

HON. GEMILIANO LOPEZ, JR., IN HIS CAPACITY AS MAYOR OF MANILA; EUFEMIA DOMINGUEZ, IN HER CAPACITY AS CITY BUDGET OFFICER; HERMINIO ARCEO, IN HIS CAPACITY AS CHAIRMAN, COMMITTEE ...*G.R. No. 104158. November 06, 1992*

Ponente: FELICIANO, J.

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On 29 February 1972, private respondent Galicano Manapat retired from the government service as Chief of the Legal Division of the Office of the Municipal Board of Manila. He retired under the provisions of R.A. No. 1616, as amended, having then rendered twenty (20) years of service to petitioner City of Manila and received the amount of P24,479.02 representing his full retirement benefit.

On April 1977, Manapat was reemployed by the City of Manila, this time as Secretary of the City of Manila Board of Tax Assessment Appeals, with a monthly salary of P3,993.33. He occupied that position until he reached the compulsory retirement age of sixty-five (65) years on 27 June 1989. The City of Manila extended his period of service for six (6) months, i.e., up to 27 December 1989. During this additional period of service, i.e., on 1 July 1989, the Salary Standardization Law (R.A. No. 6758) took effect and increased Manapat's monthly salary from P3,993.33 to P11,385.00.

Upon expiration of private respondent Manapat's six (6)-month extended period of service, he filed with the Government Service Insurance System ("GSIS") an application for retirement under R.A. No. 1616, as amended. This application was approved by the GSIS on 6 April 1990, initially on the basis of his previous salary of P3,993.33 per month; on that basis, he was entitled to a total retirement gratuity of P179,274.04, less the amount of P24,479.02 previously received as retirement pay when he first retired on 29 February 1972, making a net balance of P154,795.02.

On 16 May 1990, the GSIS adjusted Manapat's approved application for retirement to conform with his last standardized monthly salary of P11,385.00. This adjustment resulted in a total collectible retirement pay or gratuity of P486,634.84 for Manapat.

The approved adjusted claim of Manapat for retirement benefits was forwarded by the GSIS to the Board of Tax Assessment Appeals of the City of Manila. The Assistant Department Head of that Board in turn transmitted the papers to the Chairman of the Committee on the Settlement of Claims for Retirement Gratuity and Terminal Leave Pay ("Committee") by an Indorsement dated 21 May 1990. The next day, however, the Chairman of that Committee returned the papers to the Manila Board of Tax Assessment Appeals without acting on the retirement gratuity claim of Manapat, upon the ground that it was existing policy of the City of Manila that an employee who has reached the compulsory retirement age of sixty-five (65) years must retire under R.A. No. 660 and not under the provisions of R.A. No. 1616, as amended.

Manapat appealed the action of the Chairman of the Committee to the City Budget Officer. The latter officer replied by informing Manapat that his claim for retirement pay was forwarded to the then Mayor of the City of Manila, petitioner Gemiliano Lopez, Jr., as well as to the City Legal Officer for legal advice.

On 1 October 1990, the City Legal Officer of the City of Manila rendered a written opinion to the effect that the City, as employer, had discretionary authority to allow or disallow a claim to retire under R.A. No. 1616, as amended, considering that retirement under that law was optional and payment of retirement benefits thereunder was subject to the availability of funds. A week later, on 8 October 1990, Manapat received a letter from petitioner City Mayor advising that his (Manapat's) request for settlement of his claim for retirement gratuity under R.A. No. 1616 could not be favorably acted upon due financial constraints upon the City Government.

Manapat then commenced in the Regional Trial Court of the City of Manila, a special civil action for mandamus to compel petitioner officials of the City of Manila to allow Manapat to retire under the provisions of R.A. No. 1616, as amended. The trial court dismissed the petition.

On appeal, the Court of Appeals reversed the decision of the trial court and issued a writ of mandamus ordering petitioner officials to pay the retirement claim of Mr. Manapat in the amount of P486,636.84 with legal interest from the time of filing of the petition for mandamus and awarded as well Mr. Manapat P30,000.00 as moral damages and another P30,000.00 as attorney's fees.

In the present Petition for Review, petitioner officials of the City of Manila pose the very same issues they had raised before the Court of Appeals, namely:

- (1) Whether a government employee, who has reached the compulsory retirement age of 65 years, may opt to retire under R.A. No. 1616 as amended or, alternatively, is entitled only to retirement benefits under the mandatory retirement clause of R.A. No. 660; and
- (2) Whether the City of Manila as employer may be compelled to pay the retirement benefits of its employees under R.A. No. 1616, notwithstanding lack of available funds for that purpose.

We are aware of the very practical considerations which underlie the respective positions taken by petitioners and private respondent. Petitioners are insisting that private respondent Manapat retire under the provisions of R.A. No. 660 because, under those provisions, the GSIS is bound to pay the retirement benefits properly accruing to Manapat, while it is the City of Manila as employer which is liable for the retirement gratuity appertaining under R.A. No. 1616 as amended to Manapat. Upon the other hand, Manapat wishes to retire under the provisions of R.A. No. 1616 as amended because the amount of the gratuity accruing under that law will be significantly higher than the gratuity which would be payable under the terms of R.A. No. 660.[1]

Both R.A. No. 660 and R.A. No. 1616 were amendments to Commonwealth Act ("C.A.") No. 186, otherwise known as the Government Service Insurance System Charter. Section 12, C.A. No. 186, as amended by both R.A. No. 660 and R.A. No. 1616 provides, in relevant part, as follows:

"Section 12. Conditions for retirement. -- x x x.

(a) On completion of thirty years of total service and attainment of age fifty-seven years, a member shall have the option to retire. In all cases of retirement under this Act, the last three years of service before retirement must be continuous and he must have 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: x x x. In all cases no one shall be entitled to retirement benefit if his age is below fifty-two years or his total service is less than fifteen years.

(b) Notwithstanding the provisions of the preceding paragraph, a member may be allowed to retire after

rendering a total service of thirty years, regardless of age, the retiring employee to receive a monthly annuity for life, but the benefit for service rendered after June sixteen, nineteen hundred and fifty-one, shall be whatever amount of annuity can be purchased by the accumulated government and personal contributions to the credit of a member plus interest allowed by the system on the date of retirement. Said annuity shall be computed in accordance with the mortality table and the rate of interest adopted by the system. This benefit shall be in addition to the benefit for service rendered prior to June sixteen, nineteen hundred and fifty-one as provided in section eleven (A) of this Act.

(c) 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. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums described in subsection (a) of Section five hereof, without interest, be only a gratuity equivalent to one month's salary for every year of the first twenty years of service, plus one and one-half month's salary of every year of service over twenty but below thirty years and two month's salary for every year of service over thirty years in case of employees based on the highest rate received and in case of elected officials on the rates of pay as provided by law. This gratuity is payable by the employer or officer concerned which is hereby authorized to provide the necessary appropriation or pay the same from any unexpended items of appropriations or savings in its appropriations. Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement.

x x x x x x x x

(e) Retirement shall be automatic and compulsory at the age of sixty-five years with lump sum payment of present value of annuity for the first five years and future annuity to be paid monthly, and other benefits given to a compulsory retired member as provided for in Republic Act Number Six hundred and sixty, as amended, if he has completed fifteen years of service and if he has not been separated from the service during the last three years of service prior to retirement; otherwise he shall be allowed to continue in the service until he shall have completed the required length of service, unless he is otherwise eligible for disability retirement. This paragraph shall not apply to elective officials and constitutional officers whose tenure of office is guaranteed. Upon specific approval of the President of the Philippines, the President of the Senate, the Speaker of the House of Representatives or the Chief Justice of the Supreme Court, as the case may be, an employee may be allowed to continue to serve in the executive, legislative or judicial branch of the government after the age of sixty-five years if he possesses special qualifications and the corresponding Department Secretary certifies in writing that his services are needed.

The automatic and compulsory retirement age for members of the judiciary shall be seventy years under the conditions and with all the benefits provided for in the next preceding paragraph.

If a member exercises the option to retire pursuant to the provisions of Subsection (a) above at age sixty-three years, he shall likewise be entitled to all the benefits provided for in the first paragraph of this subsection. If the option is exercised at age sixty or over but below sixty-three years, the retiree shall be entitled to a lump sum payment of present value of annuity for the first three years, with the balance of the five-year guaranteed annuity payable in lump sum upon reaching the age of sixty-three years, and future annuity to be paid monthly, in addition to other benefits provided for in Republic Act Numbered Six hundred and sixty, as amended.

It shall be the duty of the employer concerned to notify each employee under its direction of the date of his automatic separation from the service at least sixty days in advance thereof.

x x x x x x x x.[2]

(Underscoring supplied)

Petitioners do not dispute the fact that private respondent Manapat had, at the time of his second retirement on 27 December 1989, rendered a total of thirty-five (35) years of government service, with the result that he had complied with the requirements for retirement under each and every one of the four (4) modes of retirement provided in Section 12 of C.A. No. 186 as amended, quoted above, to wit:

Section 12 (a) -- 30 years of government service and attainment of age 57 years;

12 (b) -- 30 years of government service "regardless of age;"

12 (c) -- 20 years of government service "regardless of age;" and

12 (e) -- 15 years of government service and attainment of age 65 years.

Petitioners, however, insist that a government employee who has reached the compulsory retirement age of sixty-five (65) years, with at least fifteen (15) Years of service in the government, has no choice save to retire under the provisions of Section 12(e) of C.A. No. 186 as amended (i.e., R.A. No. 660), retirement thereunder being "automatic and compulsory."

The Court is unable to agree. While Section 12(e) of C.A. No. 186 as amended provides that "[r]etirement shall be automatic and compulsory at the age of 65 years," there is nothing in the statute to suggest that a government employee who, like private respondent Manapat, happens to satisfy the requirements not only of Section 12(e) but also of Sections 12(a), 12(b) and 12(c), must necessarily retire under Section 12(e). We find it very difficult to understand why a government employee who reaches the compulsory retirement age of sixty-five (65) but who has served a total, not of fifteen (15) years (the minimum required under 12[e]) but rather thirty-five (35) years (i.e., more than the years of service specified under 12[a], 12[b] and 12[c]), should be regarded as deprived of the right to retire under 12(c) (i.e., R.A. No. 1616 as amended), where the required number of years of service is only twenty (20).

The interpretation urged by petitioners is conspicuously at war with the basic policy purpose of C.A. No. 186 as amended by R.A. No. 1616 which is, of course, to create an added incentive for qualified government employees to remain in the service of the government. The basic principles for the construction of statutes tell us that a statute must be read in such a way as to give effect to the purpose projected in the statute. Under this principle of effectiveness, retirement statutes, in case of a real as distinguished from a merely ostensible doubt or ambiguity, must be so construed as to give meaning and effect to their humanitarian purposes and so as reasonably to benefit employees who had opted to stay in the service of the government for so many years.[3] Thus, we read Section 12(c) as applicable in respect of private respondent Manapat who had complied with the requirement of that subsection of at least twenty (20) years of service. The benefits of Section 12(c) are, under its express terms, available to anyone who shall have rendered at least twenty (20) years of service, "regardless of [the] age" reached by the retiree at the time of his retirement.

We agree, therefore, with the respondent Court of Appeals which held that Section 12(e) of C.A. No. 186 as amended "cannot and should not be construed as limiting the mode of retirement of [a] government employee who has reached the age of 65 years:"

"This provision of law x x x is mandatory only [in respect of] those who have reached the age of [sixty-five] 65 years and have rendered at least fifteen [15] years of government service but not [in respect of] those who have rendered at least twenty (20) years of service. For, in the latter case, the retiree is given the option to retire under the provisions of Republic Act No. 1616 [i.e. s. 12 (c), C.A. No. 186], amending Commonwealth Act No. 186. And this is true regardless of the age of the retiree. x x x x.

x x x x x x x x

The enactment of Republic Act No. 1616 is exactly intended to provide for two [2] other modes of retirement, and these are:

- (1) retirement after rendering a total service of thirty (30) years, regardless of age;
- (2) retirement after rendering at least twenty (20) years of service, regardless of age.

It is crystal clear, therefore, that a retiree, regardless of age, that is, whether or not he is 65 [sixty-five] years at the time of his retirement, for as long as he has rendered at least twenty (20) years of service or has rendered a total service of thirty (30) years, can retire under the provisions of Republic Act No. 1616."^[4] (Underscoring supplied)

We should also note that the phrase "regardless of age" found in Section 12(c) becomes particularly meaningful when it is recalled that Section 12(e), which declares that "retirement shall be automatic and compulsory at age 65," nonetheless gives an employee who has already reached sixty-five (65) years of age the option to remain in the government service in order to complete the 15-year minimum service requirement.^[5]

We consider, therefore, and so hold that an employee who shall have satisfied the requirements for retirement under more than one (1) subsection of Section 12 of C.A. No. 186 as amended is entitled to choose the subsection (whose requirement he has complied with and) under which he shall retire. The option of retiring under Section 12(c) or Section 12(e), in the circumstances of this case, belongs to private respondent Manapat and not to his employer, the City of Manila. That option cannot be taken away from the retiree by the employer, which is precisely what petitioners purported to do through the medium of the "policy" of restricting the options open to a retiree who has reached the age of sixty-five (65) to retirement under Section 12(e) even though such retiree simultaneously satisfies the requisites of retirement under some other subsection or subsections of Section 12. To sustain the petitioners' alleged "policy" would in effect constitute an amendment of the terms of the applicable statute, something which neither this Court nor petitioners are authorized to do.

We turn to the second issue of whether or not petitioners may be compelled by mandamus to pay the retirement benefit due to private respondent Manapat notwithstanding the lack of funds for that purpose asserted by petitioners.

The application for retirement of Manapat having been approved and adjusted under the provisions of Section 12(c), C.A. No. 186 as amended, it became ministerial on the part of petitioner City of Manila as employer of Manapat to provide the funds necessary to pay the latter's lawfully accrued retirement gratuity. We expressly reject the argument of petitioners that the funding of private respondent's retirement gratuity under Section 12(c) is "discretionary" on the part of such employer.

The fact that petitioner City of Manila may have no item in its General Appropriation Ordinance specifically earmarking an amount of P486,634.84 for payment to Mr. Manapat, presents no legal obstacle. In *Baldivia, et al. v. Lota, etc.*,^[6] the petitioners were denied payment of their terminal leave pay because allegedly the Municipality of Taal, Batangas, had no budget or appropriation ordinance setting aside the sums necessary to pay petitioners' terminal leave pay. This Court, through the then Mr. Justice and later Mr. Chief Justice Roberto Concepcion held that:

"Indeed, respondent could have, and should have, either included the claim of petitioners herein in the general budget he is bound to submit, pursuant to section 2295 of the Revised Administrative Code, or prepared a special budget for said claim, and urged the municipal council to appropriate the sum necessary therefor. In any event, if the municipal mayor fails or refuses to make the necessary appropriation, petitioners may bring an action against the municipality for the recovery of what is due them and after securing a judgment therefor, seek a writ of mandamus against the municipal council and the municipal mayor to compel the enactment and

approval of appropriation ordinance necessary therefor."[7] (Underscoring supplied)

In the more recent case of *Municipality of Makati v. Court of Appeals*,^[8] the Court went a little further and held that mandamus was available to compel, not only the enactment and approval of the necessary appropriation ordinance, but also the corresponding payment of municipal funds therefor:

"Nevertheless, this is not to say that private respondent and [PNB] are left with no legal recourse. Where a municipality fails or refuses, without justifiable reason, to effect payment of a final money judgment rendered against it, the claimant may avail of the remedy of mandamus in order to compel the enactment and approval of the necessary appropriation ordinance, and the corresponding disbursement of municipal funds therefor. (See *Viuda De Tan Toco v. The Municipal Council of Iloilo*, 49 Phil. 52 [1926]; *Baldivia v. Lota*, 107 Phil. 1099 [1960]; *Yuviengco v. Gonzales*, 108 Phil. 247 [1960])."

In fact, however, the Court of Appeals has pointed out that the City of Manila does have an appropriation authorizing payment of retirement claims like those of Mr. Manapat:

"Even assuming, for the sake of argument, that payment of retirement gratuities under R.A. 1616 is indeed subject to the availability of funds, still respondents-appellees cannot escape or withhold payment to petitioner-appellant for the following reason:

In 1990, the City of Manila had an annual appropriation for retirement benefits in the amount of P14,000,000.00 (Exhibit 'J-1'). In view of its failure to enact a new budget for the fiscal year 1991 (the year this case was filed), its budget for 1990 was considered re-enacted hence, the aforementioned appropriation for retirement purposes was deemed in force and effect at the time of the filing of this case on January 22, 1991. Therefore, respondents-appellees cannot claim that the City of Manila had no available funds for the purpose. And this is especially true considering that the said appropriation cannot be used for any other purpose, the same being classified as 'Statutory and Contractual Obligation' (Exhibit 'J-2'), and the assurance of the City Budget Officer, Eufemia Dominguez, to indicate the source of funds to pay petitioner-appellant's claim provided only that his (petitioner-appellant) 'request will be acted upon favorably by the foregoing officials.' (Exhibit 'G')."

We must, moreover, underscore that Section 12(c), C.A. No. 186 as amended, in fact effectively dispenses with the need for enacting an ordinance specifically appropriating private respondent Manapat's retirement pay, or inserting an appropriate item to that effect in a General Appropriation Ordinance of the City of Manila. For Section 12(c) provides in part as follows:

"This gratuity is payable by the employer or officer concerned which is hereby authorized to provide the necessary appropriation or pay the same from any unexpended items of appropriations or savings of its appropriations. x x x." (Underscoring Supplied)

In other words, Section 12(c) itself furnishes statutory authority to petitioners to pay Manapat's claim out of any savings the City of Manila may have from its other appropriations.

One final point. The Court of Appeals awarded private respondent the amount of P30,000.00 as moral damages and another P30,000.00 as attorney's fees. Viewed as a whole, the record does not show, in a clear and convincing manner, the evident bad faith and arbitrariness on the part of petitioners which generate liability for moral damages; we therefore delete this award. Upon the other hand, the award of attorney's fees is entirely just and equitable since petitioners' act or omission compelled private respondent Manapat, a life-long government employee, to have recourse to litigation to protect his right to retirement benefits.^[11]

WHEREFORE, the Petition for Review is hereby DENIED for lack of merit and the questioned Decision of the respondent Court of Appeals is hereby AFFIRMED, except that the award of P30,000.00 "as and for moral

damages" is hereby DELETED. Costs against petitioners.

SO ORDERED.

Gutierrez, Jr., Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and Melo, JJ., concur.

Narvasa, C.J., on official leave.

Medialdea, J., on leave.

Campos, Jr., J., did not took part.

[1] Under R.A. No. 1616, as amended (Section 12(c), C.A. No. 186, as amended, *infra*), an employee, regardless of age and employment status, may be allowed to retire with gratuity provided said employee has rendered at least twenty (20) years of service, the last three (3) years of which are continuous. Said employee shall have the following benefits after completing at least twenty (20) years of government service:

Gratuity of one (1) month (based on last salary received) for every year of service up to the twentieth (20th) year.

Gratuity of one and one-half (1-1/2) months for every year of service from the twenty-first (21st) year to the thirtieth (30th) year;

Gratuity of two (2) months for every year of service above the thirty-first (31st) year.

On the other hand, R.A. No. 660, as amended (Section 12 (a) and (e), C.A. No. 186, as amended, *infra*), grants to an employee, with the following minimum combination of age and years of service, the last three (3) years of which are continuous:

AGE : 52 53 54 55 56 57 58 59 60 61 62 63 64 65

SERVICE : 35 34 33 32 31 30 28 26 24 22 20 18 16 15

the following benefits computed at eighty (80) percentum of the monthly salary (average salary for the last three (3) years):

(a) Five (5) year lump sum or sixty (60) months salary;

(b) After the five (5) year period, the surviving pensioner gets a monthly annuity or pension until he dies based on the above computation;

(c) Survivorship benefits for surviving spouse and children at the rate of 50 % of the pension for the surviving spouse and 10 % of the pension for each minor child should the pensioner die after the first five (5) year period.

[2] R.A. No. 660 introduced paragraphs a, d, e, f, and g; while R.A. No. 1616 as amended inserted paragraphs b and c to Section 12 of C.A. 186.

[3] *Cena v. Civil Service Commission*, G.R. No. 97419, dated 03 July 1992; *Santiago v. Commission on Audit*, 199 SCRA 125 (1991); *In re: Ruperto G. Martin*, 187 SCRA 477 (1990); *In re: Gregorio G. Pineda*, 187 SCRA 469 (1990); *In re: Application for Retirement under R.A. No. 910 of Associate Justice Ramon B. Britanico of the IAC*, 173 SCRA 421 (1989).

[4] Court of Appeals Decision, pp. 7-8; *Rollo*, pp. 117-118.

[5] *Cena v. Civil Service Commission*, G.R. No. 97419, promulgated 3 July 1992.

[6] 107 Phil. 1099 (1960).

[7] 107 Phil. at 1104

[8] 190 SCRA 206 (1990).

[9] 190 SCRA at 213.

[10] Court of Appeals Decision, pp. 9-10; Rollo, pp. 119 -120.

[11] Article 2208 (2) and (11), Civil Code of the Philippines.

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