

ISIDRO, ZENAIDA, IRWIN, ZENDA AND DORNET, ALL SURNAMED ANIMOS, PETITIONERS, VS. PHILIPPINE VETERANS AFFAIRS OFFICE, ITS ADMINISTRATOR, JUAN L. GACAD, AND THE COURT OF APPEALS, R...

G.R. No. 79156. June 22, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The Court grants this petition assailing the decision of the Court of Appeals.*

The case originated from a suit for mandamus commenced by the petitioners against the respondent, the Philippine Veterans Affairs Office, to compel payments by the said respondent of full pension benefits, retroactive to 1947, under Republic Act No. 65 as amended. The Regional Trial Court** dismissed the case on the ground of lack of jurisdiction. The petitioners then appealed to the respondent, the Court of Appeals, which however rendered an affirmance.

The antecedent facts are stated by the Solicitor General. We quote:

Isidro Animos is a veteran of World War II, having been a member of the USAFFE and later of the guerilla forces during the war.

On October 18, 1946, Republic Act No. 65 was approved, providing for a Bill of Rights for Officers and Enlisted Men of the Philippine Army, Recognized and Deserving Guerilla Organizations, and Veterans of the Philippine Revolution. Section 9 thereof provides:

"SEC. 9. The persons mentioned in sections one and two hereof who are permanently incapacitated from work owing to sickness, disease, or injuries sustained in line of duty, shall be given a life pension of fifty pesos a month unless they are actually receiving a similar pension from other Government funds, and shall receive, in addition, the necessary hospitalization and medical care."

Pursuant to the above provision, Animos filed with the Philippine Veterans Board (now Philippine Veterans Affairs Office, or PVAO, for short) a claim for disability pension benefit. Upon medical examination, Animos was found to have incurred partial physical disability due to a gunshot wound, and was awarded 25% pension benefit effective November 18, 1947, in the amount of P12.50 a month.

On June 21, 1957, Republic Act No. 1920 was approved amending Sec. 9 of Rep. Act No. 65, which increased the life pension from P50.00 to P100.00, plus P10.00 a month for each unmarried minor child below 18 years of age. Subsequently, on June 22, 1969, Rep. Act No. 5373 took effect which further amended said Sec. 9 and increased the basic monthly pension from P100.00 to P200.00, plus P30.00 a month for the wife and P30.00 a month for each unmarried child below 18 years.

It appears that on September 27, 1955, Animos filed an application for dependents' pension benefits. The

application was however disapproved on September 4, 1956, on the ground that Animos was not totally incapacitated.

Upon the required re-evaluation of his partial physical disability, Animos was re-rated to be 30% disabled on November 25, 1964 and was correspondingly granted a P30.00 monthly pension. Again, on August 4, 1970, Animos was re-rated to be 50% disabled and was granted a P50.00 monthly pension. Reassessments made on April 22, 1975 and June 11, 1982 showed that Animos' partial disability remained unchanged at 50%.

Animos' numerous written requests to be granted the maximum pension benefit as well as dependents' pension benefits were all disapproved. Thus, on November 23, 1982, Animos, his wife and children filed a petition for mandamus with the then Court of First Instance of Albay against the PVAO, to compel that office to increase his monthly pension, alleging that since the rules on disability rating of the latter are contrary to law, Animos, who was granted a lifetime pension for his disability should be paid the maximum pension benefits, including pension for his wife and minor children.[1]

In dismissing the petition, the trial court held that "should petitioner's claim be upheld for the satisfaction of veteran's benefits for the years up to the presents, or a period of about 40 years, the defendant may not be in a position, legally and budgetary-wise, to comply with the court's award as sufficient treasury funds therefor could only be appropriated for that purpose by the legislature,"[2] and ruled that the petition was "in effect a money claim against the government"[3] over which it did not have jurisdiction. In sustaining the trial court, the Courts of Appeals added that mandamus does not lie to interfere with discretion, and that the petitioner had failed to exhaust administrative remedies.

On the question of procedure, the controlling precedents are *Begoso v. Chairman, Philippine Veterans Administration*[4] and *Teoxon v. Members of the Board of Administrators, Philippine Veterans Administration*,[5] in which we held:

1. The fourth assignment of error assails what it considers to be the failing of the lower court in not holding that the complaint in this case is in effect a suit against the State which has not given its consent thereto. We have recently had occasion to reaffirm the force and primacy of the doctrine of non-suability. It does not admit of doubt, then, that if the suit were in fact against the State, the lower court should have dismissed the complaint. Nor is it to be doubted that while ostensibly an action may be against a public official, the defendant may in reality be the government. As a result, it is equally well-settled that where a litigation may have adverse consequences on the public treasury, whether in the disbursements of funds or loss of property, the public official proceeded against not being liable in his personal capacity, then the doctrine of non-suability may appropriately be invoked. It has no application, however, where the suit against such a functionary had to be instituted because of his failure to comply with the duty imposed by statute appropriating public funds for the benefit of plaintiff or petitioner. Such is the present case.

The doctrine announced by us in *Ruiz v. Cabahug* finds relevance: "We hold that under the facts and circumstances alleged in the amended complaint, which should be taken on its face value, the suit is not one against the Government, or a claim against it, but one against the officials to compel them to act in accordance with the rights to be established by the contending architects, or to prevent them from making payment and recognition until the contending architects have established their respective rights and interests in the funds retained and in the credit for the work done." As a matter of fact, in an earlier case where we sustained the power of a private citizen claiming title to and right of possession of a certain property to sue an officer or agent of the government alleged to be illegally withholding the same, we like-wise expressed this caveat: "However, and this is important, where the judgment in such a case would result not only in the recovery of possession of the

property in favor of said citizen but also in a charge against or financial liability to the Government, then the suit should be regarded as one against the government itself, and, consequently, it cannot prosper or be validly entertained by the courts except with the consent of said Government."

2. Nor is the third assignment of error to the effect that the lower court did not require appellee to exhaust his administrative remedies before coming to court any more persuasive. An excerpt from the leading case of *Gonzales v. Hechanova*, the opinion being penned by the present Chief Justice, clearly demonstrates why appellants' argument in this respect is unavailing: "Respondents assail petitioner's right to the reliefs prayed for because he 'has not exhausted all administrative remedies available to him before coming to court.' We have already held, however, that the principle requiring the previous exhaustion of administrative remedies is not applicable where the question in dispute is purely a legal one, or where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction, or where the respondent is a department secretary, whose acts as an alter-ego of the President bear the implied or assumed approval of the latter, unless actually disapproved by him, or where there are circumstances indicating the urgency of judicial intervention." The *Gonzales* doctrine, it is to be noted, summarized the views announced in earlier cases. The list of subsequent cases reiterating such a doctrine is quite impressive. To be more specific, where there is a stipulation of facts, as in this case, the question before the lower court being solely one of law and on the face of the decision, the actuation of appellants being patently illegal, the doctrine of exhaustion of administrative remedies certainly does not come into play.[6]

Mandamus therefore lies, and failure to exhaust remedies is no defense against payment.

We come to the merits.

The denial of the petitioner's claim was predicated on the finding that his disabilities were, based on the respondent's "Rules on Disability Ratings", partial rather than total, a condition that precludes payment of maximum pension benefits. The petitioner submits that the very rating system adopted by the respondent veterans' office is null and void.

The applicable provision is Section 9 of Republic Act No. 65, as amended, as follows:

SEC. 9. The persons mentioned in sections one and two hereof who are permanently incapacitated from work owing to sickness, disease, or injuries sustained in line of duty, shall be given a life pension of two hundred pesos a month, and thirty pesos a month for his wife and each of his unmarried minor children below eighteen years of age, unless they are actually receiving a similar pension from other Government funds, and shall receive, in addition, the necessary hospitalization and medical care.[7]

In *Begoso*, *supra*, as well as *Teoxon*, *supra*, this Court held that bare rules promulgated by the Philippine Veterans Administration, now the Philippine Veterans' Affairs Office, cannot overrule the mandate of statute, on the fundamental principle that "an administrative agency cannot amend an act of Congress." [8] In the case at bar, there is no gainsaying the fact that the petitioner had been enjoying pension benefits, albeit partial, pursuant to the provisions of Section 9, *supra*, upon the premise that he was qualified thereto. Hence, the Government must pay him maximum pension benefits. The fact that his injuries, based on the respondent's ratings, have been classified as "partial" cannot erase the equal fact that he is "permanently incapacitated" under the law. Section 9 refers simply to "permanent incapacity" and makes no distinctions as a condition sine qua non to compensability. It does not require such an incapacity to be total or partial and neither does it authorize the PVAO to make a gradation of injuries. It is axiomatic that where the law does not distinguish, let no one distinguish. The classifications or ratings formulated by the respondent body amount to an amendment of the law at the administrative level, and to that extent, they are null and void.

The case of Board of Administrators, PVA v. Agcaoili,[9] which the Solicitor General invokes does not apply. In that case, we denied pension for the plain reason that the applicant was not permanently incapacitated. But we did not, consequently, uphold, expressly or by implication, the PVAO's rules in said case, the applicant being disqualified in any event. If we did, it was because their validity was not specifically challenged. Needless to state, we did not abandon either Begoso or Teoxon therein.

It is pure conjecture to say that the petitioner "had no more service-connected disability to hang on and should not have been denied continued disability pension were it not for the compassionate regard by respondents to the veterans of World War II." [10] The fact of the matter is that the respondent had consistently paid the petitioner pension benefits for the past forty years, meaning to say that he was (is) entitled thereto. It would be an act of injustice to deny him now what, by strong constitutional presumptions, is due him.

Neither is it a matter of charity or compassion. The PVAO is vested with no discretion to deny payment where payments is due and conversely, to pay when payment is not due.

"The State," declares the Constitution (1973), "shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living." [11] Under the present Constitution, the State's concern for war veterans finds an even more emphatic expression:

SEC. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provides adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.[12]

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Sec. 7. The State shall provide immediate and adequate care, benefit, and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans. Funds shall be provided therefor and due consideration shall be given them in the disposition of agricultural lands of the public domain and, in appropriate cases, in the utilization of natural resources.[13]

In the face of clear State policy, the burden is consequently on the Government to show that the applicant is not qualified for pension. The applicant enjoys a presumed qualification upon a simple demonstration that he had fought in the war and had suffered a permanent incapacity as a result thereof.

The records show that the petitioner suffered various injuries, in his ear arising from a bombing in Atimonan, Quezon (where elements of the Japanese Imperial Army landed, after they had established a beachhead at Vigan, Ilocos Sur, two days after the Pearl Harbor bombing which commenced World War II in the Pacific area), and other parts of his body due to bullets and bayonets.[14] There is no showing that his wounds have since healed. Hence, they are "permanent" within the intendment of the veterans' Bill of Rights. As we said, the fact that they are partial rather than total is of no moment. "Permanent incapacity", under Republic Act No. 65, contemplates an injury or ailment sustained in battle, permanent or incurable in character, and such that it impedes normal work. But the statute does not require that the veteran be utterly unable to work by reason of the injury or ailment, or otherwise, "totally disabled". To say that it does is to reduce the law into a simple social security measure, similar to workmen's compensation, rather than an act of gratitude by the State to the brave veterans of the last two wars in the country.

Further, to say that Republic Act No. 26 applies only to veterans totally disabled for work is to make the Act the veterans' sole source of income (by virtue of the prohibition against multiple compensations under Sections 9 and 10). Certainly, P230.00 a month[15] -- the amount of pension under the Act -- is hardly "compensation" for any

common tao, let alone a totally disabled citizen. This could not have been the intent of the legislature.

The clear implication is that the PVAO may not rate disabilities in the same manner they are evaluated under our laws on employees' compensation. So long as a veteran's incapacity is permanent, the veteran is entitled to payment.

Alleged budgetary constraints or lack of appropriation are no obstacles to payment. In *Español v. Chairman, Philippine Veterans Administration*,^[16] we ordered "the restoration of [the petitioner's] monthly pension and her children's monthly dependent's pension provided for by R.A. No. 65, as amended, the coverage of which Congress had already appropriated funds [for]."^[17] The instant case presents a similar situation. In asking for retroactive pension, what the petitioner in reality seeks is the "restoration" of full pension benefits long denied him on account of the PVAO's improper application of Republic Act No. 65, and the funds for which have been undoubtedly appropriated.

To the extent that this decision is incompatible with our decision in *PVAO vs. Asterio Q. Tamayo*, promulgated on July 29, 1988, G.R. No. 74322, the latter is therefore considered changed.

The war veterans loom as the forgotten heroes of this generation. This is the reality both unfortunate and tragic. What has been lost on many is the fact that it was because of their bravery and sacrifice that we are a free people today.

They stand as shining mementos of our struggle for emancipation from the colonial yoke. With crude boloes and primitive spears but with abundant courage in their hearts they fought the white man's arsenal of rifles and cannons, overcame it, and finished a revolution. They fought with no anticipation of a prize, reward, or medal, but in obedient and unquestioning response to duty to country.

It was they who, four decades later, would lead the resistance against the Japanese invaders. Poorly trained, fed, and equipped but encouraged by a firmness of will, they offered their lives and many forfeited theirs -- amid superior firepower from the enemy. Like the revolutionaries, they were not conscripts but volunteers. And like them, they fought without any expectation of laurels or citations but in order that liberty shall dawn upon the land.

The Court strongly stresses that Republic Act No. 65, the veterans' Bill of Rights, was not meant to compensate alone veterans for the wounds of war. It is, above all, a gesture of gratitude on the part of the State and a tribute to their gallantry and selfless love of country. Though valor cannot be measured in terms of money, money is the best we can offer for the moment. And if we cannot do more, let us do no less. This case should not have indeed reached this Court had not insensitivity gotten the better of Government functionaries.

WHEREFORE, the petition is GRANTED.

The respondent, the Philippine Veterans Affairs Office, is ORDERED to pay the petitioner, his spouse, and qualified children, full pension benefits plus such other and further increments as may be provided for by law, effective November 18, 1947. No costs.

SO ORDERED.

Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Feliciano, J., joins C.J., Fernan, in his separate dissenting opinion.

Narvasa J., dissent and vote to adhere to the ruling in G.R. No. 74322 (*Phil. Veterans Affairs Office v. Tamayo*, July 29, 1988).

* CA-G.R. SP No. 10496, Eleventh Division; Francisco, Ricardo, J., Lombos-de la Fuente, Lorna and Benipayo, Alfredo, JJ., Concurring.

** Regional Trial Court, Fifth Judicial Region, Branch VII, Legazpi City; Hon. Domingo Reyes, Presiding Judge.

[1] Rollo, 68-71.

[2] Id., 18.

[3] Id.

[4] No. L-25916, April 30, 1970, 32 SCRA 466.

[5] No. L-25619, June 30, 1970, 33 SCRA 585.

[6] Begoso v. Chairman, Philippine Veterans Administration, 471-474. With respect to the defense prescription, see Español v. Chairman, Philippine Veterans Administration, No. L-44616, June 29, 1985, 137 SCRA 314.

[7] II PPGS (Rev. Ed.) 468; emphasis in original.

[8] Teoxon v. Members of the Board of Administrators, Philippine Veterans Administration, 589.

[9] No. L-38129, July 23 1974, 58 SCRA 72.

[10] Rollo, id., 32; emphasis in original.

[11] CONST. (1973), art. II, sec. 7.

[12] CONST. (1987), art. II, sec. 9.

[13] Supra, art. XVI, sec. 7.

[14] Rollo, id., 16.

[15] P200.00 a month for the veteran and P30.00 a month for his spouse for each unmarried child.

[16] Supra

[17] Supra, 320.

Animos vs PVAO : 79156 : June 22, 1989 : C.J. Fernan : En Banc : Dissenting Opinion 4 1 Clean 6 pt 6 pt 0 3
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DISSENTING OPINION

FERNAN, C.J.:

Without detracting from the great honor and gratitude our nation owes its war heroes and veterans I regret that I am unable to concur with the opinion expressed by the majority relative to the power of the Philippine Veterans Affairs Office (PVAO) to rate the disability or incapacity from work of war veterans seeking entitlement to the pension benefits provided under Republic Act No. 65 and its amendments.

As conceded in my earlier ponencia in G.R. No. 74322 entitled "The Philippine Veterans Affairs Office vs. Asterio Q. Tamayo", promulgated on July 29, 1988, R. A. No. 65 itself did not contain a disability rating schedule. However, it did repose upon the Philippine Veterans Board, predecessor of the PVAO, rule-making powers which by their tenor are sufficiently broad and encompassing to include this authority to rate disabilities. Thus, from its enactment in 1946, or for more than forty (40) years, the governmental agency specially created and charged with implementing the provisions of R.A. No. 65 and its amendments, from the Philippine Veterans Board, the Philippine Veterans Administration to the present PVAO, had consistently done so in accordance with the assailed disability rating schedule. Although technically not binding and controlling on the courts, the construction given by the agency or entity charged with the enforcement of a statute should be given great weight and respect (In re Allen, 2 Phil. 630, 640), particularly so if such construction, as in the case at bar, has been uniform and consistent, and has been observed and acted on for a long period of time (Molina vs. Rafferty, 38 Phil. 167; Madrigal vs. Rafferty, 38 Phil. 414; Philippine Sugar Central vs. Collector of Customs, 51 Phil. 143).

Neither should we lose sight of the fact that the basic law, R.A. No. 65, has undergone a number of amendments, without the legislature deeming it wise or proper to discontinue or proscribe this practice of the implementing agency of rating the veterans' disabilities. This, to my mind, is a strong indication, nay, conclusive proof that the construction given by the PVAO and its predecessors is in accord with the legislative intent, for a basic rule in statutory construction is that the legislature is presumed to know the effect which statutes originally had, and by re-enactment to intend that they should again have the same effect (In re McCullough Dick, 39 Phil. 41). There is implied legislative approval by the legislature's failure to change a long-standing administrative construction (Asturias Sugar Central, Inc. vs. Commissioner of Customs, 29 SCRA 617).

It is regrettable that the majority has missed the wisdom of the construction given by the veterans board to Section 9 of R. A. No. 65, and the undeniable fact that it is through the veterans board's authority to rate disabilities that the spirit and intent of the law are being given their most beneficial effects. Note that Section 9 of R.A. No. 65 uses the phrase "permanently incapacitated from work" as the qualifying condition for the full pension benefits provided thereunder. As stated in the case of Board of Administrators vs. Agcaoili, 58 SCRA 72, these words "have a restrictive signification which cannot be conveniently disregarded." An amendment, R.A. No. 5753* enacted on June 21, 1969, employs the equally restrictive term "totally disabled". The literal import flowing from the interchangeable and synonymous use of the phrases "permanently incapacitated from work" and "total disability", is that the legislature intended to give the full amount of pension benefits provided under the law only to war veterans who are permanently and totally unable to engage in any gainful occupation or employment by reason of the sickness, disease or injury sustained in line of duty. The veterans board could have easily interpreted and applied the law in this wise, but did not. It is to its great credit that giving due consideration to the spirit and intent of the law, rather than adhering to its letters, the veterans board correctly construed the law as setting a maximum amount of pension benefits for the worst kind or condition of incapacity from work (i.e., permanent), and leaving to the administering agency thru its ample rule-making powers the task of providing for proportional benefits for corresponding varying degrees of incapacity or disability. Thus, it is thru the now assailed rating power of the veterans board that less than permanently incapacitated war veterans are enjoying the benefits, albeit partial, of the law, which a literal reading thereof would seem to preclude.

In what it probably perceives as a most charitable and generous move, the majority lightly casts aside the construction given and followed by the veterans board for more than 40 years. The majority likewise completely failed to make the very crucial and significant distinction between "permanent incapacity" and "permanent incapacity from work", and in the process, unwittingly gave rise to an absurd, if not inequitable situation, in that all war veterans are deemed entitled to the same amount of pension benefits regardless of the nature and effect of the sickness, disease or injury sustained in line of duty. Certainly, the legislature could not have intended such

patent inequality. It is safer and more logical to assume that the law intended to give equal benefits to those similarly situated, a circumstance best attained through the adoption by the veterans board of a standard classification of disability or incapacity.

Moreover, to entitle all war veterans to the full amount of pension benefits mentioned in the law regardless of the extent of their disability would involve a staggering sum of money. While there is no gainsaying that the amount prescribed by law is far from adequate, we must, however, realize that the Philippines is a relatively poor country. It wants to reward its war heroes and veterans for their valor and gallantry but harsh economic reality deters it from adequately doing so. It does what it can under the circumstances, without the Judiciary adding to its financial troubles and burden through what I firmly believe to be an unwarranted interpretation of a law.

* R.A. 5753 is entitled, "AN ACT FURTHER AMENDING REPUBLIC ACT NUMBER SIXTY FIVE, AS AMENDED, BY INCREASING THE PENSION OF TOTALLY DISABLED VETERANS OF WORLD WAR II AND THEIR LIVING DEPENDENTS."

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