ADORACION CAROLINO (SPOUSE AND IN SUBSTITUTION OF THE DECEASED JEREMIAS A. CAROLINO), PETITIONER, VS. GEN. GENEROSO SENGA, AS CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPIN...

G.R. No. 189649. April 20, 2015

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-189649/

PERALTA, J.:

Before us is a petition for review under Rule 45 seeking to reverse and set aside the Decision[1] dated May 25, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 103502 and the Resolution[2] dated September 10, 2009 denying reconsideration thereof.

The factual and legal antecedents are as follows:

On December 1, 1976, Jeremias A. Carolino, petitioner's husband, retired[3] from the Armed Forces of the Philippines (AFP) with the rank of Colonel under General Order No. 1208 dated November 29, 1976, pursuant to the provisions of Sections 1(A) and 10 of Republic Act (RA) No. 340,[4] as amended. He started receiving his monthly retirement pay in the amount of P18,315.00 in December 1976 until the same was withheld by respondents in March 2005. On June 3, 2005, Jeremias wrote a letter[5] addressed to the AFP Chief of Staff asking for the reasons of the withholding of his retirement pay. In a letter reply,[6] Myrna F. Villaruz, LTC (FS) PA, Pension and Gratuity Officer of the AFP Finance Center, informed Jeremias that his loss of Filipino citizenship caused the deletion of his name in the alpha list of the AFP Pensioners' Payroll effective March 5, 2005; and that he could avail of re-entitlement to his retirement benefits and the restoration of his name in the AFP Pensioners' Masterlist Payroll by complying with the requirements prescribed under RA No. 9225, or the Dual Citizenship Act.

It appeared that the termination of Jeremias' pension was done pursuant to Disposition Form[7] dated October 29, 2004, which was approved by the Chief of Staff and made effective in January 2005. In the said Disposition Form, the AFP Judge Advocate General opined that under the provisions of Sections 4, 5, and 6 of RA No. 340, retired military personnel are disqualified from receiving pension benefits once incapable to render military service as a result of his having sworn allegiance to a foreign country. It was also mentioned that termination of retirement benefits of pensioner of the AFP could be done pursuant to the provisions of Presidential Decree (PD) No. 1638[8] which provides that 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. It being in consonance with the policy consideration that all retirement laws inconsistent with the provisions of PD No. 1638 are repealed and modified accordingly.

On August 24, 2006, Jeremias filed with the Regional Trial Court (RTC) of Quezon City, a Petition for Mandamus[9] against Gen. Generoso Senga, as Chief of Staff of the AFP, Brig. Gen. Fernando Zabat, as Chief of the AFP Finance Center, Comm. Reynaldo Basilio, as Chief of the AFP-GHQ Management and Fiscal Office, and

Comm. Emilio Marayag, Pension and Gratuity Management Officer, Pension and Gratuity Management Center, AFP Finance Center, seeking reinstatement of his name in the list of the AFP retired officers, resumption of payment of his retirement benefits under RA No. 340, and the reimbursement of all his retirement pay and benefits which accrued from March 5, 2005 up to the time his name is reinstated and, thereafter, with claim for damages and attorney's fees. The case was docketed as Civil Case No. Q-06-58686, and raffled off to Branch 220.

On February 26, 2007, the RTC rendered its Decision[10] granting the petition for mandamus, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered ordering General Hermogenes Esperon, Jr., as Chief of Staff of the AFP, Brigadier General Fernando Zabat, as the Commanding Officer of the AFP Finance Center, Commodore Reynaldo Basilio, as Chief of the AFP-GFIQ Management and Fiscal Office, and Captain Theresa M. Nicdao, as Pension and Gratuity Officer of the Pension and Gratuity Management Center, or any of their respective successors and those taking instructions from them as agents or subordinates, to:
>
> - immediately reinstate the name of petitioner in the list of retired AFP Officers, and to resume payment of his retirement benefits under RA 340; and
>
> - release to [petitioner] all retirement benefits due him under RA 340 which accrued to him from March 2005 continuously up to the time his name is reinstated in the list of AFP retired officers.[11]

The RTC found that the issue for resolution is the applicability of RA No. 340 and PD No. 1638 upon Jeremias' retirement benefits. It found that he retired as a commissioned officer of the AFP in 1976; thus, RANo. 340 is the law applicable in determining his entitlement to his retirement benefits and not PD No. 1638 which was issued only in 1979. Article 4 of the Civil Code provides that "laws shall have no retroactive effect unless the contrary is provided." PD No. 1638 does not provide for such retroactive application. Also, it could not have been the intendment of PD No. 1638 to deprive its loyal soldiers of a monthly pension during their old age especially where, as here, the right had been vested to them through time. RA No. 340 does not provide that the loss of Filipino citizenship would terminate one's retirement benefits; and that PD No. 1638 does not reduce whatever benefits that any person has already been receiving under existing law.

Respondents sought reconsideration,[12] but the RTC denied the same in an Order[13] dated May 25, 2007, the decretal portion of which reads:

> WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby DENIED, considering that the questioned decision has not yet attained.its finality. The Motion for Execution in the meantime is hereby DENIED.[14]

Aggrieved, respondents elevated the case to the CA. After the submission of the parties' respective memoranda, the case was submitted for decision.

Jeremias died on September 30, 2007[15] and was substituted by his wife, herein petitioner.

On May 25, 2009, the CA granted respondents' appeal. The dispositive portion of the CA decision reads:

> WHEREFORE, premises considered, the instant appeal is GRANTED. The appealed decision is REVOKED and SET ASIDE.[16]

In so ruling, the CA found that while it is true that Jeremias retired in 1976 under the provisions of RA No. 340, as amended, which does not contain any provision anent cessation or loss of retirement benefits upon acquiring another citizenship, PD No. 1638, which was signed in 1979, effectively repealed RA No. 340, as amended. Section 27 of PD No. 1638, which provides that the name of a retiree who loses his Filipino citizenship shall be

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

removed from the retired list and his retirement benefits terminated upon such loss, was correctly made applicable to Jeremias' retirement benefits. Logic dictates that since Jeremias had already renounced his allegiance to the Philippines, he cannot now be compelled by the State to render active service and to render compulsory military service when the need arises. The CA found that for the writ of mandamus to lie, it is essential that Jeremias should have a clear legal right to the thing demanded and it must be the imperative duty of respondents to perform the act required which petitioner failed to show; thus, mandamus will not lie.

Petitioner's motion for reconsideration was denied in a Resolution dated September 10, 2009.

Hence, this petition raising the following:

> RESPONDENT COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RENDERING THE ASSAILED DECISION AND RESOLUTION WHICH SET ASIDE AND REVERSED THE 26 FEBRUARY 2007 DECISION OF THE QC RTC BECAUSE:
> PD 1638 should not have been applied and cannot be used against petitioner as her husband's retirement and pension were granted to him by the AFP under RA 340 which was not superseded by PD 1638, a later statute.
>
> Petitioner correctly availed of the remedy of mandamus to compel the reinstatement of his pension and benefits from the AFP under RA 340 as PD 1638 was not applicable to him.

Petitioner contends that her husband's retirement from the active service in 1976 was pursuant to the provisions of RA No. No. 340 as PD No. 1638 was not yet in existence then, and there was nothing in RA No. 340 that disqualifies a retired military personnel from receiving retirement benefits after acquiring foreign citizenship. The concept of retirement benefits is such that one is entitled to them for services already rendered and not for those to be made at a future time. Retirement benefits due petitioner's husband under RA No. 340, is an acquired right which cannot be taken away by a subsequent law. PD No. 1638 does not expressly provide for its retroactive application. Respondents, being officers of the AFP tasked to implement the provisions of RA No. 340 have neglected their function thereunder by delisting petitioner's husband as a retiree, thus, mandamus is proper.

In his Comment, the Solicitor General argues that PD No. 1638 applies to all military personnel in the service of the AFP whether active or retired; hence, it applies retroactively to petitioner's husband. Even when a retiree is no longer in the active service, his being a Filipino still makes him a part of the Citizen Armed Forces; that whether a military personnel retires under the provisions of RA No. 340 or under PD No. 1638, he is still in the service of the military and/or the State only that he is retired, thus, they should not be treated differently upon the loss of Filipino citizenship. He argues when there is an irreconcilable conflict between the two laws of different vintages, i.e., RA No. 340 and PD No. 1638, the latter enactment prevails.

The Solicitor General argues that mandamus will not issue to enforce a right to compel compliance with a duty which is questionable or over which a substantial doubt exists. In this case, petitioner's husband does not have a well-defined, clear and certain legal right to continuously receive retirement benefits after becoming an American citizen. Likewise, the AFP does not have a clear and imperative duty to grant the said benefits considering that Section 27 of PD No. 1638 provides that 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.

Petitioner filed her reply thereto. We find merit in the petition.

Petitioner's husband retired in 1976 under RA No. 340. He was already receiving his monthly retirement benefit in the amount of P18,315.00 since December 1976 until it was terminated in March 2005. Section 5, RA No. 340 provides:

> Sec. 5. Officers and enlisted men placed in the retired list shall be subject to the rules and articles of war and to

> trial by court-martial for any breach thereof. At any time said officers and enlisted men may be called to active service by the President. Refusal on the part of any officer or enlisted man to perform such services shall terminate his right to further participation in the benefits of this Act provided he resides in the Philippines and is physically fit for service. Such fitness for service shall be determined by applicable regulations.

The afore-quoted provision clearly shows how a retiree's retirement benefits may be terminated, i.e., when the retiree refuses to perform active service when called to do so provided that (1) the retiree resides in the Philippines and (2) is physically fit for service. There is no other requirement found in the law which would be the reason for the termination of a retiree's retirement benefits. Petitioner's husband was never called to perform active service and refused to do so, however, his retirement benefit was terminated. The reason for such termination was his loss of Filipino citizenship based on Section 27 of PD No. 1638, to wit:

> 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.

We find that the CA erred in applying PD No. 1638 to the retirement benefits of petitioner's husband.

Firstly, PD No. 1638 was signed by then President Ferdinand Marcos on September 10, 1979. Under Article 4 of the Civil Code, it is provided that laws shall have no retroactive effect, unless the contrary is provided. It is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions;[17] that all statutes are to be construed as having only prospective operation, unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used; and that every case of doubt must be resolved against retrospective effect.[18] These principles also apply to amendments of statutes.

PD No. 1638 does not contain any provision regarding its retroactive application, nor the same may be implied from its language. In fact, Section 36 of PD No. 1638 clearly provides that the decree shall take effect upon its approval. As held in Parreno v. COA,[19] there is no question that PD No. 1638, as amended, applies prospectively. Since PD No. 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.[20] Conversely, PD No. 1638 is not applicable to those who retired before its effectivity in 1979. The rule is familiar that after an act is amended, the original act continues to be in force with regard to all rights that had accrued prior to such amendment.[21]

Moreover, Section 27 of PD No. 1638 specifically provides for the retirees to whom the law shall be applied, to wit:

> 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, (emphasis supplied)

Notably, petitioner's husband did not retire under those above-enumerated Sections of PD No. 1638 as he retired under RA No. 340.

Secondly, it has been held that 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.[22] Undeniably, petitioner's husband had complied with the conditions of eligibility to retirement benefits as he was then receiving his retirement benefits on a monthly basis until it was terminated. 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.[23] It is only upon retirement that military personnel acquire a vested right to retirement benefits.[24]

Retirees enjoy a protected property interest whenever they acquire a right to immediate payment under pre-existing law.[25]

In Ayog v. Cusi,[26] we expounded the nature of a vested right, thus:

> "A right is vested when the right to enjoyment has become the property of some particular person or persons as a present interest" (16 C.J.S. 1173). It is "the privilege to enjoy property legally vested, to enforce contracts, and enjoy the rights of property conferred by the existing law" (12 C.J.S. 955, Note 46, No. 6) or "some right or interest in property which has become fixed and established and is no longer open to doubt or controversy" (Downs vs. Blount 170 Fed. 15, 20, cited in Balboa vs. Farrales, 51 Phil. 498, 502).
>
> The due process clause prohibits the annihilation of vested rights. "A state may not impair vested rights by legislative enactment, by the enactment or by the subsequent repeal of a municipal ordinance, or by a change in the constitution of the State, except in a legitimate exercise of the police power" (16 C.J.S. 1177-78).
>
> It has been observed that, generally, the term "vested right" expresses the concept of present fixed interest, which in right reason and natural justice should be protected against arbitrary State action, or an innately just and imperative right which an enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny (16 C.J.S. 1174, Note 71, No. 5, citing Pennsylvania Greyhound Lines, Inc. vs. Rosenthal, 192 Atl. 2nd 587).[27]

Petitioner's husband acquired vested right to the payment of his retirement benefits which must be respected and cannot be affected by the subsequent enactment of PD No. 1638 which provides that loss of Filipino citizenship terminates retirement benefits. Vested rights include not only legal or equitable title to the enforcement of a demand, but also an exemption from new obligations after the right has vested.[28]

In fact, Sections 33 and 35 of PD No. 1638 recognize such vested right, to wit:

> 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 x 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.

Section 33 of PD No. 1638 is clear that the law has no intention to reduce or to revoke whatever retirement benefits being enjoyed by a retiree at the time of its passage. Hence, Section 35 provides for an exception to what the decree repealed or modified, i.e., except those necessary to preserve the rights granted to retired or separated military personnel.

We also find that the CA erred in finding that mandamus will not lie.

Section 3, Rule 65 of the Rules of Court lay down under what circumstances petition for mandamus may be filed, to wit:

> SEC. 3. Petition for mandamus. - When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

A writ of mandamus can be issued only when petitioner's legal right to the performance of a particular act which is sought to be compelled is clear and complete. A clear legal right is a right which is indubitably granted by law or is inferable as a matter of law.[29] A doctrine well-embedded in our jurisprudence is that mandamus will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same.[30] The remedy of mandamus lies to compel the performance of a ministerial duty.[31] A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done.[32] If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial.[33]

The petition for mandamus filed by petitioner's husband with the RTC was for the payment of his terminated retirement benefits, which has become vested, and being a ministerial duty on the part of the respondents to pay such claim, mandamus is the proper remedy to compel such payment.

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review.[34] However, the principle of exhaustion of administrative remedies need not be adhered to when the question is purely legal.[35] This is because issues of law cannot be resolved with finality by the administrative officer.[36] Appeal to the administrative officer would only be an exercise in futility.[37] Here, the question raised is purely legal, i.e., what law should be applied in the payment of retirement benefits of petitioner's husband. Thus, there was no need to exhaust all administrative remedies before a judicial relief can be sought.

WHEREFORE, the petition is GRANTED. The Decision dated May 25, 2009 and the Resolution dated September 10, 2009 of the Court of Appeals are hereby REVERSED and SET ASIDE. The Decision dated February 26, 2007 of the Regional Trial Court of Quezon City, Branch 220, is AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Perez,[*] Reyes, and Jardeleza, JJ., concur.

June 26, 2015

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on April 20, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on June 26, 2015 at 10:15 a.m.

Very truly yours,
(SGD.)
WILFREDO V. LAPITAN
Division Clerk of Court

[*] Designated Acting Member, in lieu of Associate Justice Martin S. Villarama, Jr., per Raffle dated April 20, 2015.

[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Normandie B. Pizarro, concurring; rollo, pp. 34-42.

[2] Id. 44-45.

[3] Id. at 65.

[4] AN ACT TO ESTABLISH A UNIFORM RETIREMENT SYSTEM FOR THE ARMED FORCES OF THE PHILIPPINES, TO PROVIDE FOR SEPARATION THEREFROM, AND FOR OTHER PURPOSES.

[5] Rollo, p. 66.

[6] Id. at 67.

[7] Id. at 68-69; Termination of Pension Payments for Retirees of RA340 with Foreign Citizenship.

[8] ESTABLISHING A NEW SYSTEM OF RETIREMENT AND SEPARATION FOR MILITARY PERSONNEL OF THE ARMED FORCES OF THE PHILIPPINES AND FOR OTHER PURPOSES.

[9] Rollo, pp. 51-58.

[10] Per Judge Jose G. Paneda; id. at 132-138.

[11] Id. at 138.

[12] Id. at 140-148.

[13] Id. at 150.

[14] Id. (Emphasis in the original)

[15] Id. at 47.

[16] Id. at 42. (Emphasis in the original)

[17] Buyco v. Philippine National Bank, 112 Phil. 588, 592 (1961), citing Lopez, et al. v. Crow, 40 Phil. 997, 1007 (1919).

[18] Id., citing Montilla v. Agustinian Corp., 24 Phil. 220, 222 (1913).

[19] 551 Phil. 368 (2007).

[20] Parreño v. COA, supra, at 377.

[21] Buyco v. Philippine National Bank, supra, citing Fairchild v. U.S., 91 Fed. 297; Hathaway v. Mutual Life Ins. Co. of N.Y., 99 F. 534.

[22] Parreño v. Commission on Audit, supra note 19, at 377, citing Brion v. South Phil. Union Mission of 7[th] Day Adventist Church, 366 Phil. 967, 975 (1999).

[23] Id., citing Government Service Insurance System v. Montesclaros, 478 Phil. 573, 584 (2004).

[24] Id.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

[25] Id.

[26] 204 Phil. 126 (1982).

[27] Ayog v. Cusi, supra, at 135.

[28] Republic v. Miller, 365 Phil. 634, 638 (1999), citing 16A Am. Jur. 2d, Constitutional Law, 651.

[29] Manila International Airport Authority v. Rivera Village Lessee Homeowners Association Incorporated, 508 Phil. 354, 371 (2005).

[30] Id.

[31] See Heirs of Spouses Venturillo v. Judge Quilain, 536 Phil. 839, 846 (2006).

[32] Id.

[33] Id.

[34] Castro v. Gloria, 415 Phil. 645, 651 (2001).

[35] Id. at 652.

[36] Id.

[37] Id.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.