

ADAM C. DERKUM, PETITIONER, VS. PENSION AND INVESTMENT BOARD, COMPOSED OF J. RALSTON HAYDEN, LUTHER B. BEWLEY, SALVADOR LAGDAMEO, JOSE GIL, SAMUEL F. GACHES, HARVEY A. BORDNER A...*G.R. No. 43479. September 28, 1935*

Ponente: HULL, J.

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This is an original action for mandamus brought in this court for the purpose of compelling the respondent to pay petitioner an increased amount under the provisions of Act No. 3050 as amended, commonly known as the Teachers' Pension Law. For many years petitioner served the Government of the Philippine Islands in various capacities under the Bureau of Education. On October 3, 1927, he was, upon his own request, retired from the service with an annuity of P2,000 per annum. The pertinent provisions of the Teachers' Pension Law at that time are set forth in note [1].

At the time of his retirement his annual salary as computed by the retirement law, was P5,500, and had it not been for the limitation of 4,000, his length of service would have entitled him to an annuity of P2,750 per annum.

On December 6, 1929, the Governor-General approved Act No. 3629 (see note 2). The only change made by this Act was in raising the limitation from P4,000 to P6,000. In due time petitioner asked respondent to hold that this Act applied to him and to give him the benefit thereof. This request was denied by respondent, and relief was also denied by the Governor-General, Whereupon this action was brought. Petitioner contends that the new Act applies to his case, although he had been retired prior to the passage of the amendatory Act. In view of the plenary powers of the Philippine Legislature under our Organic Act, there can be no question that the law-making body has the right to increase the annuities now being received by retired officers. The question is, therefore, whether the Legislature by its action intended to grant the new benefits to those already separated from the service. If the Legislature had that question in mind and intended to grant the benefits to those situated¹ as petitioner, a clause to that effect would have put the question beyond debate. Not having done so, we can only look to the language of the Act itself and learn the legislative intent through the standard canons of construction.

It is contended on the part of petitioner that our retirement laws were taken from California and that, therefore, the decisions of the California courts on their retirement statutes should be controlling in this jurisdiction. Petitioner cites a number of California decisions where the annuity of policemen and firemen have been increased after their retirement. An examination of the California statutes, however, discloses that our statute is expressed in quite different terms, and it is probable that our Legislature not only looked at the legislation that had been passed in California but also at that which had been passed in other states.

In the California cases cited", policemen or firemen received an annuity based on the grade they held at the time of retirement, and the California courts have held that when the compensation of that grade is increased, the corresponding increase should be given to those on the retired list (*Rumetsch vs. Davie*, 47 Cal. App., 512; 190

Pac, 1075; Whitehead vs. Davie, 189 Cal., 715; 209 Pac, 1008; Klench vs. Board of Pension Fund Com'rs., 79 Cal. App., 171; 249 Pac, 46.)

A similar case was decided in the opposite way by the Supreme Court of Illinois. (O'Neil vs. Harding, 314 Ill., 516; 145 N. E., 593.)

It is also to be noted that in some particulars in California those retired retained a connection with the service, while here the petitioner is completely severed from the Philippine service, and there remains only the obligation of the Philippine Government to pay him whatever annual sum may be due under the law.

The contention of petitioner that his annuity is not a mere gratuity is correct. (People ex rel Kroner vs. Abbott, 274 Ill., 380; 113 N. E., 696, and cases there cited.) When the conditions of the law are fulfilled, the employee becomes entitled to the annuity as a matter of right. But the rights of a person retired are determined by the law as it stood at the date of retirement (O'Neil vs. Harding, supra), and therefore he has no vested right to the benefits of subsequent laws.

Where a section of an Act is amended as was done in this case, the general rule is that such amendment has no retroactive force, and orders made before the passage of the amendment will not be affected by it but will continue to be governed by the original statute.

"When a statute is amended by declaring that it shall read in a given way, the amendment has no retroactive force. It has been said that the rule which, as to positive enactments, requires express evidence of legislative intent in order to give them retroactive effect, does not apply to repealing statutes, but the better view is that, where the result will be to impair contracts or vested rights, a construction is to be avoided which will give a retrospective operation to a repealing statute. * * *" (25 R. C. L., 795.)

"Unless required in express terms or by clear implication, an amendatory act will not be given a retroactive construction. Proceedings instituted, orders made, and judgments rendered before the passage of the amendment will therefore not be affected by it, but will continue to be governed by the original statute. Where a statute, or a portion thereof, is amended by declaring that, as amended, it shall read as follows, and then setting forth the amended section in full, the provisions of the original statute that are repealed are to be considered as having been the law from the time they were first enacted, and the new provisions are to be understood as enacted at the time the amended act takes effect." (59 C. J., 1181.)

The theory that petitioner's right is founded upon contract does not inure to the benefit of petitioner. The Philippine Government is carrying out its obligation to petitioner, which became crystallized and determinable upon the date of his retirement. A contract is not ordinarily affected by an amendment of the law under which the contract arose. (Government of the Philippine Islands vs. Frank, 13 Phil 236.) That the Legislature saw fit subsequently to be more generous to those who were to be retired in the future, was a matter of policy solely for its determination. Had the Legislature instead of increasing the annuity, reduced it, petitioner would have had a right to resist its application to his case, having been retired prior to the change. Petitioner having this right, the respondent is bound to deny an increase unless the Legislature expressly so directed.

Section 2 of Act No. 3050 as amended on December 6, 1929, by Act No. 3629, must be read in connection with section 1 of said Act. Section 1 provides that the persons therein named " * * * shall be eligible for retirement on an annuity as provided in section 2 hereof * * * " On December 6, 1929, the petitioner was not a person "eligible for retirement". His retirement was then an already consummated fact. Persons in his status therefore are not embraced in the terms of the Act as amended. These terms being expressed in the future tense, it would require a forced construction of the language actually used by the Legislature to make the law as it stood after December 6, 1929, applicable to teachers who had previously been retired.

We are conscious of the inequality which results between those who retired before and those who may have retired after December 6, 1929, in respect of the amount of the annuity which they receive. But the remedy rests with the Legislature if it was not the intention of the Legislature that such a difference should be made.

In view of the premises, the petition for writ of mandamus is denied without special pronouncement as to costs. So ordered.

Avanceña, C.J., Malcolm, Villa-Real, Abad Santos, Vickers, Imperial, Goddard, and Recto, JJ., concur.

Butte, J., took no part for the reason that he was the Chairman of the Teachers' Pension and Investment Board on June 30, 1932.

Writ denied.

[1] Section 1. Beginning on the first day of April next following the date of the approval of this Act, all teachers, principals, supervisors, inspectors, superintendents, and other persons employed in supervising and directing the school work of teachers in the public school service of municipalities, provinces, and the Insular Government of the Philippine Islands, whose positions are not classified as purely clerical, without regard as to status in the classified civil service of the Philippine Islands, who have on that day, or who shall have on any date thereafter, rendered at least twenty years of service as computed in section seven of this Act, shall be eligible for retirement on an annuity as provided in section two hereof: Provided, That lecturers and other special instructors who render provisional service shall not be eligible for pension nor shall such services be counted as teaching service in computing the length of service of a teacher: Provided, further, That the provisions of this Act shall not include persons who are not citizens of the Philippine Islands or of the United States of America. Sec. 2. For the purpose of determining the amount of annuity which a retired employee shall receive the following classifications and rates shall be established upon the basis of the annuity consisting of a fractional part of the average pay, salary or compensation, for the three years of service rendered prior to the granting of the pension with maximum average pay, salary or compensation in no case exceeding four thousand pesos per annum. The annual annuity as computed under this Act shall be four-tenths of the average salary for twenty years of service; five-tenths of the average salary for twenty-three years of service; six-tenths of the average salary for twenty-six years of service; seven-tenths of the average salary for twenty-nine years of service; eight-tenths of the average salary for thirty-two or more years of service.

* * * * *

Sec. 10. Beginning on the first day of the third month next following the approval of this Act and monthly thereafter there shall be deducted and withheld from each monthly basic salary, pay or compensation of each employee to whom this Act applies a sum equal to three per centum of such employee's monthly basic salary, pay or compensation. The Insular Treasurer shall cause the said deductions to be withheld from all specific appropriations for the particular salaries or compensations from which the deductions are made and from all allotments out of lump sum appropriations for payment of such salaries or compensations for each fiscal year, and said sums shall be transferred on the books of the Insular Treasurer to the credit of the "Teachers Pension and Disability Fund" created in this Act.

[2] Section 1. Section two of Act Numbered Three thousand and fifty is hereby amended so as to read as follows:

"Sec. 2. For the purpose of determining the amount of annuity which a retired employee shall receive, the following classifications and rates shall be established upon the basis of the annuity consisting of a fractional part of the average pay, salary, or compensation, for the three years of service rendered prior to the granting of the pension with maximum average pay, salary, or compensation, in no case exceeding six thousand pesos per

annum. The annual annuity as computed under this Act shall be four-tenths; of the average salary for twenty years of service; five-tenths of the average salary for twenty-three years of service; six-tenths of the average salary for twenty-six years of service; seven-tenths of the average salary for twenty-nine years of service; eight-tenths of the average salary for thirty-two or more years of service."

Sec. 2. This Act shall take effect upon its approval.

Approved, December 6, 1929.

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