

GAUDENCIO LACSON, PETITIONER AND APPELLANT, VS. AUDITOR GENERAL, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. 12538. April 29, 1960*

Ponente: GUTIERREZ DAVID, J.

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Appeal from an order of the Court of First Instance of Manila dismissing appellant's petition for mandamus on the grounds that the court lacks jurisdiction to take cognizance of the case and that the petition states no cause of action.

It appears that appellant, former Acting Department Manager and Administrative Officer of the National Marketing Corporation (hereinafter referred to as NAMARCO) with salary at P7,200.00 per annum, was, on December 31, 1955, laid off as a result of the reorganization of the corporation under Administrative Order No. 53 issued pursuant to Republic Act No. 1845, otherwise known as the NAMARCO Law. He had been in the government service since 1912.

On February 6, 1956, he filed with the Government Service Insurance System (hereinafter referred to as GSIS) an application for retirement under Com. Act No. 186, as amended by Republic Act No. 660. The application was approved and, on the basis of his length of service and age, he received from the GSIS the total sum of P18,617.58.

In addition to the retirement insurance benefits he received, appellant also filed with the NAMARCO a claim for gratuity equivalent to one month salary for every year he had been in the government service, under section 18 (b), par. (3), of Republic Act No. 1345. The claim, however, was denied. The Auditor General—to whom it was referred—ruling that appellant's right to gratuity is alternative to retirement benefits under Com. Act No. 186, as amended by Republic Act No. 660. Contending otherwise, appellant, on November 26, 1956, filed the present action for mandamus against the Auditor General, NAMARCO, and the GSIS. In his petition, as against the first two respondents named, appellant claims in substance that he was unjustly laid off because he was, at the time, only 61 years old and had still 3 years, one month and 12 days to serve until the compulsory retirement age of 65 years, thus depriving him of his salary for that period in the total sum of P22,220.00; that having been in the service for 42 years, he is entitled to the total sum of P25,200.00 computed at one month salary for every year of service he had rendered; that his right to said gratuity cannot be limited to 12 months as provided in Republic Act No. 1345, such limitation being discriminatory and unconstitutional. As against the GSIS, appellant alleges that he "sustained the corresponding actuarial deductions in the amount of P3,720.00, the amount deducted from his 5 year lump sum annuity at the rate of P62.00 per month, in view of the fact that he is legally entitled to P424.00 had he reached the age of 65 years in the service, instead of P362.00 only, the basis of his present annuity." Appellant, likewise, claims P15,000.00 moral damages, plus P8,000.00 attorney's fees.

Instead of answering the petition, the respondents-appellees filed separate motions to dismiss, that of the respondent GSIS based on the ground of failure of the petition to state a cause of action, and that of the other

respondents, also on the same ground in addition to lack of jurisdiction of the court to hear and determine the case. Acting upon the motions, the court below in its order of May 7, 1957 dismissed the petition, with cost against petitioner-appellant. Hence, this appeal.

The appeal is without merit.

Appellant, by his petition for mandamus, is, in effect, appealing from the decision of the Auditor General denying his claim for gratuity. Such appeal should have been made to this Court within 30 days from notice of the decision. As the law now stands, the decision of the Auditor General in cases affecting an executive department, bureau, or office of the Government may be appealed directly to the President whose action shall be final; while those where the aggrieved party is a private person or entity are appealable to the Supreme Court. (Com. Act No. 827; Rule 45, Rules of Court; Radiowealth vs. Agregado, 86 Phil., 429; 47 Off. Gaz., [12th] Supp. 87; Stiver vs. Dizon, 76 Phil., 725; Abad Santos vs. Auditor General, 79 Phil., 176; 45 Off. Gaz., 1216; Rosario vs. Auditor General, G.R. No. L-11817, April 30, 1958.)

In any event, the petition states no cause of action. Petitioner-appellant, instead of contesting the legality of his separation from the NAMARCO, filed an application for and received retirement insurance benefits under Com. Act No. 186, as amended by Republic Act No. 660. Such being the case, his claim for the salary he would have received had he not been laid off cannot be allowed. As to his claim for gratuity, this Court has already held in the case of Gabriel vs. Government Service Insurance System (103 Phil., 651; 55 Off. Gaz. [10] 1756), that under the second paragraph of section 26 of Republic Act No. 660 gratuity is excluded by the enjoyment of retirement insurance benefits.

Moreover, section 18 (b), par. 3, of Republic Act No. 1345, under which appellant claims his right to gratuity, does not, in our opinion, allow the payment of gratuity in addition to retirement insurance benefits. That section provides in part as follows:

"SEC. 18.—(a) * * *

"(b) * * *

"(3) * * * If the officials and employees of the PRISCO so separated from the service are entitled to retire under the Osmena Retirement Law (Act 2598, as amended) or under Republic Act Numbered Six hundred sixty, they shall be so retired upon the payment of the obligation, of the PRISCO to the Government Service Insurance System subsisting under the said Republic Act Numbered Six hundred sixty on the date of the approval hereof. Those who may not be retired under the aforesaid laws shall be entitled to gratuity, which shall be paid in one lump sum, equivalent to one month's salary for every year of continuous, satisfactory service rendered in the PRISCO and in any branch of the government and government agencies and instrumentalities on the basis of the last salary received by them, but not exceeding twelve months in the aggregate: * * *."

Under the above legal provisions, it is apparent that those who may be retired under the Osmeña Retirement Law (Act 2598, as amended) or under Republic Act No. 660 (which amends Com. Act 186) are not entitled to gratuity. At any rate, the right to gratuity, as already seen, is excluded by the enjoyment of retirement insurance benefits under Republic Act No. 660. Having received retirement insurance benefits under said Act, appellant has, therefore, by his own voluntary act, divested himself of his right to gratuity.

As to appellant's charge of illegal "actuarial deductions" against the GSIS—which is based on the theory that his annuity should be computed at P424.00 per month, instead of P362.00, since, according to him, he is entitled to receive that amount "had he reached the age of 65 years in service" —suffice it to say that said appellant admits in his petition that on the date of his retirement he was only 61 years of age. He does not question the amounts paid

to him by the GSIS as incorrectly computed based upon his age and length of service at the time of his retirement. The charge, therefore, is not only without basis but also preposterous.

Wherefore, the order of dismissal appealed from is affirmed, with costs against petitioner-appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

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