

EN BANC

G.R. No. 191890 - EVALYN I. FETALINO and AMADO M. CALDERON, *petitioners*, MANUEL A. BARCELONA, JR., *petitioner-intervenor*, v. COMMISSION ON ELECTIONS, *respondent*.

Promulgated: DECEMBER 04, 2012 

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DISSENTING OPINION

REYES, J.:

At issue in this case is whether the petitioners are entitled to the full five-year lump sum gratuity provided by Republic Act (R.A.) No. 1568, as amended,¹ entitled “An Act to Provide Life Pension to the Auditor General and the Chairman or any Member of the Commission on Elections.”²

In deference to the majority, it is my opinion that the petitioners are entitled to a pro-rated computation of the gratuity for reasons hereinafter discussed.

R.A. No. 1568, as amended, provides for the retirement benefits due to a COMELEC or Chairperson Member. One is the *gratuity* or five-year lump sum and the other is the *annuity* or lifetime monthly pension. The bone of contention in this case pertains solely to the *gratuity* or five-year lump sum.

¹ R.A. No. 1568 was amended by R.A. Nos. 3473 and 3595.

² Approved on June 16, 1956 and re-enacted by 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.”



Originally, Section 1 of R.A. No. 1568 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 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.

R.A. No. 1568 was subsequently amended by R.A. Nos. 3473³ and 3595,⁴ until R.A. No. 4968,⁵ which declared inoperative or abolished R.A. No. 1568, as amended. R.A. No. 1568, as amended by R.A. Nos. 3473 and 3595 was finally resurrected by R.A. No. 6118⁶ by re-enacting it.

Thus, as it now stands, Section 1 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 or 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 this term of office**, **he or his heirs shall be paid in lump sum his salary for one year, not 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. (Emphasis and underscoring ours)

There are only four (4) categories under which a COMELEC Chairperson or Commissioner may avail of the five-year lump sum gratuity,

³ Approved on June 16, 1962. The title of the law was amended to read as “(A)n Act to provide under certain conditions life pension to the Auditor General and the Chairman and members of the Commission on Elections,” while the proviso “(A)nd, 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,” was added to Section 1.

⁴ Approved on June 22, 1963, entitled “An Act to Amend Republic Act Numbered Fifteen Hundred Sixty-Eight.”

⁵ Approved on June 17, 1967, entitled, “An Act Amending further Commonwealth Act Numbered One Hundred Eighty-Six, as amended.”

⁶ Section 1 thereof states: “Republic Act Numbered One thousand five hundred sixty-eight, as amended by Republic Act Numbered Three thousand four hundred seventy-three and Republic Act Numbered Three thousand five hundred ninety-five providing for the pension system for the Auditor General and the Chairman and Members of the Commission on Elections, is hereby re-enacted.”

viz:

- (1) Retirement from the service for having completed the term of office;
- (2) Incapacity to discharge the duties of 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.

The termination of the petitioners' *ad interim* appointments cannot qualify as either incapacity or resignation.

Incapacity in this case means the inability of a public officer to perform the functions and duties concomitant to the office due to impairment. The termination of the petitioners' *ad interim* appointment was obviously not a result of any disability such that the petitioners cannot perform the duties of a Commissioner. The limitation on their capacity to perform the duties of their office was due to the simple reason that they have no office or responsibility to speak of since their *ad interim* appointments were not acted upon by the CA and were bypassed with the adjournment of Congress.

Neither can the termination of their *ad interim* appointments be deemed as resignation. 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 use 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.⁷ In this case, there was no intentional relinquishment by the petitioners' of their posts as the termination was a result of the adjournment of Congress without the CA acting on their appointments.

⁷ *Ortiz v. COMELEC*, 245 Phil. 780, 787 (1988).

The COMELEC was correct in ruling that the only pertinent provision under which the petitioners' case may fall is retirement from service.⁸ Retirement, however, entails compliance with certain age and service requirements specified by law and jurisprudence and takes effect by operation of law.⁹

R.A. No. 1568, as amended, is clear. Section 1 thereof states that “[W]hen x x x any Member of the Commission on Elections **retires from the service for having completed his term of office** x x x he or his heirs shall be paid in lump sum his salary for five years x x x.” It is obvious from the plain language of the provision that retirement under said category presupposes completion of the term of office.

Term means the time during which the officer may claim to hold office as a matter of right, and fixes the interval after which the several incumbents shall succeed one another.¹⁰ Particularly, *term of office* has been defined as the period when an elected officer or appointee is entitled to perform the functions of the office and enjoy its privileges and emoluments.¹¹

Article IX-D, Section 2 of the 1987 Constitution provides for a seven (7) year term, without reappointment, for the COMELEC Chairperson and Commissioners. In this case, petitioners Fetalino and Calderon served as COMELEC Commissioners only from February 16, 1998 to June 30, 1998. Petitioner-intervenor Barcelona, on the other hand, served only from February 12, 2004 to July 10, 2005. Strictly construed, the petitioners, therefore, did not complete the full term of their office.

I believe, however, that all is not lost for the petitioners. In *Ortiz v.*

⁸ Rollo, p. 48.

⁹ *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.

¹⁰ *Gaminde v. Commission on Audit*, 401 Phil. 77, 88 (2000).

¹¹ *Casibang v. Judge Aquino*, 181 Phil. 181, 190 (1979).

COMELEC,¹² the Court affirmed the grant of retirement benefits in favor of then COMELEC Commissioner Mario D. Ortiz (Ortiz) despite the fact that he did not complete the full term of his office. Ortiz was initially appointed as COMELEC Commissioner by then President Ferdinand E. Marcos and took his oath of office on July 30, 1985. Immediately after the assumption of President Corazon C. Aquino (Pres. Aquino), Ortiz, together with other COMELEC Commissioners, tendered their courtesy resignations on March 5, 1986, which were accepted by Pres. Aquino. Subsequently, Ortiz filed his application for retirement benefits, which was denied by the COMELEC. Taking into consideration principles of equity and justice, the Court reversed the COMELEC's denial of Ortiz's application and directed the appropriate government agency to facilitate the processing and payment of his retirement benefits. The Court stated:

The curtailment of his 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 albeit much ahead of the date stated in his appointment paper. Petitioner's case 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. His cessation from the service entails no removal but an expiration of his term.**

As he is deemed to have completed his term of office, petitioner should be considered retired from the service. x x x.¹³ (Citation omitted and emphasis ours)

While the circumstances of *Ortiz* are not exactly identical with that of the petitioners', this should not be a bar to the Court's application of the *Ortiz* ruling in this case. It should be noted that at the time of Ortiz's appointment in 1985 and courtesy resignation in 1986, there was no CA to speak of as it was abolished by the 1973 Constitution.¹⁴ Nevertheless, the severance of the petitioners' appointment may be likened to that of Commissioner Ortiz's in that it is not "attributable to any voluntary act" on their part and their positions may be "placed in the same category as that of

¹² Supra note 7.

¹³ Id. at 788-789.

¹⁴ <http://comappt.gov.ph/index.php?id1=2&id2=1&id3=0>, viewed on October 25, 2012.

an official holding a primarily confidential position whose tenure ends upon his superior's loss of confidence in him.”¹⁵

Moreover, a liberal construction of R.A. No. 1568, as amended, would achieve the humanitarian purposes of the law so that efficiency, security and well-being of government employees may be enhanced. After all, retirement laws are designed to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood.¹⁶ Thus, the non-renewal of the petitioners' *ad interim* appointments should be tantamount to expiration of their respective terms and in line with the same dictates of justice and equity espoused in *Ortiz*, the petitioners, therefore, are deemed to have completed their terms of office and considered as retired from the service.

Parenthetically, to a public servant, pension is not a gratuity but rather a form of deferred compensation for services performed and his right thereto commences to vest upon his entry into the retirement system and becomes an enforceable obligation in court upon fulfillment of all conditions under which it is to be paid. Similarly, retirement benefits receivable by public employees are valuable parts of the consideration for entrance into and continuation in public employment. They serve a public purpose and a primary objective in establishing them is to induce able persons to enter and remain in public employment, and to render faithful and efficient service while so employed.¹⁷

The petitioners, however, are not entitled to the full five-year lump sum gratuity provided by R.A. No. 1568, as amended. Section 1 contains the *proviso*: “he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement.” Said condition provides for the manner of computing the retirement benefits due to a COMELEC Chairperson or Commissioner. Consequently, a maximum of five-year lump gratuity is given to a Chairperson or Commissioner who retired and has served for at least five (5) years. If the years of service are

¹⁵ Supra note 7.

¹⁶ *Government Service Insurance System v. De Leon*, G.R. No. 186560, November 17, 2010, 635 SCRA 321, 330.

¹⁷ Supra note 7.

less than five (5), then a retiree is entitled to a gratuity for every year of service. The same *proviso* also contemplates the situation when a Chairperson or Commissioner does not complete the full term of the office. This will occur, for example, when a Chairperson or Commissioner takes over in a case of vacancy resulting from certain causes – death, resignation, disability or impeachment – such that the appointee will serve only for the unexpired portion of the term of the predecessor.¹⁸ In such case, the retiree is entitled to gratuity depending on the years of service but not to exceed five (5) years. Given that the petitioners did not serve the full length of their term of office, the computation of their lump sum gratuity should be based on the foregoing *proviso*.

Moreover, I do not agree with the petitioners that they were deprived of due process when the COMELEC issued the assailed resolution without affording them the right to be notified of its issuance and be heard on the matter. Neither did they acquire a vested right over their retirement benefits.

In issuing the assailed Resolution No. 8808, the COMELEC was performing a purely administrative function. Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs.¹⁹ In *Bautista v. COMELEC*,²⁰ the Court stated that the term *administrative* connotes, or pertains, to administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things.²¹ It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon.²² In denying the petitioners' application for retirement benefits, the COMELEC was merely applying and implementing the provisions of R.A. No. 1568, as amended,

¹⁸ See *Funa v. The Chairman, Commission on Audit, Reynaldo A. Villar*, G.R. No. 192791 April 24, 2012.

¹⁹ *Cipriano v. Commission on Elections*, 479 Phil. 677, 690 (2004).

²⁰ 460 Phil. 459 (2003).

²¹ *Id.* at 475-476, citing the concurring opinion of Justice Antonio in *University of Nueva Caceres v. Hon. Martinez*, 155 Phil. 126, 132-133 (1974).

²² *Id.*

vis-à-vis the petitioners' prevailing circumstances. It was not exercising any quasi-judicial or administrative adjudicatory power such that the due process requirements of notice and hearing must be observed.²³

Records also show that the issuance of the assailed resolution originated from the petitioners' own move to have their retirement benefits paid.²⁴ Petitioners, in fact, were also able to present their respective positions on the matter when they sought a re-computation of the initial retirement benefits that were granted by the COMELEC on a *pro rata* basis.²⁵

It should be stressed that the retirement benefits granted to COMELEC Chairpersons and Commissioners under R.A. No. 1568, as amended, are purely gratuitous in nature. The petitioners cannot claim any vested right over the same as these are not similar to a pension plan where employee contribution or participation is mandatory, thus vesting in the employee a right over said pension. The rule is that where the pension is part of the terms of employment and employee participation is mandatory, employees have contractual or vested rights in the pension.²⁶

WHEREFORE, I vote that the petition filed by Evelyn I. Fetalino and Amado M. Calderon should be **GRANTED** while the petition filed by Manuel A. Barcelona should be **DENIED** inasmuch as he admitted that he already received his *pro-rated* gratuity.²⁷


BIENVENIDO L. REYES
Associate Justice

²³ *Namil v. COMELEC*, 460 Phil. 751, 759 (2003).

²⁴ *Rollo*, pp. 52-67.

²⁵ *Id.* at 93.

²⁶ *GSIS, Cebu City Branch v. Montesclaros*, 478 Phil. 573, 584 (2004); see also *Parreño v. Commission on Audit*, G.R. No. 162224, June 7, 2007, 523 SCRA 390, 400.

²⁷ *Rollo*, p. 236; *Petition-In-Intervention*, p. 5.