

GAUDENCIO T. CENA, PETITIONER, VS. THE CIVIL SERVICE COMMISSION AND THE HON PATRICIA A. STO. TOMAS, IN HER CAPACITY AS CHAIRMAN OF THE CIVIL SERVICE COMMISSION, RESPONDENTS.

G.R. No. 97419. July 03, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

May a government employee who has reached the compulsory retirement age of 65 years, but who has rendered 11 years, 9 months and 6 days of government service, be allowed to continue in the service to complete the 15-year service requirement to enable him to retire with the benefits of an old-age pension under Section 11 par. (b) of the Revised Government Service Insurance Act of 1977? This is the issue raised before this Court by petitioner Gaudencio T. Cena, a Registrar of the Register of Deeds of Malabon, Metro Manila.

The facts are not disputed.

Petitioner Gaudencio T. Cena entered the government service on November 16, 1978 as Legal Officer II of the Law Department of Caloocan City where he stayed for seven (7) years until his transfer on November 16, 1986 to the Office of the Congressman of the First District of Caloocan City where he worked for only three (3) months, or until February 15, 1987, as Supervising Staff Officer.

On July 16, 1987, he was appointed as Registrar of the Register of Deeds of Malabon, Metro Manila, the position he held at the time he reached the compulsory retirement age of 65 years on January 22, 1991. By then, he would have rendered a total government service of 11 years, 9 months and 6 days. Before reaching his 65th birthday, he requested the Secretary of Justice, through Administrator Teodoro G. Bonifacio of the Land Registration Authority (LRA), that he be allowed to extend his service to complete the 15-year service requirement to enable him to retire with full benefits of old-age pension under Section 11, par. (b) of P.D. 1146.

The LRA Administrator, for his part, sought a ruling from the Civil Service Commission whether or not to allow the extension of service of petitioner Cena as he is covered by Civil Service Memorandum No. 27, series 1990. In his 2nd Indorsement dated August 6, 1990, the LRA Administrator observed that if petitioner's service as of January 22, 1991 of 10 years, 6 months and 6 days (should be 11 years, 9 months and 6 days) would be extended to 15 years, he would have to retire on April 15, 1994 at the age of 68 years.

On July 31, 1990, the Civil Service Commission denied petitioner Cena's request for extension of service in its CSC Resolution No. 90-681, declaring therein, that Mr. Cena shall be considered retired from the service on January 22, 1991, the date when he shall reach the compulsory retirement age of sixty-five (65) years, unless his retention for another year is sought by the head of office under Civil Service Memorandum Circular No. 27, s. 1990.

Petitioner Cena filed a motion for reconsideration. On October 17, 1990, the Civil Service Commission set aside

its CSC Resolution No. 90-681 and allowed Gaudencio Cena a one-year extension of his service from January 22, 1991 to January 22, 1992, citing CSC Memorandum Circular No. 27, series of 1990, the pertinent of which reads:

"1. Any request for the extension of service of compulsory retirees to complete the fifteen (15) years service requirement for retirement shall be allowed only to permanent appointees in the career service who are regular members of the Government Service Insurance System (GSIS), and shall be granted for a period not exceeding one (12) year."

On January 22, 1991, petitioner's second motion for reconsideration was denied in its CSC Resolution No. 91-101.

Hence, the instant petition for review on certiorari alleging that the Civil Service Commission committed a grave abuse of discretion when it granted the extension of petitioner's service as Registrar of Deeds of Malabon, Metro Manila, for a period of only one (1) year pursuant to CSC Memorandum Circular No. 27, Series of 1990, instead of three (3) years and three (3) months to complete the 15-year service requirement for his retirement with full benefits as provided under Section 11, par. (b) of Presidential Decree No. 1146, otherwise known as the Revised Government Service Insurance Act of 1977.

Petitioner contends that reliance of the Commission on par. (1) of Memorandum Circular No. 27 allowing an extension of service of a compulsory retiree for a period not exceeding one (1) year is both erroneous and contrary to the "benevolent and munificent intentions" of Section 11 of P.D. 1146. Petitioner points out that par. (b), Section 11 of P.D. No. 1146 does not limit nor specify the maximum number of years the retiree may avail of to complete the 15 years of service.

The Solicitor-General agrees with petitioner Cena. He argues that the questioned provision being generally worded, Section 11 par. (b), P.D. 1146 has general application, thus respondent CSC has no authority to limit through CSC Memorandum Circular No. 27 the privilege under said section to government employees who lack just one year to complete the 15-year service requirement.

The Civil Service Commission, however, contends that since public respondent CSC is the central personnel agency of the government, it is vested with the power and authority, among others, to grant or allow extension of service beyond retirement age pursuant to Section 14 par. (14), Chapter 3, Subtitle A, Title I, Book V of Executive Order No. 292 (Administrative Code of 1987). In interpreting Section 11 par. (b) of P.D. 1146, public respondent CSC contends that the phrase "Provided, That if he has less than fifteen years of service, he shall be allowed to continue in the service to complete the fifteen years", is qualified by the clause: "Unless the service is extended by appropriate authorities," which means that the extension of service must be first authorized by the Commission, as the appropriate authority referred to in Section 11, par. (b), P.D. 1146, before the service of a compulsory retiree (one who has already reached age of 65 years with at least 15 years of service) can be extended.

We grant the petition.

Section 12, par. (14), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code of 1987 (November 24, 1987) cannot be interpreted to authorize the Civil Service Commission to limit to only one (1) year the extension of service of an employee who has reached the compulsory retirement age of 65 without having completed 15 years of services, when said limitation has no relation to or connection with the provision of the law supposed to be carried into effect.

Section 12, par. (14), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code of 1987 provides thus:

"SEC. 12. Powers and Functions.- The Commission shall have the following powers and functions:

x x x x x x x x

"(14) Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of service beyond retirement age;"

As a law of general application, the Administrative Code of 1987 cannot authorize the modification of an express provision of a special law (Revised Government Service Insurance of 1977). Otherwise, the intent and purpose of the provisions on retirement and pension of the Revised Government Service Insurance Act of 1977 (P.D. 1146) would be rendered nugatory and meaningless.

Section 11 paragraph (b) of the Revised Government Service Insurance Act of 1977 expressly provides, thus:

"SEC. 11. Conditions for Old-Age Pension. - (a) Old-age pension shall be paid to a member who:

x x x x x x x x

"(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee of sixty-five years of age with at least fifteen years of service: Provided, That if he has less than fifteen years of service, he shall be allowed to continue in the service to complete the fifteen years." (Emphasis supplied)

Being remedial in character, a statute creating a pension or establishing retirement plan should be liberally construed and administered in favor of the persons intended to be benefited thereby. 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 (*Bautista vs. Auditor General*, 104 Phil 428; *Ortiz vs. Commission on Elections*, G.R. No. L-78957, June 28, 1988, 162 SCRA 812).

The Court stated in *Abad Santos vs. Auditor General*, 79 Phil. 176, that a pension partakes of the nature of "retained wages" of the retiree for a double purpose: (1) to entice competent men and women to enter the government service, and (2) permit them to retire from the service with relative security, not only for those who have retained their vigor, but more so for those who have been incapacitated by illness or accident.

We have applied the liberal approach in interpreting statutes creating pension or establishing retirement plans in cases involving officials of the Judiciary who lacked the age and service requirement for retirement. We see no cogent reason to rule otherwise in the case of ordinary employees of the Executive Branch, as in the case of petitioner *Cena*, who has reached 65 but opted to avail of the statutory privilege under Section 11 par. (b) of P.D. 1146 to continue in the service to complete the 15-year service requirement in order to avail of old-age pension.

In *Re: Application for Gratuity Benefits of Associate Justice Efren I. Plana*, Adm. Matter No. 5460, En Banc Resolution, March 24, 1988, the Court, applying the liberal approach, ruled that Justice Plana, who at the time of his courtesy resignation on March 25, 1986 lacked a few months to meet the age requirement for retirement under the law, is entitled to full retirement benefits under R.A. 910 because his accrued leave credits would have entitled him to go on leave until beyond the age requirement for retirement.

The above ruling of the Court was reiterated in *Re: Application for Retirement under Rep. Act No. 910 of Associate Justice Ramon B. Britanico* of the Intermediate Appellate Court, Adm. Matter No. 6484-Ret., May 15, 1989. By liberally interpreting Section 3 of R.A. 910, as amended, in favor of the persons intended to be benefited by them, the Court also allowed the conversion of the application for disability retirement of Justice Ruperto Martin under said Section 3 of R.A. 910, as amended (10-year lump sum without the lifetime annuity) into an application for voluntary retirement under Section 1 (5-year lump sum with lifetime annuity) eleven years after his disability retirement was approved on January 10, 1978 (*In Re: Application for Life Pension under Rep. Act 910. Ruperto G. Martin*, applicant, 187 SCRA 477). The ten-year lump sum which he had received was

considered by the Court as payment under Section 1 of the five-year lump sum, to which he was entitled, and of his monthly pensions for the next five years.

However, the Court pointed out in *Re: Gregorio G. Pineda*, Adm. Matter No. 2076-RET., July 13, 1990, and its six (6) companion cases, 187 SCRA 469, that when the Court allows seeming exceptions to fixed rules for certain retired Judges or Justices, there are ample reasons behind each grant of an exception. The crediting of accumulated leaves to make up for lack of required age or length of service is not done indiscriminately. It is always on a case to case basis.

There is thus no justifiable reason in not allowing ordinary employees in the Executive Branch, on a case to case basis, to continue in the service to complete the 15-year service requirement to avail of the old-age pension under Section 11 of P.D. 1146. By limiting the extension of service to only one (1) year would defeat the beneficial intentment of the retirement provisions of P.D. 1146.

In resolving the question whether or not to allow a compulsory retiree to continue in the service to complete the 15-year service, there must be present an essential factor before an application under Section 11 par. (b) of P.D. 1146 may be granted by the employer or government office concerned. In the case of officials of the Judiciary, the Court allows a making up or compensating for lack of required age or service only if satisfied that the career of the retiree was marked by competence, integrity, and dedication to the public service (*Re: Gregorio Pineda*, supra). It must be so in the instant case.

It is interesting to note that the phrase "he shall be allowed to continue in the service to complete the fifteen years" found in Section 11 (b) of P.D. 1146 is a reproduction of the phrase in the original text found in Section 12 (e) of Commonwealth Act 186, as amended, otherwise known as the "Government Service Insurance Act" approved on November 14, 1936. There is nothing in the original text as well as in the revised version which would serve as the basis for providing the allowable extension period to only one (1) year. There is likewise no indication that Section 11 par.(b) of P.D. 1146 contemplates a borderline situation where a compulsory retiree on his 65th birthday has completed more than 14, but less than 15 years of government service., i.e. only a few months short of the 15-year requirement which would enable him to collect an old-age pension.

While it is true that the Administrative Code of 1987 has given the Civil Service Commission the authority "to take appropriate action on all appointments and other personnel matters in the Civil Service including extension of service beyond retirement age", the said provision cannot be extended to embrace matters not covered by the Revised Government Service Insurance Act of 1977 (*Sto. Tomas vs. Board of Tax Appeals*, 93 Phil. 376, 382, citing 12 C.J. 845-46). The authority referred to therein is limited only to carrying into effect what the special law, Revised Government Insurance Act of 1977, or any other retirement law being invoked provides. It cannot go beyond the terms and provisions of the basic law.

The Civil Service Commission Memorandum Circular No. 27 being in the nature of an administrative regulation, must be governed by the principle that administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions (*People vs. Maceren*, G.R. No. L-32166, October 18, 1977, 79 SCRA 450; *Teoxon v. Members of the Board of Administrators*, L-25619, June 30, 1970, 33 SCRA 585; *Manuel v. General Auditing Office*, L-28952, December 29, 1971, 42 SCRA 660; *Deluao v. Casteel*, L-21906, August 29, 1969, 29 SCRA 350).

The pronouncement of the Court in the case of *Augusto Toledo vs. Civil Service Commission, et al.*, G.R. No-92646-47, October 4, 1991, squarely applies in the instant case. We declared in the case of Toledo that the rule prohibiting 57-year old persons from employment, reinstatement, or re-employment in the government

service provided under Section 22, Rule III of the Civil Service Rules on Personnel Actions and Policies (CSRPAP) cannot be accorded validity, because it is entirely a creation of the Civil Service Commission, having no basis in the law itself which it was meant to implement and it cannot be related to or connected with any specific provision of the law which it is meant to carry into effect. The Court, speaking thru Justice Edgardo L. Paras, stated, thus:

"The power vested in the Civil Service Commission was to implement the law or put it into effect, not to add to it; to carry the law into effect or execution, not to supply perceived omissions in it. 'By its administrative regulations, of course, the law itself can not be extended; said regulations cannot amend an act of Congress.' (Teoxon v. Members of the Board of Administrators, Philippine Veterans Administration, 33 SCRA 585, 589 [1970], citing Santos v. Estenzo, 109 Phil. 419 [1960]; see also, Animos v. Philippine Veterans Affairs Office, 174 SCRA 214, 223?224 [1989] in turn citing Teoxon).

"The considerations just expounded also conduce to the conclusion of the invalidity of Section 22, Rule III of the CSRPAP. The enactment of said section, relative to 57-year old persons, was also an act of supererogation on the part of the Civil Service Commission since the rule has no relation to or connection with any provision of the law supposed to be carried into effect. The section was an addition to or extension of the law, not merely a mode of carrying it into effect." (Emphasis supplied)

The governing retirement law in the instant case is P.D. 1146 otherwise known as the "Revised Government Service Insurance Act of 1977". The rule on limiting to only one (1) year the extension of service of an employee who has reached the compulsory retirement age of 65 years, but has less than 15 years of service under Civil Service Memorandum Circular No. 27 s. 1990, cannot likewise be accorded validity because it has no relation to or connection with any provision of P.D. 1146 supposed to be carried into effect. The rule was an addition to or extension of the law, not merely a mode of carrying it into effect. The Civil Service Commission has no power to supply perceived omissions in P.D. 1146.

As a matter of fact, We have liberally applied Section 11 par. (b) of P.D. 1146 in two (2) recent cases where We allowed two employees in the Judiciary who have reached the age of 65 to continue in the government service to complete the 15-year service requirement to be entitled to the benefits under P.D. 1146.

In a resolution dated January 23, 1990 in A.M. No. 87-7-1329-MTC, We allowed Mrs. Florentina J. Bocade, Clerk of Court, Municipal Trial Court, Dagami, Leyte, who at the time she reached the age of 65 years on October 16, 1987 had only 10 years of government service, to continue her services until October 10, 1992. Thus, she was given a period of 5 years, to complete the 15-year service requirement to be entitled to the retirement benefits under Section 11 par. (b) of P.D. 1146. The Court observed that Mrs. Bocade is still performing her duties without any adverse complaints from her superior and that she is physically fit for work per report of the Medical Clinic.

The Court, in a resolution dated April 18, 1991, in A.M. No. 91-3-003-SC.-Re: Request for the extension of service of Mrs. Crisanta T. Tiangco, allowed Mrs. Crisanta T. Tiangco, Budget Officer V, Budget Division, Fiscal Management and Budget Office of the Supreme Court to continue her services until February 10, 1995. She was granted a period of 3 years, 10 months and 13 days because she has to her credit only 11 years, 1 month and 17 days of government service at the time she reached the age of 65 years on March 29, 1991 in order that she be entitled to the retirement benefits under P.D. No. 1146.

It is erroneous to apply to petitioner Cena who has rendered 11 years, 9 months and 6 days of government service, Section 12, par. (b) of P.D. 1146 which provides that "a member who has rendered at least three (3) years but less than 15 years of service at the time of separation shall, x x x upon separation after age sixty, receive a cash equivalent to 100% of his average monthly compensation for every year of service."

The applicable law should be Section 11 par. (b) of P.D. 1146 which allows him to extend his 11 years, 9 months and 6 days to complete the 15-year of service consistent with the beneficial intendment of P.D. 1146 and which right is subject to the discretion of the government office concerned.

Section 12 par. (b) of P.D. 1146 does not apply to the case of herein petitioner Cena, because he opted to continue in the service to complete the 15-year service requirement pursuant to Section 11 par. (b) of P.D. 1146. The completion of the 15-year service requirement under Section 11 par. (b) partakes the nature of a privilege given to an employee who has reached the compulsory retirement age of 65 years, but has less than 15 years of service. If said employee opted to avail of said privilege, he is entitled to the benefits of the old-age pension. On the other hand, if the said employee opted to retire upon reaching the compulsory retirement age of 65 years although he has less than 15 years of service, he is entitled to the benefits provided for under Section 12 of P.D. 1146, i.e. a cash equivalent to 100% of his average monthly compensation for every year of service.

The right under Section 11, par. (b) is open to all employees similarly situated, so it does not offend the constitutional guarantee of equal protection of the law. There is nothing absurd or inequitable in rewarding an employee for completion of the 15-year service beyond the retirement age. If he would be better off than the one who has served for 14 years but who is separated from the service at the age of 64, it would be only just and proper as he would have worked for the whole period of 15 years as required by law for entitlement of the old-age pension. Indeed, a longer service should merit a greater reward. Besides, his entitlement to the old-age pension is conditioned upon such completion. Thus, if the service is not completed due to death or incapacity, he would be entitled to the benefit under Section 12, par. (b), i.e. a cash equivalent to 100% of his average monthly compensation for every year of service.

Finally, in view of the aforesaid right accorded under Section 11, par. (b) of P.D. 1146, petitioner Cena should not be covered by Memorandum Circular No. 65 issued by then Executive Secretary Catalino Macaraig on June 14, 1988. Memorandum Circular No. 65 allowing retention of service for only six (6) months for "extremely meritorious reasons" should apply only to employees or officials who have reached the compulsory retirement age of 65 years but who, at the same time, have completed the 15-year service requirement for retirement purposes. It should not apply to employees or officials who have reached the compulsory retirement age of 65 years, but who opted to avail of the old-age pension under par. (b), Section 11 of P.D. 1146, in which case, they are allowed, at the discretion of the agency concerned, to complete the 15-year service requirement.

ACCORDINGLY, the petition is granted. The Land Registration Authority (LRA) of the Department of Justice has the discretion to allow petitioner Gaudencio Cena to extend his 11 years, 9 months and 6 days of government service to complete the 15-year service so that he may retire with full benefits under Section 11 par. (b) of P.D. 1146.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Regalado, Davide, Jr., Nocon, and Bellosillo, JJ., concur.

Padilla, see concurring opinion.

Grino-Aquino, Romero, JJ., see separate dissenting opinion.

6 pt 6 pt 0 3

DISSENTING OPINION

GRINO-AQUINO, J.:

The issue raised in this petition for review of the Resolution No. 90-935 dated October 17, 1990 of the Civil Service Commission, is whether the government service of petitioner Gaudencio Cena as Registrar of Deeds for Malabon, Metro Manila, may be extended for a period of one (1) year only (from January 22, 1991 up to January 22, 1992) and not for as long as necessary to enable him to complete 15 years service so that he may retire with full benefits.

After a careful consideration of related provisions of the retirement laws, I Submit that inasmuch as P.D. No. 1146 is silent on the matter, the Civil Service Commission, pursuant to the authority granted to it in the Administrative Code of 1987, "to take appropriate action on x x x all personnel matters in the Civil Service, including extension of service beyond retirement age" (paragraph 14, Section 12, Chapter 3, Subtitle A, Title I, Book V), appropriately promulgated Memorandum Circular No. 27, Series of 1990, limiting the extension of service to "not exceeding one year." The pertinent provisions of the circular are quoted below:

"1. Any request for the extension of service of compulsory retirees to complete the fifteen (15) years service requirement for retirement shall be allowed only to permanent appointees in the career service who are regular members of the Government Service Insurance System (GSIS), and shall be granted for a period not exceeding one (1) year.

"2. Any request for the extension of service of compulsory retiree to complete the fifteen (15) years service requirement for retirement who entered the government service at 57 years of age or over upon prior grant of authority to appoint him or her, shall no longer be granted.

"3. Any request for the extension of service to complete the fifteen (15) years service requirement for retirement shall be filed not later than three (3) years prior to the date of compulsory retirement.

"4. Any request for the extension of service of a compulsory retiree who meets the minimum number of years of service for retirement purposes may be granted for six (6) months only with no further extension." (pp., 64-65, Rollo; emphasis supplied.)

The maximum allowable extension of "not exceeding one year" fixed in paragraph 1 of CSC Memorandum Circular No. 27 is reasonable, just, and consistent with the general rule that "retirement shall be automatic and compulsory at the age of 65 years" (Sec. 12[e], Com. Act 186).

I believe that Section 11, paragraph (b) of P.D. 1146 contemplates a borderline situation where a compulsory retiree on his 65th birthday has completed more than 14, but less than 15, years of government service, or a few months short of the 15-year requirement which would enable him to collect an old-age pension. Pursuant to the beneficent objectives of our retirement laws, said retiree may be granted an extension of not more than one year to enable him to complete 15 years of government service and receive full retirement benefits including old-age pension which, otherwise, he would not be entitled to receive. Such extension will enable him to retire after his 65th birthday, but before he attains 66 years of age, hence, still within the mandatory retirement age of 65 years fixed by law, for as a matter of fact, one is 65 years old upon reaching his 65th birthday until the eve of his 66th.

Since Cena, on his 65th birthday, had rendered service to the government for a total of only 11 years, 9 months and 6 days, he is not entitled to an extension of his service to complete 15 years for it would illegally and unreasonably stretch his retirement age beyond his 68th birthday, or long after he shall have ceased to be 65 years old.

As Cena would not be able to complete 15 years of government service even if he were given a one-year

extension of service, paragraph 1 of CSC Memorandum Circular No. 27 may not be availed of by him. The applicable legal provision to him would be paragraph (b), Section 12 of P.D. 1146 which provides that "a member who has rendered at least three (3) years but less than 15 years of service, at the time of separation shall, x x x upon separation after age sixty,* receive a cash payment equivalent to 100% of his average monthly compensation for every year of service." He is not entitled to an old-age pension, length of service being the determinant of whether or not a retired employee would be entitled to such pension.

The petitioner's theory that a compulsory retiree (one who is 65 years old) should be allowed an extension of his service for any number of years to complete the 15-year-service requirement under Section 11(b), P.D. 1146, can produce absurd and inequitable results. An employee who has rendered only 3 years of government service at the age of 65 can have his service extended for 12 years and finally retire at the age of 77 and receive a life pension, while one who has served for 14 years, but whose service is terminated by death or incapacity at the age of 64, will only receive a cash gratuity equivalent to one month pay for every year of service in the government, without a life pension, under Section 12, paragraph (b), P.D. No. 1146.

Worth pondering also are the points raised by the Civil Service Commission that extending the service of compulsory retirees for longer than one (1) year would: (1) give a premium to late-comers in the government service and in effect discriminate against those who enter the service at a younger age; (2) delay the promotion of the latter and of next-in-rank employees; and (3) prejudice the chances for employment of qualified young civil service applicants who have already passed the various government examinations but must wait for jobs to be vacated by "extendees" who have long passed the mandatory retirement age but are enjoying extension of their government service to complete 15 years, so they may qualify for old-age pension.

While I agree with the stand of the Civil Service Commission that an extension of service may not exceed one year, I do not agree with the grant to Cena of a service extension of one (1) year from January 23, 1991, or until January 22, 1992 under paragraph 1 of Memorandum Circular No. 27 for that paragraph should apply to a compulsory retiree who needs an extension of "not exceeding one year" (Cena needs more than 3 years) to complete the 15-year-service requirement for old-age pension benefits. There is no point in granting to a 65-year-old retiree a one-year extension of service, if, anyway, as in Cena's case, the extension will not enable him to complete 15 years of government service. Applicable to Cena is paragraph (b), Section 12 of P.D. 1146 which provides that "a member who has rendered x x x less than 15 years of service upon separation after age sixty, (shall) receive a cash payment equivalent to 100% of his average monthly compensation for every year of service."

I therefore vote to dismiss the petition for certiorari.

* Separation at age sixty-five is separation "after age sixty."

400 6 pt 6 pt 0 3

CONCURRING OPINION

PADILLA, J.:

I concur in the majority opinion written by Mr. Justice Leo D. Medialdea, with a slight modification. The majority opinion would vest upon the Land Registration Authority "the discretion to allow petitioner Gaudencio Cena to extend his eleven (11) years, nine (9) months and six (6) days of government service to complete the fifteen (15)

years service so that he may retire with full benefits under Section 11 par. (b) of P.D. 1146" (decision, p. 16). A reading of the cited provision of law which reads as follows:

"SEC. 11. Conditions for Old-Age Pension.

x x x x x

(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee of sixty-five years of age with at least fifteen years of service: Provided, That if he has less than fifteen years of service, he shall be allowed to continue in the service to complete the fifteen years."

would indicate, in my opinion, that the government employee who has reached sixty-five (65) years of age but has rendered less than fifteen (15) years of service, has THE RIGHT to continue in the service to complete fifteen (15) years, and that the government office or agency where he is employed cannot but allow the exercise of such right of the subject employee. In short, the employing government office or agency must allow the government employee who has reached sixty-five (65) years of age, but has rendered less than fifteen (15) years of service, the opportunity to complete the fifteen (15) years of service in order to enjoy the benefits of old-age pension. It follows from this that if such government employee is no longer fit to complete the remainder of the fifteen (15) year service (after reaching age 65), he should be terminated for cause, after appropriate proceedings, otherwise, he has the right to continue in the service for purposes of completing his fifteen (15) years of service.

6 pt 6 pt 0 3

DISSENTING OPINION

ROMERO, J.:

I adopt the arguments in the dissenting opinion of my esteemed colleague, J. Carolina Griño-Aquino, which are at once logical and reasonable even as it takes into account the socio-logical implications of a contrary ruling. At the same time, I add my own.

J. Aquino's interpretation is in consonance with the spirit of practically all existing retirement laws fixing the compulsory retirement age of government employees at sixty-five. The precursor of Presidential Decree No. 1146, Commonwealth Act No. 186, explicitly provided that retirement should be "automatic and compulsory at the age of sixty-five years." The phrase "automatic and compulsory" with reference to the retirement age of sixty-five years had been retained in subsequent amendatory laws, specifically Republic Act Nos. 660, 728 and 3096.

The word "compulsory" should be understood in its legal signification: involuntary or forced in contradistinction to voluntary.[1] Considering the use of the word "compulsory" in connection with age sixty-five, the same word in Sec. 11 (b) of P.D. No. 1146 should refer only to the specified retirement age and not to the fifteen-year service mentioned therein. This paragraph merely cites one class of prospective retirees which would be eligible to receive old-age pension and that is, those who have reached the age of sixty-five years while at the same time having to their credit "at least fifteen years of service." That this is the intendment of the law is borne out by the succeeding proviso that contemplates the possibility that the same sixty-five year old may have served "less than fifteen years of service."

Moreover, to interpret the law as meaning that the age limit and the fifteen-year length of service should concur before a government employee is allowed the old-age pension may well give rise to a situation wherein a person who enters government service a year before reaching age sixty-five would have to wait until he is seventy-nine

years old to be entitled to the old-age pension provided for in P.D. No. 1146, which is an absurdity. Hence, to give substance to the real signification of the law, the proviso in Sec. 11 (b) which states that a government employ-ee who has "less than fifteen years of service, x x x shall be allowed to continue in the service to complete the fifteen years," should contemplate a situation wherein the employee has only a minimal period of time left to complete the fifteen-year period. What this minimal period is the Civil Service Commission has correctly declared to be "not exceeding one year." Otherwise, the government may well be saddled with a corps of civil servants that may be regarded graphically as liabilities instead of assets.

Moreover, encouraging the retention of employees well beyond the age of sixty-five years would, in effect, swell the numbers of the qualified but unemployed many who even now, face the bleak prospect of being edged out of the labor market by those who can but offer to the government and the people their dimin-ishing physical and mental vitality.

Attention should be called to the fact that the dissenting opinion is in consonance with the present policy on retirement as well as trends being laid down by the other branches of the government on the matter.

For instance, there are bills now pending in Congress that seek to lower the compulsory retirement age of the bureaucracy. House Bill No. 33769 sponsored by Congressman Roco and other Congressmen would lower it from sixty-five to sixty.[2]

Its counterpart bill in the Senate, S. No. 561 whose author is Senator Tamano, likewise would amend the present law by lowering the compulsory age of retirement to sixty.[3]

House Bill No. 25903 earlier authored by Congressmen Monfort and Estrella would further reduce the compulsory retirement age to fifty-six in order to give the young retirees the opportunity to engage in gainful employment or otherwise utilize their skills and experiences while they are still relatively strong.

Along the same line of thinking, the proposed Civil Service Code would set the compulsory age of retirement at sixty.

On the specific issue of whether a compulsory retiree who has not served fifteen years should be allowed an extension for as long as necessary to enable him to complete the fifteen years of service required for entitlement to a life pension (which is the position of the petitioner) or just a maximum period of "not exceeding one year" as fixed in CSC Memorandum Circular No. 27 which is supported by the dissenting opinion, it is worthwhile calling attention to Memorandum Circular No. 65[4] issued by Executive Secretary Catalino Macaraig. Amending Memorandum Circular No. 163 dated March 5, 1968, it categorically states:

"Officials or employees who have reached, the compulsory retirement age of 65 years shall not be retained in the service, except for extremely meritori-ous reasons in which case the retention shall not exceed six (6) months."

According to the ponencia, this Circular "should apply only to employees or officials who have reached the compulsory, retirement age of 65 years but who, at the same time, have com-pleted the 15-year service requirement for requirement purposes." A close reading of the title of Memorandum Circular No. 65, as well as the relevant provision quoted above, leaves no room for ambiguity or interpretation inasmuch as there is no phrase that qualifies the scope of the law to those employees who have reached the compulsory retirement age of 65 years " but who, at the same time, have completed the 15-year service requirement for retirement purposes." To read into the Memorandum Circular this qualifying phrase is to unduly expand the coverage of the law to cases not intended by the Office of the Executive Secretary.

The ponencia proffers the argument that since the Court has allowed the officials and employees of the Judiciary

who have reached the compulsory age of retirement but lacked the fifteen-year service requirement to continue working until they complete said period, there is "no cogent reason to rule otherwise in the case of ordinary employees of the Executive Branch as in the case of petitioner Cena". But there is cogent reason. Petitioner Gaudencio T. Cena, being an employee of the Land Registration Authority under the Department of Justice, falls under the Executive Department. Accordingly, Memorandum Circular No. 65 quoted in the above preceding paragraph which allows a retention or extension of only six months and this only for "extremely meritorious reasons" should be applicable to his case.

Needless to say, it would conduce to sound management practice in the government if this rule could be rationalized and applied uniformly to all government employees with the exceptions provided by law.

[1] 8 Words and Phrases 465 and 15A C.J.S. 312 both citing *State v. Bradley*, 230 P. 2d 216, 220.

[2] The pertinent provision is reproduced below:

(INTRODUCED BY CONGRESSMEN ROCO, BAUTISTA, SR., PONCE DE LEON, BELTRAN, JR., MONFORT, CONGRESSWOMAN PLAZA (C), CONGRESS-WOMEN JAVIER (R), BANDON, JR., ANIAG, JR., CONGRESSWOMEN COSETENG, LOBREGAT, CONGRESSMEN DANS, MITRA, DRAGON, BACALTOS, MONTE-JO, MIRAN, VALDEZ, MASKARINO, TY, PUZON, CALINGASAN, PALACOL, DOMINGUEZ, ROMERO, YULO, MENDIOLA, DIMAPORO (M.A.B.), NAVARRO, SR., ROXAS, JR., CONGRESSWOMAN RAYMUNDO, CONGRESSMEN GILLEGO, MARTINEZ, JR., TIROL, BORJAL, LACSON, DUREZA, DEL MAR, BAGATSING (A), ESTRELLA (E), CONGRESSWOMEN ALMARIO, LABARIA, CONGRESSMEN WEBB, NOGRALES, SINGSON (L.) AND VILLAREAL, SR. PER COMMITTEE REPORT NO. 1318)

"SEC. 11. Conditions for [Old-Age Pension] OPTIONAL AND COMPULSORY RETIREMENT. - (a) [Old-age pension] OPTIONAL RETIREMENT shall be [paid] AVAILABLE to a member who:

"(1) Has at least [fifteen] TWELVE years of service;

"(2) Is at least [sixty] FIFTY-FIVE years of age; and

"(3) Is [separated from] LEAVING the service.

"(b) [Unless the service is extended by appropriate authorities,] Retirement shall be compulsory for an employee at [sixty-five] SIXTY years of age with at least [fifteen] TWELVE years of service: Provided, That, if he has less than [fifteen] TWELVE years of service, he shall be allowed to continue in the service to complete the [fifteen] TWELVE years: PROVIDED, HOWEVER, THAT ALL SERVICES RENDERED IN THE GOVERNMENT IRRESPECTIVE OF STATUS OF APPOINTMENT DULY ACCREDITED SHALL BE COUNTED AS GOVERNMENT SERVICE FOR RETIREMENT UNDER THIS ACT; PROVIDED, FURTHER, THAT ALL GOVERNMENT EMPLOYEES WHO, AT THE TIME OF THE EFFECTIVITY OF THIS ACT, ARE SIXTY-ONE YEARS OF AGE AND ABOVE SHALL RETIRE UNDER THE FOLLOWING PHASES:

"(1) THOSE WITHIN THE AGES OF SIXTY-FOUR TO SIXTY-FIVE YEARS OLD SHALL BE RETIRED ON THE FIRST YEAR OF IMPLEMENTATION OF THIS ACT;

"(2) THOSE WITHIN THE AGES OF SIXTY-TWO TO SIXTY-THREE YEARS OLD SHALL BE RETIRED ON THE SECOND YEAR OF IMPLEMENTATION; AND

"(3) THOSE SIXTY-ONE YEARS OF AGE SHALL BE RETIRED ON THE THIRD YEAR OF

IMPLEMENTATION, "PROVIDED, FINALLY, THAT PAYMENT OF ALL RETIREMENT BENEFITS TO A RETIREE SHALL BE MADE IN LUMP-SUM AND PAID NOT LATER THAN THE EFFECTIVITY DATE OF HIS RETIREMENT."

[3] The pertinent provision runs thus:

"Sec. 11. Conditions for Old-Age Pension.?"

(a) Old-Age Pension shall be paid to a member who:

(1) has at least [fifteen] TWENTY years of service;

(2) is at least [sixty] FIFTY-FIVE years of age; And

(3) is separate from the service.

(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at [sixty-five] SIXTY years of age with at least [fifteen] TWENTY years of service; Provided, That if he has less than [fifteen] TWENTY years of service, he shall be allowed to continue in the service to complete the [fifteen] TWENTY years."

[4] This Circular states:

"MEMORANDUM CIRCULAR NO. 65

FURTHER AMENDING CIRCULAR NO. 163, DATED MARCH 5, 1968, AS AMEND-ED, PARTICULARLY AS REGARDS THE RETENTION IN THE SERVICE OF PERSONS WHO HAVE REACHED THE COMPULSORY RETIREMENT AGE OF 65 YEARS.

WHEREAS, this Office has been receiving requests for rein-statement and/or retention in the service of employees who have reached the compulsory retirement age of 65 years, despite the strict conditions provided for in Memorandum Circular No. 163, dated March 5, 1968, as amended.

WHEREAS, the President has recently adopted a policy to adhere more Strictly to the law providing for compulsory retire-ment age of 65 years and, in extremely meritorious cases, to limit the service beyond the age of 65 years to six (6) months only.

WHEREFORE, the pertinent provision of Memorandum Circular No. 163 on the retention in the service of officials or employees who have reached the compulsory retirement age of 65 years, is hereby amended to read as follows:

‘Officials or employees who have reached the compulsory retirement age of 65 years shall not be retained in the service, except for extremely meritorious reasons in which case the retention shall not exceed six (6) months.’

All heads of departments, bureaus, offices and instrumental-ities of the government including government-owned or controlled corporations, are hereby enjoined to require their respective offices to strictly comply with this circular.

This Circular shall take effect immediately.

By authority of the President

(Sgd.) CATALINO MACARAIG, JR.

Executive Secretary

Manila, June 14, 1988"

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