

GOVERNMENT SERVICE INS-URANCE SYSTEM, PETITIONER, VS. CIVIL SERVICE COMMISSION AND DR. MANUEL BARADERO, RESPONDENTS.

G.R. Nos. 98395 & 102449. June 19, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In our decision dated October 28, 1994 we held that government service rendered on a per diem basis is not creditable in computing the length of service for retirement purposes. Thus, we reversed the questioned resolutions and orders of the Civil Service Commission (CSC) requiring the Government Service Insurance System (GSIS) to consider creditable the services of private respondents on a per diem basis.

However, private respondent Matilde S. Belo in G.R. No. 102449 filed a motion for reconsideration dated 17 November 1994, of this Court's decision of October 28, 1994. She insists that the services rendered by her as Vice Governor of Capiz, between December 31, 1975 to January 1, 1979, be considered as creditable for purposes of retirement. The Government Service Insurance System likewise filed a motion for reconsideration on November 22, 1984 in behalf of both private respondents Belo and Dr. Manuel Baradero on essentially the same grounds. We shall deal with both motions together.

Central to the averments on the aforestated motions for reconsideration is the question of whether or not regular service in government on a per diem basis, without any other form of compensation or emolument, is compensation within the contemplation of the term 'service with compensation' under the Government Service Insurance Act of 1987.

After a careful consideration of the arguments in both motions, we are compelled to reconsider our decision.

While what respondents Belo and Baradero received were denominated as "per diem," the amounts received were actually in the nature of a compensation or pay. What should therefore be considered as controlling in both cases would be the nature of remuneration, not the label attached to it.

Respondent Belo held the position of Vice-Governor of Capiz continuously between January 5, 1972 up to February 1, 1988. From January 25, 1972 up to December 31, 1979, she held office by virtue of an election and was paid a fixed salary.[1] From December 31, 1979 up to February 1, 1988, she held the position of Vice Governor of Capiz in a holdover capacity, broken down into two periods:[2]

1. A period in which she was paid on a per diem basis - from December 31, 1976 to December 31, 1979; and
2. A period in which she was paid a fixed salary - from January 1, 1980 to February 1, 1988.

In its June 7, 1989 Resolution[3] on the matter, CSC held that the services rendered for the first holdover period between January 31, 1976 to January 1, 1979 was creditable for purposes of retirement. CSC noted that during the entire holdover period, respondent Belo actually served on a full time basis as Vice Governor and was on call 24

hours a day. Disagreeing with the CSC's insistence that the period in which respondent Belo was paid on a per diem basis should be credited in computing the number of years of creditable service to the government, GSIS subsequently filed a petition for certiorari before this court, questioning the orders of the CSC. Agreeing that per diems were not compensation within the meaning of Section 1(c) of R.A. 1573 which amended Section 1(c) of C.A. No. 186 (Government Service Insurance Act), we granted the petitions in G.R. Nos. 98395 and 102449,[4] and reversed the CSC Orders and Resolutions in question.

A review of the circumstances surrounding payment to respondent Belo of the per diems in question convinces us that her motion is meritorious. We are convinced that the "per diem" she received was actually paid for in the performance of her duties as Vice-Governor of Capiz in a holdover capacity not as the per diem referred to by section 1(c) of R.A. No. 1573 which amended Section 1(c) of C.A. No. 186 (Government Service Insurance Act). A closer look at the aforecited provision, moreover, reveals a legislative intent to make a clear distinction between salary, pay or compensation, on one hand, and other incidental allowances, including per diems on the other. Section 1 (c) provides:

(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 to the base pay of the position or rank as fixed by law or regulations.[5]

Since it is generally held that an allowance for expenses incident to the discharge of an office is not a salary of office,[6] it follows that if the remuneration received by a public official in the performance of his duties does not constitute a mere "allowance for expenses" but appears to be his actual base pay, then no amount of categorizing the salary as a "per diem" would take the allowances received by petitioner from the term service with compensation for the purpose of computing the number of years of service in government. Furthermore, it would grossly violate the law's intent to reward the public servant's years of dedicated service to government for us to gloss over the circumstances surrounding the payment of the said remunerations to the petitioner in taking a purely mechanical approach to the problem by accepting an attached label at face value.

In G.R. No. 98395, the period disputed was served by respondent Baradero as a member of the Sangguniang Bayan of the Municipality of La Castellana, Negros Occidental between January 1, 1976 to October 10, 1978 where he was likewise paid on a per diem basis. It is not disputed that during this period, respondent Baradero rendered full services to the government as a member of the Sangguniang Bayan. In fact, on the basis of its earlier resolution on the case of respondent Belo, the Civil Service Commission recognized the period in which respondent Baradero served as a member of the Sangguniang Bayan as creditable for retirement purposes instead of allowing his petition for extension of service in order to complete the 15 year period of service required for the purpose of qualifying for retirement benefits.[7]

In the sense in which the phrase "per diem" is used under the Government Service Insurance Law, a per diem is a daily allowance given for each day an officer or employee of government is away from his home base.[8] This is its traditional meaning: its usual signification is as a reimbursement for extra expenses incurred by the public official in the performance of his duties.[9] Under this definition the per diem is intended to cover the cost of lodging and subsistence of officers and employees when the latter are on duty outside of their permanent station.[10]

On the other hand, a per diem could rightfully be considered a compensation or remuneration attached to an office.[11] Under the circumstances obtaining in the case of respondent Belo the per diems received by her during the period that she acted in holdover capacity obviously were in the nature of compensation or remuneration for her services as Vice Governor of the Province of Capiz, rather than as a reimbursement for incidental expenses incurred while away from her home base. In connection with this, it is important to lay stress to the following

facts:

1. Petitioner rendered service to the government continuously from January 25, 1972 to February 1, 1988 as Vice Governor of the Province of Capiz. During a portion of the holdover-period, i.e., from December 31, 1976 to January 1, 1979, payment for her services to the government was through per diems for every regular or special session of the Sangguniang Panlalawigan attended.[12]
2. The CSC noted that: "[F]ormer Vice Governor Belo was on a full time basis when she served...on a hold-over capacity... As such provincial official she is (sic) legally and factually on call by the provincial people and the province more than eight hours a day, or at any time of the day beyond the prescribed working hours.
3. She received no other forms of remuneration during the disputed period." [13]

The same could be said of the services rendered by respondent Baradero, who, before and after the period in question had an unblemished record of service to the government as a member of the army and as a medical officer of the Philippine Medicare Commission. The disputed period was served on a full-time basis regardless of the denomination given to the compensation received by him.

What ought to be controlling in the cases at bench therefore, should be the nature of the remuneration rather than the label attached to it. While there is no dispute that the law excepting per diems from the definition of compensation is clear and requires no interpretation, however, since the term per diem may be construed either as compensation or as allowance, it would be necessary for us to inquire whether the term per diem in the GSIS Law refers to one or the other signification. As explained above, it is plainly obvious that per diem as compensation, is not what the law contemplates. The clear intent of the Government Insurance Law was to exclude those extra incidental expenses or incurred on a daily basis covered by the traditional definition of the term per diem. An important fact missed from our earlier decision was that, while respondent Belo was paid on a per diem basis during her first holdover period as Vice Governor, she was subsequently paid a fixed salary, which apparently rectified an otherwise anomalous situation. The services rendered by respondent Belo having been continuous, the disputed period should be credited for purposes of retirement.

On the other hand, respondent Baradero was willing to serve two additional years of service to government in order to complete the 15 year period required by our retirement laws. The Civil Service Commission felt this was unnecessary and denied the same on the ground that the period served on a per diem basis, was, like the disputed period in the Belo case, creditable.[14]

The distinctions between salary and per diem made hereinabove were in fact adverted to in our original decision dated October 28, 1994. In explaining the allowance of service rendered on a per diem basis in the case of *Inocencio vs. Ferrer* of the Social Security System, we noted with approval the Government Service Insurance System's explanation that the per diem service which was credited for purposes of retirement was Commissioner Ferrer's full time service as Hearing Officer not his per diem service for attendance at Board Meetings. Even then, we indirectly noted the difference between per diem paid as compensation for services rendered on a full time basis and per diem as allowance for incidental expenses. Respondent Belo asserts, with reason, that the per diems paid to her, while reckoned on the basis of attendance in Board Meetings, were for her full time services as Vice Governor of the Province of Capiz. In fact, the same service, albeit still on a holdover basis, was eventually paid with a fixed salary.

Retirement benefits given to government employees in effect reward them for giving the best years of their lives to the service of their country. This is especially true with those in government service occupying positions of leadership or positions requiring management skills because the years they devote to government service could be

spent more profitably in lucrative appointments in the private sector. In exchange for their selfless dedication to government service, they enjoy security of tenure and are ensured of a reasonable amount of support after they leave the government. The basis for the provision of retirement benefits is, therefore, service to government. While a government insurance system rationalizes the management of funds necessary to keep this system of retirement support afloat and is partly dependent on contributions made by the thousands of members of the system, the fact that these contributions are minimal when compared to the amount of retirement benefits actually received shows that such contributions, while necessary, are not absolutely determinative in drawing up criteria for those who would qualify as recipients of the retirement benefit system.

It cannot be convincingly asserted that petitioners could not avail themselves of the benefits of the policy because no deductions were made from their salaries during the disputed periods when they were paid on a per diem basis. In respondent Belo's case, before and after that short interregnum, she was paid a fixed salary. She was not duly informed that that short period was not to be credited in computing the length of her service for retirement purposes. She assumed in all good faith that she continued to be covered by the GSIS insurance benefits considering that in fact and in practice the deductions are virtually mandatorily made from all government employees on an essentially involuntary basis. Similarly, had respondent Baradero been informed of the need to pay the required deductions for the purpose of qualifying for retirement benefits, he would have willingly paid the required sums. In a sense, the contract made between the GSIS and the government employee is done on a take-it-or-leave-it basis, that is, it is a virtual contract of adhesion which gives the employee no choice but to involuntarily accede to the deductions made from their oftentimes meager salaries. If the GSIS did not deduct, it was by its own choice: contributions were exacted from petitioner before and after the disputed period. To assert that petitioners would have been entitled to benefits had they opted for optional deductions at that point misses the principal fact in issue here, which is the question as to whether or not the disputed periods should be credited as service with compensation for the purposes of retirement.

Moreover, the source of GSIS benefits is not in essence merely contractual; rather, it is a social legislation as clearly indicated in the "whereases" of Presidential Decree No. 1146, to wit:

WHEREAS, provisions of existing laws that have prejudiced, rather than benefited, the government employee; restricted, rather than broadened, his benefits, prolonged, rather than facilitated the payment of benefits, must now yield to his paramount welfare;

WHEREAS, the social security and insurance benefits of government employees must be continuously re-examined and improved to assure comprehensive and integrated social security and insurance programs that will provide benefits responsive to their needs and those of their dependents in the event of sickness, disability, death, retirement, and other contingencies; and to serve as a fitting reward for dedicated public service;

WHEREAS, in the light existing economic conditions affecting the welfare of government employees there is a need to expand and improve the social security and insurance programs administered by the Government Service Insurance Systems, specifically, among others, by increasing pension benefits, expanding disability benefits, introducing survivorship benefits, introducing sickness income benefits, and eventually extending the compulsory coverage of these programs to all government employees regardless of employment status.

The situation as far as private respondents and the GSIS are concerned could be rectified by deducting a reasonable amount corresponding to the contributions which should have been deducted during the period from the amount of retirement benefits accruing to them. It would be grossly inequitable — as it would violate the spirit of the government retirement and insurance laws — to permanently penalize both respondents Belo and Baradero by ignoring the fact of actual period of service to government with compensation, and deny them the retirement

privileges that they, for their unselfish service to the government justly deserve. Under the peculiar circumstances of the case at bench, the demand for equity prompts us to regard spirit not letter, and intent, not form, in according substantial justice to both respondents, where the law, through its inflexible rules might prove inadequate.

WHEREFORE, the instant motion is hereby GRANTED, our decision dated October 28, 1994 RECONSIDERED and the questioned resolutions and orders of the CSC requiring GSIS to consider creditable the services of private respondents on a per diem basis AFFIRMED.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Puno, Vitug, Mendoza, and Francisco, JJ., concur.

Regalado, J., pro hac vice.

Davide, Jr., J., in the result.

Romero and Melo, JJ., joins J. Quiason in his dissenting opinion.

Bellosillo, J., no part.

[1] Rollo, p. 25; Annex "A".

[2] Id.

[3] Id., Res. No. 89-836.

[4] Government Service Insurance System vs. Civil Service Commission and Matilde S. Belo, G.R. No. 102249, October 28, 1994. This case was consolidated by this court with G.R. No. 98395 (GSIS vs. Civil Service Commission and Dr. Manuel R. Baradero). Only the private respondent in G.R. No. 102249 has appealed.

[5] 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 or appointments, excluding per diems, bonuses, overtime pay and allowances.

[6] *Mc Coy V. Handlin* 153 N.W. 361(1915).

[7] Rollo, p. 28, Annex "A".

[8] *Lexal Laboratories vs. National Chemical Industries Workers Union*, 25 SCRA 668 (1968).

[9] *Peralta vs. Mathay*, 38 SCRA 256, 260 (1971).

[10] *Supra*, note 3.

[11] *Supra*, note 4.

[12] Rollo, p. 53.

[13] Rollo, p. 26; Annex "A".

[14] *Supra*, note 7.

DISSENTING OPINION

QUIASON, J.:

Respondents Civil Service Commission (CSC) and Matilde S. Belo moved for the reconsideration of our Decision dated October 28, 1994.

The CSC argued that services rendered on a per diem basis may be creditable for retirement purposes, for it is the nature of the service rendered and not the manner of compensation which shall prevail in the determination of creditable government service. It also contended that it has the power to determine creditable government service for retirement purposes, and that the function of petitioner Government Service Insurance System (GSIS) is limited to computing the amount of retirement benefits due the government employee (G.R. No. 98395, Rollo, p. 111).

On her part, respondent Belo emphasized that as former Vice-Governor and Governor of Capiz, she rendered full time service to the electorate but was paid per diem as compensation. She invoked that the case of Commissioner Inocencio V. Ferrer be similarly applied to her case (G.R. No. 102449, Rollo, p. 109). In her supplemental motion for reconsideration, respondent Belo further alleged that in the Ferrer case, the GSIS resolved to consider the period when Commissioner Ferrer was receiving per diem as compensation as creditable for retirement purposes.

The issues raised in the motion for reconsideration are: (1) whether the GSIS is the proper government agency to determine what service is creditable for retirement purposes; and (2) whether full time service rendered by a government employee receiving per diem as compensation is creditable for retirement purposes.

We deem it wise to raise a third issue: whether said employee may avail of retirement benefits notwithstanding his failure to make contributions to the GSIS for the duration he was receiving per diem as compensation.

We affirm our ruling that it is the GSIS which has the power to determine what service is creditable for retirement purposes. Presidential Decree No. 1146 (Government Service Insurance Act of 1987) vests such power in the GSIS. It must be emphasized that P.D. No. 1146 is a special law which prevails over Executive Order No. 292 (Administrative Code of 1987).

We can concede that the nomenclature given to the basic salary paid a government employee is not controlling in determining the service that is creditable for retirement purpose and what is important is that the pay is given for full time work.

Petitioner Belo cannot invoke the case of Commissioner Ferrer because what the GSIS considered as creditable service was his full-time work as hearing officer of the Social Security Commission, and not as Commissioner.

Prior to Republic Act No. 7160, otherwise known as the Local Government Code of 1991, local government units were not compulsorily covered by the Government Insurance Act (R.A. No. 186). However, R.A. No. 1573 amending R.A. No. 186, allowed the optional coverage under the government insurance system, provided that:

"(1) the employee notifies the System in writing; (2) the employee complies with the requirements of the System and that he is in government service when the insurance takes effect; and (3) after his admission, the employee shall be eligible to either life or retirement insurance benefits, or to both, for which the rates of the premiums or contributions shall be paid by him, including the share otherwise payable by his employer" (Sec. 4[b]).

Anent the third issue, it must be borne in mind that the obligation to pay premiums is equally essential as the period of services rendered.

In the case of respondent Belo, she never became a member of the GSIS during her term as Vice-Governor and Governor of Capiz, nor did she contribute to the System. It must be emphasized that she then had the option of continuing her membership when she started working for the local government unit by complying with the requirements of Section 4(b) of R.A. No. 1573. However, she failed to exercise such option.

The GSIS is only obligated to grant retirement benefits to its members. Such obligation exists where there is a contract of life or retirement insurance between the GSIS and the government employee. This contract is evidenced by the GSIS policy issued when the government employee's admission is approved. In certain cases, the contract of insurance between them is compulsory, for which reason both employer and employee are required to make contributions to the GSIS. Contributions of the government employee are made possible through salary deduction.

Premiums payable by the members are the lifeblood of the retirement scheme. These premiums are actuarially computed and any attempt to do away with them has an unsettling effect on the entire system.

It would now be unjust for respondent Belo to compel the GSIS to grant her retirement benefits when she never remitted the employer's and her share of contributions for the period December 31, 1976 to January 1, 1979. To countenance such argument would result in an inequitable situation where the GSIS is exposed to a risk without the benefit of receiving any contribution or premium. The GSIS was never intended to be a charitable institution for government retirees. It is only fair that the GSIS be entitled to the payment of premiums as soon as it is exposed to the risk insured against, whether it be a life or annuity insurance (cf. The Insurance Code, Sec. 77).

The most liberal application that can be given to the ruling of the GSIS with respect to services paid on per diem basis is to limit it to cases where the retiree has paid the corresponding retirement premiums during said period.

I vote to deny the motion for reconsideration.

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