EN BANC

A.M. No. 12-8-07-CA ***(Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for His Services as Commission Member III of the National Labor Relations Commission)***; **A.M. No. 12-9-5-SC** ***(Re: Computation of Longevity Pay of Court of Appeals Justice Angelita A. Gacutan)***; **and A.M. No. 13-02-07-SC** ***(Re: Request of Court of Appeals Justice Remedios A. Salazar-Fernando that Her Services as MTC Judge and as COMELEC Commissioner be considered as Part of Her Judicial Service and Included in the computation/adjustment of Her longevity pay)***

Promulgated:

June 16, 2015

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SEPARATE OPINION

VELASCO, JR., *J.*:

I join Justice Teresita Leonardo-De Castro's dissent, with certain clarifications of my own.

The *ponencia* of Justice Arturo D. Brion resolves to dispose the ensuing issues or incidents as follows:

(1) **NOTE** the Memorandum dated February 18, 2013 of Atty. Eden T. Candelaria and the Report and Recommendation dated February 15, 2013 of Atty. Corazon G. Ferrer-Flores;

(2) **GRANT** the request of Associate Justice Remedios A. Salazar-Fernando that her services as Judge of the Municipal Trial Court of Sta. Rita, Pampanga be included in the computation of her longevity pay;

(3) **DENY** the request of Associate Justice Remedios A. Salazar Fernando that her services as COMELEC Commissioner be included in the computation of her longevity pay;

(4) **DENY** the request of Associate Justice Angelita Gacutan that her services as NLRC Commissioner be included in the computation of her longevity pay from the time she started her judicial service; and

(5) **DENY** with finality the motion for reconsideration of Associate Justice Vicente S.E. Veloso for lack of merit.

I concur with items (2) and (3) above, but express a contrary view with respect to dispositions **(4)** and **(5)**.

The Antecedents

Letter-Request of Court of Appeals
Justice Angelita A. Gacutan

In her letter of September 11, 2012,[1] Court of Appeals (CA) Justice Angelita A. Gacutan requested that: (a) her service as Commissioner IV of the National Labor Relations Commission (NLRC) from March 1998 to November 2009 be credited as part of her judicial service for purposes of retirement; (b) she be given a longevity pay equivalent to 10% of her basic salary; and (c) an adjustment on her salary, allowances and benefits be made from the time she assumed office at the CA in November 2009.

In her Comment, Atty. Corazon G. Ferrer-Flores, Chief of the Financial Management and Budget Office (FMBO), recommended that: (1) Justice Gacutan's request anent **(a)** be **granted** but only for purposes of and only to take effect upon her compulsory retirement on December 3, 2013; and (2) regarding **(b)** and **(c)**, the same be **denied**.

Letter-Request of Court of Appeals
Justice Vicente S.E. Veloso

Justice Veloso made a similar request in July 2012 insofar as his stint as NLRC Commissioner, from November 1989 to February 3, 2004, is concerned. And in asking that his service in that capacity be credited as service in the Judiciary for purposes of adjusting his salary, specifically his longevity pay, Justice Veloso adverts to the fact that the services, as assistant solicitor general, of CA Justices Magdangal M. De Leon and Fernanda Lampas-Peralta, before their appointment as CA members on February 4, 2004, were immediately credited as service in the Judiciary for purposes of longevity pay.

Following the denial of his request, Justice Veloso has moved for reconsideration, followed later by another motion gently reminding the Court that he is due to compulsory retire on January 7, 2015.

[1] *Rollo* (A.M. No. 12-9-5-SC), pp. 4-5.

Issue

With the FMBO's unchallenged Comment dated January 4, 2013 that Justice Gacutan's service as NLRC Commissioner be credited as service in the Judiciary for purposes of her retirement benefits, to take effect on her compulsory retirement on December 3, 2013, it follows that similarly, Justice Veloso's service as NLRC Commissioner should also be credited as service in the Judiciary, effective as of his compulsory retirement on January 7, 2015.

Thus, the **remaining issue** for Our resolution is – whether or not the NLRC services of Justices Veloso and Gacutan can be credited as service in the Judiciary, for purposes of **longevity pay.**

Justices Veloso and Gacutan already enjoyed, in law, the salaries, allowances and benefits of an Associate Justice of the Court of Appeals at the time they were appointed as NLRC Commissioners

Article 216 of the Labor Code, as amended by Section 8 of Republic Act (RA) **6715**, which was approved as law on **March 2, 1989,** provides:

> SECTION 8. Article 216 of the same Code is amended to read as follows:
>
> 'ARTICLE 216. *Salaries, benefits and other emoluments.* – The Chairman and **members of the [NLRC] shall receive an annual salary** at least **equivalent to**, and be **entitled** to the **same allowances** and **benefits as, those of the** Presiding Justice and **Associate Justices of the Court of Appeals**, respectively. The Executive Labor Arbiters shall receive an annual salary at least equivalent to that of an Assistant Regional Director of the Department of Labor and Employment and shall be entitled to the same allowances and benefits as that of a Regional Director of said department. x x x allowances and benefits of the aforementioned officials.' (emphasis supplied)

Article 216 would later be amended by RA 9347 dated July 27, 2006 and as thus further amended reads:

> ARTICLE 216. *Salaries, benefits and other emoluments.* – The Chairman and members of the [NLRC] shall **have the same rank,** receive an **annual salary** at least **equivalent to**, and be **entitled** to the **same allowances** and **benefits** as, those of the Presiding Justice and **Associate Justices of the Court of Appeals**, respectively. x x x

Clearly, even in the absence of the "rank" amendment introduced by RA 9347, then NLRC Commissioners Veloso and Gacutan were already entitled to "**receive** an **annual salary** at least **equivalent to**, **and** be entitled to the same **allowances and benefits as those** of the x x x **Associate Justices of the [CA]** x x x." That as hereinafter discussed, what matters is their receiving, for purposes of computing longevity pay, the salary of a CA Justice at the time they served as NLRC Commissioners.

The reason behind RA 6715's giving the NLRC Commissioners salaries that are equivalent, at least, to those of Justices of the Court of Appeals

Attached to Justice Veloso's motion for reconsideration as Annex "F"[2] are the following apt exchanges in the House of Representatives on **House Bill No. 11524** which became RA 6715. I quote the pertinent portions of said deliberation as follows:

> MR. ANNI. Are we increasing the salaries of the NLRC commissioners and the labor arbiters, Mr. Speaker?
>
> MR. VELOSO. In this bill, yes, Mr. Speaker. **We propose to increase not only their rank**, but also their salaries and emoluments. They will be handling very sensitive cases in the field of labor management relations, and x x x in order to insulate them from all the foolishness and those charges of graft that we have been hearing about, we better give them good pay. And it **was also agreed**, I think, **by all concerned in that Tripartite Review Committee, that their rank**, and for that matter their qualifications, **be also increased.** (emphasis supplied)

From the foregoing, it is clear that the intent of Congress revealed by the congressional deliberation on HB 11524 which became RA 6715 is to grant the NLRC commissioners the rank of CA justices.

And lest we forget, at the time RA 6715 became a law in **1989**, the CA was yet to handle labor relations cases. **Then a Labor Arbiter's decision under Art. 217 of the Labor Code** was **appealable to the NLRC Proper** under the succeeding Article 223 of the Code**, and from there**, an aggrieved party's recourse is to repair to this Court via certiorari under Rule 65.

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[2] Id. at 49-50.

A change in the above grievance procedure came only on **September 16, 1998**, when the Court in *St. Martin Funeral Homes v. National Labor Relations Commission*[3] ruled:

> Therefore, all references in the amended Section 9 of B.P. No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to mean and refer to petitions for certiorari under Rule 65. Consequently, all such petitions should henceforth be initially filed in the [CA] in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired.

It was clearly Congress' desire to amply compensate the NLRC Commissioners that RA 6715 had to provide in Article 216 thereof that the "**salary** x x x allowances and benefits" enjoyed by the CA Justices be extended to NLRC's Commissioners, they being, to stress, the sole adjudicator of parties' labor disputes on appeal. And while, on account of *St. Martin*, the appellate court now shares with this Court the task of declogging this Court's dockets on labor disputes, one fact is undeniable––the NLRC continues, until now, to resolve appeals from decisions of Labor Arbiters.[4] The need to compensate them with at least the equivalent salary, allowances and benefits of Justices of the CA continues to be in order.

The claim of Justices Veloso and Gacutan that their services at the NLRC be credited as service in the Judiciary is a valid claim even under the authoritative opinion of Justice Teresita J. Leonardo-De Castro

At this juncture, I beg leave to cite and fully support the following points intoned in the Concurring and Dissenting Opinion of Justice Teresita J. Leonardo- De Castro.

1. Under the longevity provision (Sec. 42) of *The Judiciary Reorganization Act of 1980*, (BP Blg. 129, as amended), "the term '**salary**' covers basic monthly pay plus **longevity pay**"; longevity pay forms part of the salary of the recipient.

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[3] G.R. No. 130866, September 16, 1989.

[4] ART. 223. Appeal. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

x x x x

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar from receipt thereof by the parties.

2. "Salary" is not synonymous to and should not be confused with "rank".

3. The intention of those who crafted RA 9347 amending Art. 216 of the Labor Code, was that "**salaries**" of "NLRC Commissioners" at the NLRC be "at par**"** with CA justices.

4. Senator Escudero's sponsorship speech on Senate Bill No. 2659 which became R.A. No. 10071 adopted the explanation notes of related bills, particularly the explanatory note of then Sen. Angara for Senate Bill No. 213 that:

> At the heart of a strong justice system is the indispensable and complementary role of the State's prosecutorial and counselling arm. The National Prosecution Service [NPS] and the Office of the Chief State Counsel [OCSC] are mandated to uphold the rule of law as a component of the justice system.
>
> It is sad to note, however, that our prosecutors and state counselors earn less than those in the Judiciary. Such situation has produced a migratory effect. After spending a few years in the NPS or the OCSC, they resign and join the ranks of the judiciary. x x x
>
> This bill seeks to correct the aforementioned inequities. The increase in **salaries** and the granting of additional services and privileges to the members of the National Prosecution Service and the Office of the Chief State Counsel, will place them **at par with those in the Judiciary** [and] would deter the current practice of migration. (emphasis in the original)

Hence, Justice De Castro's view:

> This legislative intent to grant certain officials of the Executive Department the same salaries as that of their respective judicial counterparts should be read in conjunction with how salary is defined in the law and treated vis-a-vis longevity pay in prevailing case law. In enacting a statute, the legislature is presumed to have been aware of, and have taken into account, prior laws and jurisprudence on the subject of legislation. x x x
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> Thus, Congress knew, or is presumed to know, the concept of longevity pay under Sec. 42 of [BP] Blg. 129 as **part of the total salary** of members of the Judiciary when it enacted [RA] Nos. 9417, 9347 and 10071, which granted certain officials of the Office of the Solicitor General, the [NLRC] and the National Prosecution Service, respectively, the same salary as their respective counterparts in the Judiciary. Moreover, armed with that knowledge, Congress is presumed to have intended to adopt the definition of 'salary' (as constituting basic monthly salary plus longevity pay) when it enacted [RA] Nos. 9417, 9347 and 10071, which will be in keeping with the legislative intent to equalize the salary of certain executive officials with members of the Judiciary. x x x

> x x x x
>
> In other words, by enacting [RA] Nos. 9417, 9347 and 10071 which granted certain officials of the Executive Department the same salary as their respective counterparts in the Judiciary, Congress manifested its intent to treat 'salary' the way it has been treated in [BP] Blg. 129 as interpreted by this Court, that is, basic monthly pay plus longevity pay.
>
> Since the above-mentioned laws do not make any distinction with respect to the term 'salary' as it is expressly provided for in Sec. 42 of [BP] Blg. 129, we should not make any distinction. x x x (emphasis in the original; words in brackets added)

Being valid observations, I adopt them as part of my dissent.

The claims of Justices Veloso and Gacutan have consistently been supported by existing jurisprudence

I need not belabor the past actions taken by the Court, as articulated by Justice De Castro, to support the proposition that the longevity pay under Sec. 42 of BP Blg. 129 is among the monetary benefits given or allowed to heretofore officers in the executive branch for credited services in that branch before their appointment in the judiciary. And some of these favored individuals whose service outside the judiciary were considered as judicial service did not even have the rank of judges or justices, although some, by express legal conferment, did. The cases of the following whose request for adjustment of their longevity pay or retirement pay to include their services outside the judiciary were favorably acted upon: Justice Emilio Gancayco, former Chief State Prosecutor; Justice Buenaventura de la Fuente, former Chief Legal Counsel; Justice Abraham Sarmiento, Special Legal Counsel to the University of the Philippines; Judge Fernando Santiago, Agrarian Counsel; and Justice Josefina Guevara-Salonga, former Assistant Provincial Fiscal.

Indeed, the need for consistency in Our rulings dictates Our granting the requests of Justices Veloso and Gacutan that their services at the NLRC be considered as service in the Judiciary for the purpose of computing their longevity pay.

The consistent ruling of this Court in Santiago, Gancayco, De la Fuente and Guevarra-Salonga should not be abandoned.

The *ponencia* argues that the "cited cases of Santiago, Gancayco, De la Fuente and Guevarra-Salonga are not controlling" and are "strained and erroneous application of Section 42, BP 129 that should be abandoned."[5] And as further argued, "the grant of longevity pay to **Justice Guevarra-Salonga** and Justice **Dela Fuente** were based on a **misinterpretation** and **misunderstanding** of the Judiciary's retirement law – RA 910 read in relation to Section 42 of BP 129 – and its interaction with RA 10071, which granted prosecutors the same rank and benefits (including retirement benefits of their counterparts in the Judiciary)."

The *ponencia*, however, has to me not satisfactorily demonstrated that the adverted cases were indeed resolved based on what it considered as the Court's misunderstanding and misinterpretation of RA 910 in relation with related retirement and/or compensation law. In this regard, I join what Justice De Castro expressed on the matter in her Rejoinder to Justice Brion's Reply:

> The problem with the position of Justice Brion, I believe, is its basic premise that the longevity pay should be strictly construed to apply to members of the Judiciary only, and laws enacted by Congress should not be deemed to have put them on equal footing in terms of rank and salary with executive officials. **In particular, even if the laws speak of 'same rank' and 'same salary'**, **he is averse to the idea or rationale behind the laws providing for the equal rank and salaries of members of the Judiciary, prosecutors, and public officers in the OSG and the NLRC.** While certain members of the Judiciary may feel an exclusive franchise to the rank, salary, and benefits accorded to them by law, we cannot impose our own views on Congress which has ample power to enact laws as it sees fit, absent any grave abuse of discretion or constitutional infraction on its part. (emphasis added.)

The *ponencia's* proposal to freeze longevity pay grants for judicial officials who are still in the service, is iniquitous

The *ponencia* proposes:

> By these conclusions, we do not hereby disavow the longevity pay we have previously ***granted to the retired justices and judicial officials*** for services rendered outside the Judiciary; they may continue enjoying their granted benefits as these are benefits already granted whose withdrawal at this point will be **inequitable**. The above-described and similar misinterpretations of RA 910 and Section 42 of B.P. Blg. 129, however, must from hereon be corrected by considering our past mistaken grants as aberrations that we are now abandoning. To achieve this

[5] *Ponencia*, pp. 31-33.

> objective ***for those still in the service*** who are now enjoying past longevity pay grants *due to years outside the Judiciary*, they shall likewise continue with the grants already made, but their grants will have to be frozen at their current levels until their services outside the Judiciary are *compensated for* by their present and future judicial service.

In net effect, the *ponencia* virtually urges that the **longevity pay** of Justice Magdangal De Leon and Justice Fernanda Lampas-Peralta—whose longevity salaries were invoked by Justice Veloso in his letter dated July 30, 2012—must "be frozen at their current levels until their services outside the Judiciary," particularly at the Office of the Solicitor General, "are *compensated for* by their present and future judicial service."

I beg to disagree.

Justices De Leon and Lampas-Peralta are not parties to this case. Freezing their—and those similarly situated—enjoyment of the longevity pay they obtained as early as day one of their service at the Court of Appeals and on the strength of Section 3, RA 9147, would be confiscatory under the due process clause.

In all then, Justices Gacutan and Veloso, during their stint as NLRC Commissioners, were already entitled under the law to receive an annual salary at least equivalent to and be entitled to the same benefits as those of the Associate Justices of the CA. In fine, the intendment of the law was to make the salaries of NLRC Commissioners at par with their judicial counterparts. On the premise then that basic salary equals the statutory rate plus longevity pay, the intent to equalize and the longevity system would be distorted if NLRC Commissioners, as Justices Veloso and Gacutan in this case, would be denied the privilege of tacking their services as such commissioners to their services in the judiciary.

All the foregoing premises considered, it behooves this Court to **grant** the requests of Associate Justice Vicente S.E. Veloso and Associate Justice Angelita A. Gacutan that their services as NLRC Commissioners be included in the computation of their longevity pay.

I, therefore, vote to grant the respective requests of Associate Justice Vicente S.E. Veloso and Associate Justice Angelita A. Gacutan that their services as NLRC Commissioners be included in the computation of their longevity pay as justices of the Court of Appeals.

PRESBITERO J. VELASCO, JR.
Associate Justice