

OSCAR HUNT, PETITIONER, VS. JAIME HERNANDEZ, AUDITOR GENERAL OF THE PHILIPPINES, AND JOSE GIL, COMMISSIONER OF CIVIL SERVICE, RESPONDENTS.

G. R. No. 45665. September 15, 1937

Ponente: LAUREL, J.

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LAUREL, J.:

This is a petition for a writ of mandamus to compel the Auditor General the Commissioner of Civil Service to pay to the petitioner herein, Oscar Hunt, the sum of P1,734.82 which is the amount so far withheld from the petitioner's gratuity granted under the provisions of Acts Nos. 4007 4051 of the Philippine Legislature, to continue paying his monthly pension of P60 until the total amount of his gratuity is paid.

It appears that the petitioner was an employee of the Government of the Philippines until the early part of the year 1933 when he retired under the provisions of the aforementioned Acts. Upon retirement, he was granted a gratuity of P4,320 payable at the rate of P60 per month. At the time of his retirement or thereafter, he was indebted to the Government in the sum of P5,342.27 taken from the San Lazaro Investment Fund administered by the Director of Lands, which indebtedness was secured by a mortgage on a parcel of land and improvements in the City of Manila. Unable to pay the amount, the mortgage was foreclosed the property sold at public auction for P3,000 leaving a deficiency of P2,934.82 which includes tax delinquency, costs other incidental expenses indicated in appendix B of the petition. To cover this deficiency, P54.82 of the petitioner's pension corresponding¹ to the month of February, 1935, his monthly pensions for the period from March, 1935, to June, 1937, inclusive, were withheld by the respondents Auditor General Commissioner of Civil Service. The petitioner protested against the withholding of his gratuity its application to wipe off the balance of his indebtedness and, having exhausted the administrative remedies, filed the present petition with this court for the purpose above-indicated.

The question to be determined is whether or not the gratuity of the petitioner in this case can be withheld applied to the payment of his remaining indebtedness to the San Lazaro Investment Fund notwithstanding the provision of section 3 of Act No. 4051 that "the gratuity provided for in this Act shall not be attached or levied upon execution." The respondents contend that the withholding of the corresponding amount of the petitioner's gratuity was made with a view to its application to the payment of his indebtedness to the Government, and that such action is authorized by section 624 of the Administrative Code which provides that "When any person is indebted to the government of the Philippine Islands or Government of the United States, the Insular Auditor may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness."

While section 3 of Act No. 4051 refers merely to attachment or levy upon execution, we are of the opinion that the exemption should be liberally construed in favor of the pensioner. Pension in this case is a bounty flowing from the graciousness of the Government intended to reward past services and, at the same time, to provide the pensioner with the means with which to support himself his family. Unless otherwise clearly provided, the

pension should inure wholly to the benefit of the pensioner. It is true that the withholding application of the amount involved was had under section 624 of the Administrative Code not by any judicial process, but if the gratuity could not be attached or levied upon execution in view of the prohibition of section 3 of Act No. 4051, the appropriation thereof by administrative action, if allowed, would, lead to the same prohibited result enable the respondents to do indirectly what they can not do directly under section 3 of Act No. 4051. Act No. 4051 is a later statute having been approved on February 21, 1933, whereas the Administrative Code of 1917 which embodies section 624 relied Upon by the respondents was approved on March 10 of that year. Considering section 3 of Act No. 4051 as an exception to the general authority granted in section 624 of the Administrative Code, antagonism between the two provisions is avoided.

While the Director of Lands who is administrator of the San Lazaro Investment Fund at whose instance the withholding of the gratuity of the petitioner was made by the Auditor General the Commissioner of Civil Service could have been joined as one of the respondents, it is clear that, in the present case, the payment of the gratuity to the petitioner is a ministerial duty and, it appearing that payment could not be made because of the refusal of the respondents, a fact which is alleged in paragraph 12 of the petition not controverted by the Solicitor-General, the writ of mandamus prayed for is granted the respondents Jaime Hernandez, in his capacity as Auditor General of the Philippines, Jose Gil, in his capacity as Commissioner of Civil Service, are hereby directed to pay to the petitioner P1,734.82, the amount withheld from February, 1935 to June, 1937 and, thereafter, to continue paying him in the manner authorized by law until the amount of his gratuity is fully paid. Without pronouncement as to costs. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, Concepcion, JJ., concur.

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