

GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. CIVIL SERVICE COMMISSION AND DR. MANUEL BARADERO, RESPONDENTS.

G.R. No. 98395. October 28, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

Before us are two petitions docketed as G.R. No. 98395 and G.R. No. 102449. The petitions were consolidated since they principally involved the same issue and parties.

We grant both petitions.

I

G. R. No. 98395

This is a petition for certiorari under Rule 65 of the Revised Rules of Court, to reverse and set aside four orders of the Civil Service Commission (CSC), namely: (1) the Resolution No. 90-642 dated July 16, 1990, which resolved as creditable for retirement purposes the service of private respondent Manuel Baradero, who served as Sangguniang Bayan member on a per diem basis from January 1, 1976 to October 20, 1978; (2) the Order dated September 20, 1990 directing the implementation of CSC Resolution No. 90-642; (3) the Order dated December 7, 1990 directing the President and General Manager of petitioner Government Service Insurance System (GSIS) to show cause why they should not be held in contempt for the delay in the implementation of Resolution No. 90-642; and (4) the Resolution No. 91-526 dated April 23, 1991, which dismissed petitioner's Motion for Reconsideration of the Order dated September 20, 1990.

Dr. Manuel Baradero was a government employee, who occupied the position of Medical Officer IV in the Philippine Medical Care Commission, until he reached the mandatory age of retirement of 65 years old.

He served the Philippine Army as an enlisted man from November 17, 1942 until June 30, 1945. He resumed his government career on January 1, 1976, when he was elected a member of the Sangguniang Bayan of the Municipality of La Castellana, Negros Occidental. As such, he received per diem for every session attended. He resigned from the Sangguniang Bayan on October 10, 1976. On October 20, 1978, he was appointed Medical Officer I at the Philippine Medical Care Commission, where he served until he reached the compulsory retirement age of 65 years old (Rollo, p. 28).

Prior to turning 65 years old, Dr. Baradero applied for compulsory retirement with petitioner, which credited in his favor 13 years of government service, excluding his term as a Sangguniang Bayan member. He requested an extension of service from the CSC to enable him to complete 15 years of government service. This was necessary so that he may avail of retirement benefits.

The request was denied by the CSC in its Resolution No. 90-642 dated July 16, 1990. Instead, it ruled that Dr.

Baradero's two-year stint as a member of the Sangguniang Bayan be considered as creditable service, hence completing the mandatory 15-year service and making him eligible for retirement benefits (Rollo, p. 28).

The GSIS contested the resolution, alleging that:

"(1) Per diem was expressly excluded in the definition of Compensation in RA 1573 on June 16, 1956. Prior to this, services paid on per diem basis were considered creditable.

(2) Per diems were excluded from the definition of compensation because "per diems, by themselves are usually of minimal amounts which cannot actually support an insurance coverage" (Office of the General Counsel Opinion 08-85, June 3, 1985). It had been maintained that "salary is essential to insurance in the System, as it serves as the basis for the determination of the monthly premiums or contributions" (Government Corporate Counsel Opinion No. 198, s. 1957).

(3) In the case of the late Commissioner Inocencio V. Ferrer of the Social Security System, Commissioner Ferrer received per diems not only for attending meetings of the Commission but also for hearing cases as hearing officer. With the almost daily hearings of Commissioner Ferrer, he was said to have been performing full-time service and received substantial amount of per diems such that "the so-called per diems that he received were not really per diems but compensation" (OGC Opinion 08-85). Hence, his services as hearing Commissioner were considered creditable, but his per diem for attending the board meetings were excluded in the computation of his retirement benefits" (Rollo, p. 32).

The GSIS advised that the CSC extend the services of Dr. Baradero until he completes the required 15 years so that he may avail of retirement benefits.

On September 20, 1990, the CSC issued an order directing the GSIS to implement Resolution No. 90-642 (Rollo, p. 35).

The GSIS filed a motion for reconsideration of the order (Rollo, p. 37), which was denied by the CSC in its Resolution No. 91-526 dated April 23, 1991. The resolution further directed the GSIS to comply with the CSC resolution and order under pain of contempt (Rollo, p. 49).

Hence, this petition where the GSIS charges the CSC with grave abuse of discretion in ruling that: (1) services rendered on a per diem basis is creditable for purposes of retirement; and (2) it has exclusive jurisdiction in the determination of services which are creditable.

The Office of the Solicitor General filed a "Manifestation and Motion In Lieu of Comment," which submitted its position that the law expressly excludes services rendered on per diem basis in determining creditable government service for retirement purposes.

The Solicitor General is of the opinion that the CSC's resolutions and order crediting such services were in violation of the law, and encroached on the power of the GSIS to administer and implement retirement laws. He therefore recommended that the instant petition be given due course (Rollo, p. 100).

G. R. No. 102449

This is a petition for certiorari under Rule 65 of the Revised Rules of Court, to reverse and set aside three orders of the CSC, namely: (1) the Resolution dated June 7, 1989, which resolved as creditable for retirement purposes the services rendered by respondent Matilde S. Belo, who served as Vice-Governor of Capiz in a hold-over capacity from December 31, 1976 to January 1, 1979; (2) the Order dated July 18, 1991 directing the President and General Manager of petitioner to show cause why they should not be held in contempt for the delay in the implementation of CSC Resolution No. 89-368; and (3) the Order dated October 3, 1991, finding the President and General Manager of petitioner guilty of indirect contempt with penalty of a fine of P1,000.00 per day of

defiance until the implementation of CSC Resolution No. 89-368.

Matilde Belo retired from the government service on February 2, 1988. At the time of her retirement, Belo was the Vice-Governor of Capiz in a hold-over capacity. She served as Governor of Capiz from January 25, 1972 until February 1, 1988.

As an elected government official, Belo received a fixed salary of P13,000.00 per annum from January 25, 1976 until December 31, 1976. Thereafter, she held the same position in a hold-over capacity and was remunerated as follows: (1) from December 31, 1976 until January 1, 1979, she received per diem for every session attended of the Sangguniang Panlalawigan; and (2) from December 31, 1979 until February 1, 1988, she received a fixed salary ranging from P23,000.00 to P45,000.00 per annum (Rollo, p. 25).

Belo sought an opinion from the CSC to determine if the services she rendered from December 31, 1976 until January 1, 1979, in which period she was paid on a per diem basis, is creditable for retirement purposes.

In response to the query, the CSC issued Resolution No. 89-368 dated June 7, 1987, which affirmed that her services for said period was creditable (Rollo, pp. 25-26).

Belo's application for retirement was referred to the GSIS Committee on Claims, which adopted a position contrary to that of the CSC.

On August 6, 1991, the GSIS received the Order dated July 18, 1991, which directed its President and General Manager to show cause why they should not be held in contempt for the delay in the implementation of CSC Resolution No. 89-368 (Rollo, pp. 28).

The GSIS filed its "Manifestation/Explanation," alleging that it cannot implement the resolution considering that it has a pending petition for certiorari before this Court in the case of Dr. Baradero (G.R. No. 98395), where the same issue was raised (Rollo, p. 30).

On October 3, 1991, the CSC issued an order finding the President and General Manager of GSIS guilty of indirect contempt. Both were meted a penalty of P1,000.00 fine for each day of defiance until the implementation of Resolution No. 89-368. The CSC noted that the mere pendency of the case of Dr. Baradero cannot prevent the implementation of its resolution unless this Court issues a temporary restraining order, and that said case had nothing to do with the case of Belo (Rollo, p. 34).

The GSIS filed the instant petition, charging the CSC with committing the same errors in G.R. No. 98395.

The Office of the Solicitor General manifested that it was adopting its "Manifestation and Motion In Lieu of Comment" filed in G.R. No. 98395, holding the view that the law excluded services rendered on a per diem basis, in crediting the length of service for retirement purposes (Rollo, p. 62).

In her comment, Belo insisted that CSC was correct in finding that her services rendered on a per diem basis are creditable for retirement purposes. She claimed that the case of Commissioner Ferrer of the Social Security Commission applied to her case by analogy.

She likewise contended that Executive Order No. 292 (Administrative Code of 1987) vests in the CSC jurisdiction over matters regarding the accreditation of government services. She particularly cites Section 12, Chapter 3, Book V thereof which enumerates the powers and functions of the CSC, among which is to:

xxx xxx xxx

17. Administer the retirement program for government employees and accredit government services and evaluate qualifications for retirement (Underscoring supplied);

xxx xxx xxx

II

The issues to be resolved are: (1) Is government service rendered on a per diem basis creditable for computing the length of service for retirement purposes; and (2) Is petitioner the proper government agency in determining what service is creditable for retirement purposes?

Section 35 of P.D. No. 1146 (Government Service Insurance Act of 1987) vests in petitioner the power to implement the provisions of said law, which includes the guaranty of retirement benefits.

Under the epigraph "Benefits," Section 10 thereof provides for the computation of service, and reads:

xxx xxx xxx

Computation of Service. -

For the purpose of this section, the term service shall include full time service with compensation: Provided, That part-time and other services with compensation may be included under such rules and regulations prescribed by the System (Underscoring supplied).

It is therefore material in the claim of retirement benefits that the employee should have rendered service with compensation.

"Compensation" is defined by Section 1(c) of R.A. No. 1573, which amended Section 1(c) of C.A. No. 186 (Government Service Insurance Act), thus:

(c) 'Salary, pay, or compensation' shall be construed as to exclude all bonuses, per diems, allowances and overtime pay, or salary, pay or compensation given in addition to the base pay of the position or rank as fixed by law or regulations (Underscoring supplied).

A similar definition is provided in Section 2(i) of P.D. No. 1146:

(i) Compensation - the basic pay or salary received by an employee, pursuant to his employment/appointments, excluding per diems, bonuses, overtime pay, and allowances (Underscoring supplied).

The law is very clear in its intent to exclude per diem in the definition of "compensation." Originally, per diem was not among those excluded in the definition of compensation (See Section 1(c) of C.A. No. 186), not until the passage of the amending laws which redefined it to exclude per diem.

The law not only defines the word "compensation," but it also distinguishes it from other forms of remunerations. Such distinction is significant not only for purposes of computing the contribution of the employers and employees to the GSIS but also for computing the employees' service record and benefits.

The Secretary of Justice, in his Opinion No. 196, s. 1976, opined:

xxx That such receipt of salary is an indispensable requirement for membership, especially in the Retirement Insurance Fund, is logically inferred from these provisions of the GSIS Act: Section 5 which requires that to receive the benefits provided for and described in the GSIS Act, each official or employee who is a member of the System and his employer shall pay the prescribed monthly rates of contributions or premiums based on a percentage of the "monthly salary" of the employee or official; Sections 11 and 12, providing that the amount of retirement annuity or gratuity, or death or disability benefits granted thereunder, shall be based on the monthly "salary"; and Section 13, providing that the term "service," for purposes of computing the aggregate period of service which forms the basis for retirement, shall include only service with "compensation" (Underscoring supplied; G.R. No. 98395, Rollo, p. 67).

In essence, the grant of retirement benefits necessitates an obligation on the part of the employee to contribute to the insurance fund of petitioner. Such obligation only arises where the employee is receiving "salary, pay or compensation" and not per diem, which is not capable of paying off the premium contributions to petitioner.

Also enlightening is the "Joint Civil Service Commission, Department of Budget and Management and Government Service Insurance System Circular No. 1-89" dated July 13, 1989. It prescribes the guidelines on the filing and processing of retirement applications, and we quote:

IV. Certification of Services Rendered

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C. In certifying to services rendered, Heads and Personnel Officers/Administrative Officers of agencies shall be guided by the existing laws, rules and regulations followed by GSIS in determining creditable services for retirement purposes which are as follows:

1. All previous services rendered by an official/employee pursuant to a duly approved appointment, including those of Presidential appointees, to a position in the Civil Service with compensation or salary or pay whether on permanent, provisional, temporary, emergency, substitute, or casual status, and whether paid monthly, daily, or hourly, subject to these conditions:

xxx xxx xxx

2. Services of government employees paid on per diem basis up to June 15, 1956 only.

D. All cases not covered by the procedures/guidelines above shall be referred to GSIS for final determination (G.R. No. 98395, Rollo, pp. 75 and 77; Underscoring supplied).

The circular is clear that services rendered on a per diem bases are not creditable for retirement purposes. It likewise confirms that it is the GSIS, and not the CSC which is the proper agency in determining services which are creditable for retirement purposes.

In *Profeta v. Drilon*, 216 SCRA 777 (1992), we ruled that the GSIS has the original and exclusive jurisdiction to determine whether a member is qualified or not to avail of the old-age pension benefit under P.D. No. 1146, based on its computation of a member's years of government service. By analogy, we reiterate our ruling in the cases at bench.

The case of Commissioner Inocencio V. Ferrer of the Social Security System is unapplicable. While it is true that Commissioner Ferrer was granted retirement benefits notwithstanding being paid on a per diem basis, we find merit in the GSIS explanation that the grant was consistent with its policy, since the service which was creditable in Commissioner Ferrer's favor was his full time service as Hearing Officer, and not his attendance at board meetings, which was not credited.

Anent the CSC's power to "administer the retirement program xxx and accredit government services xxx for retirement" (Administrative Code of 1987, Book V, Chapter 3, Section 12), we rule that CSC role is ministerial. "Accredit" merely means acknowledge. It must not be confused with the power to determine what service is creditable for retirement purposes. It has been established that such power belongs to the GSIS (cf. *Profeta v. Drilon*, 216 SCRA 777 [1992]).

The aforementioned provision relied upon by public respondent is derived from the Administrative Code of 1987, which is a general law. It cannot prevail over the Revised Government Insurance Act of 1977, which is a special law (cf. *Cena v. Civil Service Commission*, 211 SCRA 179 [1992]).

With the passage of the Administrative Code of 1987, members of the Sangguniang Bayan are no longer paid per diem, but are now receiving compensation. Thus, services rendered after the effectivity of the law may therefore be considered creditable for retirement purposes.

Private respondents both claim that retirement laws must be liberally interpreted in favor of the retirees. However, the doctrine of liberal construction cannot be applied in the instant petitions, where the law invoked is clear, unequivocal and leaves no room for interpretation or construction. Moreover, to accommodate private respondents' plea will contravene the purpose for which the law was enacted, and will defeat the ends which it sought to attain (cf. *Re: Judge Alex Z. Reyes*, 216 SCRA 720 [1992]).

WHEREFORE, the petitions are both GRANTED. The CSC resolutions and orders in question are REVERSED and SET ASIDE. No pronouncement as to costs.

SO ORDERED.

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

Feliciano, J., on official leave.

Bellosillo, J., no part.

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