

APOLONIO NICDAO, PETITIONER AND APPELLEE, VS. THE GOVERNMENT SERVICE INSURANCE SYSTEM, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. 13474. February 29, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

The Government Service Insurance System has appealed the decision of the Manila court of first instance requiring it to give Apolonio Nicdao the retirement benefits of Republic Act 660 as amended.

He is not entitled to retirement, maintains the appellant, because he was not in the Government service on June 16, 1951, when Act 660 took effect.

According to the Manila court, "Apolonio Nicdao worked as a blacksmith in the Bureau of Public Works continuously from 1921 to 1941. From June 4, 1947 to September 30, 1949, he was again employed in the Bureau of Public Works as a blacksmith with a salary of P5.50 a day. On October 1, 1949, he was laid off due to lack of funds. On March 16, 1950, he worked again in the same bureau and as a blacksmith at the same rate of P5.50 a day, until March 31, 1950 when he was again laid off due to lack of funds." Said court also found that he filed an application for retirement under Act No. 2589, which application was granted by the Office of the President on October 11, 1955.

There is no denying that Republic Act 660 applies only to those in the Government service at the time of its enactment, with some exceptions mentioned in the Act itself. But Nicdao contends (and the court below maintains) that he was in the service on June 16, 1951, and/or that he belongs to one class of exceptions.

Basis of his first contention is the approval of the retirement on October 11, 1955. If I was retired on October 1955, argues Nicdao, that means I was in the service up to that time. But the President's approval said, "retired effective on the day following his last day of service"—which was April 1, 1950. Obviously, Nicdao could not be in the service in 1951, because he was retired in 1950. To uphold his contention, would entail payment of salary up to October 1955. In administrative practice, there is nothing unusual in the approval of a retirement or resignation effective months or years before.

Even admitting for the sake of argument, says Nicdao, that I was separated from the service in April 1950, my case falls under section 26 of Republic Act 660 that extends the position was benefits thereof to "any officer or employee whose position was abolished" before June 16, 1951.

The contention is untenable. When he was "laid off" for lack of funds, his position was not "abolished". In fact in 1950, he was again employed after he had been "laid off" a few months before (1949)—which could not have been done if his position had been "abolished" when he was laid off in 1949.

In this connection the official statement of the Bureau of Public Works on the matter (Exh. 3) reads:

"* * * He (Nicdao) was laid off not due to the reorganization under Republic Act No. 422 nor due to the elimination of his position and salary under Republic Act No. 563, because he was last assigned to work on special project (project No. 1010-844, Marking and Crating of 10 steel towers 110 ft.) with a limited appropriation of only P2,800.00. Simultaneously, said project was finished and funds exhausted on March 31, 1950, hence his lay-off from the service on April 1, 1960."

But the strongest argument of appellant rests on Sec. 12 (a) of Republic Act 660 which requires as a condition sine qua non, three years continuous service immediately before retirement. From the service records of Nicdao, as hereinbefore related he can not be held to have rendered such three-years continuous service.

Before concluding, we may advert to appellee's motion to dismiss the appeal on the ground that it was filed out of time. We find that his computation is based on the service of copy of the decision on the Government Corporate Counsel—not on actual receipt thereof by Atty. Leovigildo Monasterial and/or Atty. Panganiban, both of the Government Service Insurance System. The records show that the Government Corporate Counsel never filed its appearance for the respondent-appellant. All pleadings for respondent had always been signed by said two attorneys. In fact as early as October 18, 1957 (before the decision in November 9, 1957), the Government Corporate Counsel had filed a "manifestation" that his office was not appearing for the G. S. I. S. and that the latter's counsel of record were Attorneys Monasterial and Panganiban.

Wherefore, the judgment is revoked, and the Government Service Insurance System is absolved from Nicdao's claims. So ordered.

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

Padilla, J., took no part.

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