

**EDILBERTO M. RAMOS, PETITIONER, VS. HON. RAMON A. DIAZ,
EXECUTIVE SECRETARY, HON. MACARIO PERALTA, JR., SECRETARY
OF NATIONAL DE-FENSE, GEN. ALFREDO M. SANTOS, CHIEF OF
STAFF, A...**

G.R. No. 24521. December 11, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Col. Edilberto Ramos was ordered compulsorily retired effective September 22, 1963, for having completed thirty (30) years of service in the Armed Forces of the Philippines, pursuant to the Armed Forces Retirement Act (Rep. Act 340). Said order of retirement, dated October 25, 1963, was signed by the Chief of Staff, A.F.P., for the General Headquarters, upon authority of the President of the Philippines.

Several criminal cases, however, were pending against Ramos. For this reason, payment of retirement benefits to him under said Republic Act 340 was withheld, until he obtains the proper clearances of these charges and of his money and property accountabilities. Ramos wrote three letters to the President[1] praying for payment of said benefits under the Act, and on April 27, 1965, the Adjutant General of the Armed Forces, signing for the Acting Chief of Staff, wrote to Ramos[2] informing him that the Office of the President, in its 5th Indorsement to the Secretary of National Defense, denied the payment of his retirement benefits under the Act until he is cleared of the criminal charges against him.

On May 12, 1965, Col. Edilberto Ramos filed before Us the present petition for Mandamus against Executive Secretary Raman Diaz, Secretary of National Defense Macario Peralta, Jr., Chief of Staff, A.F.P., General Alfredo Santos and Col. Maximo Jante, Chief of Finance, A.F.P., to compel the payment of retirement benefits under Republic Act 340, as amended.

At issue is whether the payment of benefits granted to members of the Armed Forces under the Armed Forces Retirement Act, as amended, may be withheld pending resolution of criminal charges against the retiree.

A reproduction of the pertinent portion of the Act providing for compulsory retirement is in order:

"Upon completion of at least thirty years of continuous satisfactory active service or upon attaining sixty years of age with a minimum of fifteen years continuous active service, retirement shall be compulsory, unless the continued service of the officer or enlisted man is, in the opinion of the President, required for the good of the service." (Sec. 1/b/ of R.A. 340, underscoring ours).

It is the position of Ramos that the fact of his compulsory retirement itself operates as the determination of the satisfactoriness of his service, encompassing the fulfillment of all the conditions required by law and immediately vesting in him automatically his rights to the benefits under the law; that the payment of such benefits is mandatory under Section 2 of the Act because he is given the option to receive a gratuity equivalent to a month's base and longevity pay on the date of retirement for every year of service or an annual retirement pay

equivalent to 2-1/2% of the annual base and longevity pay; that such benefits are under Sec. 16-A of this Act and Article 302 of the Civil Code, not subject to attachment, levy, execution or any tax whatsoever.

The provision is clear that continuous active service during the thirty-year period must be satisfactory in order that the benefits under the Act may be granted. Thus, one may be compelled to retire after thirty years of continuous active service but it does not necessarily follow that he automatically gets the benefits under the law especially when circumstances are such that a doubt is cast upon the satisfactoriness of his service.

In the case at bar, the letter of the Office of the President, dated October 25, 1963 ordering Ramos' retirement[3] under Republic Act No. 340, as amended, was in approval of the recommendation of the General Headquarters for his retirement for the good of the service in view of the pendency of several criminal charges against him in the courts.[4] Some of these cases were for estafa and malversation of public funds alleged to have been committed during his service in the Armed Forces. Understandably, the letter ordering his retirement (Annex 1) provided for the payment of benefits only after showing satisfactoriness of his service through the submission of clearances of his criminal charges and of his money and property accountabilities. While Ramos alleges that only one case is pending, the others having been dismissed, a conviction in the same bears against the satisfactoriness of his service which would be reason enough to bar him from the benefits of the Act.

Ramos' contention that withholding of the retirement benefits is equivalent to his conviction and in violation of the presumption of innocence, is untenable. Ramos is not being presumed guilty of or punished for any offense; hence, the presumption of innocence is not violated. Rather, the pendency of the criminal charges puts in issue the satisfactoriness of his service, and this point has first to be resolved before retirement benefits can be paid to him.

Petitioner also relies on the wording of the letter[5] from the Office of the President, signed by the Executive Secretary and addressed to the Secretary of National Defense which in part stated that Ramos "x x x is hereby retired from the Armed Forces of the Philippines in the rank of Colonel effective September 22, 1963, the date he completed 30 years of creditable service and when he therefore became due for automatic and compulsory retirement." Ramos points out that Webster's dictionary defines "creditabile service" as "that which is sufficiently good to bring esteem, deserving of praise." He relies on the use of the phrase in claiming automatic grant of the benefits. However, the same letter states that to dispel any doubt "the payment of the corresponding gratuity and any other benefits to which subject officer is entitled shall be held pending resolution of the satisfactoriness of his service which shall be determined by this office only upon submittal of clearances of his criminal charges and of his money and property accountabilities, subject to the usual accounting and auditing requirements." In the light of the clear terms of the letter, "creditabile service" could not have the import of Ramos' allegations. Mandamus would only lie if the petitioner's right is clear and indubitable.

WHEREFORE, the petition for mandamus is hereby denied. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Feb. 25, 1964, Annex B, p. 15 of the Record; Jan. 21, 1965, Annex C, p. 26 of the Record; Feb. 11, 1965, Annex D, p. 32 of the Record.

[2] Annex E, p. 49 of the Record.

[3] Annex 1 of Respondent's Answer, p. 61 of the Record.

[4] Annex F, 5th Indorsement, p. 50 of the Record.

[5] Annex 1 to Respondents' Answer, p. 61 of the Record.

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