EARIST) and was thereafter appointed its President on 29 March 1989.

After reaching the age of sixty-five (65) years on 16 June 1989, petitioner inquired from the Government Service Insurance System (GSIS) as to whether she may be allowed to extend her services with the government as President of EARIST beyond the age of sixty-five (65) years, to enable her to avail of the old-age pension retirement benefits under PD 1146 (Revised Government Service Insurance Act of 1977). In answer to her query, petitioner was advised by the GSIS to return to the service until she shall have fulfilled the fifteen (15) years service requirement pursuant to Section 11 of PD 1146, to qualify for the old-age pension retirement plan. The GSIS declared that petitioner was not yet eligible to retire under PD 1146, as she had not rendered the sufficient number of years of service on the date of her supposed retirement on 16 June 1989 and that her creditable service was only twelve (12) years and two (2) months. As things stood, she could only claim one hundred percent (100%) of her average monthly compensation for every year of creditable service or to a refund of her premium contributions with the GSIS.[1]

On 6 October 1989, as recommended by the Department of Education, Culture and Sports (DECS) Secretary and the Board of Trustees of EARIST, President Aquino, through Deputy Executive Secretary Magdangal B. Elma, extended the term of petitioner as President of EARIST until she shall have completed the required fifteen (15) years of service after reaching the age of sixty five (65) years on the date of her normal retirement on 16 June

1989 or for an additional period of two (2) years, seven (7) months and twelve (12) days.[2]

In March 1990, the EARIST Faculty and Employees Union filed an administrative complaint against petitioner before the Office of the President, for her alleged irregular appointment and for graft and corrupt practices. In a memo-randum, dated 16 August 1990, the Office of the President furnished petitioner a copy of the complaint with a direc-tive to file an answer thereto with the DECS Secretary, who was duly authorized to conduct a formal investigation of the charges against petitioner. Pending investigation of the complaint, petitioner was placed under preventive suspension for a period of ninety (90) days.[3] After serving the period of suspension, petitioner re-assumed her duties and functions as President of EARIST.

In a letter dated 20 July 1990, DECS Secretary Carino recommended the compulsory retirement of petitioner.[4]

For the purpose of investigating the administrative charges against petitioner,[5] an Ad-Hoc Committee was created by President Aquino on 12 February 1991. The parties filed their respective pleadings and hearings in the case were conducted by the committee.

Pending resolution of the administrative charges against her, petitioner was detailed with the DECS Central Office pursuant to a memorandum dated 13 February 1991 signed by Deputy Executive Secretary Sarmiento III. Petitioner filed a petition for certiorari, prohibition and mandamus before the Regional Trial Court of Manila, Branch 40, seeking her reinstatement as EARIST President. After trial, said petition was dismissed. On appeal, the Court of Appeals denied the petition for certiorari on 2 April 1991.[6]

Petitioner likewise assailed her reassignment with the DECS Central Office, before the Civil Service Commission (CSC). On 30 July 1991, the CSC denied petitioner's complaint. She moved for reconsideration of said resolution but the same was denied on 3 December 1991, which prompted petitioner to file a petition for certiorari before this Court docketed as G.R. No. 103271. On 3 March 1992, this Court dismissed said petition.

After evaluating the evidence presented before the Ad-Hoc Committee, in a decision[7] dated 23 October 1991, the Office of the President dismissed the administrative complaint against petitioner for lack of substantial evidence. In the same decision, the Office of the President also declared petitioner as compulsorily retired from government service as of 15 October 1991, holding that:

"x x x (I)f the aforesaid sick leave of 62 working days (approximately 3 months) were to be added to the respondent's creditable service, together with the period of two (2) weeks which the respondent's counsel admits in his Memorandum the respondent had served as Professorial Lecturer, the respondent should be considered as compulsorily retired as of Oct. 15, 1991, having completed the required 15 years in the service on or about the said date after reaching the age of 65.

Accordingly, the administrative charges against Dr. Lydia M. Profeta for her alleged 'irregular appointment and graft and corrupt practices' are hereby dismissed. However, Dr. Profeta is hereby considered as now compulsorily retired from the service as of October 15, 1991, in accordance with the provisions of Section 11(b) of Presidential Decree No. 1146, having completed fifteen (15) years in the government service on or about the said date after reaching the age of sixty-five (65) on June 16, 1989." [8]

In a letter dated 23 October 1991, petitioner requested the GSIS to determine the exact date of her retirement. On 5 November 1991, petitioner was advised by the GSIS that the exact date of her retirement falls on 14 August 1992.[9]

A motion for reconsideration was then filed by peti-tioner with the Office of the President, assailing the portion of its decision declaring her as compulsorily retired from the service as of 15 October 1991, alleging that the said office has no jurisdiction over the issue of her compulsory retirement from the government service.

In a resolution<sup>[10]</sup> dated 31 January 1992, petitioner's motion for reconsideration was denied by the Office of the President. In the same resolution, the Office of the President clarified that there was an over extension of petitioner's period of service with the government by failure to reckon with the sixty-two (62) working days during which petitioner went on sick leave (from 20 March to 17 June 1986) and the period of two (2) weeks during which petitioner served as Professorial Lecturer. In considering petitioner as compulsorily retired as of 15 October 1991, the Office of the President held that it merely resolved *motu proprio* to shorten by three-and-a-half (3-1/2) months the extension granted to petitioner to complete the required fifteen (15) years of service for purposes of retirement. It further declared that it is for the President to determine whether or not petitioner could still continue as EARIST President despite her exoneration from the administrative charges filed against her.

Under Presidential Decree No. 1146 (Revised Government Insurance Act of 1977), one of the benefits provided for qualified members of the GSIS is the old-age pension benefit. A member who has rendered at least fifteen (15) years of service and is at least sixty (60) years old when separated from the service, is entitled to a basic monthly pension for life but for not less than five (5) years. On the other hand, a member who has rendered less than fifteen (15) years of service but with at least three (3) years of service and is sixty (60) years of age when separated from the service is entitled to a cash payment equivalent to one hundred percent (100%) of the average monthly compensation for every year of service.

However, retirement is compulsory for a member who has reached the age of sixty-five (65) years with at least fifteen (15) years of service. If he has less than fifteen (15) years of service, he shall be allowed to continue in the service to complete the fifteen (15) years,<sup>[11]</sup> to avail of the old-age pension benefit.

To a public servant, a pension is not a gratuity but rather a form of deferred compensation for services performed and his right to it commences to vest upon his entry into the retirement system and becomes an enforceable obligation in court upon fulfillment of all conditions under which it is to be paid. Similarly, retirement benefits receivable by public employees are valuable parts of the consideration for entrance into and continuation in public office or employment. They serve a public purpose and a primary objective in establishing them is to induce competent persons to enter and remain in public employment and render faithful and efficient service while so employed.<sup>[12]</sup> 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.<sup>[13]</sup> The liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency, security and well-being of government employees maybe enhanced.<sup>[14]</sup>

In the case at bar, at the time petitioner reached the compulsory retirement age of sixty-five (65) years, she had rendered less than the required fifteen (15) years of service under Section 11 of P.D. 1146. Thus, to enable her to avail of the old-age pension benefit, she was allowed to continue in the service and her term as President of EARIST was extended until she shall have completed the fifteen (15) year service requirement, or for an additional two (2) years, seven (7) months, and twelve (12) days, as determined by the Office of the President.

This period of extended service granted to petitioner was amended by the Office of the President. In resolving the administrative complaint against petitioner, the Office of the President, ruled not only on the issues of alleged irregular appointment of petitioner and of graft and corrupt practices, but went further by, in effect, reducing the period of extension of service granted to petitioner on the ground that the latter had already completed the fifteen (15) year service requirement under P.D. 1146, and declared petitioner as compulsorily retired as of 15 October 1991.

In other words, the extension of service of petitioner was until January 1992. However, the Office of the President made a new computation of petitioner's creditable service. In the process of determining petitioner's period of

service with the government, the Office of the President included as part of her service the sixty-two (62) days sick leave applied for by petitioner covering the period between 20 March to 17 June 1988 and her service as a lecturer of approximately two (2) weeks, or a total of three-and-a-half (3 1/2) months. As a result of this new computation, petitioner's extension of service which was supposed to end in January 1992 was reduced by the Office of the President by three-and-a-half (3 1/2) months or until 15 October 1991.

On the other hand, the computation made by the GSIS as to the exact date of retirement of petitioner fell on 14 August 1992.[15] Thus, the extension of service granted to petitioner by the Office of the President for two (2) years, seven (7) months and twelve (12) days which brought her services only up to January 1992, would not enable herein petitioner to complete the fifteen (15) years service requirement for purposes of retirement. To allow the Office of the President to shorten the extension of service of petitioner by three-and-a-half (3 1/2) months which consist of petitioner's sick leave and service as lecturer, would further reduce petitioner's service with the government. Such reduction from petitioner's service would deprive her of the opportunity of availing of the old-age pension plan, based on the computation of the GSIS.

We hold that it is the GSIS which has the original and exclusive jurisdiction to determine whether a member is qualified or not to avail of the old-age pension benefit under P.D. 1146, based on its computation of a member's years of service with the government.[16] The computation of a member's service includes not only full time but also part time and other services with compensation as may be included under the rules and regulations prescribed by the System.[17]

The sixty-two (62) days leave of absence of petitioner between 20 March to 17 June 1986 and her part-time service as a lecturer of approximately two (2) weeks, or a total of three-and-a-half (3 1/2) months is not reflected in her service record. Said period should be considered as part of her service with the government and it is only but proper that her service record be amended to reflect said period of service.

We have observed that the computation made by the GSIS of petitioner's date of retirement failed to take into account the three-and-a-half (3 1/2) months service of petitioner which was not reflected in her service record. If we deduct this unrecorded three-and-a-half (3 1/2) months service of petitioner from 14 August 1992, petitioner is to be considered retired on 30 April 1992.

The order of the Office of the President declaring petitioner as compulsorily retired as of 15 October 1991 defeats the purpose for allowing petitioner to remain in the service until she has completed the fifteen (15) years service requirement. Between the period of 16 October 1991 to 30 April 1992, petitioner should have been allowed to continue in the service to be able to complete the fifteen (15) years service requirement; she was prepared to render services for said period but was not allowed to do so; she should, therefore, be entitled to all her salaries, benefits and other emoluments during said period (16 October 1991 - 30 April 1992). However, petitioner's claim for reinstatement to her former position to enable her to complete the fifteen (15) year service requirement for retirement purposes is no longer possible, considering that she is deemed to have completed the said service requirement as of 30 April 1992.

WHEREFORE, the portion of the decision of the Office of the President dated 23 October 1991 declaring petitioner as compulsorily retired as of 15 October 1991 is SET ASIDE. Petitioner is hereby declared to have been in the service as President of EARIST from 16 October 1991 until 30 April 1992 and therefore entitled to all salaries, benefits and other emoluments of said office from 16 October 1991 to 30 April 1992. In addition, she is declared as entitled to her old-age pension benefits for having reached age 65 years while in the service with 15 years of service to her credit, subject to her compliance with all applicable regulations and requirements of the GSIS.

**SO ORDERED.**

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

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[1] Rollo, pp. 41-42

[2] Ibid., p. 49

[3] Rollo, p. 50

[4] Ibid., pp. 82-83

[5] Ibid., pp. 53-54

[6] Comment, Rollo, pp. 118-120

[7] Rollo, pp. 25-33

[8] Ibid., p. 33

[9] Rollo, p. 71

[10] Rollo, pp. 35-38

[11] Sections 11 & 12, PD 1146

[12] Ortiz v. Comelec, G.R. No. 78957, 28 June 1998, 162 SCRA 812

[13] Santiago v. COA, G.R. No. 92284, 12 July 1991, 199 SCRA 125

[14] Ortiz v. Comelec, *supra*.

[15] Rollo, p. 56

[16] Section 24, PD 1146

[17] Section 10, PD 1146

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