

MARIO D. ORTIZ, PETITIONER, VS. COMMISSION ON ELECTIONS AND COMMISSION ON AUDIT, RESPONDENTS.

G.R. No. 78957. June 28, 1988

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FERNAN, J.:

In this petition for certiorari, petitioner presents before the Court the issue of whether or not a constitutional official whose "courtesy resignation" was accepted by the President of the Philippines during the effectivity of the Freedom Constitution may be entitled to retirement benefits under Republic Act No. 1568, as amended.

Petitioner was appointed Commissioner of the Commission on Elections [COMELEC] by then President Ferdinand E. Marcos "for a term expiring May 17, 1992." [1] He took his oath of office on July 30, 1985.

On March 5, 1986, together with Commissioners Quirino D. Marquinez and Mangontawar G. Guro, petitioner sent President Corazon C. Aquino a letter which reads as follows:

"The undersigned Commissioners were appointed to the Commission on Elections on July 30, 1985.

"Following the example of Honorable Justices of the Supreme Court, on the premise that we have now a revolutionary government, we hereby place our position at your disposal." [2]

Thereafter, or on March 25, 1986, the Freedom Constitution was promulgated through Proclamation No. 3, Article III thereof provides:

"SECTION 1. In the reorganization of the government, priority shall be given to measures to promote economy, efficiency, and the eradication of graft and corruption.

"SEC. 2. All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986.

"SEC. 3. Any public officer or employee separated from the service as a result of the reorganization effected under this Proclamation shall, if entitled under the laws then in force, receive the retirement and other benefits accruing thereunder."

On April 16, 1986, the COMELEC, then composed of Acting Chairman Ramon H. Felipe, Jr. and Commissioners Froilan M. Bacungah, Quirino A. Marquinez, Mario D. Ortiz (petitioner herein), Ruben E. Agpalo and Jaime J. Layosa, adopted Resolution No. 86-2364 approving the application for retirement of Commissioners Victorino Savellano and Jaime Opinion. Seven days later, the same body passed Resolution No. 86-2370 approving the application for retirement of Commissioner Mangontawar B. Guro.

On July 21, 1986, the Deputy Executive Secretary requested Acting Chairman Felipe to convey the information to Commissioners Marquinez, Ortiz, Agpalo and Layosa that the President had "accepted, with regrets, their respective resignations, effective immediately." [3] After the presidential acceptance of said "resignations" the new COMELEC was composed of Ramon H. Felipe, Jr. as Chairman and Commissioners Froilan M. Bacungan,

Leopoldo L. Africa, Haydee B. Yorac, Andres R. Flores, Dario C. Rama and Anacleto D. Badoy, Jr., as members. It was to this body that Commissioners Agpalo, Ortiz and Marquinez submitted on July 30, 1986 their respective applications for retirement. They were followed by Commissioner Layosa on August 1, 1986.

To justify their petitions for retirement and their requests for payment of retirement benefits, all seven former COMELEC Commissioners invoked Republic Act No. 1568 as amended by Republic Act No. 3595 and re-enacted by Republic Act No. 6118, specifically the following provision:

"SECTION 1. When the Auditor General or the Chairman or any Member of the Commission on Elections retires from the service for having completed his term of office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of his term of office, he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement incapacity, death or resignation, as the case may be: Provided, That in case of resignation, he has rendered not less than twenty years of service in the government; And provided, further, That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation."

In its en banc Resolution No. 86-2491[*] of August 13, 1986,[4] the COMELEC revoked Resolutions Nos. 86-2364 dated April 16, 1986 and 86-2370 dated April 23, 1986, and denied the applications for retirement of Commissioners Marquinez, Agpalo, Ortiz and Layosa on the ground that they were "not entitled to retirement benefits under Republic Act No. 1568, as amended" without specifying the reason therefor.[5]

Petitioner Ortiz moved for the reconsideration of said resolution, contending that he was entitled to the benefits under Republic Act No. 1568, as amended. He averred therein that he did not resign but simply placed his position at the disposal of the President; that he had in fact completed his term as Commissioner by the "change in the term of [his] office and eventual replacement," and that he was entitled to retirement benefits under the aforementioned law because Article 1186 of the Civil Code which states that "the condition [with regard to an obligation shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment." He invoked the aforementioned provisions of Proclamation No. 3 and cited the cases of former Chief Justice Ramon C. Aquino and Associate Justice Hermogenes Concepcion, Jr. who were allowed to retire by this Court and receive retirement benefits.[6]

Petitioner's letter/motion for reconsideration was denied by the COMELEC in its en banc resolution of October 1, 1986.[**] On December 18, 1986, petitioner appealed the denial of his claim to the Chairman of the Commission on Audit (COA). In its memorandum dated January 15, 1987, the COA referred the matter to the COMELEC resident auditor for comment and recommendation. Having failed to receive any communication from the COA for some six months, on June 3, 1987, petitioner reiterated his appeal thereto. Again, the matter was referred to the COMELEC resident auditor with a request for immediate action thereon.

A month later, or on July 9, 1987, petitioner filed the instant petition for certiorari alleging that the COMELECs "arbitrary and unjust denial" of his claim for retirement benefits and of his subsequent motion for reconsideration constitutes "grave and whimsical abuse of discretion amounting to lack of jurisdiction" which can only be remedied through the instant petition in the absence of an appeal or any plain, speedy and adequate remedy.[7] In his memorandum, however, petitioner admits that, as correctly stated by the Solicitor General in respondents' comment on the petition, this petition is basically one for a writ of mandamus aimed at compelling both the COMELEC and the COA to approve his claim for retirement benefits.[8]

We consider this case as a special civil action of both certiorari and mandamus and, notwithstanding the Solicitor General's contention that action herein is premature as the COA may yet render a decision favorable to the

petitioner, We opt to decide this case to shed light on the legal issue presented.

The respondents posit the view that petitioner's "voluntary resignation" prevented the completion of his term of office, and, therefore, having rendered only sixteen years of service to the government, he is not entitled to retirement benefits.[9]

We disagree. Petitioner's separation from government service as a result of the reorganization ordained by the then nascent Aquino government may not be considered a resignation within the contemplation of the law. Resignation is defined as the act of giving up or the act of an officer by which he declines his office and renounces the further right to use it.[10] To constitute a complete and operative act of resignation, the officer or employee must show a clear intention to relinquish or surrender his position accompanied by the act of relinquishment.[11] Resignation implies an expression of the incumbent in some form, express or implied, of the intention to surrender, renounce and relinquish the office, and its acceptance by competent and lawful authority.[12]

From the foregoing it is evident that petitioner's "resignation" lacks the element of clear intention to surrender his position. We cannot presume such intention from his statement in his letter of March 5, 1986 that he was placing his position at the disposal of the President. He did not categorically state therein that he was unconditionally giving up his position. It should be remembered that said letter was actually a response to Proclamation No. 1 which President Aquino issued on February 25, 1986 when she called on all appointive public officials to tender their "courtesy resignation" as a "first step to restore confidence in public administration."

Verily, a "courtesy resignation" cannot properly be interpreted as resignation in the legal sense for it is not necessarily a reflection of a public official's intention to surrender his position. Rather, it manifests his submission to the will of the political authority and the appointing power.

A stringent interpretation of courtesy resignations must therefore be observed, particularly in cases involving constitutional officials like the petitioner whose removal from office entails an impeachment proceeding.[13] For even if working for the government is regarded as no more than a privilege, discharge for disloyalty or for doubt about loyalty may involve such legal rights as those in reputation and eligibility for other employment.[14]

The curtailment of his term not being attributable to any voluntary act on the part of the petitioner, equity and justice demand that he should be deemed to have completed his term albeit much ahead of the date stated in his appointment paper. Petitioner's case should be placed in the same category as that of an official holding a primarily confidential position whose tenure ends upon his superior's loss of confidence in him. His cessation from the service entails no removal but an expiration of his term.[15]

As he is deemed to have completed his term of office, petitioner should be considered retired from the service. And, in the absence of proof that he has been found guilty of malfeasance or misfeasance in office or that there is a pending administrative case against him, petitioner is entitled to a life pension under Republic Act No. 1568 as amended and re-enacted by Republic Act No. 6118. He is, therefore, protected by the mantle of the Freedom Constitution specifically Article III, Section 3 thereof which was in effect when he was replaced by the appointment and qualification of a new Commissioner.

Parenthetically, to a public servant, pension is not a gratuity but rather a form of deferred compensation for services performed and his right thereto commences to vest upon his entry into the retirement system and becomes an enforceable obligation in court upon fulfillment of all conditions under which it is to be paid.[16] Similarly, retirement benefits receivable by public employees are valuable parts of the consideration for entrance into and continuation in public employment.[17] They serve a public purpose and a primary objective in

establishing them is to induce able persons to enter and remain in public employment, and to render faithful and efficient service while so employed.[18]

Worth noting is the fact that, as originally enacted, Republic Act No. 1568 required not less than twenty years of service in the government at the time of the retirement, death or resignation of the Auditor General or the Chairman and any Member of the COMELEC. The same length of service was required after Republic Act No. 3473 amended the law. However, Republic Act No. 3595 further amended Republic Act No. 1568 and the 20-year service requirement was mandated only in case of resignation of the public official covered by the law. Although Republic Act No. 1568, as amended, was inoperative and abolished in Section 9 of Republic Act No. 4968, it was re-enacted under Republic Act No. 6118.

On the respondents' assertion that the retirement law is clear and hence, there is no room for its interpretation, We reiterate the basic principle that, being remedial in character, a statute creating pensions should be liberally construed and administered in favor of the persons intended to be benefited thereby.[19] This is as it should be because the liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency, security, and well-being of government employees may be enhanced.[20]

WHEREFORE, respondent Commission on Election's denial of petitioner's application for retirement benefits is hereby reversed and set aside. The Commission on Audit and other public offices concerned are directed to facilitate the processing and payment of petitioner's retirement benefits.

SO ORDERED.

Yap, C. J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, and Medialdea, JJ., concur.

Gutierrez, Jr., J., on leave.

[1] Rollo, p. 8.

[2] Rollo, p. 10.

[3] Rollo, p. 11.

[4] Rollo, p. 12.

[5] Rollo, p. 13.

[6] Rollo, pp. 14-15.

[**] Present during the executive session were Commissioners Africa, Yorac. Badoy. Florcs and Rama. Except for Commissioner Badoy who abstained, all the other Commissioners voted to deny petitioner's letter/motion for reconsideration.

[7] Rollo, p. 6.

[8] Rollo, p. 89

[9] Comment, p. 7.

[10] 37 Words and Phrases 476 citing State vs. Murphy, 97 P. 391, 395.

[11] Gonzales vs. Hernandez, L-15482, May 30, 1961, 2 SCRA 228; 63 Am. Jur.' 2d 727; Mechem; A Treatise on

the Law of Public Offices and Officers, pp. 262-263.

[12] Gamboa vs. Court of Appeals, L-38068, September 30, 1981, 108 SCRA 1.

[13] 1973 Constitution, Article XIII. Sec. 2; 1987 Constitution. Article XL Section 2.

[14] Birnbaum vs. Trussell 371 F. 2d 672.

[15] Cadiente vs. Santos. 1.-35592. June I 1, 1986, 142 SCRA 280 citing Hernandez vs. Vilegas, L-1 7287. June 30. 1965, 14 SCRA 548.

[16] Stab ex rel. Wittler vs. Yelle, 399 P. 2d 319.

[17] Yeazell vs. Copins, 402 P. 2d 541.

[18] Geller vs. Dept. of Treasury, Div. of Pensions and Annuity Fund, 252 A. 2d 393.

[19] Geller vs. Dept. of Treasury, supra.

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