

FRANCISCO S. TANTUICO, JR., PETITIONER, VS. HON. EUFEMIO DOMINGO, IN HIS CAPACITY AS CHAIRMAN OF THE COMMISSION ON AUDIT, ESTELITO SALVADOR, MARGARITO SILOT, VALENTINA EUSTAQUIO...

G.R. No. 96422. February 28, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari, prohibition and mandamus, with prayer for temporary restraining order or preliminary injunction, under Rule 65 of the Revised Rules of Court.

The petition mainly questions the withholding of one-half of petitioner's retirement benefits.

I

On January 26, 1980, petitioner was appointed Chairman of the Commission on Audit (COA) to serve a term of seven years expiring on January 26, 1987. Petitioner had discharged the functions of Chairman of the COA in an acting capacity since 1975.

On December 31, 1985, petitioner applied for clearance from all money, property and other accountabilities in preparation for his retirement. He obtained the clearance applied for, which covered the period from 1976 to December 31, 1985. The clearance had all the required signatures and bore a certification that petitioner was "cleared from money, property and/or other accountabilities by this Commission" (Rollo, p. 44).

After the EDSA Revolution, petitioner submitted his courtesy resignation to President Corazon C. Aquino. He relinquished his office to the newly appointed Chairman, now Executive Secretary Teofisto Guingona, Jr. on March 10, 1986. That same day, he applied for retirement effective immediately.

Petitioner sought a second clearance to cover the period from January 1, 1986 to March 9, 1986. All the signatures necessary to complete the second clearance, except that of Chairman Guingona, were obtained. The second clearance embodies a certificate that petitioner was "cleared from money, property and/or accountability by this Commission" (Rollo, p. 49). Chairman Guingona, however, failed to take any action thereon.

Chairman Guingona was replaced by respondent Chairman. A year later, respondent Chairman issued COA Office Order No. 87-10182 (Rollo, p. 50), which created a committee to inventory all equipment acquired during the tenure of his two predecessors.

On May 7, 1987, respondent Chairman indorsed petitioner's retirement application to the Government Service Insurance System (GSIS), certifying, among other matters, that petitioner was cleared of money and property accountability (Rollo, p. 52). The application was returned to the COA pursuant to R.A. No. 1568, which vests in the COA the final approval thereof.

On September 25, 1987, the inventory committee finally submitted its report, recommending petitioner's clearance from property accountability inasmuch as there was no showing that he personally gained from the missing property or was primarily liable for the loss thereof (Rollo, pp. 53--58).

Not satisfied with the report, respondent Chairman issued a Memorandum directing the inventory committee to explain why no action should be filed against its members for failure to complete a physical inventory and verification of all equipment; for exceeding their authority in recommending clearances for petitioner and Chairman Guingona; and for recommending petitioner's clearance in total disregard of Section 102 of P.D. No. 1445 (Government Auditing Code of the Philippines). The members of the committee were subsequently administratively charged.

On January 2, 1988, respondent Chairman created a special audit team for the purpose of conducting a financial and compliance audit of the COA transactions and accounts during the tenure of petitioner from 1976 to 1984 (COA Office Order 88-10677; Rollo, pp. 66-67).

On February 28, 1989, the special audit team submitted its report stating: (i) that the audit consisted of selective review of post-audit transactions in the head offices and the State Accounting and Auditing Center; (ii) that the audit disclosed a number of deficiencies which adversely affected the financial condition and operation of the COA, such as violations of executive orders, presidential decrees and related rules and regulations; and (iii) that there were some constraints in the audit, such as the unavailability of records and documents, and personnel movements and turnover. While the report did not make any recommendation, it instead mentioned several officials and employees, including petitioner, who may be responsible or accountable for the questioned transactions (Rollo, pp. 73, 147-151).

Respondent Chairman rendered a Decision dated November 20, 1989, in the administrative case filed against the principal members of the first inventory committee. He found them guilty as charged and issued them a reprimand. The other members were meted a stern warning, except for one who was exonerated for not taking part in the preparation of the inventory report.

In a letter dated December 21, 1989, a copy of which was received by petitioner on December 27, 1989, respondent Chairman informed petitioner of the approval of his application for retirement under R.A. No. 1568, effective as of March 9, 1986 (Rollo, pp. 68-69). However, respondent Chairman added:

"xxx In view, however, of the audit findings and inventory report adverted to above, payment of only one-half (1/2) of the money value of the benefits due you by reason of such retirement will be allowed, subject to the availability of funds and the usual accounting and auditing rules. Payment of the balance of said retirement benefits shall be subject to the final results of the audit concerning your fiscal responsibility and/or accountability as former Chairman of this Commission."

In a letter dated January 22, 1990, petitioner requested full payment of his retirement benefits.

Petitioner was furnished a copy of the report of the special audit team in the letter dated December 21, 1989 of respondent Chairman on January 29, 1990, nearly a year after its completion. Attached to a copy of the report was a letter dated November 14, 1989 from respondent Chairman, who required petitioner to submit his comment within 30 days (Rollo, p. 153).

Petitioner submitted a letter-comment, wherein he cited certain defects in the manner the audit was conducted. He further claimed that the re-audit was not authorized by law since it covered closed and settled accounts.

Upon petitioner's request, he was furnished a set of documents which he needed to prepare his comment. He was likewise given another 30-days to submit it.

A series of correspondence between petitioner and respondent Chairman ensued. On September 10, 1990, petitioner requested a copy of the working papers on which the audit report was based. This was denied by respondent Chairman, who claimed that under the State Audit Manual, access to the working paper was restricted. Petitioner's reconsideration was likewise denied and he was given a non-extendible period of five days to submit his comment.

Instead of submitting his comment, petitioner sought several clarifications and specifications, and requested for 90 days within which to submit his comment, considering that the report covered a ten-year period of post-audited transactions. Ignoring petitioner's request, respondent Chairman demanded an accounting of funds and a turn over of the assets of the Fiscal Administration Foundation, Inc. within 30 days.

II

Petitioner then filed the instant petition. As prayed for by petitioner, this Court issued a temporary restraining order on January 17, 1991.

Petitioner argues that notwithstanding the two clearances previously issued, and respondent Chairman's certification that petitioner had been cleared of money and property accountability, respondent Chairman still refuses to release the remaining half of his retirement benefits - a purely ministerial act.

Petitioner was already issued an initial clearance during his tenure, effective December 31, 1985 (Rollo, p. 44). All the required signatures were present. It also bore a certification that petitioner "is cleared from money, property and/or other accountabilities by this commission" with the following notation:

"No property accountability under the Chairman's name as the person. Final clearance as COA Chairman subject to the completion of ongoing reconciliation of Accounting & P(roper)ty records and to complete turnover of COA property assigned to him as agency head.

xxx

The responsibility of the Chairman for the disbursement and collection accounts of this Commission for CYs Sept. '75 to Aug. '85, were completely post-audited, however as of Dec. 31, 1985, the suspensions and disallowances in the amounts of P36,196,962.11 and P28,762.36 respectively, are still in the process of settlement" (Rollo, pp. 44 - 45).

Petitioner also applied for a second clearance to cover the period from January 1 to March 9, 1986, which application had been signed by all the officials, except the Chairman (Rollo, p. 49).

Whatever infirmities or limitations existed in said clearances were cured after respondent Chairman favorably indorsed petitioner's application for retirement to the Government Service Insurance System and recommended its approval to take effect on March 10, 1986. In said endorsement, respondent Chairman made it clear that there were no pending administrative and criminal cases against petitioner (Rollo, p. 52).

Regardless of petitioner's monetary liability to the government that may be discovered from the audit concerning his fiscal responsibility or accountability as former COA Chairman, respondent Chairman cannot withhold the benefits due petitioner under the retirement laws.

In *Romana Cruz v. Hon. Francisco Tantuico*, 166 SCRA 670 (1988), the National Treasurer withheld the retirement benefits of an employee because of his finding that she negligently allowed the anomalous encashment of falsified treasury warrants.

In said case, where petitioner herein was one of the respondents, we found that the employee had been cleared by

the National Treasurer from all money and property responsibility, and held that the retirement pay accruing to a public officer may not be withheld and applied to his indebtedness to the government.

In *Tantuico*, we cited Justice Laurel's essay on the rationale for the benign ruling in favor of the retired employees, thus:

"xxx 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 and his family. Unless otherwise clearly provided, the pension should inure wholly to the benefit of the pensioner. It is true that the withholding and application of the amount involved was had under Section 624 of the Administrative Code and not by any judicial process, but if the gratuity could not 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 and enable the respondent to do indirectly what they can not do directly under Section 3 of the 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 (*Hunt v. Hernandez*, 64 Phil. 753 [1937]).

Under Section 4 of R.A. No. 1568 (An Act to Provide Life Pension to the Auditor General and the Chairman or Any Member of the Commission on Elections), the benefits granted by said law to the Auditor General and the Chairman and Members of the Commission on Elections shall not be subject to garnishment, levy or execution. Likewise, under Section 33 of P.D. No. 1146, as amended (The Revised Government Service Insurance Act of 1977), the benefits granted thereunder "shall not be subject, among others, to attachment, garnishment, levy or other processes."

Well-settled is the rule that retirement laws are liberally interpreted in favor of the retiree because the intention is to provide for the retiree's sustenance and comfort, when he is no longer capable of earning his livelihood (*Profeta vs. Drilon*, 216 SCRA 777 [1992]).

Petitioner also wants us to enjoin the re-audit of his fiscal responsibility or accountability, invoking the following grounds:

1. The re-audit involved settled and closed accounts which under Section 52 of the Audit Code can no longer be re-opened and reviewed.
2. The re-audit was initiated by respondent Chairman alone, and not by the Commission as a collegial body;
3. The report of the special audit team that recommended the re-audit is faulty as the team members themselves admitted several constraints in conducting the re-audit, e.g. unavailability of the documents, frequent turn-over and movement of personnel, etc.;
4. The re-audit covered transactions done even after petitioner's retirement;
5. He was not given prior notice of the re-audit;
6. He was not given access to the working papers; and
7. Respondents were barred by *res judicata* from proceeding with the re-audit (*Rollo*, pp. 19--40).

The petition must fail insofar as it seeks to abort the completion of the re-audit. While at the beginning petitioner raised objections to the manner the audit was conducted and the authority of respondents to re-open the same, he subsequently cooperated with the examination of his accounts and transactions as a COA official.

With respect to the legal objections raised by petitioner to the partial findings of the respondents with respect to his accountability, such findings are still tentative. As petitioner has requested, he is entitled to a reasonable time within which to submit his comment thereon.

But in order to prepare his comment, petitioner should be given access to the working papers used by the special audit team. The audit report covered a period of ten years (1976-1985) and involved numerous transactions. It would be unfair to expect petitioner to comment on the COA's findings of the report without giving him a chance to verify how those findings were arrived at.

It has been seven years since petitioner's retirement. Since then he was only paid half of his retirement benefits, with the other half being withheld despite the issuance of two clearances and the approval of his retirement application. As of the filing of this petition on December 21, 1990, no criminal or administrative charge had been filed against petitioner in connection with his position as former Acting Chairman and Chairman of the COA.

WHEREFORE, the petition is GRANTED insofar as it seeks to compel respondent Chairman of the COA to pay petitioner's retirement benefits in full and his monthly pensions beginning in March 1991.

The petition is DENIED insofar as it seeks to nullify COA Office Order No. 88-10677 and the audit report dated February 28, 1989 but petitioner should be given full access to the working papers to enable him to prepare his comment to any adverse findings in said report. The temporary restraining order is LIFTED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Puno, Vitug, and Kapunan, JJ., concur.

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