

MARIA NATIVIDAD VDA. DE TAN, PETITIONED AND APPELLEE, VS. VETERANS BACKPAY COMMISSION, RESPONDENT AND APPELLANT.

G.R. No. 12944. March 30, 1959

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12944/>

REYES, J.B.L., J.:

On March 5, 1957, petitioner-appellee, Maria Natividad vda. de Tan, filed with the Court of First Instance of Manila a verified petition for mandamus seeking an order to compel the respondent-appellant Veterans Back Pay Commission: (1) to declare deceased Lt. Tan Chiat Bee alias Tan Lian Lay, a Chinese national, entitled to backpay rights, privileges, and prerogatives under Republic Act No. 304, as amended by Republic Act No. 897; and (2) to give due course to the claim of petitioner, as the widow of the said veterans, by issuing to her the corresponding backpay certificate of indebtedness.

Respondent Commission filed its answer in due time asserting certain special and affirmative defenses, on the basis of which, the Commission unsuccessfully moved to dismiss the petition.

The parties then submitted a stipulation of facts herein-below reproduced:

"Come now the petitioner and respondent in the above-entitled case through their respective counsel, and to this Honorable Court respectfully agree and stipulate that the following facts are true:

- That the petitioner is of legal age, widow, and a resident of 400 Lallana, Tondo, Manila; that the respondent is a government instrumentality or agency, with offices in the City of Manila, Philippines, duly vested with authority to implement the provisions of the Backpay Law, otherwise known as Republic Act No. 897, further amending Republic Act No. 304;
- That the petitioner is the widow of the late Lt. Tan Chiat Bee alias Tan Lion Lay, a Chinese national, and a bonafide member of the 1st Regiment, United States-Chinese Volunteers in the Philippines;
- That the United States-Chinese Volunteers in the Philippines is a guerrilla organization duly recognized by the Army of the United States and forming part and parcel of the Philippine Army;
- That Tan Chiat Bee alias Tan Lian Lay died in the service on April 4, 1945 in the battle at Ipo Dam, Rizal Province, Philippines; he was duly recognized as a guerrilla veteran and certified to by the Armed Forces of the Philippines as having rendered meritorious military services during the Japanese occupation;
- That petitioner as the widow of the said recognized deceased veteran, filed an application for back pay under the provisions of Republic Act No. 897, the resolution of the Veterans Back Pay Commission dated November 19, 1953 and the letter of the Veterans Back Pay Commission dated December 9, 1953;
- That on June 18, 1955, the Secretary and Chief of Office Staff of the Veterans Back' Pay Commission sent a letter to General Vicente Lopez of the United States-Chinese Volunteers in the Philippines apprising the latter that the Commission has reaffirmed its resolution granting the back pay to alien members;
- That the Adjutant, Armed Forces of the Philippines, has verified and certified that deceased veteran has

rendered service as a recognized guerrilla for the period indicated in his (Adjutant's) indorsement to the Chief, Finance Service Armed Forces of the Philippines;

- That, likewise, the Chief of Finance Service, Camp Murphy, has computed the backpay due the petitioner and the same was passed in audit by the representatives of the Auditor General;

- That after due deliberation respondent revoked its previous stands and ruled that aliens are not entitled to back pay;

- That on February 13, 1957, the respondent Veterans Back Pay Commission, through its Secretary & Chief of Office Staff, made a formal reply to the aforesaid claim of the herein petitioner denying her request on the ground that aliens are not entitled to backpay;

- That upon refusal of the Veterans Back Pay Commission the petitioner brought the case direct to this Honorable Court by way of mandamus;

- That petitioner and respondent admit the existence and authenticity of the following documents;

Annex A-Resolution of the Veterans Back Pay dated November 19, 1953.

Annex R-Letter dated December 9, 1953.

Annex C-Letter dated June 18, 1955.

Annex D-Executive Order No. 21 dated October 28, 1944.

Annex E-Executive Order No. 68 dated September 26, 1945.

Annex F-Minutes of the Resolution of the Back Pay Commission regarding the opinion of the Secretary of Justice dated February 8, 1956.

Annex G-Letter of Back Pay Commission dated February 26, 1954 to Secretary of Justice.

Annex H-Opinion No. 213 series of 1956 of the Secretary of Justice.

Annex I-Reply of Veterans Backpay Commission.

Annex J-Explanatory note to House Bill No. 1953.

Annex K-Explanatory note to Senate Bill No. 10.

Annex L-Explanatory note to House Bill No. 1228, now Republic Act No. 897.

Annex M-Joint Resolution No. 5 of the First Congress of the Philippines.

- That the parties waive the presentation of further evidence;

- That the respondents will file its memorandum within ten (10) days from August 1, 1957 and the petitioner may file her memorandum within ten (10) days from receipt of respondent's memorandum, after which the case is deemed submitted for decision. Manila, July 31, 1957."

Based on the foregoing, the lower court rendered judgment the dispositive portion of which, reads:

"Wherefore, the petition is granted, ordering respondent Commission to give due course to the claim of herein petitioner to the backpay to which her deceased husband was entitled as member of a duly recognized guerrilla organization."

Against the decision, the respondent instituted this appeal averring once more, in its assignment of errors, the special and affirmative defenses that the petitioner failed to exhaust available administrative remedies; that the suit is, in effect, an action to enforce a money claim against the government without its consent; that mandamus will not lie to compel the exercise of a discretionary function; and that Republic Act Nos. 304 and 897 already referred to were never intended to benefit aliens.

We find no merit in the appeal. As to the claim that mandamus is not the proper remedy to correct the exercise of discretion of the Commission, it may well be remembered that its discretion is limited to the facts of the case, i.e., in merely evaluating the evidence whether or not claimant is a member of a guerrilla force duly recognized by the

United States Army., Nowhere in the law is the respondent Commission given the power to adjudicate or determine rights after such facts are established. Having been satisfied that deceased Tan Chiat Bee was an officer of a duly recognized guerrilla outfit, certified to by the Armed Forces of the Philippines, having served under the United States-Chinese Volunteers in the Philippines, a guerrilla unit recognized by the United States Army and forming part of the Philippine Army, it becomes the ministerial duty of the respondent to give due course to his widow's application. (See sections 1 and 6, Republic Act 897.) Note that the Chief of the Finance Service, Camp Murphy, has accepted the backpay due the petitioner's husband and the same was passed in audit by the representatives of the Auditor General.

It is insisted by the respondent Commission that aliens are not included within the purview of the law. We disagree. The law as contained in Republic Act Nos. 304 and 897 is explicit enough, and it extends its benefits to members of "guerrilla forces duly recognized by the Army of the United States." From the plain and clear language thereof, we fail to see any indication that its operation should be limited to citizens of the Philippines only, for all that is required is that the guerrilla unit be duly recognized by the Army of the United States. We are in full accord with Opinion No. 213, series of 1956, of the Secretary of Justice, which reads:

"Section 1 of the cited Act (Republic Act No. 304, as amended by Republic Act No. 897), otherwise known as the Back Pay Law, recognizes the rights to the backpay of members of "guerrilla forces duly recognized by the Army of the United States, among others. A perusal of its provisions reveals nothing which may be construed to mean that only Filipino citizens are entitled to back pay thereunder. On the contrary, the statute expressly includes within its coverage "persons under contract with the Government of the Commonwealth", which clause was construed by this office to refer to "experts and technical personnel employed for highly specialized service" by the government (Opinion No. 137, s. 1953), a majority of whom were non-citizens. Thus, in Opinion No. 30, s. 1949, this office ruled that a civil service employee of the U.S. Coast and Geodetic Survey rendering service to the Philippine Government when war broke out on December 8, 1941, was entitled to back pay.

As regards guerrillas, it seems clear that all the law requires is that they be "duly recognized by the Army of the United States." Section 1 of the Back Pay Law, it is also noted, enumerates those who are not entitled to its benefits; recognized guerrillas who were not Filipino citizens are not among those expressly mentioned. The maxim *expressio unius est exclusio alterius*, I think, finds application here.

Moreover, Executive Order No. 21, dated October 28, 1944, expressly declared that, Sections 22 (a) and 27 of Commonwealth Act No. 1 to the contrary notwithstanding, "all persons of any nationality or citizenship, who are actively serving in recognized military forces in the Philippines, are thereby considered to be on active service in the Philippine Army."

It is the respondent's main argument that it could not have been the intention of Congress to extend its benefit to aliens, as the purpose of the law was "precisely to help rehabilitate members of the Armed Forces of the Philippines and recognized guerrillas by giving them the right to acquire public lands and public property by using the back pay certificate", and "it is fundamental under the Constitution that aliens except American citizens cannot acquire public lands or exploit our natural resources". Respondent Commission fails to realize that this is just one of the various uses of the certificate; and that it may also be utilized for the payment of obligations to the Government or to any of its branches or instrumentalities, i.e., taxes, government hospital bills, etc. (See Sec. 2, Rep. Act No. 897).

As further observed by the lower court:

"It is one thing to be entitled to backpay and to receive acknowledgment therefor, and another thing to receive backpay certificates in accordance with the resolutions of the Commission and to make use of the same."

It was, therefore, unreasonable if not arbitrary on the part of respondent Commission to deny petitioner's claim on this basis.

It is further contended by the Commission that the petitioner should have first exhausted her administrative remedies by appealing to the President of the Philippines, and that her failure to do so is a bar to her action in court (*Montes vs. The Civil Service Board of Appeals*, 101 Phil., 490; 54 Off. Gaz. [7] 2174. The respondent Commission is in estoppel to invoke this rule, considering that in its resolution (Annex F of the Stipulation of Facts) reiterating its obstinate refusal to abide by the opinion of the Secretary of Justice, who is the legal adviser of the Executive Department, the Commission declared that—

"The opinions promulgated by the Secretary of Justice are advisory in nature, which may either be accepted or ignored by the office seeking the opinion, and any aggrieved party has the court for recourse," (Annex F)

thereby leading the petitioner to conclude that only a final judicial ruling in her favor would be accepted by the Commission.

Neither is there substance in the contention that the petition is, in effect, a suit against the government without its consent. The relief prayed for is simply "the recognition of the rights of the petitioner-appellee" under the provisions of sections 1 and 2 of Republic Act No. 897, and consists in "directing an agency of the government to perform an act * * * it is bound to perform." Republic Act Nos. 304 and 897 necessarily embody state consent to an action against the officers entrusted with the implementation of said Acts in case of unjustified refusal to recognize the rights of proper applicants.

The decision appealed from should be, and hereby is, affirmed. No costs. So ordered.

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

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.