

## **PEDRO GRAVADOR, PETITIONER-APPELLEE, VS. EUTQUIO MEMIGO, THE DISTRICT SUPERVISOR OF BAYAWAN-STA. CATALINA SCHOOL DISTRICT, THE DIVISION SUPERINTENDENT OF SCHOOLS OF NEGROS ORIE...**

*G.R. No. 24989. July 21, 1967*

Ponente: RUIZ CASTRO, J.

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### **RUIZ CASTRO, J.:**

The petitioner Pedro Gravador was the principal of the Sta. Catalina Elementary School in Sta. Catalina, Negros Oriental on August 15, 1964 when he was advised by the then Superintendent of Schools Angel Salazar, Jr., through the respondent Supervisor Teodulfo E. Dayao, of his separation from the service on the ground that he had reached the compulsory retirement age of 65. The advice reads:

"According to your pre-war records as a teacher in the public schools, including your Employee's Record Card, which has just been found in connection with the verification of the services of all school officials including elementary school principals in this division, you were born on November 26, 1897. As of this date, therefore, you are now 66 years, 8 months, and 22 days old.

"In view of the above, you are hereby advised of your separation from the service effective immediately unless you can show valid proof in the form of a baptismal or birth certificate that you are below sixty-five of age today.

A few days later the respondent Eutiquio Mamigo was designated teacher-in-charge of the said elementary school.

On August 31, 1964 the petitioner wrote the Director of Public Schools, protesting his forced retirement on the ground that the date of his birth is not November 26, 1897 but December 11, 1901. Attached to his letter was the affidavit, executed on July 26, 1962, of Lazaro Bandoquillo and Pedro A. Sienes, both of Amlan, Negros Oriental, in which these two affiants declared that they knew that the petitioner "was born on December 11, 1901, in the Municipality of Amlan, formerly known as New Ayuquitan, Province of Negros Oriental, Philippines" because, "we were the neighbors of the late spouses, NEPOMUCENO GRAVADOR and AGUEDA REGOROSA [petitioner's parents], and that we were present when said PEDRO GRAVADOR was born; furthermore, we were also invited during the baptismal party a few weeks after the birth of said PEDRO GRAVADOR."

On October 19, 1964 the petitioner wrote to the Division Superintendent of Schools, reiterating his claim that he had not reached the age of 65 and enclosing some papers in support thereof.

On April 13, 1965 he filed this suit for quo warranto, mandamus and damages in the Court of First Instance of Negros Oriental. He asked the court to adjudge him entitled to the office of principal of the Sta. Catalina Elementary School and to order payment to him of not only his back salaries but also damages in the total amount

of P52,400. Named as respondents were Eutiquio Mamigo, the District Supervisor, the Superintendent of Schools, the Director of Public Schools and the Secretary of Education.

The respondents filed their answer, entered into a stipulation of facts with the petitioner, and thereafter the case was submitted for decision. The trial court concluded that the petitioner was born on December 11, 1901 and accordingly granted his petition. Immediate execution was ordered, as a result of which the petitioner was reinstated.

The respondents appealed directly to this Court.

On July 6, 1967 the petitioner asked for the dismissal of the appeal on the ground that the issues posed thereby had become moot with his retirement from the service on December 11, 1966 and the payment to him of the corresponding retirement benefits. We deem it necessary, however, to review the trial court's decision on the merits, considering that the computation of retirement annuities is based, among other things, on the number of years of service of a retiree,[1] and that payment of benefits already made to the petitioner on the basis of December 11, 1901 as the date of his birth would not exempt him from the obligation to make a refund should this Court ultimately rule that he was actually born on November 26, 1897, as the respondents claim.

The amount of annuity at the age of 57 is P20 plus, for each year of service rendered after June 16, 1957, 1.6% of the average monthly salary received during the last five years, plus, for each year of service rendered prior to June 16, 1951, if such service lasted for at least seven years, 1.2% of the average monthly salary. This amount is adjusted actuarially if retirement is at an age other than 57, but the maximum amount of the monthly salary is no case more than 2/3 of the average monthly salary or P500, whichever is the smaller amount.

The formula-

$$R = P20 + [(1.6\% \times M) \times (1.2\% \times P)] [A]$$

Where-

R = Monthly annuity at 57

A = Average monthly salary for the last 5 years

M = No. of years of service after June 16, 1951

P = No. of years of service before June 16, 1951 if at least 7 years

If retirement is at an age other than 57, the monthly annuity at 57 is first computed after which the amount obtained is multiplied by the actuarial adjustment factor corresponding to the age at the retirement in accordance with the following table:

Age Adj. Factor    Age Adj. Factor

|               |                  |      |
|---------------|------------------|------|
| 52 years..... | 87 59 years..... | 1.06 |
| 53 years..... | 89 60 years..... | 1.09 |
| 54 years..... | 92 61 years..... | 1.12 |
| 55 years..... | 94 62 years..... | 1.16 |
| 56 years..... | 97 63 years..... | 1.20 |
| 57 years..... | 1.00 years.....  | 1.24 |

58 years.....1.03 65 years.....1.24

(GSIS Handbook of Information on Retirement Insurance, 14-15 [1965])

The controversy on the petitioner's date of birth arose as a result of the conflicting records of the Division of Schools of Negros Oriental. On the one hand the pre-war records show his date of birth to be November 26, 1897. These records consist of two Insular Teacher's Cards[2] and one Employee's Record Card.[3] It is on the basis of these records that the Superintendent of Schools determined the petitioner's age to be 66 years, 8 months and 22 days on August 15, 1964.

On the other hand, the post-war records, consisting of an Elementary Teacher's Report Card,[4] an Employee's Record Card[5] and an Employee's Record of Qualifications,[6] state that the petitioner was born on December 11, 1901. These are the records on which the petitioner bases his claim.

The problem is aggravated by two uncontroverted facts, namely, that the records of the church where the petitioner was baptized were destroyed by fire, and that the municipal civil register contains no record of the petitioner's birth.

According to the trial court, the post-war records were intended to replace the pre-war records and therefore the correct date of birth of the petitioner is December 11, 1901. The court also took into account the verified answer in a cadastral proceeding in the Court of First Instance of Negros Oriental, dated March 15, 1924, filed by the petitioner's brother, Romulo Gravador, now deceased. It is therein stated that the petitioner, said to be one of the co-owners of a piece of land, was at the time 23 years old.

The respondents now contend that the trial court erred in placing full reliance on the post-war records to establish the date of birth (December 11, 1901) of the petitioner. They argue that these records were made only because it was thought that the pre-war records had been lost or destroyed, but as some pre-war records had since been located, the date contained in the pre-war records should be regarded as controlling; and that the finding of the Superintendent of Schools that the petitioner was born on November 26, 1897 is an administrative finding that should not be disturbed by the court.

That the findings of fact of administrative officials are binding on the courts if supported by substantial evidence, is a settled rule of administrative law. But whether there is substantial evidence supporting the finding of the Superintendent of Schools is precisely the issue in this case. The school official based his determination of the petitioner's age on the pre-war records in the preparation of which the petitioner does not appear to have taken a part.[7] On the other hand, the petitioner relies on post-war records which he personally accomplished to prove the date of his birth.[8]

It is our considered view that the lower court correctly relied upon the post-war records, for three cogent reasons.

In the first place, as Moran states, although a person can have no personal knowledge of the date of his birth, he may testify as to his age as he had learned it from his parents and relatives and his testimony in such case is an assertion of a family tradition.[9] Indeed, even in his application for back pay which he filed with the Department of Finance, through the Office of the Superintendent of Schools, on October 7, 1948, the petitioner stated that the date of his birth is December 11, 1901. He repeated the same assertion in 1956 and again in 1960 when he asked the Government Service Insurance System and the Civil Service Commission to correct the date of his birth to December 11, 1901.

In the second place, the import of the declaration of the petitioner's brother, contained in a verified pleading in a cadastral case way back in 1924, to the effect that the petitioner was then 23 years old, can not be ignored. Made

ante litem motam by a deceased relative, this statement is at once a declaration regarding pedigree within the intendment and meaning of section 33 of Rule 130 of the Rules of Court.

Thus, December 11, 1901 is established as the date of birth of the petitioner not only by evidence of family tradition but also by the declaration ante litem motam of a deceased relative.

Finally, the parties are agreed that the petitioner has a brother, Constantino, who was born on June 10, 1898 and who retired on June 10, 1963 with full retirement pay. The petitioner then could not have been born earlier than Constantino, say in 1897 as the pre-war records indicate, because Constantino is admittedly older than he.[10]

Still it is argued that the petitioner's action was prematurely brought because he had not availed of all administrative remedies. This argument is without merit. Suits for quo warranto to recover a public office must be brought within one year.[11] Before filing this case the petitioner waited for eight months for the school officials to act on his protest. To require him to tarry a little more would obviously be unfair to him since on April 13, 1965, when this case was filed, he had only four months left within which to bring the case to court. There was neither manner nor form of assurance that the decision of the Director of Public Schools would be forthcoming. The rule on exhaustion of administrative remedies does not apply where insistence on its observance would result in the nullification of the claim being asserted.[12]

ACCORDINGLY, the judgment a quo is affirmed. No pronouncement as to costs.

Reyes, JBL, Makalintal, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.  
Concepcion, C.J., and Dizon, J., did not take part.

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[1] See Government Service Insurance Act (Com. Act No. 186), sec. 11 (1936).

The amount of monthly annuity at the age of 57 is P20 plus, for each year of service rendered after June 16, 1951, 1.6% of the average monthly salary received during the last five years, plus, for each year of service rendered prior to June 16, 1951, if such service lasted for at least seven years, 1.2% of the average monthly salary. This amount is adjusted actuarially if retirement is at an age other than 57, but the maximum amount of the monthly salary is in no case more than 2/3 of the average monthly salary or P500, whichever is the smaller amount.

The formula is ?

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**AGE**

**ADJ. FACTOR**

**AGE**

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52 years

.87

59 years

1.06

53 years

.89

60 years

1.09

54 years

.92

61 years

1.12

55 years

.94

62 years

1.16

56 years

.97

63 years

1.20

57 years

1.00

64 years

1.24

58 years

1.03

65 years

1.24

(GSIS Handbook of Information on Retirement Insurance 14-15 [1965])

[2] Stipulation of Facts (hereinafter cited as Stipulation), Annexes G & I.

[3] Id., Annex I-1.

[4] Id., Annex I-2.

[5] Id., Annex I-3.

[6] Id., Annex J.

[7] Id., par. 7.

[8] Id., par. 8.

[9] 5 M. Moran, Comments on the Rules of Court 314 (1963).

[10] Stipulation, Annex P.

[11] E.g., De la Maza vs. Ochave, G.R. L-22336, May 23, 1967; Unabia vs. City Mayor, 99 Phil. 253 (1956)

[12] Alzate vs. Aldana, G.R. L-14407, Feb. 29, 1960.

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