Republic of the Philippines
Supreme Court
Manila

EN BANC

EVALYN I. FETALINO and AMADO M. CALDERON, Petitioners,	**G.R. No. 191890**
	Present:
	SERENO, *C.J.*,*
	CARPIO, Acting *C.J.*,**
	VELASCO, JR.,
	LEONARDO-DE CASTRO,
MANUEL A. BARCELONA, JR., Petitioner-Intervenor,	BRION,
	PERALTA,
	BERSAMIN,
	DEL CASTILLO,
	ABAD,
	VILLARAMA, JR.,
- versus -	PEREZ,
	MENDOZA,
	REYES,
	PERLAS-BERNABE, and
	LEONEN, *JJ.*
COMMISSION ON ELECTIONS, Respondent.	Promulgated: DECEMBER 04, 2012

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DECISION

BRION, *J.*:

Before us is a Petition for *Certiorari,* Mandamus and Prohibition with Application for Writ of Preliminary Injunction and/or Temporary Restraining Order,[1] seeking to nullify and enjoin the implementation of Commission on Elections (*Comelec*) Resolution No. 8808 issued on March 30, 2010.[2] Republic Act (*R.A.*) No. 1568, as amended,[3] extends a five-year

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* On Leave.

** In lieu of Chief Justice Maria Lourdes P. A. Sereno per Special Order No. 1384 dated December 4, 2012.

1 *Rollo*, pp. 3-42.

2 *Id.* at 46-51.

3 The term Republic Act No. 1568 without indicating its amended status refers to the Republic Act, as amended, unless otherwise indicated.

lump sum gratuity to the chairman or any member of the Comelec upon *retirement*, after completion of the term of office; *incapacity*; *death*; and *resignation* after reaching 60 years of age but before expiration of the term of office. The Comelec *en banc* determined that former Comelec Commissioners Evalyn I. Fetalino[4] and Amado M. Calderon[5] (*petitioners*) - whose *ad interim* appointments were not acted upon by the Commission on Appointments (*CA*) and, who were subsequently, not reappointed — are not entitled to the five-year lump sum gratuity because they did not complete in full the seven-year term of office.

The Antecedent Facts

On February 10, 1998, President Fidel V. Ramos extended an interim appointment to the petitioners as Comelec Commissioners, each for a term of seven (7) years, pursuant to Section 2, Article IX-D of the 1987 Constitution.[6] Eleven days later (or on February 21, 1998), Pres. Ramos renewed the petitioners' *ad interim* appointments for the same position. Congress, however, adjourned in May 1998 before the CA could act on their appointments. The constitutional ban on presidential appointments later took effect and the petitioners were no longer re-appointed as Comelec Commissioners.[7] Thus, the petitioners **merely served as Comelec Commissioners for more than four months, or from February 16, 1998 to June 30, 1998**.[8]

Subsequently, on March 15, 2005, the petitioners applied for their retirement benefits and monthly pension with the Comelec, pursuant to R.A.

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3 The term Republic Act No. 1568 without indicating its amended status refers to the Republic Act, as amended, unless otherwise indicated.

4 *Vice* Remedios A. Salazar-Fernando, now a member of the Court of Appeals.

5 *Vice* Regalado E. Maambong (deceased), retired member of the Court of Appeals.

6 The provision states:
(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Member for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

7 *Rollo*, pp. 6-7.

8 *Id*. at 50.

No. 1568.[9] The Comelec initially approved the petitioners' claims pursuant to its Resolution No. 06-1369[10] dated December 11, 2006 whose dispositive portion reads:

> [T]he Commission RESOLVED, as it hereby RESOLVES, to approve the recommendation of Director Alioden D. Dalaig, Law Department, to grant the request of former Comelec Commissioners Evalyn Fetalino and Amado Calderon for the payment of their retirement benefits, subject to release of funds for the purpose by the Department of Budget and Management.[11]

On February 6, 2007, the Comelec issued Resolution No. 07-0202 granting the petitioners a pro-rated gratuity and pension.[12] Subsequently, on October 5, 2007, the petitioners asked for a re-computation of their retirement pay on the principal ground that R.A. No. 1568,[13] does not cover a pro-rated computation of retirement pay. In response, the Comelec issued a resolution referring the matter to its Finance Services Department for comment and recommendation.[14] On July 14, 2009, the Comelec issued another resolution referring the same matter to its Law Department for study and recommendation.[15]

In the presently assailed Resolution No. 8808[16] dated March 30, 2010, the Comelec, on the basis of the Law Department's study, completely disapproved the petitioners' claim for a lump sum benefit under R.A. No. 1568. The Comelec reasoned out that:

> Of these four (4) modes by which the Chairman or a Commissioner shall be entitled to lump sum benefit, only the first instance (completion of term) is pertinent to the issue we have formulated above. It is clear that the ***non-confirmation and non-renewal of appointment*** is not a case of resignation or incapacity or death. The question rather is: Can it be considered as retirement from service for having ***completed*** one's term of office?

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9 *Id*. at 52-67.
10 *Id*. at 88-89.
11 *Id.* at 89.
12 *Id.* at 90-92.
13 *Id.* at 93.
14 *Id.* at 94-97.
15 *Id*. at 98-99.
16 *Supra* note 2.

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The full term of the Chairman and the Commissioners is seven (7) years. When there has been a partial service, what remains is called the "unexpired term." The partial service is usually called tenure. There is no doubt in the distinction between a term and tenure. Tenure is necessarily variable while term is always fixed. When the law, in this case, RA 1568 refers to completion of term of office, it can only mean finishing up to the end of the seven year term. By completion of term, the law could not have meant partial service or a variable tenure that does not reach the end. It could not have meant, the "expiration of term" of the Commissioner whose appointment lapses by reason of non-confirmation of appointment by the Commission on Appointments and non-renewal thereof by the President. It is rightly called expiration of term but note: it is not completion of term. RA 1568 requires 'having completed his term of office' for the Commissioner to be entitled to the benefits.

Therefore, one whose ad interim appointment expires cannot be said to have completed his term of office so as to fall under the provisions of Section 1 of RA 1568 that would entitle him to a lump sum benefit of five (5) years salary.[17] (emphasis, italics and underscores ours)

On this basis, the Comelec ruled on the matter, as follows:

Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to APPROVE and ADOPT the study of the Law Department on the payment of retirement benefits to members of the Commission.

Consequently, the following former Chairman and Commissioners of this Commission whose appointments expired by reason of non-approval by Commission on Appointments and non-renewal by the President **are not entitled to a lump sum benefit under Republic Act 1528** (sic):

Name	Position	Date of Service
1. Alfredo Benipayo, Jr.	Chairman	Feb. 16, 2001 to June 5, 2002
2. Evalyn Fetalino	Commissioner	Feb. 16, 1998 to June 30, 1998
3. Amado Calderon	Commissioner	Feb. 16, 1998 to June 30, 1998
4. Virgilio Garciliano	Commissioner	Feb. 12, 2004 to June 10, 2005
5. Manuel Barcelona, Jr.	Commissioner	Feb. 12, 2004 to June 10, 2005
6. Moslemen Macarambon	Commissioner	Nov[.] 05, 2007 to Oct. 10, 2008
7. Leonardo Leonida	Commissioner	July 03, 2008 to June 26, 2009

[17] *Id*. at 48-49.

> This resolution shall also apply to all requests of former COMELEC Chairmen and Commissioners similarly situated. All previous resolutions which are inconsistent herewith are hereby AMENDED or REVOKED accordingly.
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> Let the Finance Services and Personnel Departments implement this resolution.[18] (emphasis ours)

The Petitions

The petitioners sought the nullification of Comelec Resolution No. 8808 *via* a petition for *certiorari* under Rule 65 of the Rules of Court. Petitioner-intervenor Manuel A. Barcelona, Jr. later joined the petitioners in questioning the assailed resolution. Like the petitioners, Barcelona did not complete the full seven-year term as Comelec Commissioner since he served only from February 12, 2004 to July 10, 2005. The petitioners and Barcelona commonly argue that:

(1) the non-renewal of their *ad interim* appointments by the CA until Congress already adjourned qualifies as *retirement* under the law and entitles them to the full five-year lump sum gratuity;

(2) Resolution No. 06-1369 that initially granted the five-year lump sum gratuity is already final and executory and cannot be modified by the Comelec; and

(3) they now have a vested right over the full retirement benefits provided by RA No. 1568 in view of the finality of Resolution No. 06-1369.[19]

In the main, both the petitioners and Barcelona pray for a liberal interpretation of Section 1 of R.A. No. 1568. They submit that the involuntary termination of their *ad interim* appointments as Comelec Commissioners should be deemed by this Court as a retirement from the

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[18] *Id.* at 50-51.

service. Barcelona, in support of his plea for liberal construction, specifically cites the case of *Ortiz v. COMELEC.*[20] The Court ruled in this cited case that equity and justice demand that the involuntary curtailment of Mario D. Ortiz's term be deemed a completion of his term of office so that he should be considered retired from the service.

In addition, the petitioners also bewail the lack of notice and hearing in the issuance of Comelec Resolution No. 8808. Barcelona also assails the discontinuance of his monthly pension on the basis of the assailed Comelec issuance.[21]

The Case for the Respondents

On July 22, 2010, the Comelec filed its Comment[22] through the Office of the Solicitor General. The Comelec prays for the dismissal of the petition on the grounds outlined below:

First, it submits that the petitioners' reliance on Section 13, Rule 18 of the Comelec Rules of Procedure to show that Resolution No. 06-1369 has attained finality is misplaced as this resolution is not the final decision contemplated by the Rules. It also argues that estoppel does not lie against the Comelec since the erroneous application and enforcement of the law by public officers do not estop the Government from making a subsequent correction of its errors.[23]

Second, the Comelec reiterates that the petitioners are not entitled to the lump sum gratuity, considering that they cannot be considered as officials who retired after completing their term of office. It emphasizes that R.A. No. 1568 refers to the completion of the term of office, not to partial service or to a variable tenure that does not reach its end, as in the case of

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19 *Id.* at 12-38.
20 245 Phil.780, 788 (1988).
21 *Rollo*. p. 237.
22 *Id.* at 107-122.

the petitioners. The Comelec also draws the Court's attention to the case of *Matibag v. Benipayo*[24] where the Court categorically ruled that an *ad interim* appointment that lapsed by inaction of the Commission on Appointments does not constitute a term of office.[25]

Third, it argues that the petitioners do not have any vested right on their retirement benefits considering that the retirements benefits afforded by R.A. No. 1568 are purely gratuitous in nature; they are not similar to pension plans where employee participation is mandatory so that they acquire vested rights in the pension as part of their compensation. Without such vested rights, the Comelec concludes that the petitioners were not deprived of their property without due process of law.[26]

The Court's Ruling

We DISMISS the petition and DENY Barcelona's petition for intervention.

Preliminary Considerations

R.A. No. 1568 provides two types of retirement benefits for a Comelec Chairperson or Member: a *gratuity* or five-year lump sum, and an *annuity* or a lifetime monthly pension.[27] Our review of the petitions, in particular, Barcelona's petition for intervention, indicates that he merely questions the discontinuance of his monthly pension on the basis of Comelec Resolution No. 8808.[28] As the assailed resolution, by its plain terms (cited above), only pertains to the lump sum benefit afforded by R.A. No. 1568, it appears that Barcelona's petition for intervention is misdirected. We note, too, that Barcelona has not substantiated his bare claim that the Comelec

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23 *Id.* at 113-116.
24 429 Phil. 554 (2002).
25 *Rollo*, p. 119.
26 *Id.* at 120-121.
27 Section 1 of R.A. No. 1568, as amended.
28 *Supra* note 20.

discontinued the payment of his monthly pension on the basis of the assailed Resolution.

To put the case in its proper perspective, the task now before us is to determine whether the petitioners are entitled to the full five-year lump sum gratuity provided for by R.A. No. 1568. We conclude under our discussion below that they are not so entitled as they did not comply with the conditions required by law.

The petitioners are not entitled to the lump sum gratuity under Section 1 of R.A. No. 1568, as amended

That the petitioners failed to meet conditions of the applicable retirement law — Section 1 of R.A. No. 1568[29] — is beyond dispute. The law provides:

> Sec. 1. When the Auditor General or the Chairman or any Member of the Commission on Elections retires from the service for having completed his term of office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of his term of office, he or his heirs shall be paid in lump sum his salary for one year, not

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[29] Originally, Section 1 of R.A. No. 1568 only provided for a five-year lump sum gratuity. It reads:

> Section 1. When the Auditor General, or the Chairman or any Member of the Commission on Elections retires from the service for having completed his term of office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns upon reaching the age of sixty years, he or his heirs shall be paid in lump sum his salary for five years: *Provided*, That at the time of said retirement, death or resignation, he has rendered not less than twenty years of service in the government.

Subsequently, R.A. No. 1568 was amended by R.A. No. 3473 (entitled "An Act to provide under certain conditions life pension to the Auditor General and the Chairman and members of the Commission on Elections") to include a life pension and R.A. No. 3595. These amendments added the following proviso in Section 1 of R.A. No. 1568, as amended:

> And, *provided, further*, That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of the monthly salary he was receiving on the date of retirement, incapacity or resignation.

On June 17, 1967, R.A. No. 4968 (entitled "An Act to Amend Republic Act Numbered Fifteen Hundred Sixty-Eight") abolished R.A. No. 1568, as amended. Finally, on August 4, 1969, R.A. No. 6118 (entitled "An Act to Restore the Pension System for the Auditor General and the Chairman and Members of the Commission on Elections as Provided in Republic Act Numbered One Thousand Five Hundred Sixty-Eight, as amended") re-enacted R.A. No. 1568, as amended, by R.A. No. 3473 and R.A. No. 3595.

> exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement, incapacity, death or resignation, as the case may be: Provided, That in case of resignation, he has rendered not less than twenty years of service in the government; And, provided, further, That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation. [italics supplied]

To be entitled to the five-year lump sum gratuity under Section 1 of R.A. No. 1568, any of the following events must transpire:

(1) **Retirement from the service for having completed the term of office**;

(2) Incapacity to discharge the duties of their office;

(3) Death while in the service; and

(4) Resignation after reaching the age of sixty (60) years but before the expiration of the term of office. In addition, the officer should have rendered not less than twenty years of service in the government at the time of retirement.

Death during the service obviously does not need to be considered in the present case, thus leaving *retirement*, *incapacity* and *resignation* as the event that must transpire in order to be entitled to the lump sum gratuity.

We note that the termination of the petitioners' *ad interim* appointments could hardly be considered as incapacity since it was not the result of any disability that rendered them incapable of performing the duties of a Commissioner. Thus, incapacity is likewise effectively removed from active consideration.

"Resignation is defined as the act of giving up or the act of an officer by which he declines his office and renounces the further right to it. To constitute a complete and operative act of resignation, the officer or employee must show a clear intention to relinquish or surrender his position

accompanied by the act of relinquishment."[30] In this sense, resignation likewise does not appear applicable as a ground because the petitioners did not voluntarily relinquish their position as Commissioners; their termination was merely a consequence of the adjournment of Congress without action by the CA on their *ad interim* appointments.

This eliminative process only leaves the question of whether the termination of the petitioners' *ad interim* appointments amounted to retirement from the service after completion of the term of office. We emphasize at this point that the *right to retirement benefits* accrues only when two conditions are met: *first*, when the conditions imposed by the applicable law – in this case, R.A. No. 1568 — are fulfilled; and *second*, when an actual retirement takes place.[31] This Court has repeatedly emphasized that retirement entails compliance with certain age and service requirements specified by law and jurisprudence, and takes effect by operation of law.[32]

Section 1 of R.A. No. 1568 allows the grant of retirement benefits to the Chairman or any Member of the Comelec who has retired from the service after having completed his term of office. The petitioners obviously did not retire under R.A. No. 1568, as amended, since they never completed the full seven-year term of office prescribed by Section 2, Article IX-D of the 1987 Constitution; they served as Comelec Commissioners for barely four months, *i.e.*, from February 16, 1998 to June 30, 1998. In the recent case of *Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946,*[33] where the Court did not allow Judge Macarambon to retire under R.A. No. 910 because he did not comply with the age and service requirements of the law, the Court emphasized:

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30 *Ortiz v. Comelec, supra* note 19 at 787; citations omitted.

31 See J. Brion's Separate Concurring Opinion in *Herrera v. National Power Corporation,* G.R. No. 166570, December 18, 2009, 608 SCRA 475, 501, citing *DBP v. COA,* 467 Phil. 62 (2004).

32 *Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946,* A.M. No. 14061- Ret, June 19, 2012.

33 *Ibid*.

> **Strict compliance with the age and service requirements under the law is the rule and the grant of exception remains to be on a case to case basis.** We have ruled that the Court allows seeming exceptions to these fixed rules for certain judges and justices only and whenever there are ample reasons to grant such exception. (emphasis ours; citations omitted)

More importantly, we agree with the Solicitor General that the petitioners' service, if any, could only amount to *tenure in office* and not to the *term of office* contemplated by Section 1 of R.A. No. 1568. *Tenure* and *term of office* have well-defined meanings in law and jurisprudence. As early as 1946, the Court, in *Topacio Nueno v. Angeles,*[34] provided clear distinctions between these concepts in this wise:

> **The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another**. **The tenure represents the term during which the incumbent actually holds the office**. The term of office is not affected by the hold-over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. There is no principle, law or doctrine by which the term of an office may be extended by reason of war. [emphasis ours]

This is the ruling that has been followed since then and is the settled jurisprudence on these concepts.[35]

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34 76 Phil. 12, 21-22 (1946).

35 *Aparri v. CA, et al.*[35] similarly discusses what a "term" connotes, as follows:

> **The word "term" in a legal sense means a fixed and definite period of time which the law describes that an officer may hold an office.** According to Mechem, the term of office is the period during which an office may be held. Upon the expiration of the officer's term, unless he is authorized by law to holdover, his rights, duties and authority as a public officer must *ipso facto* cease. In the law of Public Officers, the most natural and frequent method by which a public officer ceases to be such is by the expiration of the term for which he was elected or appointed. [emphasis ours; italics supplied; citations omitted]

A later case, *Gaminde v. Commission on Audit,*[35] reiterated the well-settled distinction between term and tenure, *viz.*:

> In the law of public officers, there is a settled distinction between "term" and "tenure." "[T]he term of an office must be distinguished from the tenure of the incumbent. **The term means the time during which the officer may claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office.** The term of office is not affected by the hold-over. **The tenure may be shorter than the term for reasons within or beyond the power of the incumbent.** [emphases ours]

While we characterized an *ad interim* appointment in *Matibag v. Benipayo*[36] "as a permanent appointment that takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office," we have also positively ruled in that case that "an *ad interim* appointment that has lapsed by inaction of the Commission on Appointments **does not constitute a term of office**."[37] We consequently ruled:

> However, an *ad interim* appointment that has lapsed by inaction of the Commission on Appointments does not constitute a term of office. **The period from the time the *ad interim* appointment is made to the time it lapses is neither a fixed term nor an unexpired term.** To hold otherwise would mean that the President by his unilateral action could start and complete the running of a term of office in the COMELEC without the consent of the Commission on Appointments. This interpretation renders inutile the confirming power of the Commission on Appointments.[38] (emphasis ours; italics supplied)

Based on these considerations, we conclude that the petitioners can never be considered to have retired from the service not only because they did not complete the full term, but, more importantly, because they did not serve a "term of office" as required by Section 1 of R.A. No. 1568, as amended.

Ortiz v. COMELEC cannot be applied to the present case

We are not unmindful of the Court's ruling in *Ortiz v. COMELEC*[39] which Barcelona cites as basis for his claim of retirement benefits despite the fact that — like the petitioners — he did not complete the full term of his office.

In that case, the petitioner was appointed as Comelec Commissioner, for a term expiring on May 17, 1992, by then President Ferdinand E. Marcos, and took his oath of office on July 30, 1985. When President Corazon Aquino assumed the Presidency and following the lead of the

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36 *Supra* note 23.
37 *Id*. at 598; emphasis ours.
38 *Ibid*.
39 *Supra* note 19.

Justices of the Supreme Court, Ortiz — together with the other Comelec Commissioners — tendered his courtesy resignation on March 5, 1986. On July 21, 1986, President Aquino accepted their resignations effective immediately. Thereafter, Ortiz applied for retirement benefits under R.A. No. 1568, which application the Comelec denied. The Court, however, reversed the Comelec and held that "[t]he curtailment of [Ortiz's] term not being attributable to any voluntary act on the part of the petitioner, equity and justice demand that he should be deemed to have completed his term xxx. [That he] should be placed in the same category as that of an official holding a primarily confidential position whose tenure ends upon his superior's loss of confidence in him." Thus, as "he is deemed to have completed his term of office, [Ortiz] should be considered retired from the service."[40]

A close reading of *Ortiz* reveals that it does not have the same fact situation as the present case and is thus not decisive of the present controversy. We note that the impact of the principle of *stare decisis* that Barcelona cited as basis is limited; **specific judicial decisions are binding only on the parties to the case and on future parties with *similar or identical* factual situations**.[41] Significantly, the factual situation in *Ortiz* is totally different so that its ruling cannot simply be bodily lifted and applied arbitrarily to the present case.

First, in *Ortiz,* Ortiz's appointment was a regular appointment made by then President Marcos, while the petitioners were appointed by President Ramos *ad interim* or during the recess of Congress.

Second, Ortiz's appointment was made under the 1973 Constitution which did not require the concurrence of the CA. Notably, the 1973 Constitution abolished the CA and did not provide for an executive limit on

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[40] *Id.* at 788.

[41] See Concurring Opinion of J. Brion in *Philippine Savings Bank, et al. v. Senate Impeachment Court, etc.*, G.R. No. 200238, February 9, 2012 citing Theodore O. Te, *Stare In (Decisis): Reflections on Judicial Flip-flopping in League of Cities v. Comelec and Navarro v. Ermita,* 85 PHIL. L. J. 784, 787 (2011). See also *Negros Navigation Co., Inc. v. CA,* 346 Phil. 551, (1997).

the appointing authority of the President. In the present case, the petitioners' *ad interim* appointment was made under the 1987 Constitution which mandated that an appointment shall be effective only until disapproval by the CA or until the next adjournment of Congress.

Third, in *Ortiz,* the Court addressed the issue of whether a constitutional official, whose "courtesy resignation" had been accepted by the President of the Philippines during the effectivity of the Freedom Constitution, may be entitled to retirement benefits under R.A. No. 1568. In the present case, the issue is whether the termination of the petitioners' *ad interim* appointments entitles them to the full five-year lump sum gratuity provided for by R.A. No. 1568.

No occasion for liberal construction since Section 1 of R.A. No. 1568, as amended, is clear and unambiguous

The petitioners' appeal to liberal construction of Section 1 of R.A. No. 1568 is misplaced since the law is clear and unambiguous. We emphasize that the primary modality of addressing the present case is to look into the provisions of the retirement law itself. Guided by the rules of statutory construction in this consideration, we find that the language of the retirement law is clear and unequivocal; no room for construction or interpretation exists, only the application of the letter of the law.

The application of the clear letter of the retirement law in this case is supported by jurisprudence. As early as 1981, in the case of *In Re: Claim of CAR Judge Noel,*[42] the Court strictly adhered to the provisions of R.A. No. 910 and did not allow the judge's claim of monthly pension and annuity under the aforementioned law, considering that his length of government service fell short of the minimum requirements.

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[42] Adm. Matter No. 1155-CAR, 194 Phil. 9 (1981).

Similarly, in *Re: Judge Alex Z. Reyes,*[43] the Court dismissed CTA Judge Reyes' invocation of the doctrine of liberal construction of retirement laws to justify his request that the last step increment of his salary grade be used in the computation of his retirement pay and terminal leave benefits, and held:

> In *Borromeo*, the court had occasion to say: "It is axiomatic that retirement laws are liberally construed and administered in favor of the persons intended to be benefited. All doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes." **Such interpretation in favor of the retiree is unfortunately not called for nor warranted, where the clear intent of the applicable law and rules are demonstrably against the petitioner's claim.** (Paredes v. City of Manila, G.R. No. 88879, March 21, 1991). Section 4 is explicit and categorical in its prohibition and[,] unfortunately for Judge Reyes[,] applies squarely to the instant case.[44] (emphasis ours; italics supplied)

Finally, in *Gov't Service Insurance System v. Civil Service Commission,*[45] the Court was asked to resolve whether government service rendered on a *per diem* basis is creditable for computing the length of service for retirement purposes. In disregarding the petitioners' plea for liberal construction, the Court held:

> 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*.
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> 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.
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> x x x x
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> 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:

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43 Adm. Matter No. 91-6-007-CTA, December 21, 1992, 216 SCRA 720.

44 *Id.* at 725.

45 G.R. Nos. 98395 and 102449, October 28, 1994, 237 SCRA 809.

> Judge Alex Z. Reyes, 216 SCRA 720 [1992]).[46] [italics supplied; emphasis ours]

No compelling reasons exist to warrant the liberal application of Section 1 of R.A. No. 1568, as amended, to the present case

We find no compelling legal or factual reasons for the application of the Court's liberality in the interpretation of retirement laws to the present case. The discretionary power of the Court to exercise the liberal application of retirement laws is not limitless; its exercise of liberality is on a case-to-case basis and only after a consideration of the factual circumstances that justify the grant of an exception. The recent case of *Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946*[47] fully explained how a liberal approach in the application of retirement laws should be construed, *viz*:

> The rule is that retirement laws are construed liberally in favor of the retiring employee. **However, when in the interest of liberal construction 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.
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> In some instances, the lacking element—such as the time to reach an age limit or comply with length of service is *de minimis*. It could be that the amount of accumulated leave credits is tremendous in comparison to the lacking period of time.
>
> More important, **there must be present an essential factor** before an application under the *Plana* or *Britanico* rulings may be granted. 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; it was only a bowing to policy considerations and an acceptance of the realities of political will which brought him or her to premature retirement. (emphases and italics ours; citation omitted)

In the present case, as previously mentioned, *Ortiz* cannot be used as authority to justify a liberal application of Section 1 of R.A. No. 1568, as

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46 *Id.* at 816- 818.

47 *Supra* note 32 citing *Re: Gregorio G. Pineda*, A.M. No. 6789, July 13, 1990, 187 SCRA 469, 475.

amended not only because it is not on all fours with the present case; more importantly, the Court in *Ortiz* had ample reasons, based on the unique factual circumstances of the case, to grant an exception to the service requirements of the law. In *Ortiz*, the Court took note of the involuntariness of Ortiz's "courtesy resignation," as well as the peculiar circumstances obtaining at that time President Aquino issued Proclamation No. 1 calling for the courtesy resignation of all appointive officials, *viz*:

> From the foregoing it is evident that petitioner's "resignation" lacks the element of clear intention to surrender his position. We cannot presume such intention from his statement in his letter of March 5, 1986 that he was placing his position at the disposal of the President. He did not categorically state therein that he was unconditionally giving up his position. It should be remembered that said letter was actually a response to Proclamation No. 1 which President Aquino issued on February 25, 1986 when she called on all appointive public officials to tender their "courtesy resignation" as a "first step to restore confidence in public administration."[48]

In stark contrast, no such peculiar circumstances obtain in the present case.

Finally, in the absence of any basis for liberal interpretation, the Court would be engaged in **judicial legislation** if we grant the petitioners' plea. We cannot overemphasize that the policy of liberal construction cannot and should not be to the point of engaging in judicial legislation — an act that the Constitution absolutely forbids this Court to do. In the oft-cited case of *Tanada v. Yulo*,[49] Justice George A. Malcolm cautioned against judicial legislation and warned against liberal construction being used as a license to legislate and not to simply interpret,[50] thus:

> Counsel in effect urges us to adopt a liberal construction of the statute. That in this instance, as in the past, we aim to do. But counsel in his memorandum concedes "that the language of the proviso in question is somewhat defective and does not clearly convey the legislative intent", and at the hearing in response to questions was finally forced to admit that what the Government desired was for the court to insert words and phrases in the law in order to supply an intention for the legislature. That we

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48 *Ortiz v. COMELEC, Supra* note 19 at 787-788.

49 61 Phil. 515 (1935).

50 See Theodore O. Te, *Stare In (Decisis): Reflections on Judicial Flip-flopping in League of Cities v. Comelec and Navarro v. Ermita*, 85 PHIL. L. J. 784, 787 (2011).

> cannot do. By liberal construction of statutes, courts from the language used, the subject matter, and the purposes of those framing them are able to find out their true meaning. There is a sharp distinction, however, between construction of this nature and the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced. The former is liberal construction and is a legitimate exercise of judicial power. The latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government, the executive, the legislative, and the judicial.[51]

In the present case, Section 1 of R.A. No. 1568, by its plain terms, is clear that retirement entails the completion of the term of office. To construe the term "retirement" in Section 1 of R.A. No. 1568 to include termination of an *ad interim* appointment is to read into the clear words of the law exemptions that its literal wording does not support; to depart from the meaning expressed by the words of R.A. No. 1568 is to alter the law and to legislate, and not to interpret. We would thereby violate the time-honored rule on the constitutional separation of powers. The words of Justice E. Finley Johnson in the early case of *Nicolas v. Alberto*[52] still ring true today, *viz.*:

> The courts have no legislative powers. In the interpretation and construction of statutes their sole function is to determine, and, within the constitutional limits of the legislative power, to give effect to the intention of the legislature. The courts cannot read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself. To depart from the meaning expressed by the words of a statute, is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the legislature, and it is the province of the courts to construe, not to make the laws.

To reiterate, in light of the express and clear terms of the law, the basic rule of statutory construction should therefore apply: "legislative intent is to be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction."[53]

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51 *Tanada v. Yulo*, *supra* note 50, at 519.

52 See Dissenting Opinion in *Nicolas v. Alberto*, 51 Phil. 370, 382 (1928).

53 See Concurring Opinion of J. Brion in *Philippine Savings Bank, et al. v. Senate Impeachment Court, etc.*, G.R. No. 200238, February 9, 2012, citing *Veroy v. Layague, et al.*, G.R. No. L-95630, June 18, 1992 and *Provincial Board of Cebu v. Presiding Judge of Cebu, CFI, Br. IV*, G.R. No. 34695, March 7, 1989, 171 SCRA 1.

The Comelec did not violate the rule on finality of judgments

Petitioners argue that Resolution No. 06-1369, which initially granted them a five-year lump sum gratuity, attained finality thirty (30) days after its promulgation, pursuant to Section 13, Rule 18 of the Comelec Rules of Procedure, and, thus, can no longer be modified by the Comelec.

We cannot agree with this position. Section 13, Rule 18 of the Comelec Rules of Procedure reads:

> **Sec. 13. Finality of Decisions or Resolutions.** –
>
> a. In **ordinary actions, special proceedings, provisional remedies and special reliefs** a decision or resolution of the Commission en banc shall become final and executory after thirty (30) days from its promulgation.

A simple reading of this provision shows that it only applies to ordinary actions, special proceedings, provisional remedies and special reliefs. Under Section 5, Rule 1 of the Comelec Rules of Procedures, **ordinary actions** refer to election protests, *quo warranto,* and appeals from decisions of courts in election protest cases; **special proceedings** refer to annulment of permanent list of voters, registration of political parties and accreditation of citizens' arms of the Commission; **provisional remedies** refer to injunction and/or restraining order; and **special reliefs** refer to *certiorari,* prohibition, mandamus and contempt. Thus, it is clear that the proceedings that precipitated the issuance of Resolution No. 06-1369 do not fall within the coverage of the actions and proceedings under Section 13, Rule 18 of the Comelec Rules of Procedure. Thus, the Comelec did not violate its own rule on finality of judgments.

No denial of due process

We also find no merit in the petitioners' contention that that they were denied due process of law when the Comelec issued Resolution No. 8808

without affording them the benefit of a notice and hearing. We have held in the past that "[t]he essence of due process is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. [Thus, a] formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are given fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is absolute lack of notice and hearing." [54] In *Bautista v. Commission on Elections,*[55] we emphasized:

> In *Zaldivar vs. Sandiganbayan* (166 SCRA 316 [1988]), we held that the right to be heard does not only refer to the right to present verbal arguments in court. A party may also be heard through his pleadings. Where opportunity to be heard is accorded either through oral arguments or pleadings, there is no denial of procedural due process. As reiterated in *National Semiconductor (HK) Distribution, Ltd. vs. NLRC* (G.R. No. 123520, June 26, 1998), the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. Hence, in *Navarro III vs. Damaso* (246 SCRA 260 [1995]), we held that a formal or trial-type hearing is not at all times and not in all instances essential.[56] (italics supplied)

Thus, "[a] party cannot successfully invoke deprivation of due process if he was accorded the opportunity of a hearing, through either oral arguments or pleadings. There is no denial of due process when a party is given an opportunity through his pleadings."[57] In the present case, the petitioners cannot claim deprivation of due process because they actively participated in the Comelec proceedings that sought for payment of their retirement benefits under R.A. No. 1568. The records clearly show that the issuance of the assailed Comelec resolution was precipitated by the petitioners' application for retirement benefits with the Comelec. Significantly, the petitioners were given ample opportunity to present and explain their respective positions when they sought a re-computation of the initial pro-rated retirement benefits that were granted to them by the

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54 *Bautista v. COMELEC,* 460 Phil. 459, 478 (2003).
55 359 Phil. 1 (1998).
56 *Id*. at 9-10.
57 *Alauya, Jr. v. Commission on Elections,* 443 Phil. 893, 902 (2003); citations omitted.

Comelec. Under these facts, no violation of the right to due process of law took place.

No vested rights over retirement benefits

As a last point, we agree with the Solicitor General that the retirement benefits granted to the petitioners under Section 1 of R.A. No. 1568 are purely gratuitous in nature; thus, they have no vested right over these benefits.[58] Retirement benefits as provided under R.A. No. 1568 must be distinguished from a pension which is a form of deferred compensation for services performed; in a pension, employee participation is mandatory, thus, employees acquire contractual or vested rights over the pension as part of their compensation.[59] In the absence of any vested right to the R.A. No. 1568 retirement benefits, the petitioners' due process argument must perforce fail.

WHEREFORE, premises considered, we hereby **DISMISS** the petition for *certiorari* filed by petitioners Evalyn I. Fetalino and Amado M. Calderon for lack of merit. We likewise **DENY** Manuel A. Barcelona, Jr.'s petition for intervention for lack of merit. No costs.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

(On Leave)
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Acting Chief Justice

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58 *Parreño v. Commission on Audit*, G.R. No. 162224, June 7, 2007, 523 SCRA 390, 400.
59 *Ibid.*

(No part due to relationship to party)
PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

I join the dissent of J. Reyes:
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

(with my dissenting position)
BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V. F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Acting Chief Justice