

2ND LT. SALVADOR PARREÑO REPRESENTED BY HIS DAUGHTER MYRNA P. CAINTIC, PETITIONER, VS. COMMISSION ON AUDIT AND CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 162224. June 07, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for certiorari[1] assailing the 9 January 2003 Decision[2] and 13 January 2004 Resolution[3] of the Commission on Audit (COA).

The Antecedent Facts

Salvador Parreño (petitioner) served in the Armed Forces of the Philippines (AFP) for 32 years. On 5 January 1982, petitioner retired from the Philippine Constabulary with the rank of 2nd Lieutenant. Petitioner availed, and received payment, of a lump sum pension equivalent to three years pay. In 1985, petitioner started receiving his monthly pension amounting to P13,680.

Petitioner migrated to Hawaii and became a naturalized American citizen. In January 2001, the AFP stopped petitioner's monthly pension in accordance with Section 27 of Presidential Decree No. 1638[4] (PD 1638), as amended by Presidential Decree No. 1650.[5] Section 27 of PD 1638, as amended, provides that a retiree who loses his Filipino citizenship shall be removed from the retired list and his retirement benefits terminated upon loss of Filipino citizenship. Petitioner requested for reconsideration but the Judge Advocate General of the AFP denied the request.

Petitioner filed a claim before the COA for the continuance of his monthly pension.

The Ruling of the Commission on Audit

In its 9 January 2003 Decision, the COA denied petitioner's claim for lack of jurisdiction. The COA ruled:

It becomes immediately noticeable that the resolution of the issue at hand hinges upon the validity of Section 27 of P.D. No. 1638, as amended. Pursuant to the mandate of the Constitution, whenever a dispute involves the validity of laws, "the courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. Where the statute violates the Constitution, it is not only the right but the duty of the judiciary to declare such act as unconstitutional and void." (*Tatad vs. Secretary of Department of Energy*, 281 SCRA 330) That being so, prudence dictates that this Commission defer to the authority and jurisdiction of the judiciary to rule in the first instance upon the constitutionality of the provision in question.

Premises considered, the request is denied for lack of jurisdiction to adjudicate the same. Claimant is advised

to file his claim with the proper court of original jurisdiction.[6]

Petitioner filed a motion for reconsideration. Petitioner alleged that the COA has the power and authority to incidentally rule on the constitutionality of Section 27 of PD 1638, as amended. Petitioner alleged that a direct recourse to the court would be dismissed for failure to exhaust administrative remedies. Petitioner further alleged that since his monthly pension involves government funds, the reason for the termination of the pension is subject to COA's authority and jurisdiction.

In its 13 January 2004 Resolution, the COA denied the motion. The COA ruled that the doctrine of exhaustion of administrative remedies does not apply if the administrative body has, in the first place, no jurisdiction over the case. The COA further ruled that even if it assumed jurisdiction over the claim, petitioner's entitlement to the retirement benefits he was previously receiving must necessarily cease upon the loss of his Filipino citizenship in accordance with Section 27 of PD 1638, as amended.

Hence, the petition before this Court.

The Issues

Petitioner raises the following issues:

- Whether Section 27 of PD 1638, as amended, is constitutional;
- Whether the COA has jurisdiction to rule on the constitutionality of Section 27 of PD 1638, as amended; and
- Whether PD 1638, as amended, has retroactive or prospective effect.[7]

The Ruling of this Court

The petition has no merit.

Jurisdiction of the COA

Petitioner filed his money claim before the COA. A money claim is "a demand for payment of a sum of money, reimbursement or compensation arising from law or contract due from or owing to a government agency." [8] Under Commonwealth Act No. 327, [9] as amended by Presidential Decree No. 1445, [10] money claims against the government shall be filed before the COA. [11]

Section 2(1), Article IX(D) of the 1987 Constitution prescribes the powers of the COA, as follows:

Sec. 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis; (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

The jurisdiction of the COA over money claims against the government does not include the power to rule on the

constitutionality or validity of laws. The 1987 Constitution vests the power of judicial review or the power to declare unconstitutional a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in this Court and in all Regional Trial Courts.[12] Petitioner's money claim essentially involved the constitutionality of Section 27 of PD 1638, as amended. Hence, the COA did not commit grave abuse of discretion in dismissing petitioner's money claim.

Petitioner submits that the COA has the authority to order the restoration of his pension even without ruling on the constitutionality of Section 27 of PD 1638, as amended. The COA actually ruled on the matter in its 13 January 2004 Resolution, thus:

Furthermore, assuming arguendo that this Commission assumed jurisdiction over the instant case, claimant's entitlement to the retirement benefits he was previously receiving must necessarily be severed or stopped upon the loss of his Filipino citizenship as prescribed in Section 27, P.D. No. 1638, as amended by P.D. No. 1650.[13]

The COA effectively denied petitioner's claim because of the loss of his Filipino citizenship.

Application of PD 1638, as amended

Petitioner alleges that PD 1638, as amended, should apply prospectively. The Office of the Solicitor General (OSG) agrees with petitioner. The OSG argues that PD 1638, as amended, should apply only to those who joined the military service after its effectivity, citing Sections 33 and 35, thus:

Section 33. Nothing in this Decree shall be construed in any manner to reduce whatever retirement and separation pay or gratuity or other monetary benefits which any person is heretofore receiving or is entitled to receive under the provisions of existing law.

x x x x

Section. 35. Except those necessary to give effect to the provisions of this Decree and to preserve the rights granted to retired or separated military personnel, all laws, rules and regulations inconsistent with the provisions of this Decree are hereby repealed or modified accordingly.

The OSG further argues that retirement laws are liberally construed in favor of the retirees. Article 4 of the Civil Code provides: "Laws shall have no retroactive effect, unless the contrary is provided." Section 36 of PD 1638, as amended, provides that it shall take effect upon its approval. It was signed on 10 September 1979. PD 1638, as amended, does not provide for its retroactive application. There is no question that PD 1638, as amended, applies prospectively.

However, we do not agree with the interpretation of petitioner and the OSG that PD 1638, as amended, should apply only to those who joined the military after its effectivity. Since PD 1638, as amended, is about the new system of retirement and separation from service of military personnel, it should apply to those who were in the service at the time of its approval. In fact, Section 2 of PD 1638, as amended, provides that "th[e] Decree shall apply to all military personnel in the service of the Armed Forces of the Philippines." PD 1638, as amended, was signed on 10 September 1979. Petitioner retired in 1982, long after the approval of PD 1638, as amended. Hence, the provisions of PD 1638, as amended, apply to petitioner.

Petitioner Has No Vested Right to his Retirement Benefits

Petitioner alleges that Section 27 of PD 1638, as amended, deprives him of his property which the Constitution and statutes vest in him. Petitioner alleges that his pension, being a property vested by the Constitution, cannot be

removed or taken from him just because he became a naturalized American citizen. Petitioner further alleges that the termination of his monthly pension is a penalty equivalent to deprivation of his life.

The allegations have no merit. PD 1638, as amended, does not impair any vested right or interest of petitioner. Where the employee retires and meets the eligibility requirements, he acquires a vested right to the benefits that is protected by the due process clause.[14] At the time of the approval of PD 1638 and at the time of its amendment, petitioner was still in active service. Hence, petitioner's retirement benefits were only future benefits and did not constitute a vested right. Before a right to retirement benefits or pension vests in an employee, he must have met the stated conditions of eligibility with respect to the nature of employment, age, and length of service.[15] It is only upon retirement that military personnel acquire a vested right to retirement benefits. Retirees enjoy a protected property interest whenever they acquire a right to immediate payment under pre-existing law.[16]

Further, the retirement benefits of military personnel are purely gratuitous in nature. They are not similar to pension plans where employee participation is mandatory, hence, the employees have contractual or vested rights in the pension which forms part of the compensation.[17]

Constitutionality of Section 27 of PD 1638

Section 27 of PD 1638, as amended, provides:

Section 27. Military personnel retired under Sections 4, 5, 10, 11 and 12 shall be carried in the retired list of the Armed Forces of the Philippines. The name of a retiree who loses his Filipino citizenship shall be removed from the retired list and his retirement benefits terminated upon such loss.

The OSG agrees with petitioner that Section 27 of PD 1638, as amended, is unconstitutional. The OSG argues that the obligation imposed on petitioner to retain his Filipino citizenship as a condition for him to remain in the AFP retired list and receive his retirement benefit is contrary to public policy and welfare, oppressive, discriminatory, and violative of the due process clause of the Constitution. The OSG argues that the retirement law is in the nature of a contract between the government and its employees. The OSG further argues that Section 27 of PD 1638, as amended, discriminates against AFP retirees who have changed their nationality.

We do not agree.

The constitutional right to equal protection of the laws is not absolute but is subject to reasonable classification.[18] To be reasonable, the classification (a) must be based on substantial distinctions which make real differences; (b) must be germane to the purpose of the law; (c) must not be limited to existing conditions only; and (d) must apply equally to each member of the class.[19]

There is compliance with all these conditions. There is a substantial difference between retirees who are citizens of the Philippines and retirees who lost their Filipino citizenship by naturalization in another country, such as petitioner in the case before us. The constitutional right of the state to require all citizens to render personal and military service[20] necessarily includes not only private citizens but also citizens who have retired from military service. A retiree who had lost his Filipino citizenship already renounced his allegiance to the state. Thus, he may no longer be compelled by the state to render compulsory military service when the need arises. Petitioner's loss of Filipino citizenship constitutes a substantial distinction that distinguishes him from other retirees who retain their Filipino citizenship. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another.[21]

Republic Act No. 7077[22] (RA 7077) affirmed the constitutional right of the state to a Citizen Armed Forces. Section 11 of RA 7077 provides that citizen soldiers or reservists include ex-servicemen and retired officers of the

AFP. Hence, even when a retiree is no longer in the active service, he is still a part of the Citizen Armed Forces. Thus, we do not find the requirement imposed by Section 27 of PD 1638, as amended, oppressive, discriminatory, or contrary to public policy. The state has the right to impose a reasonable condition that is necessary for national defense. To rule otherwise would be detrimental to the interest of the state.

There was no denial of due process in this case. When petitioner lost his Filipino citizenship, the AFP had no choice but to stop his monthly pension in accordance with Section 27 of PD 1638, as amended. Petitioner had the opportunity to contest the termination of his pension when he requested for reconsideration of the removal of his name from the list of retirees and the termination of his pension. The Judge Advocate General denied the request pursuant to Section 27 of PD 1638, as amended.

Petitioner argues that he can reacquire his Filipino citizenship under Republic Act No. 9225[23] (RA 9225), in which case he will still be considered a natural-born Filipino. However, petitioner alleges that if he reacquires his Filipino citizenship under RA 9225, he will still not be entitled to his pension because of its prior termination. This situation is speculative. In the first place, petitioner has not shown that he has any intention of reacquiring, or has done anything to reacquire, his Filipino citizenship. Secondly, in response to the request for opinion of then AFP Chief of Staff, General Efren L. Abu, the Department of Justice (DOJ) issued DOJ Opinion No. 12, series of 2005, dated 19 January 2005, thus:

[T]he AFP uniformed personnel retirees, having re-acquired Philippine citizenship pursuant to R.A. No. 9225 and its IRR, are entitled to pension and gratuity benefits reckoned from the date they have taken their oath of allegiance to the Republic of the Philippines. It goes without saying that these retirees have no right to receive such pension benefits during the time that they have ceased to be Filipinos pursuant to the aforequoted P.D. No. 1638, as amended, and any payment made to them should be returned to the AFP. x x x.[24]

Hence, petitioner has other recourse if he desires to continue receiving his monthly pension. Just recently, in AASJS Member-Hector Gumangan Calilung v. Simeon Datumanong,[25] this Court upheld the constitutionality of RA 9225. If petitioner reacquires his Filipino citizenship, he will even recover his natural-born citizenship.[26] In Tabasa v. Court of Appeals,[27] this Court reiterated that "[t]he repatriation of the former Filipino will allow him to recover his natural-born citizenship x x x."

Petitioner will be entitled to receive his monthly pension should he reacquire his Filipino citizenship since he will again be entitled to the benefits and privileges of Filipino citizenship reckoned from the time of his reacquisition of Filipino citizenship. There is no legal obstacle to the resumption of his retirement benefits from the time he complies again with the condition of the law, that is, he can receive his retirement benefits provided he is a Filipino citizen.

We acknowledge the service rendered to the country by petitioner and those similarly situated. However, petitioner failed to overcome the presumption of constitutionality of Section 27 of PD 1638, as amended. Unless the provision is amended or repealed in the future, the AFP has to apply Section 27 of PD 1638, as amended.

WHEREFORE, we DISMISS the petition. We AFFIRM the 9 January 2003 Decision and 13 January 2004 Resolution of the Commission on Audit.

SO ORDERED.

Puno, C.J., on official leave.

Quisumbing, (Acting Chief Justice), Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

Carpio-Morales, J., on leave.

Nachura, J., no part. Filed pleading as Sol Gen.

[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 11-12. Signed by Chairman Guillermo N. Carague and Commissioners Raul C. Flores and Emmanuel M. Dalman.

[3] Id. at 16-17.

[4] Establishing A New System of Retirement and Separation for Military Personnel of the Armed Forces of the Philippines and For Other Purposes, dated 10 September 1979.

[5] Amending Sections 3 and 5 of Presidential Decree No. 1638 Entitled "Establishing A New System of Retirement and Separation for Military Personnel of the Armed Forces of the Philippines and For Other Purposes," dated 8 November 1979.

[6] Rollo, p. 12.

[7] Id. at 5-6.

[8] Section 4(o), Rule I, 1997 Revised Rules of Procedure of the Commission on Audit.

[9] An Act Fixing the Time Within Which the Auditor General Shall Render his Decisions and Prescribing the Manner of Appeal Therefrom. Approved on 18 June 1938.

[10] Ordaining and Instituting a Government Auditing Code of the Philippines. Signed on 11 June 1978.

[11] See Department of Agriculture v. NLRC, G.R. No. 104269, 11 November 1993, 227 SCRA 693; Carabao, Inc. v. Agricultural Productivity Commission, et al., 146 Phil. 236 (1970).

[12] Spouses Mirasol v. Court of Appeals, 403 Phil. 760 (2001).

[13] Rollo, p. 17.

[14] See Government Service Insurance System v. Montesclaros, G.R. No. 146494, 14 July 2004, 434 SCRA 441.

[15] See Brion v. South Phil. Union Mission of 7th Day Adventist Church, 366 Phil. 967 (1999).

[16] Government Service Insurance System v. Montesclaros, *supra* note 14.

[17] Id.

[18] Tiu v. Court of Appeals, 361 Phil. 229 (1999).

[19] Beltran v. Secretary of Health, G.R. No. 133640, 25 November 2005, 476 SCRA 168.

[20] Section 4 of the 1987 Constitution provides:

Sec. 4. The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal, military, or civil service.

[21] Tiu v. Court of Appeals, *supra* note 18.

[22] An Act Providing for the Development, Administration, Organization, Training, Maintenance and Utilization of the Citizen Armed Forces of the Philippines and For Other Purposes. Approved on 27 June 1991.

[23] Citizenship Retention and Re-Acquisition Act of 2003.

[24] Rollo, pp. 63-64.

[25] G.R. No. 160869, 11 May 2007.

[26] Bengson III v. House of Representatives Electoral Tribunal, G.R. No. 142840, 7 May 2001, 357 SCRA 545.

[27] G.R. No. 125793, 29 August 2006, 500 SCRA 9.

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