

INOCENTES L. FERNANDEZ, PETITIONER, VS. MANUEL S. ALBA, MINISTER OF THE BUDGET, RESPONDENT.

G.R. No. 55160. November 29, 1983

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for mandamus to compel the respondent Minister of the Budget to release sufficient amount for the payment of the increase in the monthly annuity of petitioner pursuant to Republic Act No. 6031, out of the funds from the National Treasury not otherwise appropriated.

Petitioner, then municipal judge of Dumalinao, Zamboanga del Sur, was receiving a monthly salary of Five Hundred Fifty (P550.00) pesos under Republic Act No. 4533.

On August 4, 1969, Republic Act No. 6031, providing among other things an increase in the salary rates of municipal judges, was approved into law. Thus, Republic Act No. 6031 entitled "AN ACT TO INCREASE THE SALARIES OF MUNICIPAL JUDGES AND TO REQUIRE THEM TO DEVOTE FULL TIME TO THEIR FUNCTIONS AS JUDGES, TO CONVERT MUNICIPAL AND CITY COURTS INTO COURTS OF RECORD, TO MAKE FINAL THE DECISIONS OF COURTS OF FIRST INSTANCE IN APPEALED CASES FALLING UNDER THE EXCLUSIVE ORIGINAL JURISDICTION OF MUNICIPAL AND CITY COURTS EXCEPT IN QUESTIONS OF LAW, AMENDING THEREBY SECTIONS 45, 70, 77 AND 82 OF REPUBLIC ACT NUMBERED TWO HUNDRED AND NINETY SIX, OTHERWISE KNOWN AS THE JUDICIARY ACT OF 1948, AND FOR OTHER PURPOSES", provides inter alia:

"SEC. 5. Section eighty-two of the said Act, as amended, is hereby further amended to read as follows:

'SEC 82. Salaries of municipal judges. - Municipal judges shall receive the following salaries per annum:

‘(a) In municipalities which are the capitals of their respective provinces, twelve thousand pesos each;

‘(b) Of circuit courts and in the municipalities of the first class and second class, ten thousand eight hundred pesos each;

‘(c) In municipalities of the third class, fourth class and fifth class, nine thousand six hundred pesos each;

‘(d) In municipalities of the sixth class, seventh class and municipal districts and other places not especially provided for by law, eight thousand four hundred pesos each.’

"SEC. 6. Such sums as may be necessary to provide for the salary authorized and salaries for positions created under this Act are hereby authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated. Thereafter, such sums shall be included in the annual General Appropriations Act.

"SEC. 7. This Act shall take effect upon its approval.

"Approved, August 4, 1969" (Underlining supplied).

Hence, herein petitioner's salary was supposed to be increased from five hundred fifty (P550.00) pesos to eight hundred (P800.00) pesos a month by virtue of paragraph (c), Section 82 of Republic Act No. 6031. This was not the case however, as Republic Act No. 6031 was not yet implemented.

On August 31, 1969, petitioner retired as municipal judge of Dumalinao, Zamboanga del Sur, and received a five-year lump sum as retirement gratuity at the rate of five hundred fifty (P550.00) pesos per month under Republic Act No. 4533 since as already stated, Republic Act No. 6031 was not yet implemented.

On June 1, 1971, or two years after petitioner's retirement, Republic Act No. 6031 was implemented.

In September, 1974, or five (5) years after petitioner's retirement, he began receiving a monthly retirement gratuity of five hundred fifty (P550.00) pesos under Republic Act No. 4533.

It appears from the records that then Secretary, now Associate Justice, Vicente Abad Santos, in a letter dated July 28, 1971, requested for authority to adjust the salaries of eighty four (84) municipal judges who retired before the implementation but after the enactment of Republic Act No. 6031. This was reiterated on March 15, 1974 when then Chief Justice, now Batasang Pambansa Speaker, Querube C. Makalintal, wrote a letter to the Commissioner of the Budget (now Minister of the Budget), pertinent portion of which reads:

"Republic Act No. 6031 provides, among others, increases in the rates of salaries of municipal judges. Said Act which was approved on August 4, 1969, was implemented on June 1, 1971 only. We concur with the Secretary of Justice that these retirees are also entitled to the benefits provided for under Republic Act 6031.

"In order to adjust the under-payment of their terminal leaves, it is requested that the amount of P94,303 be released under personal services out of the amounts certified to accounts payable during the fiscal years 1969-70 and 1970-71, which were already reverted to surplus adjustment under Journal Vouchers Nos. 1512112 and 1443904, dated June 30, 1972 and June 30, 1973, respectively, pursuant to Section 5 of General Auditing Office Circular No. 80, dated July 1, 1963. Likewise, it is requested that the amount of P85,200 be released out of the Retirement Gratuity Fund under Item No. 62, page 391 of Presidential Decree 233, to pay the underpayment of retirement gratuities of those who retired under Republic Act 1616, as amended. Moreover, the amount needed to cover the adjustment of retirement gratuities of those who retired under Republic Act 5095, in the amount of P1,173,000, is requested for release, pursuant to the provision of Section 2 of said Act" (pp. 6-7, rec., under-lining supplied).

On May 12, 1975, petitioner addressed a letter to the President requesting that his monthly retirement gratuity be increased from P550.00 to P800.00 citing as legal basis the increased rates authorized by Republic Act No. 6031.

In said letter, petitioner stated among others the following:

"Mr. President, I believed that Presidential Decree No. 644 is not applicable in my case as Act No. 6031 was already approved and effective when I retired but was not only implemented. It is injustice and not in equity that now I am receiving a monthly pension of P550.00 based on Act No. 4533 which was already amended and superseded by Act No. 6031 when I retired" (p. 5, rec., underscoring supplied).

The letter was endorsed to the Budget Commission (now Ministry of the Budget) for comment and recommendation (p. 8, rec.).

On August 22, 1975, the Commissioner of the Budget sent his 2nd Indorsement to the Presidential Staff, pertinent portions of which state:

"Republic Act No. 6031, an enabling act, merely authorized an appropriation whose nature the Supreme Court in the case of GENATO, et al. vs. SY-CHANGCO (SCRA, Vol. 20, p. 12) ruled that: 'x x x an appropriation is per se nothing more than a legislative authorization prescribed in the Constitution x x x the said authorization

requires implementation of allocation of funds x x x.' Pursuant to Republic Act No. 992 (Revised Budget Act), authorized appropriation shall be programmed and allotted quarterly. There being no appropriation under Republic Act No. 6031, there was nothing to program and to allot. The current appropriations decree, PD No. 733, has not also provided funds under Republic Act No. 6031, to cover adjustment of terminal leaves, retirement gratuities and salary differentials of municipal judges for the period from August 4, 1969 to May 31, 1971.

"The within request, if allowed, will generate identical requests of retirees from all branches of the government to have their retirement gratuities based on the higher salaries authorized under laws enacted while they were still in the service but implemented only after their retirement from the service. The inevitable after-effect will be bigger appropriation which the government will have to provide, but which it cannot afford, to cover adjustment of terminal leaves, retirement gratuities and salary differentials" (p. 9, rec.).

On April 3, 1979, petitioner sent a letter to the late Chief Justice Fred Ruiz Castro stating among others that "according to Section 2 of Republic Act No. 5095 under which we retired, these benefits can be paid from any fund in the National Treasury not otherwise appropriated" (p. 10, rec.). The aforesaid letter was endorsed to the Minister of the Budget on April 21, 1979, which was allegedly not answered (p. 11, rec.). However, in the comment filed by the Solicitor General, it was stated that herein petitioner sent a second letter to the President on July 5, 1979 reiterating his claim for the increase of his monthly pension from P550.00 to P800.00. The said letter was allegedly referred by the Supervising Presidential Staff Officer to the Minister of the Budget for comment. In allegedly replying thereto, the Minister of the Budget reiterated his previous position denying the claim.

Hence, the instant petition.

The main issue is whether petitioner is entitled to the benefits provided for under Republic Act No. 6031 which was enacted during his tenure of office but was implemented after his retirement.

Upon review of the records, WE find the contention of petitioner herein devoid of merit.

While WE are not unmindful of the sad plight of herein petitioner who is now very old and sickly, and who has spent the best years of his life in the government service as municipal judge of Dumalinao, Zamboanga del Sur, and who has to make do with his meager monthly pension of P550.00 in this time of economic hardship, nonetheless, WE hold that payment to him of whatever increase in his monthly annuity, terminal leave and other retirement gratuity benefits brought about by the enactment of Republic Act No. 6031 increasing the salary rates of municipal judges, must yield to the overriding economic consideration of availability of funds which the government must set aside for the purpose.

As pointed out by the Commissioner of the Budget in his 2nd indorsement dated August 22, 1975 to the Presidential Staff, Republic Act No. 6031 did not actually appropriate the funds to cover adjustment of terminal leaves, retirement gratuities and salary differentials of municipal judges for the period from August 4, 1969 to May 31, 1971. Section 6 of said Act No. 6031 merely "authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated", "such sums as may be necessary to provide for the salary authorized x x x under this Act x x x".

There being no appropriation, herein petitioner cannot compel the Minister of the Budget to release sufficient amount for the payment of the increase in the monthly annuity of petitioner herein pursuant to Republic Act No. 6031 because "such allocation entails the exercise of judgment and discretion which cannot be controlled by mandamus" (*Genato vs. Sy-Changco*, 20 SCRA 12, 14).

Finally, in the case of *Board of Administrators, PVA vs. Agcaoili*, 58 SCRA 72, 77, WE had the occasion to state that:

"But even if we have thus defined the precise terms, nature and scopes of the entitlement of the respondent Abrera, for the guidance of the petitioner, we nevertheless refrain from ordering the petitioner to pay the amount of P120.00 per month from January 1972 that is due to the respondent by virtue of the mandate of Section 9 of Republic Act 65, as amended by Republic Act 5753, because the Government has thus far not provided the necessary funds to pay all valid claims duly approved under the authority of the said statute" (*italics supplied*).

The petitioner and all other retirees similarly situated should appeal to the law-making authority for the appropriation of the necessary funds.

WHEREFORE, THE PETITION FOR MANDAMUS IS HEREBY DISMISSED. NO COSTS.

Aquino, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., Teehankee, and Abad Santos, JJ., no part.

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