

BANGKO SENTRAL NG PILIPINAS, PETITIONER, VS. COMMISSION ON AUDIT & RECARREDO S. VALENZUELA, RESPONDENTS.

G.R. NO. 168964. January 23, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

The instant petition for certiorari seeks to set aside the December 29, 2003 Judgment [1] of the Commission on Audit (COA) in Decision No. 2003-163, which allowed the release of respondent Recarredo S. Valenzuela's retirement benefits; as well as its July 21, 2005 Resolution [2] denying petitioner Bangko Sentral Ng Pilipinas' (BSP) motion for reconsideration.

On March 1, 1990, respondent was employed by the defunct Air Transportation Unit (ATU) of BSP's Security Investigation and Transportation Department (SITD). As such, he assumed direct accountability over the spare parts and equipment of BSP's aircrafts. [3] On July 20, 1993, he executed a certification [4] in his capacity as Administrative Services Officer II/Property Supply Officer, assuming responsibility over all the properties issued to the outgoing Chief Aircraft Maintenance Officer/PSO. Upon respondent's retirement on June 30, 1994, however, BSP refused to release his P291,555.00 retirement benefits for failure to settle his property accountabilities. According to BSP's Administrative Services Department (ASD), respondent's remaining unaccounted spare parts consist of 1,314 pieces worth P1,007,263.59. [5]

Respondent filed a complaint [6] with the Human Resources Management Department (HRMD) of BSP against ASD for the bank's refusal to release his retirement benefits, but HRMD denied the same. [7]

On appeal [8] by respondent to the COA, the latter rendered a decision allowing the release of the retirement benefits. It held that retirement gratuities cannot be withheld, deducted or applied to the indebtedness of an employee to the government without his/her consent. The dispositive portion thereof, reads:

Wherefore, premises considered, the instant claim is given due course and the payment of the subject amounts to the herein petitioner may now be allowed without prejudice to any action for recovery of claimant's accountabilities, if warranted. [9]

BSP filed a motion for reconsideration contending that since respondent (1) assumed responsibility effective September 19, 1992, over all the properties under the custody of the former Aircraft Maintenance Chief; [10] and (2) affixed his signature [11] in the list of unaccounted properties, [12] as of February 28, 1995, he thereby admitted his indebtedness to BSP. Invoking the case of Villanueva v. Tantuico, Jr., [13] BSP averred that compensation should take place between it and respondent since they are both creditors and debtors in their own right.

On July 21, 2005, the COA denied BSP's motion for reconsideration. [14] Hence, BSP filed the instant petition.

The issue to be resolved is whether or not BSP may validly withhold respondent's retirement benefits and unilaterally apply the same to his indebtedness to the government.

The Court rules in the negative.

In *Cruz v. Tantuico*, [15] it was held that retirement benefits accruing to a public officer may not, without his consent, be withheld and applied to his indebtedness to the government. In the said case, the National Treasurer withheld a portion of the petitioner's retirement benefits to answer for losses arising from her encashment of falsified treasury warrants. In setting aside the directive of the Treasurer, the Court explained that –

x x x no negligence attended the petitioner's encashment of the treasury warrants. Even assuming that she could be held liable for non-compliance with or violation of some rule or regulation, this Court agrees with the petitioner that Section 624 of the Revised Administrative Code cannot be construed to authorize a deduction of the value of the treasury warrants from her retirement benefits. Said section provides:

Section 624. Retention of salary for satisfaction of indebtedness. – When any person is indebted to the Government of the Philippine Islands (or Government of the United States), the Insular Auditor may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness.

The Solicitor General, in his comment, is in agreement with the petitioner that her retirement pay may not be withheld by administrative fiat to answer for the shortage incurred while in office [Rollo, p. 99.] This has also been the interpretation applied by the respondent COA Acting Secretary in similar cases [Rollo, pp. 62-63.]

That the retirement pay accruing to a public officer may not be withheld and applied to his indebtedness to the government is settled x x x.

The case of *Cruz*, [16] citing *Hunt v. Hernandez*, explained the reason for such policy in this wise:

x x x we are of the opinion that the exemption should be liberally construed in favor of the pensioner. Pension in this case is a bounty flowing from the graciousness of the Government intended to reward past services and, at the same time, to provide the pensioner with the means with which to support himself and his family. Unless otherwise clearly provided, the pension should inure wholly to the benefit of the pensioner x x x.

The above ruling was reiterated in *Tantuico, Jr. v. Domingo*, [17] and *Government Service Insurance System v. Commission on Audit*, [18] where the Court held that benefits under retirement laws cannot be withheld regardless of the employee's monetary liability to the government. Retirement laws are liberally interpreted in favor of the retiree because the intention is to provide for the retiree's sustenance and comfort when he is no longer capable of earning his livelihood. [19]

Moreover, compensation or set off between respondent's retirement benefits and his alleged liability to BSP cannot be allowed under Section 21, Chapter 4, Subtitle-B (Commission on Audit), Book V of the Revised Administrative Code of 1987, which provides:

Sec. 21. Retention of Money for Satisfaction of Indebtedness to the Government. – When any person is indebted to any government agency, the Commission may direct the proper officer to withhold the payment of any money due such person or his estate to be applied in satisfaction of his indebtedness.

The aforequoted provision originated from Section 624 of the Revised Administrative Code of 1917. In construing Section 624, the Court held in *Villanueva v. Tantuico, Jr.*, [20] that the "indebtedness" contemplated therein pertains to one that is acknowledged by the employee or one that is adjudged by the court. Absent any of these two circumstances, no compensation under Article 1278 of the Civil Code may be had, thus –

While Section 624 of the Revised Administrative Code does indeed authorize the set-off of a person's indebtedness to the Government against "any money due him or his estate to be applied in satisfaction of such indebtedness," that indebtedness must be one that is admitted by the alleged debtor or pronounced by final

judgment of a competent court. In such a case, the person and the Government are in their own right both debtors and creditors of each other, and compensation takes place by operation of law in accordance with Article 1278 of the Civil Code. Absent, however, any such categorical admission by an obligor or final adjudication, no legal compensation can take place, as this Court has already had occasion to rule in an early case. Unless admitted by a debtor himself, the conclusion that he is in truth indebted to the Government cannot be definitely and finally pronounced by a Government auditor, no matter how convinced he may be from his examination of the pertinent records of the validity of that conclusion. Such a declaration, that a government employee or officer is indeed indebted to the Government, if it is to have binding authority, may only be made by a court. That determination is after all, plainly a judicial, not an administrative function. No executive officer or administrative body possesses such a power.

In the same vein, Section 265 of the Government Accounting and Auditing Manual explicitly limits the power of COA to retain the retirement benefits of a government employee for the purpose of satisfying his indebtedness only to instances where (1) the employee admits his indebtedness and consents to such retention; or (2) a competent court so directs, thus –

Sec. 265. Retention of salary for the satisfaction of indebtedness to the government. – When any person is indebted to the Government of the Philippines or to any government-owned or controlled corporation or to any other self-governing board, commission or agency of the government, the COA may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness (Sec. 37, PD 1145 [21]). However, the retention of the retirement gratuity of a person to satisfy his indebtedness to the government may be resorted to only if the person admits his indebtedness and consents to the retention or when a competent court so directs. (Emphasis supplied)

The COA correctly debunked the averment that respondent admitted his indebtedness when he issued a certification assuming responsibility over the properties turned over by the former Aircraft Maintenance Chief. [22] To warrant the application of set off under Article 1278 of the Civil Code, the debtor's admission of his obligation must be clear and categorical and not one which merely arise by inference or implication from the customary execution of official documents in assuming the responsibilities of a predecessor, as in the instant case. Neither would respondent's signature in the list of unaccounted properties as of February 28, 1995 operate as an acknowledgement of an obligation. Suffice it to state that said signature alone hardly satisfies the requisite open and direct recognition of an obligation that would justify the diminution of retirement benefits. There must be an independent evidence showing the employee's intention to unmistakably recognize his indebtedness which was never shown in the present controversy. On the contrary, respondent categorically stated in his February 9, 1999 letter to the BSP that he never admitted any indebtedness nor consented to the retention of his benefits by the bank. [23]

Furthermore, even assuming that the February 28, 1995 list of unaccounted items bearing the signature of respondent can be construed as an admission of indebtedness, still, said purported admission cannot extend to the alleged unlocated 1,314 spare parts/furnitures/tools with an acquisition cost of P1,007,263.59, for which respondent is being held responsible. This is so because the latter items were never shown to be included in the February 28, 1995 inventory signed by respondent. From the initial 10,120 items with a total acquisition cost of P47,802,136.82, respondent's alleged accountability was trimmed down to 1,314 spare parts/furnitures/tools with an acquisition cost of P1,007,263.59. [24] It is doubtful, however, whether the latter items are included in the February 28, 1995 list inasmuch as BSP never reconciled these inventories. Hence, the amount allegedly owed by respondent to BSP are contestable and inconclusive. It cannot thus qualify as a "debt" for compensation or set off to be operative under Article 1279 [25] of the Civil Code. At best, said amount is a mere "claim" that would not make one a creditor of the other. As explained by the Court in *E.G.V. Realty Dev't. Corp. v. Court of Appeals*: [26]

Compensation or offset takes place by operation of law when two (2) persons, in their own right, are creditor and debtor of each other. For compensation to take place, a distinction must be made between a debt and a mere claim. A debt is a claim which has been formally passed upon by the highest authority to which it can in law be submitted and has been declared to be a debt. A claim, on the other hand, is a debt in embryo. It is mere evidence of a debt and must pass thru the process prescribed by law before it develops into what is properly called a debt.

Nevertheless, while the BSP cannot directly proceed against respondent's retirement benefits, it can seek restoration of its claim by means of a proper court action for its recovery. Verily, there is no prohibition against enforcing a final monetary judgment against respondent's other assets and properties. [27]

The P291,555.00 retirement gratuity due respondent consists of unused leave credits (P39,555.00), separation incentive benefits (P112,000.00), and the amount due under the provident fund (P140,000.00). [28] We find no merit in BSP's claim that separation incentive benefits cannot be interpreted as part of respondent's retirement benefits. The grant thereof in favor of retirees is authorized by Republic Act No. 7653 or "The New Central Bank Act," in addition to the existing gratuities enjoyed by the employees. Section 134 thereof provides:

SEC. 134. Separation Benefits. – Pursuant to Section 15 of this Act, the Monetary Board is authorized to provide separation incentives, and all those who shall retire or be separated from service on account of reorganization under the proceeding section shall be entitled to such incentives, which shall be in addition to all gratuities and benefits to which they may be entitled under existing laws. (Emphasis added)

As to the provident fund, BSP cannot successfully assert a paramount lien thereon because the provision invoked by it contemplate of losses arising from "offenses" and "debts." Section 5, Article IV of the Rules and Regulations Governing The Bangko Sentral Ng Pilipinas Provident Fund, states:

Section 5 – Bank's Lien

The Bank shall have a first and paramount lien upon the amount to which the erring member is entitled as stated in the preceding Section to cover all losses, costs, and expenses which the Bank may sustain through his dishonesty, defalcation, theft, embezzlement or falsification and other similar offenses.

The same lien shall also apply for any amount due to a member to cover any debt due to the Bank or the Fund. [29]

In the instant case, respondent was neither found guilty of any offense nor conclusively established to be indebted to BSP. Hence, the latter's assertion of first and paramount lien over the amount due respondent under the provident fund, must fail.

WHEREFORE, the petition is DENIED. The December 29, 2003 Judgment of the Commission on Audit in Decision No. 2003-163 which allowed the release of respondent Recarredo S. Valenzuela's retirement benefits; and its July 21, 2005 Resolution denying petitioner Bangko Sentral Ng Pilipinas' motion for reconsideration are AFFIRMED.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Sandoval-Guitierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Rollo, pp. 17-23. Penned by Chairman Guillermo N. Carague and concurred in by Commissioners Raul C. Flores and Emmmanuel M. Dalman.

[2] Id. at 24-27.

[3] Id. at 52.

[4] Id. at 66.

[5] Subject to adjustment upon computation of the money value of the various spare parts. See the August 1, 2000 Letter of BSP's Administrative Services Department to respondent at Rollo, p. 63.

[6] Rollo, pp. 52-54.

[7] Id. at 45.

[8] Id. at 28-29.

[9] Id. at 23.

[10] Id. at 66.

[11] Id. at 145.

[12] Id. at 136.

[13] G.R. No. 53585, February 15, 1990, 182 SCRA 263.

[14] Rollo, pp. 24-27.

[15] G.R. No. L-49535, October 28, 1988, 166 SCRA 670, 677-678.

[16] Id. at 679.

[17] G.R. No. 96422, February 28, 1994, 230 SCRA 391.

[18] G.R. No. 138381, November 10, 2004, 441 SCRA 532, 546.

[19] Tantuico, Jr. v. Domingo, *supra* at 398.

[20] *Supra* at 267-268.

[21] State Audit Code of the Philippines.

[22] Rollo, p. 66.

[23] Id. at 56.

[24] Id. at 63.

[25] Article 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

[26] 369 Phil. 911, 927-928 (1999).

[27] Supra at 550.

[28] Rollo, p. 19.

[29] Id. at 150.

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