

## EN BANC

[ G.R. No. 188716, June 10, 2013 ]

**MELINDA L. OCAMPO, PETITIONER, VS. COMMISSION ON AUDIT,  
RESPONDENT.**

### DECISION

**PEREZ, J.:**

This is a Petition for *Certiorari* under Rule 65, in relation to Rule 64, of the Rules of Court assailing Decision No. 2008-017<sup>[1]</sup> dated 15 February 2008 and Decision No. 2009-038<sup>[2]</sup> dated 1 June 2009 of the Commission on Audit (COA) sustaining Notice of Disallowance (ND) No. 2003-021 dated 3 September 2003 disallowing the payment of retirement gratuity to petitioner Melinda L. Ocampo (Ocampo) as Board Member and Chairperson, respectively, of the Energy Regulatory Board (ERB), amounting to P1,449,450.48.

On 1 March 1996, Ocampo retired from the National Electrification Administration under Commonwealth Act No. 186<sup>[3]</sup> as amended, by Republic Act No. 1616,<sup>[4]</sup> after more than seventeen (17) years of service. Ocampo availed of the lump sum payment with a net gratuity of P358,917.01.

Three days thereafter, on 4 March 1996, under Letter of Appointment dated 16 February 1996, Ocampo assumed office as Board Member of the ERB. On 30 June 1998, upon expiration of her term, Ocampo retired under Executive Order No. 172, "Creating the Energy Regulatory Board" in relation to Republic Act No. 1568, "An Act to Provide Life Pension to the Auditor General and the Chairman or any Member of the Commission on Elections." Ocampo availed of the five year lump sum benefit and the corresponding monthly pension to be paid out for the remainder of her life. This first gratuity lump sum payment based on sixty (60) months or five (5) years advance salary was immediately received by Ocampo after her retirement. Likewise, Ocampo began to receive her monthly pension.<sup>[5]</sup>

On 25 August 1998, Ocampo was again appointed, this time as Chairman of ERB with a term of four (4) years. On 15 August 2001, the ERB was abolished and replaced by the Energy Regulatory Commission (ERC) as a consequence of the enactment of Republic Act No. 9136, the Electric Reform Act of 2001. For the second time, Ocampo sought retirement under Executive Order No. 172. Ocampo's claim was endorsed by the then Chairperson of the ERC, Fe C. Barin (Chairperson Barin), to the Department of Budget and Management (DBM). Upon release by the DBM of the Special Allotment Release Order (SARO) and the corresponding Notice of Cash Allocation (NCA), Chairperson Barin approved the payment thereof to Ocampo.

However, on post-audit of the transaction with Ocampo as payee, State Auditor IV, Nelda R. Monterde (Auditor Monterde), issued Notice of Suspension (NS) No. 2002-002-101 dated 10 July 2002: (1) suspending payment of the amount of

P1,452,613.71 covering Ocampo's second retirement gratuity computed on a pro-rata basis equivalent to only two years, eleven months, and twenty days;<sup>[6]</sup> and (2) requiring submission by the ERC of "legal basis for [the payment of] retirement gratuity twice under the same law (EO 172)."<sup>[7]</sup>

In a letter dated 23 July 2002, Chairperson Barin responded:

1. The application for retirement and or claims for retirement benefits of former Chairman Melinda L. Ocampo [were] endorsed to DBM for its proper disposition together with the pertinent information or circumstances attendant thereto. Please see the attached letter of endorsement dated April 2, 2002 and the matrix of information on Chairman Ocampo's appointment and tenure in office. This was received by DBM on April 5, 2002.
2. In its letter dated April 24, 2002, the Department of Budget and Management (DBM) issued the Special Allotment Release Order (SARO) and the corresponding Notice of Cash Allocation (NCA) to cover the payment of Chairman Ocampo's second gratuity benefits.
3. Under the above-mentioned circumstances there was no more cogent reason nor basis for this Office to defer the release to Chairman Ocampo of the amount corresponding to the DBM approved gratuity benefits, especially considering the follow-up efforts by the beneficiaries. To do otherwise could expose the undersigned to charges of unreasonable delayed action.<sup>[8]</sup>

On 28 October 2002, Ocampo likewise wrote Auditor Monterde asking for the lifting of NS No. 2002-002-101 dated 10 July 2002 and asseverating her entitlement to the second retirement gratuity:

1. That the basic law (E.O. 172, as amended) provides no prohibition to receive second retirement gratuity;
2. That I retired under different positions, first as Board Member and second as Chairman of the Energy Regulatory Board;
3. Retirement laws are liberally construed in favor of the employee because the level of retirement compensation is below the cost of living requirements of a retiree. A grateful nation owes the retiree at the very least a liberal interpretation.<sup>[9]</sup>

Acting on Chairperson Barin's request for the lifting of NS No. 2002-001-101 dated 10 July 2002, the Legal and Adjudication Office-National (LAO-N) of the COA issued LAO-N-2003-132 dated 12 June 2003 denying the request:

Of pertinence is the last paragraph of Section 1 of EO 172, quoted hereunder, thus:

The Chairman and the Members of the Board, **upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the Commission on Elections.**

The retirement benefits of the Members of the Commission on Elections is found in RA 3595, amending RA 1568. Section 1 thereof states:

Section 1. When the Auditor General or the [Chairman] or any Member of the Commission on Elections retires from the service for having completed his term [of office] x x x, he or his heirs shall be paid **in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement,** x x x; And, provided, further, That he shall receive **an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary that he was receiving on the date of retirement,** incapacity or resignation. (Emphasis theirs).

The above provision of law is integral to the matter on hand since RA 1568 merely extends to the Auditor General and the Chairman or any Member of the Commission on Elections the retirement benefits granted under RA 910. EO 172, on the other hand, explicitly provides that the Chairman and Members of the Board shall be entitled to the same retirement benefits given to the Chairman and Members of the COMELEC. Having claimed retirement benefits under EO 172 twice, x x x Ms. Ocampo, therefore, would in all certainty be receiving double pension for the remainder of [her life].

The above-situation is predictable considering that under Paragraph 2 of Section 1 of EO 172, a person may be appointed to the Board for a minimum of two terms, to wit: "No person may be appointed to serve more than two (2) successive terms in the Board." It follows then that upon meeting the condition of completion of terms or eligibility for retirement each time, the concerned official would apply for retirement benefits, as a matter of course. While this could have been the scenario, it bears emphasizing that EO 172, however, does not have a parallel provision that would allow a Board Member to claim the full benefits of the law for as long as the number of term [of] office of such official would allow. The most practical solution that would not run counter to the prohibition against double pension is to deduct the amount of lump sum and monthly pensions already received on the first retirement under EO 172 from the gratuity claimed on the second retirement under the same law. While there is no hard and fast rule requiring such deduction, for reasons of equity however, it would be proper and logical that said

benefits should nevertheless be deducted from the retirement pay to be received by the employee concerned. x x x.

x x x x

EO 172 sets forth the condition when the Chairman and the Members of the Board of the ERB shall be entitled to retirement benefits provided under RA 3595. For clarity, the condition is "upon completion of their terms or upon becoming eligible for retirement under existing laws." A quick review of the circumstances herein obtaining would show that x x x Ms. Ocampo had met such condition when [her] term [was] completed upon the abolition of ERB. As then ERB Chairman, [she was] originally appointed to a term of four years which was however shortened to less than three years. x x x Of equal importance is the fact that [she was] also eligible for retirement under existing laws. Records bear that x x x Ms. Ocampo had previously retired on March 3, 1996.

Section 1 of RA 3595 is clear as to the extent of the gratuity: lump sum of salary for one year, not exceeding five years, for every year of service plus the life pension. In the attached pertinent documents, it is shown that [Ocampo was] granted retirement gratuity in the amount of x x x P1,472,155.43, x x x computed as follows:

x x x x

Highest Monthly Salary (Per NOSA) x No. of Gratuity Months = Gratuity Pay

$$P41,275.00 \times 35.667 = [P]1,472,155.43$$

As already mentioned, [she is] also entitled to an annuity payable monthly during the residue of [her] natural [life]. The payment of pension starts after the expiration of the five year period as provided for under Section 3 of RA 910, the retirement law of the Members of the Judiciary, thus:

Section 3. Upon retirement a Justice of the Supreme Court or of the Court of Appeals shall be automatically entitled to a lump sum payment of the monthly salary that said Justice was receiving at the time of his retirement for five years, **and thereafter upon survival after the expiration of this period of five years, to a further annuity payable monthly during the residue of his natural life** equivalent to the amount of the monthly salary he was receiving on the date of his retirement. (Emphasis theirs).

In our jurisdiction, the legal precept is against double pension. The rule in construing or applying pension and gratuity laws is that, in the absence of express provision to the contrary, they will be so interpreted as to prevent any person from receiving double compensation x x x.

There must be a provision, clear and unequivocal, to justify a double pension. x x x It is therefore, incumbent upon x x x Ms. Ocampo to show that they are exempt from this general rule.

The provision of second paragraph of Section 8 of Article IX-B of the Constitution which states "Pensions or gratuities shall not be considered as additional, double, or indirect compensation[,]" may not be invoked. This provision simply means that a retiree receiving pension or gratuity can continue to receive such pension or gratuity even if he accepts another government position to which compensation is attached x x x.

WHEREFORE, premises considered, the herein request for lifting of NS. No. 2002-001-101 (2002) is hereby DENIED.<sup>[10]</sup>

On motion for reconsideration of Ocampo, the COA LAO-N issued ND No. 2003-021 dated 3 September 2003 affirming NS No. 2002-001-101 disallowing Ocampo's receipt of a second retirement gratuity under Executive Order No. 172.

On appeal, COA, in Decision No. 2008-017 dated 15 February 2008, partially affirmed ND No. 2003-021 and allowed Ocampo's receipt of a pro- rated retirement gratuity based on her salary as Chairperson of the ERB:

WHEREFORE, in view of the foregoing, this Commission affirms in part the disallowance, under ND No. 2003-021 dated September 03, 2003, and rules that [Ocampo] is entitled to a pro-rata retirement gratuity, conformably to her years in service as Chairman of ERB which is, two years, eleven months and twenty days. In accordance with the computation prepared by the Office of the Supervising Auditor, Energy Regulatory Board hereto attached as Annex A and made an integral part hereof, of the total amount of P4,138,086.71, inclusive of gratuities and pensions, received by Ms. Ocampo only P2,688,636.23 is allowable. In fine, this Commission affirms the disallowance up to the amount of P1,449,450.48.

Accordingly, the monthly pension that [Ocampo] should receive shall only correspond to one monthly pension based on the computation of her last retirement benefit.

The Auditor concerned is hereby ordered to require the adjustment in the books of accounts of the agency as regards the payment of the first lump sum gratuity.<sup>[11]</sup>

In its Decision No. 2009-038 dated 1 June 2009, COA denied Ocampo's motion for reconsideration and affirmed the disallowance of the amount of P1,449,450.48 and of the double monthly for Ocampo.

Hence, this petition for *certiorari* alleging grave abuse of discretion by the COA.