

PRIMA K. GOBANTES, PETITIONER, VS. CIVIL SERVICE COMMISSION, HON. PA-TRICIA STO. TOMAS, HON. SAMILO BARLO-NGAY, AND HON. MARIO D. YANGO, RESPONDENTS.

G.R. No. 98093. October 08, 1992

Ponente: NARVASA, J.

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NARVASA, J.:

The certiorari action at bar concerns the right of an employee under Section 11 (b) of Presidential Decree No. 1146 -- who has reached the compulsory retirement age of sixty-five years but has not completed at least fifteen years of service -- to continue in the service for such time as may be necessary to complete said fifteen years of service and thus qualify for full retirement benefits. The legal provision reads as follows:[1]

“ * * Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five years of age with at least fifteen years of service; Provided, that if he had less than fifteen years of service, he shall be allowed to continue in the service to complete the fifteen years.”

The government employee affected is Prima Gobantes, the petitioner in this case. She “entered the government service as public school teacher on October 19, 1975 at the age of fifty-five (55),[2]and (more or less) continuously served the government up to ** July, 1990 ** (at which time she) was verbally advised to retire as she had been long due for retirement since June 9, 1985, her 65th birthday. On July 31, 1990 she contested such advice and sought extension of her service, citing Section 11 (b) of Presidential Decree No. 1146.”[3] Her request for extension was predicated on the fact that before her appointment on June 14, 1979 as permanent public school teacher, or more precisely from October 19, 1975 to March 31, 1979 -- during which period she served as Provisional Substitute Teacher -- her service was not continuous but broken, serving sometimes for a month only, sometimes two months, the longest continuous period of service being nine (9) months, the shortest, seven (7) days; hence, the total duration of her service, as of her 65th birthday, June 9, 1985, was less than fifteen (15) years, short by one (1) year and one (1) month at the very least.[4] “In a letter dated July 16, 1990, Assistant School Division Superintendent Leonora O. Basalo informed Gobantes to file her request for extension of service with the Civil Service Commission Regional Office, which she did. The said request, however, was denied by the CSC Regional Director as embodied in her indorsement dated August 21, 1990.”[5]

Gobantes appealed to the Civil Service Commission. By Resolution dated November 15, 1990 (No. 90-1035),[6] the Commission dismissed her appeal for lack of merit and affirmed the decision of the CSC Regional Office. The Resolution's dispositive portion reads as follows:

“WHEREFORE, foregoing premises considered, the Commission resolved to dismiss as it hereby dismisses the appeal of Prima K. Gobantes for lack of merit. Accordingly, the decision of CSC Regional Director Benita O. Santos as embodied in her endorsement dated August 21, 1990 is affirmed. However, Gobantes' services actually rendered from June 9, 1985 to August 21, 1990, the date her request for extension was officially denied, shall be credited for purposes of her retirement.”

The Resolution was made to rest on Memorandum Circular No. 27, series of 1990, otherwise known as the “Policy on the Extension of Services of Compulsory Retirees to Complete Fifteen Years Service Requirement for Retirement Purposes,” issued by the Commission, construing P.D. 1146 as being limited in its application to permanent employees and the allowable extension of service as being restricted to not more than a year. Said memorandum pertinently provides as follows:[7]

“Any request for 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.”

Gobantes then filed with the Office of the President of the Philippines an “Appeal or Petition for Review” dated December 7, 1990, furnishing copy thereof to the Commission.[8] She also filed an action for “Declaratory Relief, Quo Warranto, and Damages ***” with the Regional Trial Court at Dumaguete City, Branch 36.[9]

Acting on Gobantes’ appeal, the Office of the President, thru then Executive Secretary Oscar M. Orbos, addressed a letter to the Civil Service Commission, dated March 6, 1991, expressing the view inter alia that rights granted by statute (PD 1146) “cannot be taken away or diminished by administrative fiat” (such as CSC Memorandum Circular No. 27). According to Gobantes, the copy of her appeal petition to the Office of the President, which she furnished the Civil Service Commission, was treated by the latter as a motion for reconsideration of its Resolution of November 15, 1990 (No. 90-1035), and denied through another Resolution dated February 20, 1991 (No. 91-239).[10]

The special civil action of certiorari at bar was initiated by Gobantes in accordance with Section 7, Article IX of the Constitution. She seeks nullification of both said Commission's Resolutions of November 15, 1990 and February 20, 1991. Her basic thesis is that the above mentioned Memorandum Circular No. 27 (“Policy on the Extension of Services of Compulsory Retirees to Complete Fifteen Years Service Requirement for Retirement Purposes”) is invalid, being contrary to Section 11 (b) of Presidential Decree No. 1146, also above quoted, supra.[11] To support that thesis, she quite understandably quoted from the aforesaid letter of the Executive Secretary of March 6, 1991, to wit:[12]

“‘The Resolution and Circular (CSC), among other things, impose a one-year limit on extension in the service to complete the service requirement; prescribe the requirement of 3-year advance filing of request for such extension; and exclude those who entered the service at age 57 or over from among those whose requests for extension may be granted.’ (Par. 2, * *).

‘Applicable laws on retirement (CA 186, as amended, and PD 1146) impose no such restrictions/limitations. These laws mandate the continuance in the service of those who lack the minimum service requirement for retirement purposes until such time as they shall have filled the deficiency barring, of course, disability or other causes of forced separation from the service as prescribed by law. This statutory right to continue in office cannot be taken away or diminished by administrative fiat. The mandatory extension or continuance in the service of this class of employees is different from the cases of those who, upon attainment of age 65 years, have already completed the service requirement but are nevertheless allowed to stay on in office in view of the exigencies of the service. It is in the cases of the latter class of employees where administrative restrictions may come in, their extension being merely discretionary on the part of the approving authority. In the case of the former, the only administrative regulation we could think of would be in the area of providing safeguards against possible abuse in availment of the right to continue in the service.’ (par. 3, supra).”

On that chief issue, the Solicitor General has expressed agreement with petitioner's position and recommended “that Memorandum Circular No. 27, Series of 1990, be declared null and void, the questioned Resolutions No.

90-1035 and 91-239 be reversed, and petitioner be allowed to continue in the service to complete the 15-year service requirement.”[13]

There is no need to belabor the issue in the present proceeding. It has already been squarely passed upon and resolved in G.R. No. 97419 (Gaudencio T. Cena vs. Civil Service Commission and the Hon. Patricia A. Sto. Tomas, etc.), judgment in which was promulgated on July 3, 1992. In Cena, Memorandum Circular No. 27 of the Civil Service Commission was declared invalid because it is not in harmony with and has in fact gone beyond the terms of the law. Cena contains the following relevant pronouncements:

“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.”

Conformably with *Cena*, therefore, Gobantes' petition should be granted, and she should be allowed to continue in the service as public school teacher until she completes fifteen (15) years of service and thereby qualifies for retirement with full benefits unless, of course, she becomes incapacitated or is sooner dismissed for cause in accordance with law.

The respondent Commission's claim that Gobantes' resort to this Court was made out of time cannot be sustained. Notice of the Commission's Resolution No. 90-1035 dated November 15, 1990, denying Gobantes' petition for extension of her service as public school teacher, was served on Gobantes on December 7, 1990. On that very same day, December 7, 1990, Gobantes filed with the Office of the President an “Appeal or Petition for Review” against said Resolution No. 90-1035, and served copy thereof on the Civil Service Commission also on the same day, December 7, 1990. The Commission opted to treat the copy of the “Appeal or Petition for Review” served on it as a motion filed with it for reconsideration of its Resolution No. 90-1035, and denied it by Resolution promulgated on February 7, 1991 (numbered 91-239).[14] Notice of this Resolution No. 91-239 was served on Gobantes on March 7, 1991.[15] Since the Commission itself considered that a “motion for reconsideration” of its Resolution of November 15, 1990 (No. 90--1035) had been filed with it on December 7, 1990, the time that that motion was pending may not properly be deducted from the 30-day period prescribed by Section 7, Article IX of the Constitution within which the ruling of the Commission “may be brought to the Supreme Court on certiorari.” So, on March 7, 1991, when she was served with notice of the Commission's Resolution denying her “motion for reconsideration,” Gobantes had the full 30-day period to bring her case to this Court, since, as just stated, she had prevented that period from beginning to run on December 7, 1990, when she was served with notice of the Commission's first resolution (denying her petition for extension of service) by filing a motion for reconsideration on that very same day. On April 5, 1991, she filed with this Court a “Motion for Extension [up to April 18, 1991] to File the Petition” (for review of the resolutions in question); and on April 18, 1991, she did file the petition for certiorari which initiated the review proceedings at bar. Her appeal to this Court was therefore seasonably taken.

Equally untenable is the respondent Commission's argument that Gobantes had engaged in forum shopping. What happened was that while Gobantes' motion for reconsideration of CSC Resolution No. 90-1035 was yet pending -- and therefore before said Resolution could attain finality -- Gobantes' supervisor, Leonora Basalo, declared her employment already terminated and appointed Jaena Visitacion in her place as public school teacher. Wishing to prevent the enforcement of Basalo's directive through an injunction or restraining order, believing that it was futile to ask the Civil Service Commission for relief in view of its aforesaid Resolution No. 90-1035 and that her only recourse was an action for declaratory relief or quo warranto with application for injunction or restraining order; and realizing that this Court does not take cognizance of declaratory action's, she filed an action for declaratory relief (and quo warranto) with the Regional Trial Court at Dumaguete City (Branch 36), and succeeded in obtaining from that Court the injunctive relief she desired. Then, when she was served with notice of the denial of her motion for reconsideration of the Commission's aforesaid judgment, she timely elevated the case to this Court for review. Under these circumstances, the Court is not prepared to say that there has been a culpable violation by Gobantes of the doctrine against forum shopping.

WHEREFORE, the petition is GRANTED, Resolution No. 90-1035 of the respondent Civil Service Commission is ANNULLED AND SET ASIDE, and petitioner Prima Gobantes is hereby DECLARED to be entitled to continue in the service in her present position as public school teacher for such time as may be necessary to complete fifteen years of government service and thereby qualify for retirement with full benefits, unless she hereafter otherwise becomes incapacitated or is dismissed for just cause in accordance with law. No costs.

SO ORDERED.

Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., Romero, Nocon and Bellosillo, JJ., concur.

Griño-Aquino, J., in her dissent.

Melo and Campos, Jr., JJ., no part.

[1] Id., p. 8; emphasis, petitioner's

[2] She was born on June 9, 1920.

[3] Rollo, p. 35. The statement of facts is taken from CSC Resolution No. 90-1035 dated November 15, 1990, *infra*.

[4] Rollo, pp. 16, 31-33. There is no denial of this factual assertion by the respondents.

[5] SEE footnote 3, *supra* (Rollo, p. 35. The statement of facts is taken from Resolution No. 90-1035, dated November 15, 1990, *infra*)

[6] Rollo, pp. 35-36

[7] Id., p. 35; emphasis supplied by Commission in text quoted in Resolution No. 90-1035

[8] Id., pp. 9-10

[9] Id., p. 10

[10] Id., pp. 54-56

[11] Id., p. 8; emphasis, petitioner's (SEE footnote 1, *supra*)

[12] Id., pp. 13-14, emphasis, petitioner's

[13] Id., pp. 130-141 ("Manifestation in Lieu of Comment," Oct. 15, 1991 [at p. 140])

[14] SEE footnotes 8 and 10, *supra*

[15] Rollo, p. 10; Annexes H to H-3, petition

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