

PEDRO SAN DIEGO, PETITIONER, VS. THE AUDITOR GENERAL, RESPONDENT.

G. R. No. 15460. January 31, 1964

Ponente: DIZON, J.

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DIZON, J.:

Petitioner Pedro San Diego, a lieutenant colonel in the Armed Forces of the Philippines, was retired from the service on March 8, 1948 pursuant to Section 22 (g) of Commonwealth Act No. 1, as amended, due to physical disability, and received the corresponding lump sum gratuity of P16,335.00.

From November 1, 1951 to October 15, 1953, he was employed by the Philippine Council for United States Aid—hereinafter referred to as Philcusa—as Purchasing Officer, at an annual compensation of P6,000.00. On June 21, 1952, Republic Act No. 803, amending Sections 3 and 14 of Republic Act No. 340, became effective to give certain servicemen the right to choose between an increased lump sum gratuity, and a lifetime monthly pension retroactive to the date of their separation from the service. Exercising said right, petitioner elected and was granted the latter option effective as of March 8, 1948, the date of his retirement, and was forthwith given the accumulated pensions to which he was entitled under the law, deducting therefrom the gratuity of P16,335.00 received by him, as stated heretofore, under Section 22 (g) of Commonwealth Act No. 1, as amended.

Respondent Auditor General, however, applying Section 7-1(9) of Commonwealth Act No. 246 and our ruling in *Peralta vs. Auditor General* (100, Phil., 1051), withheld payment of petitioner's pensions corresponding to the period of his employment in the Philcusa until and unless he refunded his Philcusa salary. Hence this appeal.

The issue to be resolved is whether or not petitioner may retain that portion of the lump sum gratuity he had received upon retirement, corresponding to the period of his employment with Philcusa—from November 1, 1951 to October 15, 1953—without having to refund the salary he received from the latter corresponding to the same period.

Petitioner claims that Section 7-1 (9) of Commonwealth Act No. 246, as amended, which provides the following:

"Compensation of persons receiving pension—A person receiving life pension, annuity, or gratuity from the government of the Commonwealth of the Philippines, or any province, city, municipality, or other subdivision thereof, or from any government-owned or controlled entity or enterprise, who is reappointed to any position the appropriation for the salary of which is provided from funds of the said Commonwealth Government or any province, city, municipality, or other subdivision thereof, or from any government-owned or controlled entity, or enterprise, shall have the option to receive either the compensation for the position, or the pension, gratuity, or annuity; but in no case shall he receive both".

covers a case where the person who is to re-enter the government service is actually receiving a pension. Inasmuch as when he was employed by Philcusa he had already received a gratuity, and thereafter received not a pension but the salary for the office to which he was appointed, the prohibition does not apply to him.

We find petitioner's contention to be without merit.

In the Peralta case, *supra*, We said, *inter alia*:

"So that a retired government officer or employee who re-enters the service of the Government cannot receive both the pension, annuity or gratuity and the compensation for the position upon re-entering the Government service. He must elect between receiving the pension, annuity, or gratuity and the compensation for the position upon re-entering the service of the Government. Pension, annuity, or gratuity is granted by the Government to its officers and employees in recognition of past services rendered, designed primarily to provide for old age and disability of persons in its employment. Congress in enacting Republic Act No. 340, known as the Armed Forces Retirement Act, had this primordial aim in mind—to provide for old age and disability, to encourage officers and enlisted men to render honest, faithful and efficient service in the Armed Forces, Section 2 of the said Act grants to a retiring officer or enlisted man of the Armed Forces the option to choose between a lump-sum gratuity and an annual retirement pay payable in monthly installments. To sustain the petitioner's theory that he could receive the full compensation provided for the position upon re-entering the service of the Government and keep the lump-sum gratuity which he had received, because he has already spent it all and because he is not receiving a life pension, a life annuity, or a life gratuity, would be contrary to the above quoted provisions of Commonwealth Act No. 246, * * * so that the gratuity paid to the petitioner in lump sum comes under the above quoted provisions of Commonwealth Act No. 246. To hold that upon re-entering the government service those who receive retirement pay in installments must elect between the pension, annuity or gratuity and the compensation because they cannot receive both; whereas, those who have received it in lump sum may still receive the compensation for the office or employment upon re-entering the service, would be a clear disregard of the prohibition to receive both the compensation and the pension, annuity or gratuity,"

It is further argued that the option granted by Republic Act No. 803 mentioned above must be exercised upon re-entry into the Government service, and that inasmuch as petitioner received his monthly pension—after exercising the option—only after he had resigned from Philcusa, he is not covered by the prohibition.

This is likewise untenable.

The obvious purpose of the law is to prevent the payment of compensation and pension to any official or employee of the government for the same period of time. The decisive factor is the fact that the period for which pension is received or is due is identical to the period for which salary is received. Under the law, the pensioner is not entitled to have both the pension and the salary for that period (*Peralta vs. Auditor General supra*).

Lastly, that petitioner was not receiving pension but had already received it at the time of his employment with Philcusa makes no difference. If the ruling applies to a case where the officer or employee re-entering government service was actually receiving pension, monthly or otherwise, it should apply, *a fortiori*, to the case of an officer or employee re-entering public service who had already received in full the pension or gratuity to which he was entitled under the law.

Wherefore, the ruling appealed from is affirmed, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Regala and Makalintal, JJ., concur.

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