

EFREN M. HERRERA AND ESTHER C. GALVEZ, FOR AND ON THEIR BEHALF AND ON BEHALF OF OTHER SEPARATED, UNREHIRED AND RETIRED EMPLOYEES OF THE NATIONAL POWER CORPORATION, PETITIONERS, ...

G.R. No. 166570. December 18, 2009

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The question at the heart of this case is whether petitioners, former employees of the National Power Corporation (NPC) who were separated from service due to the government's initiative of restructuring the electric power industry, are entitled to their retirement benefits in addition to the separation pay granted by law.

Absent explicit statutory authority, we cannot provide our imprimatur to the grant of separation pay and retirement benefits from one single act of involuntary separation from the service, lest there be duplication of purpose and depletion of government resources. Within the context of government reorganization, separation pay and retirement benefits arising from the same cause, are in consideration of the same services and granted for the same purpose. Whether denominated as separation pay or retirement benefits, these financial benefits reward government service and provide monetary assistance to employees involuntarily separated due to bona fide reorganization.

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court on a pure question of law against the Decision^[1] dated December 23, 2004 rendered by the Regional Trial Court (RTC), Branch 101, Quezon City in SCA No. Q-03-50681 (for Declaratory Relief) entitled National Power Corporation v. Napocor Employees and Workers Union (NEWU), NAPOCOR Employees Consolidated Union (NECU), NPC Executive Officers Association, Inc. (NPC-EXA), Esther Galvez and Efren Herrera, for and on their behalf and in behalf of other separated, unrehired, and retired employees of the National Power Corporation, the Department of Budget and Management (DBM), the Office of the Solicitor General (OSG), the Civil Service Commission (CSC) and the Commission on Audit (COA). Said Decision ruled that the petitioners are not entitled to receive retirement benefits under Commonwealth Act No. 186 (CA No. 186),^[2] as amended, over and above the separation benefits they received under Republic Act (RA) No. 9136,^[3] otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).

Legal and factual background

RA No. 9136 was enacted on June 8, 2001 to provide a framework for the restructuring of the electric power industry, including the privatization of NPC's assets and liabilities.^[4] One necessary consequence of the reorganization was the displacement of employees from the Department of Energy, the Energy Regulatory Board, the National Electrification Administration and the NPC. To soften the blow from the severance of employment, Congress provided in Section 63 of the EPIRA, for a separation package superior than those provided under existing laws, as follows:

SEC. 63. Separation Benefits of Officials and Employees of Affected Agencies. - National government employees displaced or separated from the service as a result of the restructuring of the [electric power] industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: Provided, however, That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization. x x x (Emphasis supplied)

The implementing rules of the EPIRA, approved by the Joint Congressional Power Commission on February 27, 2002,[5] further expounded on the separation benefits, viz:

RULE 33. Separation Benefits

Section 1. General Statement on Coverage.

This Rule shall apply to all employees in the National Government service as of June 26, 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the restructuring of the electric [power] industry and privatization of NPC assets: Provided, however, That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested [to] by the Civil Service Commission (CSC).

Section 2. Scope of Application.

This Rule shall apply to affected personnel of DOE, ERB, NEA and NPC.

Section 3. Separation and Other Benefits.

(a) The separation benefit shall consist of either a separation pay and other benefits granted in accordance with existing laws, rules and regulations or a separation plan equivalent to one and one half (1-1/2) months' salary for every year of service in the government, whichever is higher; Provided, That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act.

x x x x

(e) For this purpose, "Salary", as a rule, refers to the basic pay including the thirteenth (13th) month pay received by an employee pursuant to his appointment, excluding per diems, bonuses, overtime pay, honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws.

(f) Likewise, "Separation" or "Displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws, as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the Act. (Emphasis supplied)

On February 28, 2003, all NPC employees, including the petitioners, were separated from the service. As a result, all the employees who held permanent positions at the NPC as of June 26, 2001 opted for and were paid the corresponding separation pay equivalent to one and a half months' salary per year of service. Nonetheless, in addition to the separation package mandated by the EPIRA, a number of NPC employees also claimed retirement benefits under CA No. 186,[6] as amended by RA No. 660[7] and RA No. 1616.[8] Under these laws, government employees who have rendered at least 20 years of service are entitled to a gratuity equivalent to one month's salary for every year of service for the first 20 years, one and a half months' salary for every year of service over 20 but below 30 years, and two months' salary for every year of service in excess of 30 years.[9]

The NPC, on the other hand, took the position that the grant of retirement benefits to displaced employees in addition to separation pay was inconsistent with the constitutional proscription on the grant of a double gratuity. Unable to amicably resolve this matter with its former employees, the NPC filed on September 18, 2003, a Petition for Declaratory Relief^[10] against several parties,^[11] including the petitioners, before the RTC of Quezon City, to obtain confirmation that RA No. 9136 did not specifically authorize NPC to grant retirement benefits in addition to separation pay.^[12] The case was docketed as SCA No. Q-03-50681 and raffled to Branch 101 of said court.

After submission of the respondents' respective Answers and Comments,^[13] the parties agreed that the court a quo would resolve the case based on the arguments raised in their memoranda^[14] since only a question of law was involved.^[15] In due course, the court a quo rendered the assailed Decision, finding that employees who received the separation benefit under RA No. 9136 are no longer entitled to retirement benefits:

The aforementioned law speaks of two (2) options for the employee to choose from, that is: (1) to receive separation pay and other benefits in accordance with existing laws, rules, and regulations or (2) to avail of the privileges provided under a separation plan (under R.A. 9136), which shall be one and one half months' salary for every year of service in the government.

Under Section 3(f) of Rule 33 of the Implementing Rules and Regulations of R.A. 9136, "separation or displacement refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules, and regulations nor has opted to retire under existing laws as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the act". Thus, it is clear that the receipt of benefits under the EPIRA law, by employees who opted to retire under such law bars the receipt of retirement benefits under R.A. 1616.

Moreover, Section 8 of Article IX-B of the 1987 Constitution prohibits the grant of both separation pay and retirement benefits. x x x

x x x x

In said constitutional provision, it is x x x clear that additional or indirect compensation is barred by law and only [allowed] when so specifically authorized by law. Furthermore, on the Private Respondents' contention that the second paragraph should be applied in their [case], the same will not hold water. This is so because "retirement benefits" [are] not synonymous to pension or gratuities as contemplated by law.

R.A. 9136 did not clearly and unequivocally authorize the payment of additional benefits to Private Respondents as the benefits referred to in such law should not be interpreted to include retirement benefits in addition to their separation pay. Separation from service due to [the] restructuring of the [electric] power industry should not be interpreted to mean "retirement" as both are different in every respect. The law specifically defines the meaning of "separation" by virtue of the restructuring. x x x

x x x x

Thus, the Respondent-Employees are not entitled to receive retirement benefits under Republic Act No. 1616 over and above the separation benefits they received under Republic Act No. 9136.^[16]

Petitioners sought recourse from the assailed Decision directly before this court on a pure question of law. The Department of Budget and Management (DBM) submitted its Comment on June 30, 2005,^[17] while the NPC, through the Office of the Solicitor General, filed its Comment on August 23, 2005.^[18] Petitioners then filed their Consolidated Reply by registered mail on November 18, 2005.^[19] After the parties filed their respective memoranda,^[20] the case was

submitted for decision.

Petitioners' arguments

Before us, petitioners argue that:

- 1) The EPIRA does not bar the application of CA No. 186, as amended. Petitioners are therefore entitled to their retirement pay in addition to separation pay.
- 2) Petitioners have vested rights over their retirement benefits.
- 3) The payment of both retirement pay and separation pay does not constitute double compensation, as the Constitution provides that "pensions or gratuities shall not be considered as additional, double or indirect compensation".

Respondents' arguments

Respondents NPC and the DBM, on the other hand, maintain that:

- 1) Section 63 of RA No. 9136 and Section 3, Rule 33 of its Implementing Rules and Regulations do not authorize the grant of retirement benefits in addition to the separation pay already received. Rather, Section 63 requires separated employees to choose between a separation plan under existing laws or the separation package under the EPIRA.
- 2) The grant of both separation pay and retirement benefit amounts to double gratuity in direct contravention of the Constitution.
- 3) No law authorizes the payment of both separation pay and retirement benefits to petitioners.

Issue

The sole issue in this case is whether or not NPC employees who were separated from the service because of the reorganization of the electric power industry and who received their separation pay under RA No. 9136 are still entitled to receive retirement benefits under CA No. 186, as amended.

Our Ruling

We deny the petition and affirm the court a quo's Decision dated December 23, 2004 in SCA No. Q-03-50681.

Absent clear and unequivocal statutory authority, the grant of both separation pay and retirement benefits violates the constitutional proscription on additional compensation.

Section 8 of Article IX(B) of the Constitution provides that "[n]o elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law". In prior decisions, we have ruled that there must be a clear and unequivocal statutory provision to justify the grant of both separation pay and retirement benefits to an employee.[21] Here, absent an express provision of law, the grant of both separation and retirement benefits would amount to double compensation from one single act of separation from employment.

Petitioners claim that Section 9 of RA No. 6656[22] amounts to sufficient statutory basis for the grant of both retirement benefits and separation pay. Section 9 provides:

x x x Unless also separated for cause, all officers and employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be. Provided, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency. Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned. (Emphasis supplied)

Unfortunately for the petitioners, their interpretation has little legal precedent. The CSC has previously ruled that employees similarly situated to petitioners herein were not entitled to both separation pay and retirement benefits; instead, the concerned employee must either avail of the separation benefit or opt to retire if qualified under existing laws. In CSC Resolution No. 021112,[23] the CSC interpreted the phrase "separation pay and retirement" in RA No. 6656 as follows:

x x x While the aforequoted provision of law used the conjunctive "and" between the words "separation pay" and "retirement", this does not mean that both benefits shall be given to an affected employee. This interpretation is supported by the phrase "if entitled thereto" found before the phrase "be paid the appropriate separation pay and retirement and other benefits under existing laws". Thus, payment of both separation and retirement benefits is not absolute.

Also, in CSC Resolution No. 00-1957,[24] the CSC declared:

The aforequoted provision of law says: 'separation pay and retirement and other benefits under existing laws'. Be it noted that the conjunctive 'and' is used between 'separation pay and retirement', which in its elementary sense would mean that they are to be taken jointly. (Ruperto G. Martin, Statutory Construction, sixth edition, p. 88) Obviously, therefore, 'separation pay and retirement' refer to only one benefit, of which an employee affected by the reorganization, if entitled thereto, must be paid plus other benefits under existing laws, i.e. terminal leave pay, etc.

Further, in *Cajiuat v. Mathay*,[25] we found that in the absence of express provisions to the contrary, gratuity laws should be construed against the grant of double compensation. *Cajiuat* involved employees of the Rice and Corn Administration who exercised their option to retire under CA No. 186 and received the appropriate retirement benefits. Subsequently, the Rice and Corn Administration was abolished by Presidential Decree No. 4.[26] Said Decree also provided for the payment of a gratuity in Section 26, paragraph 3:

Permanent officials and employees of the Rice and Corn Administration who cannot be absorbed by the Administration, or who cannot transfer or to be transferred to other agencies, or who prefer to retire, if qualified for retirement, or to be laid off, shall be given gratuity equivalent to one month salary for every year of service but in no case more than twenty-four months salary, in addition to all other benefits to which they are entitled under existing laws and regulations. x x x

On the basis of this provision, the retired employees of the Rice and Corn Administration claimed that they were entitled to the separation gratuity, over and above the retirement benefits already received. We disagreed and held that:

x x x [t]here must be a provision, clear and unequivocal, to justify a double pension. The general language employed in paragraph 3, Section 26 of Presidential Decree No. 4 fails to meet that test. All that it states is that permanent employees of the Rice and Corn Administration who are retireable are entitled to gratuity equivalent to one month salary for every year of service but in no case more than twenty four months salary in addition to other benefits to which they are entitled under existing laws and regulations. To grant double gratuity is unwarranted. No reliance can be placed [on] the use of the term "other benefits" found in the paragraph relied

upon. As clearly stated in the memorandum of the Solicitor General, they refer to "those receivable by a retiree under the general retirement laws, like the refund of contributions to the retirement fund and the money value of the accumulated vacation and sick leaves of said official employee. The clause "in addition to all other benefits to which they are entitled under existing laws and regulations" was inserted to insure the payment to the retiree of the refund of the contributions to the retirement fund and the money value of the accumulated vacation and sick leaves of said official or employee.[27]

Nothing in the EPIRA justifies the grant of both the separation package and retirement benefits.

The EPIRA, a legislative enactment dealing specifically with the privatization of the electric power industry, provides:

SEC. 63. Separation Benefits of Officials and Employees of Affected Agencies. - National government employees displaced or separated from the service as a result of the restructuring of the [electric power] industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month[s] salary for every year of service in the government: Provided, however, That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization. x x x (Emphasis supplied)

A careful reading of Section 63 of the EPIRA affirms that said law did not authorize the grant of both separation pay and retirement benefits. Indeed, the option granted was either to "a separation pay and other benefits in accordance with existing laws, rules and regulations" or to "a separation plan which shall be one and one-half months' salary for every year of service in the government". The options were alternative, not cumulative. Having chosen the separation plan, they cannot now claim additional retirement benefits under CA No. 186.

This position finds further support in Section 3(f), Rule 33 of RA No. 9136's Implementing Rules and Regulations, which provides:

(f) likewise, "separation" or "displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws, as a result of the restructuring of the electric power industry or privatization of NPC assets pursuant to the act.

As worded, Rule 33, Section 3(f) of the Implementing Rules and Regulations of RA No. 9136 precludes the receipt of both separation and retirement benefits. A separated or displaced employee, as defined by the implementing rules, does not include one who is qualified or has opted to retire under existing laws. Consequently, a separated employee must choose between retirement under applicable laws or separation pay under the EPIRA.

Within the context of reorganization, petitioners cannot claim a vested right over their retirement benefits.

Petitioners claim that having religiously paid their premiums, they have vested rights to their retirement gratuities which may not be revoked or impaired. However, petitioners fail to consider that under the retirement laws that they themselves invoke, separation from the service, whether voluntary or involuntary, is a distinct compensable

event from retirement.[28] Nothing in said laws permits an employee to claim both separation pay and retirement benefits in the event of separation from the service due to reorganization.

Thus, absent an express provision of law to the contrary, separation due to reorganization gives rise to two possible scenarios: first, when the separated employee is not yet entitled to retirement benefits, second, when the employee is qualified to retire. In the first case, the employee's separation pay shall be computed based on the period of service rendered in the government prior to the reorganization. In the second case, where an employee is qualified to retire, he or she may opt to claim separation or retirement benefits.

Contradistinction with *Laraño v. Commission on Audit*

We are, of course, aware that in *Laraño v. Commission on Audit*[29] we held that employees, who were separated from the service because of the reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and Local Waterworks and Utilities Administration (LWUA) pursuant to RA No. 8041, were entitled to both a separation package and retirement benefits.[30]

In *Laraño*, however, the Early Retirement Incentive Plan submitted to and approved by then President Fidel V. Ramos explicitly provided for a separation package that would be given over and above the existing retirement benefits. Therein lies the fundamental difference. Hence, unlike in this case, there was specific authority for the grant of both separation pay and retirement benefits.

WHEREFORE, the petition is DENIED. The Decision dated December 23, 2004 of the Regional Trial Court of Quezon City, Branch 101 in SCA No. Q-03-50681 holding that petitioners are not entitled to receive retirement benefits under Commonwealth Act No. 186, as amended is AFFIRMED with MODIFICATION that petitioners are entitled to a refund of their contributions to the retirement fund, and the monetary value of any accumulated vacation and sick leaves.

SO ORDERED.

Carpio[*], Leonardo-De Castro[**], and Abad, JJ., concur.
Brion, J., with separate concurring opinion.

[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

[1] Records, pp. 249-253; penned by Judge Normandie B. Pizarro, now Associate Justice of the Court of Appeals.

[2] An Act to Create and Establish a "Government Service Insurance System", To Provide for its Administration and To appropriate the Necessary Funds Therefor.

[3] An Act Ordaining Reforms In The Electric Power Industry, Amending For The Purpose Certain Laws And For Other Purposes (2001).

[4] EPIRA, Secs. 2(i) & 3.

[5] Under Sec. 62 of the EPIRA, the Joint Congressional Power Commission was authorized to "set the guidelines and overall framework to monitor and ensure the proper implementation" of the EPIRA.

[6] *Supra* note 2.

[7] An Act To Amend Commonwealth Act Numbered One Hundred And Eighty-Six Entitled "An Act To Create

And Establish A Government Service Insurance System, To Provide For Its Administration, And To Appropriate The Necessary Funds Therefor", And To Provide Retirement Insurance And For Other Purposes (1951).

[8] An Act Further Amending Section Twelve Of Commonwealth Act Numbered One Hundred Eighty-Six, As Amended, By Prescribing Two Other Modes Of Retirement And For Other Purposes (1957).

[9] Sec. 12(c) of CA No. 186, as amended by RA No. 1616, provides:

(c) Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least twenty years of service, the last three years of which are continuous. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums described in subsection (a) of Section five hereof, without interest, be only a gratuity equivalent to one month's salary for every year of the first twenty years of service, plus one and one-half months' salary for every year of service over twenty but below thirty years and two months' salary for every year of service over thirty years in case of employees based on the highest rate received and in case of elected officials on the rates of pay as provided by law. This gratuity is payable on the rates of pay as provided by law. This gratuity is payable by the employer or officer concerned which is hereby authorized to provide the necessary appropriation or pay the same from any unexpended items of appropriations or savings in its appropriations. Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement. x x x (Emphasis supplied)

[10] Records, pp. 1-17.

[11] Namely, the Napocor Employees and Workers Union (NEWU), NAPOCOR Employees Consolidated Union (NECU), NPC Executive Officers Association, Inc. (NPC-EXA), Esther Galvez and Efren Herrera, for and on their behalf and on behalf of other separated, unrehired, and retired employees of the National Power Corporation, the Department of Budget and Management (DBM), The Office of the Solicitor General (OSG), the Civil Service Commission (CSC), and the Commission on Audit (COA).

[12] Records, pp. 1-33.

[13] Esther Galvez and Efren Herrera (petitioners herein) filed their Answer on January 22, 2004, id. at 60-71. This Answer was adopted by Abner P. Eleria, for and on his own behalf and on behalf of other separated and [un]rehired NPC employees in a Manifestation dated February 2, 2004, id. at 74-76. The Department of Budget and Management filed its Comment on March 17, 2004, id. at 80-99.

[14] The NPC submitted its Memorandum dated July 12, 2004, id. at 155-159. Abner Eleria and all other separated and [un]rehired employees filed their Memorandum dated July 23, 2004, id. at 170-184. Herrera and Galvez submitted their Memorandum dated July 31, 2004, id. at 187-205. DBM submitted its Position paper dated September 24, 2004, id at. 222-248.

[15] Order dated June 16, 2004; id. at 196-197.

[16] Records, pp. 252-253.

[17] Rollo, pp. 61-95.

[18] Id. at 113-136.

[19] Id. at 145-154.

[20] The Memorandum for Petitioners was filed on July 10, 2006, see rollo, pp 177-200. The Memorandum for

the DBM was filed on September 12, 2006, *id.* at 218-260; finally, the Memorandum for NPC was filed on November 20, 2006, *id.* at 277-306.

[21] *Nunal v. Commission on Audit*, G.R. No. 78648, January 24, 1989, 169 SCRA 356, 361-362; *Cajiuat v. Mathay, Sr.*, 209 Phil. 579, 583 (1983).

[22] An Act To Protect The Security Of Tenure Of Civil Service Officers And Employees In The Implementation Of Government Reorganization.

[23] *Re Aurora Enerio Cerilles*, Query on Retirement Benefits dated August 22, 2002.

[24] *Re Teofilo Naungayan* dated August 30, 2000. See also CSC Resolution No. 021204 dated September 23, 2002 (*Re Carlito H. Millan*, Motion for Reconsideration of CSC Resolution No. 01-1534 dated September 14, 2001).

[25] *Supra* note 21.

[26] As amended by Presidential Decree Nos. 699 and 1485, Proclaiming The Creation Of The National Grains Authority and Providing Funds Therefor (1972).

[27] *Supra* note 21 at 583-584.

[28] Section 9 of CA No. 186 provides for the following benefits in case of involuntary separation from the service, which are distinct from retirement benefits:

In other cases of separation before maturity of a policy, the Government contributions shall cease, and the insured member shall have the following options: (a) to collect the cash surrender value of the policy; or (b) to continue the policy by paying the full premiums thereof; or (c) to obtain a paid up or extended term insurance in such amount or period, respectively, as the paid premiums may warrant, in accordance with the conditions contained in said policy; or (d) to avail himself of such other options as may be provided in the policy.

On the other hand, under RA No. 8291, the involuntary separation benefits are as follows:

SEC. 12. Unemployment or Involuntary Separation Benefits. - Unemployment benefits in the form of monthly cash payments equivalent to fifty percent (50%) of the average monthly compensation shall be paid to a permanent employee who is involuntarily separated from the service due to the abolition of his office or position usually resulting from reorganization: Provided, That he has been paying integrated contributions for at least one (1) year prior to separation. Unemployment benefits shall be paid in accordance with the following schedules:

[29] G.R. No. 164542, December 18, 2007, 540 SCRA 553.

[30] In said case, to cushion adverse financial effects on the said employees, an Early Retirement Incentive Package (ERIP) was offered to those who had rendered at least one year of service. Thus, employees affected by the reorganization were paid the corresponding benefits under the ERIP. In *Laraño*, as here, those employees who had rendered more than 20 years of service filed their claims for payment of retirement benefits under RA No. 1616. When brought before this Court, we ruled that affected officials and employees of the MWSS who were qualified to retire could claim retirement benefits, notwithstanding their receipt of benefits under the ERIP. *Id.* at 570-572.

SEPARATE CONCURRING OPINION

BRION, J.:

I concur fully with the ponencia that the petitioners are not entitled to receive retirement benefits under Commonwealth Act No. 186 as amended by Republic Act No. 660 and Republic Act No. 1616 (CA 186 as amended) over and above the superior separation package (separation pay) they have received under Section 63 of Republic Act No. 9136 (RA 9136).[1] I submit this Separate Concurring Opinion to state my own views and observations on the issues at hand.

I base my concurrence with the ponencia's conclusions on the following grounds:

a)

There is only one act of exit from the service and only one service to exit from. The petitioners who chose separation from the service under the NPC's restructuring plan never really exercised the right to optionally retire; the earlier termination of their employment denied them the opportunity to optionally retire. Consequently, no retirement pay ever accrued in their favor.

b)

The grant of retirement benefits to the petitioners in addition to the separation pay they have already received effectively amounts to additional compensation for the same services. Unless specifically authorized by law, such additional compensation is not allowed under Section 8, Article IX-B of the Constitution.

Background

Dubbed as one of the landmark legislations Congress has enacted in recent years,[2] RA No. 9136 [otherwise known as the Electric Power Industry Reform Act Regulatory Act of 2001(EPIRA)] called for the restructuring of the electric power industry, including the privatization of the National Power Corporation's (NPC) assets and liabilities. One consequence of the restructuring and of NPC's privatization was the displacement and separation from the service of all its employees. To cushion the impact of the employees' abrupt separation from the service, Section 63 of RA 9136 provided for the payment of separation pay to affected employees, as follows:

Sec. 63. Separation Benefits of Officials and Employees of Affected Agencies. - National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of the NPC assets pursuant to this Act, shall be entitled to EITHER a separation pay and other benefits in accordance with existing laws, rules or regulations OR be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government...[Emphasis supplied]

On February 27, 2002, the implementing rules of the EPIRA[3] were approved by the Joint Congressional Power Commission. The pertinent portion of this rule states:

Section 3. Separation and Other Benefits

(a)

The separation benefit shall consist of EITHER a separation pay and other benefits granted in accordance with existing laws, rules and regulations OR a separation plan equivalent to one and one half (1-1/2) month's salary for every year of service in the government, whichever is higher: Provided, That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act. [Emphasis supplied]

x x x x

(f)

Likewise, "Separation" or "Displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws, as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the Act. [Emphasis supplied]

Thus, on February 28, 2003, all NPC employees were separated from service; they uniformly opted for the superior separation pay under the NPC restructuring plan equivalent to one and one-half month salary for every year of service. Subsequently, about four hundred twenty nine (429) of these separated employees, including the petitioners, filed their claim for optional retirement benefits under CA 186, as amended.[4] The present case arose when NPC refused to pay the demanded optional retirement benefits.

The petitioners are not entitled to a retirement benefit that never accrued.

In my view, there is only one act of exit from the service and only one service to exit from; unless otherwise provided by law, only one separation benefit can be paid for this exit.

This means, in concrete terms, that the petitioners who opted to be separated from the service under the NPC restructuring plan and who have received separation pay under RA 9136, cannot also be considered to have separately exited from the same service through optional retirement under CA 186, entitling them to separate retirement benefits under this law. RA 9136 provides for separation benefits in the alternative and does not offer both.

As applied to the present case, the petitioners were employees who were qualified and could claim optional retirement had they chosen to do so. They were asked how they wanted to exit the service. Instead of choosing the exit via optional retirement under CA 186, they chose to receive separation pay under the NPC restructuring plan. Under these facts, they never availed of the CA 186 optional retirement and thus never optionally retired from the service. Had they opted to retire optionally, they obviously would not need to be separated under the NPC restructuring plan and be paid separation pay under this plan.

That the petitioners in the present case were given an option is manifestly clear under Section 63 of RA 9136 which states that displaced or separated employees shall be entitled either to:

- a) receive separation pay and other benefits in accordance with existing laws, rules and regulations; or
- b) avail of the privileges provided under the separation plan, which shall be one and one-half month salary for every year of service in the government.

The law's use of the words "either. . . or" connotes that the law offers an "option" between the separation benefits, rather than an accumulation of these benefits as the petitioners would want to impress upon this Court. This interpretation is supported by the well-settled rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated.[5] In *Centeno v. Villalon-Pornillos*,[6] the Court emphasized that:

In its elementary sense, "or", as used in a statute, is a disjunctive article indicating an alternative. It often connects a series of words or propositions indicating a choice of either. When "or" is used, the various members of the enumeration are to be taken separately. [Emphasis supplied]

That an option was given to the petitioners is further strengthened by the terms of the Implementing Rules and

Regulations (IRR) of the EPIRA, heretofore quoted, which defines separation or displacement as the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws. Significantly, under this IRR, the concept of a separated or displaced employee as a result of NPC's restructuring includes those who have not opted to retire under existing laws. In other words, the IRR expressly excludes from its coverage those employees who have opted to retire under existing laws. Thus, the options open to employees are clearly alternative in character, i.e., a choice of either means of exit so that the choice of one precludes the other.

I would also wish to emphasize the settled rule that the right to retirement benefits only accrues when two conditions are met, first, when the conditions imposed by the applicable law - in this case, CA 186 as amended - are met; and second, when an actual retirement takes place. The Court clearly recognized these conditions in *Development Bank of the Philippines v. Commission on Audit*[7] when it disallowed DPB's partial payment of retirement benefits to its employees ahead of actual retirement. We then held that:

The right to retirement benefits accrues only upon certain prerequisites. First, the conditions imposed by the applicable law - in this case, RA 1616 - must be fulfilled. Second, there must be actual retirement. Retirement means there is "a bilateral act of the parties, a voluntary agreement between the employer and the employees whereby the latter after reaching a certain age agrees and/or consents to sever his employment with the former. [Emphasis supplied]

From this ruling, optional retirement clearly is a mere expectancy until availed of by those who are qualified to exercise the option to retire. If not taken because the employee chose the separation package under RA 9136, then optional retirement under CA 186 simply remained an expectancy that never materialized and is now forever lost. To put it differently, given one and the same exit from the one and the same service for which only one separation benefit is provided, there can be no actual retirement under CA 186 after exit via the RA 9136 route has been taken; optional retirement under CA 186 has then become the road not taken.

Larano is not a controlling doctrine in the present case

I also fully agree with the ponencia's conclusion that this Court's ruling in *Larano v. Commission on Audit*[8] does not apply to the present case. Larano is factually different from the present case so that its ruling does not offer a solution to the present controversy.

First, in *Larano*, Section 6 of RA 8041 merely provided that separated employees shall be entitled to such benefits as may be determined by existing laws. In the present case, Section 63 of RA 9136 clearly provides that separated employees shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules and regulations, or to one and one-half-month salary for every year of service. Thus, *Larano's* RA 8041 did not provide that displaced employees were entitled to choose one of two given alternative benefits.

Second, the Revised ERIP, particularly Item C as the Court emphasized in *Larano*, authorized payment of premium of 0.5 month per year of service to affected regular officials and employees, with emphasis on allowing the adoption by other GOCCs and GFIs of their own separation packages with incentives and premium over and above the existing retirement benefits. In the present case, both Section 63 of RA 9136 and the Implementing Rules (as approved by the Joint Congressional Power Commission) provide that the separation benefit shall consist of either separation pay and other benefits in accordance with existing laws, rules and regulations, or a separation plan equivalent to one and one half month's salary for every year of service in the government, whichever is higher, with the express caveat, derived from the law and stated in detail in the implementing rules, that employees who have opted to retire under existing laws are excluded from the plan's coverage.

Third, in Larano, Section 7 of RA 8041, Section 6 of EO 286 and the Revised ERIP as approved by the President clearly mandated the payment of retirement benefits to employees qualified to retire under existing laws (such as RA 1616), in addition to the separation pay to officials and employees affected by MWSS' reorganization. In the present case, RA 9136 and its implementing rules do not authorize the payment of retirement benefits in addition to the separation pay that the petitioner received under the NPC separation plan.

The additional grant of retirement
benefits to the petitioners effectively
amounts to additional compensation
proscribed by the Constitution

Section 8 of Article IX(B) of the Constitution states:

SEC. 8. No elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. [Emphasis supplied]

Pensions and gratuities shall not be considered as additional, double, or indirect compensation.

The prohibition against additional or double compensation except when specifically authorized by law is considered a "constitutional curb" on the spending power of the government.[9] *Peralta v. Mathay*[10] best expressed the purpose of the prohibition when it held:

This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the ideal. There is then to be an awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position.

There is an additional compensation when, for one and the same office for which a compensation has been fixed, there is added to the fixed compensation an extra reward in the form, for instance, of a bonus.[11] In the present case, I submit that the payment of separation pay and retirement pay for a single exit from same government service effectively constitutes payment for additional compensation; the government would be paying twice for the same creditable service - a feature absent from the original terms of employment that fixed the compensation.

The illustrative example cited by the respondent Department of Budget and Management is instructive:

Given:

Highest monthly salary received

-

P8,506.30/month

Length of service

-

22 years

Separation pay under R.A. 9136

-

1.5 month's salary for every year of service

Computation:

a. Separation pay under RA 9136

=

(highest monthly salary received x length of service) x 1.5 month's salary per service year)

=

(P8,506.30 x 22 years) x 1.5

=

P187,138.60 x 1.5

=

P280,707.90

b. Retirement benefits under C.A. 186, as amended

=

highest monthly salary received x total gratuity months[12]

=

P8,506.30 x 23 total gratuity months

=

P195,644.90

Total gratuity months:

20 years x 1 month

=

20

2 years x 1.5 months

=

3

22 years

23 Total gratuity months

This illustrative example shows that similarly situated petitioners separated under RA 9136 shall receive not only the amount of P280,707.90 as separation pay, but also the amount of P195,644.90 as retirement pay under CA 186 based on the same years of service in the government. This is a grant of both separation and retirement benefits

for one and the same act of exit from government service, using exactly the same years of service in the government as basis in the computation. To validly receive this kind of double compensation, a law must exist as authority for the additional grant. Thus, the resolution of this case can be reduced to a search for this law.

Incidentally, the present fact situation and the conclusion I draw are not without precedent. While the facts are not exactly the same, the facts of the present case run very close to those of *Santos v. Court of Appeals*.^[13] In this case, upon optional retirement from the Judiciary on April 1, 1992, the petitioner received full payment of his retirement gratuity under R. A. No. 910, as amended. For five years thereafter, he continued receiving a monthly pension. Subsequently, he was appointed Director III of the defunct Metro Manila Authority (MMA). On March 1, 1995, Congress enacted R.A. No. 7924 which reorganized the MMA and renamed it as the Metropolitan Manila Development Authority. The petitioner was separated from the MMA as a result of the reorganization, giving rise to the issue of whether his separation as Director III (under RA No. 7294) should include his years of service with the Judiciary. The Court categorically answered this question in the negative, holding that:

However, to credit his years of service in the Judiciary in the computation of his separation pay under R.A. No. 7924 notwithstanding the fact that he had received or has been receiving the retirement benefits under R.A. No. 910, as amended, would be to countenance double compensation for exactly the same services, i.e., his services as MeTC Judge. Such would run counter to the policy of this Court against double compensation for exactly the same services. More important, it would be in violation of the first paragraph of Section 8 of Article IX-B of the Constitution, which proscribes additional, double, or indirect compensation. Said provision reads:

No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law....

Section 11 of R.A. No. 7924 does not specifically authorize payment of additional compensation for years of government service outside of the MMA.

thus highlighting that the legislative authority for the payment of double compensation must possess a certain level of specificity to comply with the constitutional requirement.

The case of *Sadueste v. Municipality of Surigao*^[14] provided an early opportunity for the Court to elaborate on the meaning of the phrase "specifically authorized by law." *Sadueste* involved a claim for compensation by a district engineer for his designation as a sanitary and waterworks engineer under the last paragraph of Section 1916 of the Revised Administrative Code^[15] which, prior to the present constitutional prohibition of additional or double compensation, merely provided a general grant of authority to pay additional compensation. In denying *Sadueste's* petition, the Court explained the need, under the current prohibition against double compensation, for a specific authority given to a particular employee or officer because of exceptional reasons meriting the payment of additional compensation:

The authority granted in the last paragraph of section 1016 of the Revised Administrative Code is a general authority given to all district engineers. The authority required by the Constitution to receive double or additional compensation is a specific authority given to a particular employee or officer of the Government because of peculiar or exceptional reasons warranting the payment of extra or additional compensation. The purpose of the Constitution is to prohibit generally payment of additional or double compensation except in individual instances where the payment of such additional compensation appears to be not only just but necessary. [Emphasis supplied]

The subsequent case of *Cajiuat v. Mathay, Sr.*^[16] provided a stricter standard as it required that there must be a clear and unequivocal provision of law allowing the grant of additional compensation. In *Cajiuat*, permanent officials and employees of the then Rice and Corn Administration (RCA) retired and received their retirement benefits under C.A. No. 186, as amended (Optional Retirement Law). Subsequently, Presidential Decree No. 4

abolished the RCA. The affected officials and employees then claimed separation pay based on Section 26 of PD No. 4, which provides that "permanent officials and employees of the [RCA]...who prefer to retire, if qualified for retirement, shall be given gratuity equivalent to one month salary for every year of service but in no case more than twenty-four month's salary, in addition to all other benefits under existing laws and regulations." In denying the RCA retirees' claim of double gratuity, the Court significantly held:

This Court, after a careful consideration, arrives at the same conclusion. There must be a provision, clear and unequivocal, to justify a double pension. The general language employed in paragraph 3, Section 26 of Presidential Decree No. 4 fails to meet that test. All that it states is that permanent employees of the Rice and Corn Administration who are retirable are entitled to gratuity equivalent to one month salary for every year of service but in no case more than twenty-four month's salary in addition to other benefits to which they are entitled under existing laws and regulations. To grant double gratuity then is unwarranted. No reliance can be placed to the use of the term "other benefits" found in the paragraph relied upon. As clearly stated in the memorandum of the Solicitor General, they refer to "those receivable by a retiree under the general retirement laws, like the refund of contributions to the retirement fund and the money value of the accumulated vacation and sick leaves of said official employee. The clause 'in addition to all other benefits to which they are entitled under existing laws and regulations,' was inserted to insure the payment to the retiree of the refund of the contributions to the retirement fund and the money value of the accumulated vacation and sick leaves of said official or employee."

That is all it can plausibly signify. To go further would make it a fruitful parent of injustice. It would set at naught a state policy dictated by reason and fairness alike. Petitioners seek to claim the status of an exempt class. The burden of proof is on them. That they failed to meet, relying as they do on words hardly indicative of their being accorded a favored status. To justify such a result, it is imperative that the language employed be of the clearest and most satisfactory character. The paragraph relied upon in Section 26 of Presidential Decree No. 4, to repeat, cannot be so characterized.

One last word. It is to be added that the rule against double compensation is nothing new. It was so held in *Peralta v. Auditor General*. While the question involved is not identical, its ratio decidendi applies to the instant situation, namely, to allow what petitioners seek "would be a clear disregard of the prohibition to receive both the compensation and the pension, annuity, or gratuity." *Peralta* was cited with approval in a later case, *San Diego v. Auditor General*. A recent decision, *Chavez v. Auditor General*, puts the matter tersely but emphatically. Thus: "Appeal from a decision of the Auditor General, in which we reaffirm the Court's doctrine against the payment to retirees from the government service of double pension for exactly the same services." We do so again. [Emphasis supplied]

The ruling in *Cajiuat* squarely applies to the present case since the language of Section 63 of RA 9136 similarly fails to meet the test that there must be in the law a clear and unequivocal provision allowing the grant of additional compensation. RA 9136, in fact, speaks against the grant of such additional compensation as it provides for the grant of only one separation benefit when it stated:

"[n]ational government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of the NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government." [17]

To my mind, these terms cannot be any clearer in expressing the law's intent to provide only one separation benefit. Thus, the specific legislative authorization contemplated by Section 8, Article IX-B of the Constitution for the payment of additional retirement benefits to the petitioners is totally absent.

In light of all these, I vote to DENY the petition.

[1] An Act Ordaining In the Electric Power Industry, Amending For The Purpose Certain Laws and For Other Purpose, Approved June 8, 2001.

[2] See *Freedom from Debt Coalition v. Energy Regulatory Commission*, 476 Phil. 134 (2004).

[3] The Department of Energy, in consultation with the NPC, Department of Budget and Management, Department of Trade and Industry, Energy Regulatory Commission, National Electrification Administration, Power Sector Assets and Liabilities Corporation and other Electric Power Industry Participants drafted the IRR.

[4] Section 12 of CA 186, as amended by RA 1616 states:

(c) Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of twenty years of service, the last three years of which are continuous. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums described in subsection (a) of Section five hereof, without interest, be only a gratuity to one month's salary for every year of the first twenty years of service, plus one and one-half month's salary for every year of service over twenty but below thirty years and two month's salary for every year of service over thirty years in case of employees based on the highest rate received and in case of elected officials on the rates of pay as provided by law. This gratuity is payable by the employer or officer concerned which is hereby authorized to provide the necessary appropriation or pay the same from any unexpended items of appropriations or savings in its appropriations. Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement.

[5] *Pimentel v. COMELEC*, 352 Phil. 424 (1998).

[6] G.R. No. 113092, September 1, 1994, 236 SCRA 197, 206.

[7] 467 Phil. 62 (2004).

[8] G.R. No. 164542, December 18, 2007, 546 SCRA 553.

[9] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 1996 ed., p. 925.

[10] 148 Phil. 261 (1971).

[11] Bernas, *supra* note 9 at 926.

[12] Conversion of creditable service into gratuity months:

- a. One month for every creditable year of service not exceeding twenty years;
- b. One and half months for every year creditable year of service over twenty years but not exceeding thirty years; and
- c. Two months for every creditable year of service in excess of thirty years.

[13] 399 Phil. 282 (2000).

[14] 72 Phil. 485 (1941).

[15] The provision states: "Upon designation of the Director of Public Works, a district engineer may be allowed additional compensation with the approval of the provincial board not to exceed sixty pesos per month to be paid

from the income of the waterworks systems supervised by him for services rendered in his capacity as sanitary and waterworks engineer."

[16] 209 Phil. 579 (1983).

[17] Sec. 63, RA 9136 (otherwise known as the Electric Power Industry Reform Act Regulatory Act of 2001).

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