

BALTAZAR ALANO, PETITIONER AND APPELLANT, VS. TOMAS V. FLORIDO AND JUAN T. TABIEN, RESPONDENTS. TOMAS V. FLORIDO, APPELLEE.

G.R. No. 42767. March 26, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the petitioner Baltazar Alano from the judgment of the Court of First Instance of Tayabas dismissing his petition for quo warranto as to the respondent Tomas V. Florido.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its judgment in question, to wit:

"1. The lower court erred in not declaring that the pension provided for in Act No. 3050 is embraced in the words 'salary or compensation as used in section 2175 of the Administrative Code.

"2. The lower court erred in not declaring that the pension provided for in Act No. 3050 comes from provincial or insular funds.

"3. The lower court erred in not declaring that the election of Tomas V. Florido to the office of municipal president of Lopez, Tayabas, is null and void."

The pertinent facts necessary for the resolution of the questions raised in the present appeal are as follows:

When the respondent Tomas V. Florido was proclaimed municipal president elect of Lopez, Tayabas, as a result of the general elections held in said municipality on June 5, 1934, he was receiving a monthly pension of P75 from the teachers' retirement and disability fund, under Act No. 3050.

Section 2175 of the Revised Administrative Code provides as follows:

"SEC. 2175. Persons ineligible to municipal office.—In no case shall there be elected or appointed to a municipal office ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or Insular funds, or contractors for public works of the municipality."

The first question arises whether or not the respondent's pension is a salary or a compensation. The Solicitor-General of the Philippine Islands, as legal adviser to the Government, in an opinion handed to the Chief of the Executive Bureau on May 11, 1928, relying on American jurisprudence, said as follows:

"From the foregoing definitions, it is clear that a pension is given by the Government not as payment for services rendered but as an expression of its appreciation of past services. It is granted after the person entitled to it has severed his connection with the Government, while a salary or compensation is paid during the time the officer or employee entitled thereto is still in the service of the Government. Hence, a 'pension' does not come within the meaning of the words 'salaries or compensation' employed in the aforesaid section of the law."

Although this opinion of the Solicitor-General is the prevailing jurisprudence on the subject, we believe that the

granting of a pension, besides being an act of liberality, is in compliance with the State's duty imposed by social justice to help the aged and disabled persons who, in their prime, both physical and mental, have served the community with loyalty, constancy, and self-abnegation. It is not a salary or compensation as the pensionee, prior to the granting of the pension, has already received the salary or remuneration corresponding to his work in the performance of his duty or trust.

Furthermore, the pertinent part of section 13 of said Act No. 3050, as amended by Acts Nos. 3769 and 3840, provides as follows:

"Sec. 13. * * * Persons reemployed in the government service and receiving salary, pay, or compensation for services rendered as an employee of any branch of the Government of these Islands, including municipalities and provinces in the Philippines shall have the pension discontinued for such periods of employment in each case where the pay, salary, or compensation is equal to, or greater than fifty per centum of the pension received under the provisions of this Act."

In providing that the pensions of persons reemployed in the Government service with salary or compensation shall be discontinued for the period of employment when the salary or compensation is equal to, or greater than fifty per centum of the pension received under this Act, said amendatory Acts implicitly permit the reemployment in or election of the pensionees to any public office. These Acts are subsequent to the Administrative Code. Therefore, even if the pension were considered salary or compensation, section 13 of Act No. 3050, as amended by Acts Nos. 3769 and 3840, implicitly authorizes the appointment or election of pensionees to public offices, their pension to be discontinued for the period of their new employment if the salary corresponding to said new employment is equal to or greater than fifty per centum of their pension.

The second question to be decided is whether or not the teachers' retirement and disability fund is insular or provincial.

There is no definition as to what constitutes insular or provincial fund. Public funds may be insular, provincial or municipal according to their origin and their destination under the law. The insular funds may be converted by law from insular to provincial and municipal, from provincial to insular and municipal, and from municipal to insular and provincial, according to the destination given them by law, and they remain as such insular, provincial or municipal funds until another law changes their destination. Although the teachers' retirement and disability fund partakes in its origin partly of the nature of insular, partly of provincial and partly of municipal funds, upon being destined for the payment of retirement and disability pensions it loses its original character and is converted into a special fund (section 8, Act No. 3050).

For the foregoing considerations, we are of the opinion and so hold: (1) That the teachers' retirement and disability fund partakes of a special character and is neither insular nor provincial; and (2) that the pensions received by retired and disabled teachers are neither salary nor compensation, but partly their savings and partly aid or donation (sections 9 and 10, Act No. 3050).

Wherefore, not finding any error in the appealed judgment, it is affirmed in toto, with costs against the appellant. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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