

## EN BANC

**[ A.M. No. 12-8-07-CA, July 26, 2016 ]**

**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.**

## R E S O L U T I O N

**LEONARDO-DE CASTRO, J.:**

The Resolution dated June 16, 2015, penned by Honorable Justice Arturo D. Brion (Brion), in A.M. Nos. 12-8-07-CA, 12-9-5-SC, and 13-02-07-SC, resolved, among other matters, to deny the request of Court of Appeals (CA) Justice Angelita A. Gacutan (Gacutan) to include her services as Commissioner of the National Labor Relations Commission (NLRC) in the computation of her longevity pay.

CA Justice Gacutan filed a Motion for Reconsideration of said ruling, praying that herein *ponente's* dissent to the Resolution dated June 16, 2015, joined by five other Justices, prevails. In addition, CA Justice Gacutan submitted that the grant by the Court of her request that her services in the NLRC (as of 2006) be included in computing her longevity pay would be a reward for her past continuous services as a lifelong public servant who eventually retired from the judiciary, and that "by granting her request, there is no judicial legislation - there is only the recognition of justice and equity to which we in the judiciary stand for."

After conscientious review, the Court resolves to grant CA Justice Gacutan's Motion for Reconsideration. CA Justice Gacutan's services as NLRC Commissioner should be included in the computation of her longevity pay, but only from August 26, 2006, when Republic Act No. 9347, which amended Section 216 of the Labor Code, took effect.

Herein *ponente* had already thoroughly and extensively discussed in her Concurring

and Dissenting Opinion to the Resolution dated June 16, 2015 the bases for her position - now adopted by the Court - that longevity pay under Section 42 of Batas Pambansa Big. 129 is treated as part of salary and extended to certain officials in the Executive Department who are, by law, granted the same salary as their counterparts in the Judiciary. Pertinent parts of said Concurring and Dissenting Opinion are worth reproducing below:

### ***The Literal Language of the Law***

Section 42 of Batas Pambansa Big. 129, otherwise known as "The Judiciary Reorganization Act of 1980," as amended, provides:

SEC. 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. (Emphasis supplied.)

As a rule, therefore, the grant of longevity pay under Section 42 of Batas Pambansa Big. 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 Big. 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.

Thus, the laws operate under the principle of "equal in qualifications and

equal in rank, equal in salaries and benefits received." The reasonable and logical implication of this principle is that, in the context of the dispute resolution mechanism in particular and of the justice system in general, the services rendered by the public officers concerned and the members of the Judiciary are equal in importance.

I respectfully submit the following arguments:

- (1)The law is clear: the term "salary" covers basic monthly pay plus longevity pay.**
- (2)The concept of longevity pay as "salary" should not be confused with "rank."**
- (3)The legislative intent of salary increases for certain Executive officials accords with "salary" as inclusive of longevity pay.**
- (4)The Court's long-standing interpretation of the term "longevity pay" as part of "salary" is correct.**
- (5)The executive contemporaneous construction of longevity pay is consistent with the law, as interpreted by the Supreme Court.**
- (6)Longevity pay is not a mere "benefit."**

Each of these arguments is discussed in detail below.

***The law is clear: the term "salary" covers basic monthly pay plus longevity pay.***

That the language of the law itself, in this case, Section 42 of Batas Pambansa Big. 129, is the starting and referential point of discussion of longevity pay under that law is not in dispute. It provides:

SEC. 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. (Emphases supplied.)

There is disagreement, however, on the construction of the above-quoted provision with other relevant laws, such as Section 3 of Republic Act No. 9417, Article 216 of the Labor Code, as amended by Republic Act No. 9347, and Section 16 of Republic Act No. 10071, which require the qualifications for appointment, confer the rank, and grant the same salaries, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department.

For Justice Brion, "salary" used in the aforesaid other laws should not include longevity pay. He insists that Section 42 of Batas Pambansa Big. 129 is clear and unequivocal, that longevity pay is granted to a Judge or Justice who has rendered five years of continuous, efficient, and meritorious service in the Judiciary. Service in the Judiciary within the required period is the only condition for entitlement to longevity pay under Section 42 of Batas Pambansa Big. 129.

The approach of Justice Brion on the matter is novel. It is, however, negated by the language and intent of relevant laws, as well as by the long-standing interpretation of the Court and the Executive Branch on the matter.

***The concept of longevity pay as "salary" should not be confused with "rank."***

Under Section 42 of Batas Pambansa Big. 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 Big. 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,

x x xx

xxx [T]he settled meaning of "rank," particularly that it does not include the privilege to use the title of Judge or Justice should not be used to determine the import of the term "salary" as used in the different laws. Otherwise, there would be no point in mentioning in the laws "rank" separately from "salary." "Rank" unquestionably has nothing to do with the amount of compensation or pay an official is entitled to under the law. The said term pertains only to the "class" or "standing" in an organization or societal structure.

***The legislative intent of salary increases for certain Executive officials accords with "salary" as inclusive of longevity pay.***

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.

In particular, the following portion of the interpellations in connection with Senate Bill No. 2035, which became Republic Act No. 9347, is enlightening:

Asked by the Chair whether the proposed amendment (Section 4) to Article 216 of the Labor Code means an increase in **salaries**, Senator Ejercito Estrada (J) clarified that the section proposes that **the arbiters be at par with the judges of the regional trial courts, and the commissioners at par with the justices of the Court of Appeals.** (Emphases supplied.)

In his sponsorship speech of Senate Bill No. 2659, which became Republic Act No. 10071, Senator Francis Joseph Escudero adopted as part of his sponsorship speech several explanatory notes of related bills, including the explanatory note of Senator Edgardo Angara for Senate Bill No. 213. The relevant portion of the explanatory note reads:

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, x x x. (Emphases supplied.)

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. *Manila Lodge No. 761 v. Court of Appeals instructs:*

[I]t is presumed that when the lawmaking body enacted the statute, it had full knowledge of prior and existing laws and legislation on the subject of the statute and acted in accordance or with respect thereto. (Citation omitted.)