

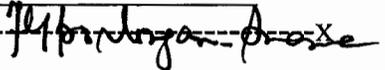
A.M. No. 12-8-07-CA - Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for His Services as Commission Member III of the National Labor Relations Commission.

A.M. No. 12-9-5-SC - Re: Computation of Longevity Pay of Court of Appeals Justice Angelita A. Gacutan.

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:

July 26, 2016

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DISSENTING OPINION

BRION, J.:

I dissent from the *ponencia*'s grant of the Motion for Reconsideration filed by former Court of Appeals (CA) Associate Justice Angelita Alberto-Gacutan (*Justice Gacutan*) asking the Court to reconsider the portion of the Court's Resolution¹ in A.M. Nos. 12-8-07-CA,² 12-9-5-SC,³ and 13-02-07-SC⁴ affecting her longevity pay.

On June 16, 2015, the Court had previously issued a Resolution, penned by Justice Arturo D. Brion, addressing the letter-requests of several retired CA justices asking for the re-computation of their longevity pay. These letter-requests had been consolidated, and the Court held in the Resolution's disposition:

(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;

¹ Dated June 16, 2015.

² 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.

³ Re: Computation of Longevity Pay of Court of Appeals Justice Angelita A. Gacutan.

⁴ 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.



(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;

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

(6) DIRECT the Clerk of this Court to proceed with the handling of granted longevity pay benefits under Section 42 of Batas Pambansa Blg. 129, pursuant to the guidelines and declarations outlined in the Moving On portion of this Resolution. [emphasis supplied]

Justice Gacutan now asks the Court to reconsider the denial we decreed by including in the computation of her longevity pay. She noted in her motion that two members of the Court (Justice Teresita J. Leonardo-De Castro – the *ponente* of the present Resolution – and Justice Presbitero J. Velasco, Jr.) issued Opinions that grant her request, and likewise adopted the arguments of these dissenting justices.⁵

Justice Gacutan specifically responded to the June 16, 2015 *ponencia*'s ruling that the judiciary is not in a position to recognize past services in the Executive, a different branch of government, and cannot thus determine the continuous, efficient, and meritorious service that the grant of longevity pay requires.⁶

According to Justice Gacutan, the determination of efficiency and meritorious service in her case may not be solely determined by the judiciary. She then proceeded to enumerate her illustrious career in the Executive, in the NLRC, and in the CA, and noted that the Judicial and Bar Council would not have nominated her for the position of CA Justice if its members had not favorably considered her intelligence, integrity, character, and experience.⁷

Reasons for my Dissent

I vote to DENY with finality Justice Gacutan's Motion for Reconsideration as it does not present any new or compelling argument to justify the Court's reversal of its Decision. The arguments Justice de Castro and Justice Velasco raised in their dissents to the June 16, 2015 Resolution have been thoroughly deliberated upon by the Court in its main ruling, and thus have already been sufficiently addressed.

⁵ Motion for Reconsideration of Court of Appeals Justice Angelita Alberto-Gacutan dated September 21, 2015.

⁶ Motion for Reconsideration, p. 3.

⁷ *Id.* at 4 – 5.

The Petitioner's Past Service in the Executive is not a Material Issue.

When the Court, in the June 16, 2015 Resolution, said that the judiciary is not in a position to determine past continuous, efficient, and meritorious service in the Executive, it was not a personal attack on Justice Gacutan's illustrious career in Government. *The observation was meant to expound on the concept that longevity pay for members of the judiciary is confined to services rendered within the judiciary.* In other words, the character of her past executive service is not a material issue in the Court's denial of her request.

The grant of longevity pay in the judiciary is based on Section 42 of Batas Pambansa Blg. No. 129 (*BP 129*),⁸ which provides:

Section 42. Longevity pay. – A monthly longevity pay equivalent to 5% of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service rendered in the judiciary; Provided, That in no case shall the total salary of each Justice or Judge concerned, after this longevity pay is added, exceed the salary of the Justice or Judge next in rank.

Laws subsequent to BP 129 conferred the same salaries and benefits granted to members of the judiciary, and to certain public officials in the executive who had been given ranks equivalent to those granted in the judiciary. The Court clarified in the June 16, 2015 Resolution that these laws do not expand the concept of longevity pay as provided in Section 42 of BP 129, and do not operate to include services in executive positions in determining the grant of longevity pay.

The Court reached this conclusion for the following reasons:

1. The Grant of Longevity Pay is only for Judges and Justices for Service in the Judiciary.

The language and terms of Section 42 of BP 129 are very clear and unambiguous. A plain reading of Section 42 shows that it grants longevity pay to a judge or justice (and to none other) who has rendered five years of continuous, efficient, and meritorious *service in the Judiciary*. The granted monthly longevity pay is equivalent to 5% of the monthly basic pay.

Notably, *Section 42 of BP 129 on longevity pay is separate from the provision on the salary of members of the judiciary found in Section 41 of BP 129.*⁹ This separate placement reflects the longevity pay's status as a

⁸ The Judiciary Reorganization Act of 1980.

⁹ According to Section 41, judges and justices shall "receive such *compensation and allowances* as may be authorized by the President along the guidelines set forth in Letter of Implementation No. 93 pursuant to Presidential Decree No. 985, as amended by Presidential Decree No. 1597." Presidential Decree No. 985 pertains to the government's Position Classification Compensation

separate benefit for members of the judiciary who have rendered “continuous, efficient and meritorious service in the judiciary;” longevity pay is not part of the salary that judges and justices are granted under Section 41.

In other words, all judges and justices are entitled to the salary prescribed for them under Section 41 of BP 129, but only those who have complied with the requisites of Section 42 are entitled to receive the additional longevity pay benefit.

Thus, when Section 42 of BP 129 required that the total salary of judges and justices receiving longevity pay should not exceed the salary of those next in rank, it simply meant that the addition of longevity pay cannot result in judges and justices of lower rank receiving a bigger total compensation than those with higher rank.

The salary of judges and justices depend on the salary grade (and subsequent step increments) of their positions under the Compensation and Classification System referred to in Section 41 of BP 129. The *proviso* in Section 42 of the same law operates to limit the amount of longevity pay granted when it disrupts the compensation system referred to in Section 41. It does not integrate longevity pay in the salary due to judges and justices under the compensation system, as not all of them are entitled to receive longevity pay in the first place.

2. Justice Gacutan’s Request has no Basis in Law.

The inclusion of past services in another branch of government in the computation of longevity pay in the judiciary has no express basis in law.

None of the laws that grant similarity of salaries and benefits between executive officials and their counterparts in the judiciary mention that services in these executive positions would be included in the computation of longevity pay in the judiciary.

In Justice Gacutan’s case, her services as past National Labor Relations Commission Commissioner (*NLRC*) places her under the operation of Republic Act No. 9347¹⁰ (*RA No. 9347*), which amended Article 216 of the Labor Code to read:

ART. 216. Salaries, benefits and other emoluments. The Chairman and members of the Commission shall have the *same rank, receive an annual salary equivalent to, and be entitled to the same allowances, retirement and benefits* as those of the Presiding Justice and Associate

System, which provides for the salary schedule of government employees classified according to their salary grade and corresponding salary rate. PD 985 has been subsequently replaced with Republic Act No. 6758, which provides for the current the Compensation and Position Classification System of the government.

¹⁰ An Act Rationalizing the Composition and Functions of the National Labor Relations Commission.

Justices of the Court of Appeals, respectively. Labor Arbiters shall have the same rank, receive an annual salary equivalent to and be entitled to the same allowances, retirement and other benefits and privileges as those of the judges of the regional trial courts. In no case, however, shall the provision of this Article result in the diminution of the existing salaries, allowances and benefits of the aforementioned officials.

The “salary” that Article 216 of the Labor Code speaks of pertains to the “compensation and allowances” under Section 41 of BP 129, as found in the salary schedule of the government’s Compensation and Position Classification System. Thus, Article 216 provided NLRC commissioners with the same salary received by Associate Justices of the Court of Appeals as prescribed in the salary schedule found in the government’s Compensation and Position Classification System.

The Compensation and Position Classification System prescribes the salary to be received by government employees depending on the salary grade their positions are classified in.¹¹

Viewed in this light, the provision of the same rank as CA Associate Justices to NLRC Commissioners in Article 216 of the Labor Code simply meant that the latter shall have the same salary grade as the former.

As an additional benefit, NLRC commissioners may be granted the longevity pay that judges and justices receive under Section 42 of BP 129, for the commissioners’ meritorious, efficient, and continuous service in the

¹¹ Section 10 of **PD 985** describes the government’s Compensation in this wise:

Section 10. The Compensation Systems. The Compensation System consists of (a) a Salary Schedule; (b) a Wage Schedule; (c) policies relating to allowances, bonuses, pension plans, and other benefits accruing to employees covered; and (d) the rules and regulations which are herein provided, including those which may be promulgated thereafter for its administration. The Salary or Wage Schedules shall each consist of twenty-eight grades, with eight prescribed steps within each grade. Each grade represents a level of work difficulty and responsibility which distinguishes it from other grades in the Schedule. Each class of position in the Position Classification System provided under this Decree shall be assigned a salary or wage grade. The Salary and Wage Schedules shall be administered in accordance with the rules provided in this Decree.

A similar system had been subsequently adopted through **RA 6758**, which provides:

Section 5. Position Classification System. – The Position Classification System shall consist of classes of positions grouped into four main categories, namely: professional supervisory, professional non-supervisory, sub-professional supervisory, and sub-professional non-supervisory, and the rules and regulations for its implementation.

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Section 6. Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System. – All positions in the government covered under Section 4 hereof shall be allocated to their proper position titles and salary grades in accordance with the Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System which shall be prepared by the DBM.

NLRC. But this is ***for CONGRESS, NOT FOR THIS COURT, to decide upon and grant.*** The grant to the members of the Executive Department of this kind of benefit is an act that the Constitution exclusively assigns to Congress. This is an authority and prerogative that the Constitution exclusively grants to Congress.

To recapitulate, RA No. 9347 merely used the salary, allowances, and benefits received by CA Justices as a yardstick for the salary, allowances, and benefits to be received by NLRC commissioners. This is what RA No. 9347 meant when it granted NLRC commissioners the same salary, allowances, and benefits as CA Associate Justices.

The grant of an equivalent judicial rank does not (and cannot) make an official in the executive a member of the judiciary; thus, benefits that accrue only to members of the judiciary cannot be granted to executive officials. This is a consequence of the separation of powers principle that underlies the Constitution.

In more concrete terms, incumbent judges and justices who had previous government service *outside the judiciary* and who had been ***granted equivalent judicial rank*** under these previous positions, cannot credit their past non-judicial service as service in the judiciary for purposes of securing benefits applicable only and earned while a member of the judiciary, ***unless Congress by law says otherwise and only for purposes of entitlement to salaries and benefits.***

3. The Grant of Longevity Pay Prayed for is an Act of Judicial Legislation.

The grant of longevity pay for past services in the NLRC, based on the grant of longevity pay to judges and justices of the judiciary, amounts to ***prohibited judicial legislation.***

Section 42 of BP 129 is clear in requiring five years of meritorious, efficient, and continuous services *in the judiciary*; subsequent legislation conferring the same salary and benefits that judges and justices enjoy to designated counterparts in the executive did not amend this requirement, expressly or impliedly.

RA No. 9347, in particular, did not specifically provide that the services in the NLRC may be tacked with the length of judicial service for purposes of computing longevity pay in the judiciary. Neither can the tacking of these periods be implied from the language of Article 216 of the Labor Code, as amended, as the provision merely uses the salary and benefits of CA Associate justices as a yardstick for determining the salary and benefits of NLRC commissioners.



It must be pointed out that the grant of the requested longevity pay can be a *blow disastrous to the reputation of the judiciary and to this Court's role as the final authority in interpreting the Constitution*, when the public realizes that this Court engaged in judicial legislation, through interpretation, to undeservedly favor its own judges and justices.

4. A Grant would effectively be a Misplaced Exercise of Liberality at the Expense of Public Funds and to the Prejudice of Sectors who are More in Need of these Funds.

The liberal approach does not allow the inclusion of the period of services in the NLRC (or any executive office) to the period of judicial service to grant longevity pay in the judiciary. The law is clear and unequivocal in its requirements for the grant of longevity pay, and cannot thus be amended through a claimed liberal approach.

The Court should not forget that liberality is not a magic wand that can ward off the clear terms and import of express legal provisions; it has a place only when, between two positions that the law can both accommodate, the Court chooses the more expansive or more generous option. *It has no place where no choice is available at all because the terms of the law are clear and do not at all leave room for discretion.*¹²

In terms of the longevity pay's purpose, liberality has no place where service is not to the judiciary, as the element of loyalty – the virtue that longevity pay rewards – is not at all present.

I cannot overemphasize too 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*. The Court may not, in the guise of interpretation, enlarge the scope of a statute or include, under its terms, situations that were not provided nor intended by the lawmakers. *The Court cannot rewrite the law to conform to what it or certain of its Members think should be the law.*

Not to be forgotten is the effect of this Court's grant on the use of public funds: funds granted to other than the legitimate beneficiaries are misdirected funds that may be put to better use by those sectors of society who need them more.

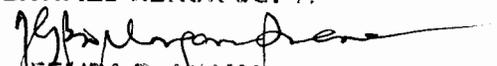
¹² Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed (*The Chartered Bank Employees Association v. Ople*, 138 SCRA 273 [1985]; *Luzon Surety Co., Inc. v. De Garcia*, 30 SCRA 111 [1969]; *Quijano v. Development Bank of the Philippines*, 35 SCRA 270 [1970]).

The same principle applies even in retirement laws, where all doubts are liberally construed and administered in favor of persons intended to be benefited. Liberal interpretation is not warranted where the law is clear and unambiguous. *Fetalino and Calderon v. Comelec*, G.R. No. 191890, December 04, 2012, citing *In Re: Claim of CAR Judge Noel*, Adm. Matter No. 1155-CAR, 194 Phil. 9 (1981) and *Re: Judge Alex Z. Reyes*, Adm. Matter No. 91-6-007-CTA, December 21, 1992, 216 SCRA 720.

For these reasons, I vote **DENY with FINALITY** the Motion for Reconsideration filed by former Court of Appeals Associate Justice Angelita Alberto-Gacutan.


ARTURO D. BRION
Associate Justice

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FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT