

## EN BANC

[ A.M. No. 12-8-07-CA, June 16, 2015 ]

**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**

### RESOLUTION

**BRION, J.:**

#### **Prefatory Statement**

#### ***The Consolidated Cases and the Affected Parties***

For the Court's consideration are the following: (1) letter-request dated August 22, 2012, of Court of Appeals **(CA) Associate Justice Remedios A. Salazar-Fernando**,<sup>[1]</sup> (2) letter-request dated September 11, 2012, of CA **Associate Justice Angelita A. Gacutan**,<sup>[2]</sup> and (3) motion for reconsideration<sup>[3]</sup> dated November 7, 2012, of **CA Associate Justice Vicente S.E. Veloso**.<sup>[4]</sup>

The petitioners are all Justices of the Court of Appeals. Justices Veloso and Fernando claim **longevity pay for services rendered within and outside the Judiciary** as part of their compensation package. Justice Gacutan, who has recently retired, claims deficiency payment of her longevity pay for the services she had **rendered before she joined the Judiciary**, as well as a re-computation of her retirement pay to include the claimed longevity pay.

**Interest in the outcome of these consolidated cases goes beyond that of the petitioners**; some incumbent justices and judges, before joining the Judiciary, also served in the Executive Department and would like to see these previous services credited in the computation of their longevity pay. Others who had also

previously served with the Executive Department currently enjoy longevity pay credit for their executive service; they would like to see their mistakenly granted longevity pay credits maintained.

**Thus, the Court's decision on these consolidated cases, whether to find for or against the petitioners, will likewise affect the interests of other judges and justices in similar circumstance, including several members of this honorable court participating in these matters.**

### **Antecedents**

#### **A. Letter-Request of Justice Salazar-Fernando**

In her letter dated August 22, 2012,<sup>[5]</sup> Justice Salazar-Fernando requested that her **services as Judge of the Municipal Trial Court (MTC)** of Sta. Rita, Pampanga, from February 15, 1983 to July 31, 1987, and as **Commissioner of the Commission on Elections (COMELEC)**, from February 14, 1992 to February 14, 1998, be considered as part of her judicial services "as in the case of Hon. Bernardo P. Pardo, Retired Associate Justice of the Supreme Court." Accordingly, Justice Salazar-Fernando requested that her longevity pay be adjusted "from the current 10% to 20% of [her] basic salary effective May 25, 1999."

We referred this letter-request to Atty. Eden T. Candelaria, Chief of the Office of Administrative Services (OAS), for study and recommendation.

In her February 18, 2013 Memorandum,<sup>[6]</sup> Atty. Candelaria recommended that Justice Salazar-Fernando's services as MTC Judge be credited as judicial service that can be added to her present longevity pay. Atty. Candelaria, however, recommended the denial of Justice Salazar-Fernando's request that her services at the COMELEC be also credited for her present longevity pay. Nonetheless, she recommended that Justice Salazar-Fernando's services in the COMELEC be included in the computation of her longevity pay upon retirement "as in the case of Justice Pardo."

#### **B. Letter-Request of Justice Gacutan**

In her letter<sup>[7]</sup> dated September 11, 2012, Justice Gacutan requested that: (a) her services as **Commissioner IV of the National Labor Relations Commission (NLRC)**, from March 3, 1998 to November 5, 2009, be credited as judicial service for purposes of retirement; (b) she be given a longevity pay equivalent to 10% of her basic salary; and (c) an adjustment of her salary, allowances and benefits be made from the time she assumed as CA Justice on November 6, 2009.

In the Court's Resolution<sup>[8]</sup> of November 13, 2012, we required the Fiscal Management and Budget Office (FMBO) to comment on Justice Gacutan's letter.

In her Comment of January 4, 2013, Atty. Corazon G. Ferrer-Flores, Deputy Clerk of Court and Chief of Office of the FMBO, recommended that: (1) Justice Gacutan's request for the crediting of her services as Commissioner IV of the NLRC as judicial service be granted, but only for purposes of her retirement benefits, to take effect on her compulsory retirement on December 3, 2013; and (2) Justice Gacutan's request that her salary and allowances be adjusted retroactive from her assumption

of office in the CA on November 6, 2009, be denied.<sup>[9]</sup>

### **C. Motion for Reconsideration of Justice Veloso**

In his November 7, 2012 motion for reconsideration,<sup>[10]</sup> Justice Veloso assailed the Court's October 23, 2012 Resolution<sup>[11]</sup> that denied his request for the crediting of his **services as NLRC Commissioner** as judicial service for purposes of adjusting his salary and benefits, specifically his longevity pay.

Justice Veloso claimed that Republic Act No. (RA) 9347 - which amended Article 216 of the Labor Code - should be applied retroactively since it is a curative statute. He maintained under this view that he already had the rank of a CA Justice as NLRC Commissioner before he was appointed to the appellate court on February 4, 2004.

We referred Justice Veloso's motion for reconsideration to the FMBO for report and recommendation in our Resolution of November 27, 2012.<sup>[12]</sup> In her Report and Recommendation dated February 15, 2013,<sup>[13]</sup> Atty. Ferrer-Flores recommended that Justice Veloso's motion for reconsideration be denied since the points he raised were a rehash of his arguments in his July 30, 2012 letter-request.<sup>[14]</sup>

### **Our Rulings**

#### **I. Letter of Justice Salazar-Fernando in A.M. No. 13-02-07-SC**

##### **a. Services as MTC Judge**

**We grant the request of Justice Salazar-Fernando to credit as judicial service her previous services as MTC Judge of Sta. Rita, Pampanga, as judicial service in the computation of her longevity pay.**

Section 42 of *Batas Pambansa Bilang (B.P. Blg.)* 129 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. [Italics supplied; emphasis and underscoring ours]

We find it undisputed that Justice Salazar-Fernando served as MTC Judge from February 15, 1983 to July 31, 1987. This service constitutes continuous, efficient, and meritorious service rendered *in the Judiciary* and, hence, should be included in the computation of her longevity pay.

##### **b. Service as COMELEC Commissioner**

**We deny, however, the inclusion of Justice Salazar-Fernando's request to credit her services as COMELEC Commissioner, from February 14, 1992 to February 14, 1998, as judicial service for longevity pay purposes.**

The only service recognized for purposes of longevity pay under Section 42 of B.P. Blg. 129 is service **in the Judiciary**, not service in any other branch of government. The COMELEC is an agency independent of the Judiciary; hence, service in this agency cannot be considered as service rendered in the Judiciary.

We find Justice Salazar-Fernando's invocation of the case of Justice Pardo, to support her claim to longevity pay, misplaced.

### ***b.1. Our Pardo Ruling***

In *In Re: Request of Justice Bernardo P. Pardo for Adjustment of His Longevity Pay*, [15] we held that the inclusion of Justice Pardo's service in the COMELEC in the computation of his longevity pay upon his retirement was predicated on the factual circumstances peculiar to him: ***he was an incumbent CA Justice when he was appointed COMELEC Chairman, and was appointed to the Supreme Court after his service with the COMELEC, without any interruption in his service.***

The Court - based on its reading of Section 3 of B.P. Blg. 129<sup>[16]</sup> - did not consider his intervening service in the COMELEC, an office outside the Judiciary, as a disruption of his service in the Judiciary.

Notably, the Court in *In Re: Justice Pardo* ***liberally interpreted the phrase "the Court" in Section 3 of BP 129 to mean the entire judiciary***, not just the Court of Appeals. The provision reads:

Any member who is ***reappointed to the Court*** after rendering service in any other position in the government shall retain precedence to which he was entitled under his original appointment, and his service ***in the Court*** shall, for all intents and purposes, be considered as continuous and uninterrupted. (emphases supplied)

This provision was an amendment to Section 3 of BP 129 which, as originally worded, referred only to the organization of the CA, the appointment process of its justices, and the means by which seniority of rank is determined among the CA justices. Executive Order No. 33 added this phrase, and hence Section 3 now reads as:

Sec. 3. Organization. There is hereby created a Court of Appeals which shall consist of a Presiding Justice and fifty Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and the Associate Justice shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President. Any member who is reappointed to the Court after rendering in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in the Court shall, for all intents and purposes, be considered as continuous and uninterrupted.

Thus, had the Court given a more literal interpretation of the phrase added by EO No. 33, then it would have interpreted its application to refer to an incumbent CA justice only. The phrase, after all, had been added to Section 3 of BP 129, which

referred to the organization of the CA. Following this interpretation, Justice Pardo's service in the COMELEC would not have been appreciated in determining his longevity pay, as he was reappointed not to the CA, but to the Supreme Court.

Instead, the Court, taking a more liberal approach, interpreted the phrase "the Court" to mean the entire judiciary. It noted that the additional phrase in Section 3 used the generic word "Court" instead of Court of Appeals, and that to apply the stricter application of interpreting "Court" to mean "Court of Appeals" would "lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers."

Thus, following this more liberal approach, Justice Pardo's one-time service outside of the judiciary was considered part of his service in the judiciary for purposes of determining his longevity pay. The same may be applied, for instance, to a trial court judge who rendered service outside the judiciary and then returned to being a member of the bench.

Thus, the Court's ruling in *In Re: Justice Pardo* is authority for expanding EO No. 33's amendment to Section 3 of BP 129 to all members of the judiciary.

**b.2. The liberal Pardo ruling cannot and should not be extended to allow members of the judiciary to leave and return more than once, without interrupting the continuity of their service.**

The next question to be asked, then, refers to the frequency by which members of the judiciary may be able to serve in other branches of government without breaking their 'continuous and uninterrupted' service. Did the ruling in Justice Pardo's case allow members of the judiciary to leave for other branches of government numerous times, and still maintain continuous and uninterrupted service in the judiciary? The answer to this question is a resounding **no**.

A critical aspect of Justice Pardo's case was the absence of any gap in his service from the time he was appointed as Caloocan City Judge in 1974, until he retired as an Associate Justice of the Supreme Court in 2002. He occupied the positions of District Judge, Court of First Instance of Rizal, Branch 34, Caloocan City, from May 3, 1974 to January 17, 1983; Regional Trial Court (RTC), Branch 43, Manila, from January 18, 1983 to March 29, 1993; Associate Justice of the CA, from March 30, 1993 to February 16, 1995; Chairman, COMELEC, from February 17, 1995 to October 6, 1998; and Associate Justice of the Supreme Court, from October 7, 1998 to February 10, 2002.

In these lights, ***Justice Pardo's case has nothing to offer by way of jurisprudential precedent in terms of determining whether Section 3 of BP 129 allows judges and justices to leave the judiciary several times without breaking their continuous service.*** There was no occasion to rule on this issue, as Justice Pardo left the judiciary only once, to serve in the COMELEC.

Proceeding from this conclusion, the next level of inquiry leads us to examine whether Section 3 of BP 129 allows multiple breaks in judicial office and considers these breaks as part of a continuous and uninterrupted judicial service.

The amendment to Section 3, as worded and interpreted in *In Re: Justice Pardo*,