

JESUS N. BORROMELO, PETITIONER, VS. THE HON. CIVIL SERVICE COMMISSION AND SECRETARY OF BUDGET AND MANAGEMENT, RESPONDENTS.

G.R. No. 96032. July 31, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Should the terminal leave pay of petitioner Borrromeo, Chairman of the Civil Service Commission (CSC) until his retirement on April 1, 1986, be computed on the basis of the highest monthly salary plus cost of living allowance (COLA) and representation and transportation allowance (RATA) or solely on the basis of highest monthly salary without said allowances? This is the issue that confronts the Court.

On August 18, 1988, the petitioner wrote a letter to the Commission on Audit (COA) Chairman, coursed through the CSC Chairman, requesting an opinion on whether or not the money value of the terminal leave of retired Constitutional Commission members should include the allowances received at the time of retirement. The petitioner, in his letter, further stated that while retired members of other Constitutional Commissions received terminal leave pay computed on the basis of highest monthly salary including allowances, the former's terminal leave was computed solely on the basis of highest monthly salary.

In a First Indorsement to the COA Chairman on September 1, 1988, the CSC Chairman recommended the approval of the petitioner's request for payment of the money value of his terminal leave based on salary plus allowances.

On September 28, 1989, the COA rendered Decision No. 992 (hereinafter referred to as the COA decision) stating that "in line with the action taken by this Commission in the previous similar cases of former COA Commissioners Hermogenes P. Pobre and Silvestre D. Sarmiento," the COA "will interpose no objection" to the petitioner's claim.

Upon the petitioner's request for payment of terminal leave differential representing the unpaid COLA and RATA amounting to P111,229.04, the CSC Chairman informed the petitioner that the release of the corresponding advice of allotment and cash outlay to cover the payment of his terminal leave differential had already been requested from the Department of Budget and Management (DBM).

On January 25, 1990, in a letter addressed to the CSC Chairman, the DBM denied the petitioner's request for payment of terminal leave differential for the following reasons, among others:

- 1) Computation of the money value of vacation and sick leave is based on "basic pay" or "basic salary" pursuant to the provisions of the Revised Administrative Code, as amended by R.A. No. 1081.
- 2) Under Section 2(1) of P.D. No. 1146, the term salary refers to the basic pay or salary received by an employee, excluding per diems, bonuses, overtime pay and allowance.

3) The cases of former COA Commissioners Pobre and Sarmiento cannot be validly invoked as precedents for purposes of DBM Budgetary action since said claims were processed without prior involvement of the DBM.

Faced with the DBM refusal to release the corresponding allotment, the CSC yielded to DBM instead of asserting its initial determination. It issued Resolution No. 90-514 dated May 30, 1990 wherein the Commission deemed it proper not to rule on the issue on “ethical considerations” and “compulsions of delicadeza” and advised the petitioner to file an action for declaratory relief (sic) on the issue with the Supreme Court.

Petitioner Borromeo sought reconsideration of CSC Resolution No. 90-514, reasoning that neither the CSC Resolution nor the opinion of the DBM Secretary could prevail over the COA decision which had become final and executory.

On October 18, 1990, the CSC issued Resolution No. 90-945 denying reconsideration of the petitioner’s case. In spite of the CSC Chairman’s earlier approval of the claim for payment, the CSC ruled that the COA decision “has no sufficient legal mooring and therefore cannot be the basis for allowing payment of the claims.” The Resolution likewise cited a June 13, 1990 letter from former Court Administrator Meynardo A Tiro informing the CSC that “the money value of the terminal leave credits of the Justices of the Supreme Court and other members of the Judiciary is based only on the highest basic salary (plus longevity pay) but excluding RATA as certified to by our Director of Fiscal Management and Budget Office.”

Hence, this petition.

The Secretary of Budget and Management was ordered impleaded try the Court in a resolution dated January 31, 1991.

The petitioner seeks the nullification of CSC Resolution Nos. 90-514 and 90-945. He urges that the COA decision which interposed no objection to the computation of his terminal leave pay based on salary plus allowances had already become final and executory since no timely appeal had been taken therefrom.

Respondent CSC, on the other hand, maintains that the COA decision is not final and conclusive since said decision merely stated that the COA will not interpose any objection to the payment of the petitioner’s claim. More importantly, respondent CSC adds, the determination of the legality of claims on leave matters is within the province of the CSC.

On this preliminary issue, the Court rules against the petitioner’s assertion that the COA decision has become final and executory and, therefore, beyond review; that the DBM has no alternative but to obey it. Article IX-A, Section 7 of the 1987 Constitution provides:

“xxx Unless otherwise provided by this Constitution or by law, any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof.”

The above-cited article refers to an aggrieved party raising a decision to this Court. Unfortunately for the petitioner, neither the Civil Service Commission nor the Secretary of Budget and Management may be viewed as an aggrieved party. The CSC is not an aggrieved party because it recommended the approval of the petitioner’s request for payment of terminal leave computed on the basis of his monthly salary plus allowances and likewise interceded in behalf of the petitioner for the release of funds from the DBM. The COA upheld this initial position. Nor is the DBM an aggrieved party because it was not privy to the case before the COA. Moreover, even if the DBM was eventually apprised of the COA decision, the DBM’s recourse was not to bring the matter on a petition for certiorari before the Court. As the agency tasked to release government funds, it simply ignored the COA

ruling with which it disagreed. It refused to approve the release of allotment and outlay for terminal leave differential since in its opinion, payment thereof had no legal basis. The records do not show any authority of COA to compel acceptance of its ruling in this particular case.

The respondent CSC's stance, however, that it is the body empowered to determine the legality of claims on leave matters, to the exclusion of COA, is not well-taken. While the implementation and enforcement of leave benefits are matters within the functions of the CSC as the central personnel agency of the government, the duty to examine accounts and expenditures relating to leave benefits properly pertains to the COA. Where government expenditures or use of funds is involved, the CSC cannot claim an exclusive domain simply because leave matters are also involved.

The COA, the CSC, and the Commission on Elections are equally pre-eminent in their respective spheres. Neither one may claim dominance over the others. In case of conflicting rulings, it is the Judiciary which interprets the meaning of the law and ascertains which view shall prevail.

The basic question for the Court's consideration is whether or not RATA and COLA should be added to the highest monthly salary in computing the petitioner's terminal leave pay.

The petitioner anchors his claim on the Memorandum Order issued by President Marcos on November 20, 1980. Apparently, this Memorandum Order was also the basis for the COA decision, invoked by the petitioner as final and executory, interposing no objection to his claim for terminal leave differential. The Memorandum Order reads:

"TO: The Chairman

Commission on Audit

Quezon City

With reference to the request of that Office for clarification on the accumulated leave credits of retired Chairman Perez and Commissioners Duque and Bayot, I hereby direct that:

The computation of the terminal leave in question shall be computed on the basis of the total number of days of leave credits each accumulated by Chairman Perez and Commissioners Duque and Bayot on the day of their retirement, not on the basis of 300 days as provided in Sec. 1014 of P.D. 1587.

The money value of the terminal leave shall be paid as computed on the basis of the highest monthly salary including allowance received at the time of the retirement.

(Sgd.) FERDINAND E. MARCOS

President of the Philippines

November 20, 1980." (p. 27, Rollo)

The above Order was the former President's response to a July 7, 1980 query initiated by former COA Chairman Francisco A. Tantuico, Jr. seeking clarification from the Office of the President respecting the claim of retired Chairman Leonardo B. Perez and Commissioners Venancio S. Duque and Flores A. Bayot of the Commission on Elections for the payment of the money value of their accumulated leaves. Since the Memorandum order specifically applies to these three officials, then said Order cannot automatically benefit others not mentioned therein. While it has persuasive value as a matter of contemporaneous interpretation especially as regards Presidential Decrees or other presidential acts, we cannot confer upon this Order the status of a law of general application.

The petitioner also invokes Administrative Order No. 44 dated December 13, 1979, extending to the Chairman and members of the Constitutional Commissions the same benefits enjoyed by retiring members of the Judiciary in the matter of rationalized rate of allowances and liberalized computation of retirement benefits and accumulated leave credits.

The Solicitor General, acting on behalf of the CSC and Secretary of Budget and Management, advances the argument that there is no provision in Administrative Order No. 444, or in any other law, which expressly authorizes the inclusion of allowances in the computation of the money value of the petitioner's accumulated leaves.

The pertinent portions of Administrative Order No. 444 provide:

xxx xxx xxx

“3. The accumulated leave credit of a Chairman/Commissioner of a Constitutional Commission shall be computed under the same rules as those applicable to members of the Judiciary.

4. Upon retirement, the lump sum of five years gratuity as provided under R.A. 3595 for the Chairman/Commissioner shall be computed on the basis of the highest monthly salary plus the duly authorized transportation, living and representation allowances in the last month prior to retirement or expiration of term.”

xxx xxx xxx

The law pertaining to retirement benefits respecting members of the Judiciary is Republic Act (R.A.) No. 910, as amended by Presidential Decree No. 1438, which reads:

xxx xxx xxx

“Sec. 3. Upon retirement, a justice of the Supreme Court or of the Court of Appeals, or a judge of the Court of First Instance, Circuit Criminal Court, Agrarian Relations, Tax Appeals, Juvenile and Domestic Relations, city or municipal court, or any other court hereafter established shall be automatically entitled to a lump sum of five years gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, living and representation allowances he was receiving on the date of his retirement; xxx.”

xxx xxx xxx

It is clear from RA 910 as amended that the five-year gratuity is based on highest monthly salary plus transportation, living and representation allowance. Should the computation of terminal leave pay, which is given on the same occasion of retirement and which arises from the same considerations of government gratitude that for most retirees is based on a lifetime of service, be accorded similar treatment?

The Solicitor General stresses that under Section 286 of the Revised Administrative Code, as amended by Republic Act No. 1081 and Executive Order No. 1077, the computation of the money value of the terminal leave pay is based only on monthly basic salary.

Section 286 of the Revised Administrative Code, as amended by RA No. 1081, states:

Section 286. When vacation leave and sick leave may be taken. - Vacation leave and sick leave shall be cumulative and any part thereof which may not be taken within the calendar year in which earned may be carried over to the succeeding years, but whenever any officer, employee, or laborer of the Government of the Philippines shall voluntarily resign or be separated from the service through no fault of his own, he shall be entitled to the commutation of all accumulated vacation and/or sick leaves to his credit: Provided, That the total vacation leave and sick leave that can accumulate to the credit of any officer or employee shall, in no case, exceed ten months: Provided, further, That the proper Department Head may in his discretion authorize

the commutation of the salary that would be received during the period of vacation and sick leave of any appointed officer or employee or teacher or laborer of the Philippine Government and direct its payment on or before the beginning of such leave from the fund out of which the salary would have been paid: Provided, furthermore, That no person whose leave has been commuted following his separation from the service shall be reappointed or reemployed under the Government of the Philippines before the expiration of the leave commuted unless he first refunds the money value of the unexpired portion of the leave commuted. (Underlining supplied)”

(Executive Order No. 1077 later amended Section 286 by removing the limitation on the number of days of vacation and sick leaves that a retiree may accumulate, although all employees are required to go on a minimum of five days vacation leave annually.)

The only provision in Section 286 of the Revised Administrative Code, as amended, which could seemingly support the Solicitor General’s view is the above underlined clause which allows the “commutation of salary” of a government officer, employee or laborer.

“Commutation of salary” as used in Section 286 is, however, not the same as “commutation of leave credits”. The former is applied for by an employee during employment when he goes on ordinary leave. Thus, if his Department Head allows it, the employee may receive his salary for the period of the vacation or sick leave before the beginning of such leave; otherwise, he gets his salary only on the pay days covered by the vacation or sick leave period or upon returning to work. In contrast, commutation of leave credits, more commonly known as terminal leave, is applied for by an officer or employee who retires, resigns or is separated from the service through no fault of his own. (Manual on Leave Administration Course for Effectiveness published by the Civil Service Commission, pages 16-17). In the exercise of sound personnel policy, the Government encourages unused leaves to be accumulated. The Government recognizes that for most public servants, retirement pay is always less than generous if not meager and scrumpy. A modest nest egg which the senior citizen may look forward to is thus provided. Terminal leave payments are given not only at the same time but also for the same policy considerations governing retirement benefits.

Since terminal leave is applied for by an officer or employee who has already severed his connection with his employer and who is no longer working, then it follows that the terminal leave pay, which is the cash value of his accumulated leave credits, should not be treated as compensation for services rendered at that time. (Re: Request of Atty. Bernardo Zialcita, 190 SCRA 851 [1990]) It can not be viewed as salary for purposes which would reduce it. (supra) There can thus be no “commutation of salary” when a government retiree applies for terminal leave because he is not receiving it as salary. What he applies for is a “commutation of leave credits.” It is an accumulation of credits intended for old age or separation from the service. Hence, Section 286 of the Revised Administrative Code is not applicable. It cannot be construed as limiting the basis of the computation of terminal leave pay to monthly salary only.

In the light of the reasons which impelled the law to include COLA and RATA in computing retirement benefits of certain officials, we rule that terminal leave payments must also be governed by the same principle. COLA and RATA should be included in computing the terminal leave credits when the officials retire or the official relationship is lawfully terminated.

The Solicitor General cites our ruling in *Paredes v. Acting Chairman*, 116 SCRA 176 [1982] to support his position.

Commonwealth Act (CA) No. 186, as amended, provides for the retirement of government employees, other than members of the Judiciary, Constitutional Commissions and those whose retirement is not covered by special law.

Section 12(c) of CA 186 reads:

“(c) Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least twenty years of service, the last three years of which are continuous. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of corresponding employer’s premiums described in subsection (a) of Section five hereof, without interest, be only a gratuity equivalent to one month’s salary for every year of the first twenty years of service, plus one and one-half month’s salary for every year of service over twenty but below thirty years and two month’s salary for every year of service over thirty years in case of employees based on the highest rate received and in case of elected officials on the rates of pay as provided by law. xxx Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement.”

xxx xxx xxx

Under the last sentence, officials and employees retired under CA 186, as amended, shall be entitled to the commutation of the vacation and sick leave credits based on the highest rate received.

In *Paredes v. Acting Chairman*, supra, the Court construed the phrase “highest rate received” as referring to the retiree’s “highest monthly salary”:

“The foregoing legal provision (Section 12(c) of CA 186 requires the computation of the money value of the terminal leave to be based on the retiree’s highest rate received. And a reading of the entire provision shows that the highest rate received refers to the retiree’s highest monthly salary.”

The petitioner in that case was a former Assistant City Auditor of Manila who sought to have his RATA included in the computation of his terminal leave pay. The Court therein held that “allowances are not considered part of salary for purposes of retirement and payment of the money value of terminal leave.”

It must be noted, however, that the Court, in that case, construed “highest rate received” as highest monthly salary mainly because the retirement gratuity received by employees under Section 12(c) of CA 186 is based only on monthly salary. Thus, under the aforementioned provision, the benefit for employees shall be “a gratuity equivalent to one month’s salary for every year of the first twenty years of service, plus one and one-half month’s salary for every year of service over 20 but below 30 years and two months’ salary for every year of service over thirty years xxx based on the highest rate received xxx Officials and employees retired under this act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received xxx.” (Underlining supplied.)

A reading of Section 12(c) of CA 186 therefore reveals an intent on the part of the legislature to provide a uniform basis in computing both the retirement gratuity and the terminal leave pay. In CA 186, that uniform basis is salary.

A different law, R.A. 910 as amended, governs the petitioner. In the case of members of the Judiciary and Constitutional Commissions, the basis in computing the retirement gratuity is the highest monthly salary plus the highest monthly aggregate of transportation, living and representation allowance (COLA and RATA). The same rule of uniformity which we applied in *Paredes v. Acting Chairman* for those retiring under CA 186 as amended should also apply for those who retire under R.A. 910 as amended. The rate used in computing retirement gratuities also applies in the computation of terminal leave credits.

It is axiomatic that retirement laws are liberally construed and administered in favor of the persons intended to be benefited. All doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes. (In *Re: Amount of the Monthly Pension of Judges and Justices starting from the Sixth year of their Retirement and after the Expiration of the Initial Five-Year Period of Retirement*, 190 SCRA 315

[1990]; Ortiz v. Commission on Elections, 162 SCRA 812 [1988]; Bautista v. Auditor General, 104 Phil. 428 [1958])

Although terminal leave pay is not synonymous with, and is not a part of, the five-year lump sum gratuity provided under RA 910 as amended and Administrative Order No. 444, the former may, in a broad sense, partake of the nature of a gratuity rather than actual salary. A gratuity is that paid to the beneficiary for past services rendered purely out of generosity of the giver or grantor. (Peralta v. Auditor General, 100 Phil 1051 [1957]) It is a mere bounty given by the government in consideration or in recognition of meritorious services and springs from the appreciation and graciousness of the government. (Pirovano v. De La Rama Steamship Co., 96 Phil. 335, 357 [1954]) While it is true that vacation and sick leave credits are earned during one's period of employment, they are, by their very nature and purpose, supposed to be enjoyed or exhausted during employment. When these accumulated leave benefits are allowed to be accumulated, not to be paid while one is working but to be reserved for old age, then this constitutes the gratuity.

Through the years, laws pertaining to accumulation of leave credits show a liberal trend with a view to favoring the retiring employee. Under Act 2711 (dated March 10, 1917), accumulated leaves that may be commuted cannot exceed 5 months. Republic Act No. 1081 (dated June 15, 1954) increased the limit from 5 to 10 months. With the passage of Executive Order No. 1077 on January 9, 1986, the retiring employee became entitled to the commutation of all accumulated vacation and sick leaves to his credit, without limitation as to the number of days of vacation and sick leave that he may accumulate.

Since terminal leave pay may also be considered a gratuity, then applying the rule on liberal interpretation of retirement laws, the basis for its computation in the case of members of the Judiciary and Constitutional Commissions must be the same as that used in computing the 5-year lump sum gratuity under RA 910 as amended and Administrative Order No. 444.

The Court is cognizant of the incongruity that may ensue if the terminal leave pay of members of the Judiciary and Constitutional Commissions is computed only on the basis of highest basic monthly salary.

If, for example a member of the CSC has an accumulated leave credit of one month and, in the two months immediately prior to retiring, consumes his accumulated leaves by going on fifteen days' vacation leave twice, there is no dispute that he will be paid two months' salary plus COLA and RATA for this two-month period, although no work has been rendered by him. If, on the other hand, he chooses to work until the last day of employment and upon retirement, applies for the commutation of his accumulated leave credit of one month, following the proposition of the Solicitor General, he will receive terminal leave pay equivalent only to one month's salary, without COLA and RATA. In the latter case, why should he be penalized for faithfully working continuously and not consuming his leave credits until his last working day? Why should the basis for the commutation of leave credits be different just because he chose to avail himself of his leave benefits immediately before and not immediately after retirement? Surely this disparity in consequence could not have been intended by our lawmakers.

There is more reason now to include COLA in the computation of terminal leave pay. Section 12 of Republic Act 6758, known as the Compensation and Position Classification Act of 1989, mandated the integration of COLA to the basic salary and, therefore, to the retirement pay of all employees. While it is true that RA 6758 took effect only on July 1, 1989, long after petitioner had already retired on April 1, 1986, his COLA should nevertheless have been included in computing terminal leave pay for the same reasons stated above.

In Re: Request of Atty. Bernardo Zialcita, supra, the affected agency filed a motion for partial reconsideration stressing that the benefits of our ruling should not be open-ended and made to apply retroactively to all the

unknown and uncomplaining persons who may have retired as far back as decades ago. We provided a cut-off date. The same practical considerations and budgetary restraints constrain the Court to impose a cut-off date for claims for terminal leave differentials. The Court therefore, rules that the inclusion of COLA and RATA as basis in arriving at terminal leave pay shall apply only to those qualified members of the Judiciary and Constitutional Commissions who retired or shall retire on or after the change of government in February, 1986.

WHEREFORE, the petition is hereby GRANTED. Resolutions 90-514 and 90-945 issued by the Civil Service Commission are set aside. The Secretary of Budget and Management is ordered to release the corresponding allotment and cash outlay for the terminal leave differential claimed by the petitioner. The terminal leave pay of qualified members of the Judiciary and Constitutional Commissions who retired or shall retire on or after the February, 1986 political upheaval shall be based on highest monthly salary plus COLA and RATA.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

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