

## EN BANC

[ A.M. No. 13-05-04-SC, August 14, 2019 ]

### RE: REQUEST OF ASSOCIATE JUSTICE ROBERTO A. ABAD FOR SALARY ADJUSTMENT DUE TO LONGEVITY OF SERVICE,

### RESOLUTION

#### BERSAMIN, C.J.:

On May 3, 2013, then Associate Justice Roberto A. Abad of this Court requested the Chief of the Office of Administrative Services (OAS) to study whether or not he was entitled to salary adjustment due to longevity of service arising from his work in the Office of the Solicitor General (OSG) prior to joining the Court. Justice Abad had served the government in several capacities continuously from 1969 to 1986. He worked in the private sector subsequently, until he joined the Government again upon his appointment to the Court in 2009, serving until his mandatory retirement in 2014.

The positions he had held in the civil service, and the periods relevant thereto, are as follows:

September 11, 1969 to October 23, 1975	- Technical Assistant, Supreme Court
October 24, 1975 to December 31, 1977	- Solicitor, OSG
January 1, 1978 to September 17, 1978	- Solicitor II, OSG
September 18, 1978 to April 17, 1980	- Solicitor III, OSG
April 18, 1980 to December 31, 1981	- Solicitor IV, OSG
January 1, 1982 to June 30, 1985	- Solicitor V, OSG
July 1, 1985 to July 31, 1986	- Assistant Solicitor General, OSG
August 7, 2009 to May 21, 2014	- Associate Justice, Supreme Court

The provision on longevity pay granted to Members of the Judiciary under Batas Pambansa (B.P.) Blg. 129, in relation to Presidential Decree (P.D.) No. 1927, states:

Section 42. *Longevity pay.* - A monthly longevity pay equivalent to five percent (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.

In its memorandum dated May 8, 2013, the OAS opined that Justice Abad's service in the OSG could not be included in the computation of his longevity pay in order to adjust his salary in the active service because his years in the OSG were deemed service rendered outside of the Judiciary. Nonetheless, the OAS recommended that Justice Abad's OSG employment be included in the computation of his longevity pay upon retirement, or for retirement purposes only, consistently with prevailing jurisprudence and precedent. In making such recommendation, the OAS noted that Republic Act (R.A.) No. 9417<sup>[1]</sup> subsequently extended judicial ranks to various positions in the OSG; and deemed the same to be retroactively applied to Justice Abad. The dispositive portion of the memorandum stated:

In view of the foregoing, [the] Office recommends that your Honor's service in the Office of the Solicitor General be considered as judicial service and to be included in the computation of your Honor's longevity pay upon [his] retirement [or] for retirement purposes only.

In his letter dated May 30, 2013, Justice Abad formally requested the Court to approve the recommendation of the OAS.

The matter was next referred to the Fiscal Management and Budget Office (FMBO) of the Court for comment.

In its July 5, 2013 comment, the FMBO concluded that Justice Abad's service in the OSG could not be considered for the purpose of entitlement to longevity pay during his incumbency, but recommended that such be considered as judicial service in computing his longevity pay for retirement purposes, and that his salary be adjusted accordingly effective upon his retirement.

Justice Abad retired upon reaching the age of 70 on May 22, 2014. His tenure as an Associate Justice of this Court was only for a period of four (4) years, eight (8) months, and sixteen (16) days, a few months short of the five years required by law to qualify for longevity pay. On September 30, 2014, the Court resolved to defer action on his request pending the resolution of A.M. No. 12-8-07-CA, which was consolidated with A.M. No. 12-9-5-SC and A.M. No. 13-02-07-SC, dealing with similar situations and involving the requests of Court of Appeals (CA) Justices Vicente S.E. Veloso, Angelita A. Gacutan, and Remedios A. Salazar-Fernando, respectively, to consider their government services rendered outside of the Judiciary in the computation of their longevity pay.

It is noted that Justices Veloso and Gacutan separately sought the crediting of their service as Commissioners of the National Labor Relations Commission (NLRC) for the purpose of computing their longevity pay; that Justice Salazar-Fernando sought her service as a Judge of the Municipal Trial Court (MTC) and as a Commissioner of the Commission on Elections (COMELEC) be considered as part of her judicial service; and that their longevity pay be adjusted accordingly.

A very closely divided Court resolved the consolidated matters in its June 16, 2015 resolution. The Court granted the request of Justice Salazar-Fernando with regard to her years of service as Presiding Judge of the MTC, but denied her request with regard to her service as COMELEC Commissioner because of breaks in the continuity of her government/judicial service. The Court denied the request of Justice Veloso

due to the fact that RA No. 9347, which granted NLRC Commissioners the rank and salary equivalent to those of Associate Justices of the CA, only took effect in 2006, which was after Justice Veloso had already left the NLRC in 2004; and that given that the law did not provide for retroactivity, Justice Veloso could not claim that he had held the rank of a CA Justice during his stint at the NLRC.

Likewise, the Court initially denied Justice Gacutan's request through the June 16, 2015 resolution by observing that her service in the NLRC as Commissioner was not equivalent to service actually rendered in the Judiciary for the purpose of computing longevity pay under Section 42 of B.P. Blg. 129, which was the law in effect during her incumbency as a CA Justice. Furthermore, in the same resolution, the majority of the Members of the Court were of the view that Section 42 should be construed strictly to refer to actual service in the Judiciary. It was acknowledged in the resolution itself that this view was a departure from earlier rulings, which had allowed service in other government posts granted by law the rank-and-salary equivalent to counterparts in the Judiciary to be credited as judicial service for longevity pay purposes.

Justice Gacutan filed a motion for reconsideration.

The Court resolved the motion for reconsideration on July 26, 2016 by a vote of 10-4 in favor of granting it. In so resolving, the Court adopted the position taken by then Associate Justice (later Chief Justice) Teresita Leonardo-de Castro in her separate concurring and dissenting opinion submitted in relation to the ruling on the matter on June 16, 2015, and reversed itself by ordering that Justice Gacutan's tenure as NLRC Commissioner from August 26, 2006 (when R.A. No. 9347 took effect) until her departure from the NLRC be included in the computation of her longevity pay. The Court opined that longevity pay under Section 42 of B.P. Blg. 129 should be treated as part of salary, and extended the benefit to certain officials in the Executive Department who were, by law, granted the same rank and benefits as members of the Judiciary.

The following discourse by Associate Justice de Castro in A.M. No. 12-8-07-CA is worth reiterating herein, *viz.*:

As a rule, therefore, the grant of longevity pay under Section 42 of *Batas Pambansa Blg. 129* is premised on the rendition of continuous, efficient, and meritorious service in the Judiciary. That is the express language of the law.

Nonetheless, there are existing laws which expressly require the qualifications for appointment, confer the rank, and grant the salaries, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department, such as the following:

(a) the Solicitor General and Assistant Solicitor Generals of the Office of the Solicitor General (OSG); and

(b) the Chief Legal Counsel and the Assistant Chief Legal Counsel, the Chief State Prosecutor, and the members of the National Prosecution Service (NPS) in the Department of Justice.

The intention of the above laws is to establish a parity in qualifications required, the rank conferred, and the salaries and benefits given to

members of the Judiciary and the public officers covered by the said laws. The said laws seek to give equal treatment to the specific public officers in the executive department and the Judges and Justices who are covered by *Batas Pambansa Blg. 129*, as amended, and other relevant laws. In effect, these laws recognize that public officers who are expressly identified in the laws by the special nature of their official functions render services which are as important as the services rendered by the Judges and Justices. They acknowledge the respective roles of those public officers and of the members of the Judiciary in the promotion of justice and the proper functioning of our legal and judicial systems.

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Under Section 42 of *Batas Pambansa Blg. 129*, longevity pay is an amount equivalent to 5% of the monthly basic pay given to Judges and Justices for each five years of continuous, efficient, and meritorious service rendered in the Judiciary. It is not only an amount given as an addition to the basic monthly pay but, more importantly, **it forms part of the salary of the recipient thereof.**

**In other words, longevity pay is "salary" and it should not be confused with "rank."**

That is how this Court has treated the longevity pay under Section 42 of *Batas Pambansa Blg. 129* since 1986, particularly in *Re: Longevity Pay of the Associate Justices of the Sandiganbayan*. It is a treatment which reflects the Court's reading of the text of the law and its understanding of the law's legislative intent.

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In conferring upon certain officials in the Executive the same salaries, aside from their rank, as those of their respective judicial counterparts, Congress intended to make the salaries of the former at par with the latter. The legislative records support this.

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Thus, Congress knew, or is presumed to have known, the concept of longevity pay under Section 42 of *Batas Pambansa Blg. 129*, **as part of the total salary** of members of the Judiciary when it enacted Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the OSG, the NLRC, and the NPS, 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 Republic Act 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. To do otherwise will negate the express legislative intent.

As it is part of the salary of a member of the Judiciary, it should perforce be part of the salary of the public officers granted by law with the same

rank and salary as their counterparts in the Judiciary. Accordingly, the increase in the salary of Judges and Justices by virtue of the longevity pay should also result in the corresponding increase in the salary of the public officers who, under relevant laws, enjoy the same rank and salary as their judicial counterparts. Otherwise, the law's express language and its intention to grant the same rank and salary of a member of the Judiciary to the said public officers will be defeated.<sup>[2]</sup>

It is under the foregoing premise that we now determine whether or not Justice Abad's service in the OSG should be credited as judicial service for the purpose of computing longevity pay.

Upon thorough consideration of the relevant legislative and jurisprudential antecedents, the Court finds and considers Justice Abad's request to be meritorious.

As early as 1916, the Administrative Code of the Philippines provided that the qualifications for appointment to the position of Solicitor-General be the same as those prescribed for Judges of the Courts of First Instance.<sup>[3]</sup> The amendments<sup>[4]</sup> of the Administrative Code adjusted upward the judicial rank given to the Solicitor-General, First Assistant Solicitor-General, and Assistant Solicitors-General. The amendments made beginning in 1953 also added that the Solicitors would have the same qualifications for appointment and rank as those prescribed for Provincial Fiscals.<sup>[5]</sup>

P.D. No. 1347,<sup>[6]</sup> which took effect on January 1, 1978, extended to the Solicitor General the same rank, prerogatives, and privileges as those of the Presiding Justice of the CA, while the Assistant Solicitors General were given the same rank, prerogatives, and privileges as those granted of Judges of the Courts of First Instance. Although silent on the rank of the Solicitors, P.D. No. 1347 it did not repeal previous laws prescribing for the Solicitors the ranks and qualifications of Provincial Fiscals (now called Provincial Prosecutors).

P.D. No. 1726, effective September 26, 1980, upgraded the salaries of the legal positions in the OSG in a manner similar to those approved for the legal positions in the Ministry of Justice.<sup>[7]</sup>

Afterwards, the Whereas Clauses of Executive Order (EO) No. 780, Series of 1982, further reinforced the intention to align the salaries of the Solicitors and the lawyers in the OSG with those of the lawyers in the Ministry of Justice (now Department of Justice) in the light of new salary rates under P.D. No. 1726. This was because EO No. 780 expressly recognized the close relationship between the qualification requirements for Fiscals, State Prosecutors and State Counsels in the Ministry of Justice (Department of Justice) and Solicitors in the OSG.<sup>[8]</sup>

R.A. No. 9417,<sup>[9]</sup> amending P.D. No. 1347, elevated the ranks, prerogatives, salaries, allowances, benefits and privileges of Assistant Solicitors General to make them equivalent to those of the Associate Justices of the CA, while the positions of Senior State Solicitor, State Solicitor II, and State Solicitor I were given the same ranks, prerogatives, salaries, and privileges as the Judges of the Regional Trial Courts, Metropolitan Trial Courts, and Municipal Trial Courts in Cities, respectively.

Later on, the Congress enacted R.A. No. 10071 to grant judicial rank to the lawyers in the Department of Justice's National Prosecution Service in a hierarchy similar to