

**JOSE G. GENEROSO, AS EXECUTOR OF ESTATE OF THE DECEASED
FAUSTINO AGUILAR, AND EMILIA WARREN AGUILAR, PLAINTIFFS
AND APPELLANTS, VS. GOVERNMENT SERVICE INSURANCE SYSTEM,
DEFENDAN...**

G.R. No. 12322. February 19, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Rizal dismissing the plaintiffs' complaint in civil case No. 3852. In their notice of appeal to this Court, the appellants state "that they intend to raise on appeal only questions of law."

The findings of the trial court are:

* * * Faustino Aguilar entered Government service on July 7, 1913 as a clerk in the Philippine Assembly. Thereafter, he served continuously in various government positions. On July 1, 1947, Aguilar was appointed Manager of the Rural Progress Administration and he remained in that position until October 10, 1949 when he was appointed Technical Adviser in the Office of his Excellency, The President. On October 7, 1950, while still serving as a technical adviser in the Office of the President, Aguilar was retired upon his application under Act No. 2589 (Osmeña Act), and he was paid a gratuity of P12,000 thereunder. On the date of his retirement, Aguilar was 69 years, 7 months and 23 days old, and he had 36 years, 11 months and 29 days of government service to his credit (Exh. B). On July 15, 1951 (should be June 16), Republic Act No. 660 was enacted; and he filed a claim for retirement under Section 26 thereof with, the Government Service Insurance System which entity made a final rejection of his claim after the claimant had already died. * * *.

Paragraphs 1 and 2, section 30, Commonwealth Act No. 186, as amended by Republic Act No. 660, which amendment took effect on 16 June 1951, provide:

Notwithstanding the provisions of this Act to the contrary, any officer or employee who died in the service within three years before said Act went into effect and who had rendered at least thirty-five years of service and who was entitled to or who could have established his right to the retirement gratuity provided for in Act Numbered Twenty-five hundred and eighty-nine, as amended, or to any other retirement benefits from any pension fund created by law shall be considered retired under the provisions of this Act if his wife, or in her default, his other legal heirs shall so elect and notify the System to that effect. Upon making such election, the wife or legal heirs of the deceased officer or employee shall be paid the monthly annuity for five consecutive years or such other benefits as provided in said Act, in lieu of the retirement gratuity or retirement benefits to which the deceased was entitled at the time of his death; and any portion of such gratuity or retirement benefits already paid to his wife or other legal heirs shall be refunded to the System: Provided, That contributions corresponding to his last five years of service shall be deducted monthly from his life annuity.

Notwithstanding any provisions of this Act to the contrary, any officer or employee whose position was abolished or who was separated from the service as a consequence of the reorganization provided for in

Republic Act Numbered Four hundred and twenty-two may be retired under the provisions of this Act if qualified: Provided, That any gratuity or retirement benefit already received by him shall be refunded to the System: Provided, further, That contributions corresponding to his last five years of service shall be paid as provided in section twelve of this Act. This provision shall also apply to any member of the judiciary who, prior to the approval of this Act, was separated from the service after reaching seventy years of age and rendering at least thirty years of service and who' is not entitled to retirement benefit under any law.[1]

The decedent Faustino Aguilar, his widow, or his legal heirs are not entitled to the benefits granted or provided for in the first paragraph of section 30, Commonwealth Act No. 186, as amended by Republic Acts Nos. 660, 728 and 1123, because Faustino Aguilar died on 24 July 1955 long after the basic law, Commonwealth Act No. 186, and the first amendatory law, Republic Act No. 660, took effect. The benefits are granted to those who died in the service within three years before the Act went into effect.

Neither is the decedent Faustino Aguilar entitled under the second paragraph of the above quoted provisions of law, because his office or position was not abolished nor was he separated from the service as a consequence of a reorganization referred to therein, he having voluntarily retired upon his petition on 7 October 1950 under Act No. 2589, while holding the position of technical adviser in the office of the President.

When on 6 January 1950, Republic Act No. 422, authorizing the President to reorganize within one year the different executive departments, etc., including corporations owned or controlled by the Government, was enacted, and when on 28 November 1950, Executive Order No. 376 was promulgated by the President, abolishing the Rural Progress Administration and transferring its functions to the Bureau of Lands, the late Faustino Aguilar already had left voluntarily the service of the Rural Progress Administration to accept the office or position of Technical Adviser to the President. Hence, his position was neither abolished nor was he separated from the service as a consequence of the reorganization of the Government as authorized and provided for in Republic Act No. 422.

The judgment appealed from is affirmed, with costs against the appellants.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] Further amended by Republic Acts Nos. 728, which took effect on 18 June 1952, and 1123, which took effect on 16 June 1954. However the amendments are not decisive of the issues raised in this appeal.

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