

## EN BANC

[ G.R. No. 191890, December 04, 2012 ]

**EVALYN I. FETALINO AND AMADO M. CALDERON, PETITIONERS,  
MANUEL A. BARCELONA, JR., PETITIONER-INTERVENOR, VS.  
COMMISSION ELECTIONS, ON RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

Before us is a Petition for *Certiorari*, Mandamus and Prohibition with Application for Writ of Preliminary Injunction and/or Temporary Restraining Order,<sup>[1]</sup> seeking to nullify and enjoin the implementation of Commission on Elections (*Comelec*) Resolution No. 8808 issued on March 30, 2010.<sup>[2]</sup> Republic Act (R.A.) No. 1568, as amended,<sup>[3]</sup> extends a five-year lump sum gratuity to the chairman or any member of the Comelec upon *retirement*, after completion of the term of office; *incapacity*; *death*; and *resignation* after reaching 60 years of age but before expiration of the term of office. The Comelec *en banc* determined that former Comelec Commissioners Evalyn I. Fetalino<sup>[4]</sup> and Amado M. Calderon<sup>[5]</sup> (*petitioners*) - whose *ad interim* appointments were not acted upon by the Commission on Appointments (CA) and, who were subsequently, not reappointed — are not entitled to the five-year lump sum gratuity because they did not complete in full the seven-year term of office.

#### The Antecedent Facts

On February 10, 1998, President Fidel V. Ramos extended an interim appointment to the petitioners as Comelec Commissioners, each for a term of seven (7) years, pursuant to Section 2, Article IX-D of the 1987 Constitution.<sup>[6]</sup> Eleven days later (or on February 21, 1998), Pres. Ramos renewed the petitioners' *ad interim* appointments for the same position. Congress, however, adjourned in May 1998 before the CA could act on their appointments. The constitutional ban on presidential appointments later took effect and the petitioners were no longer reappointed as Comelec Commissioners.<sup>[7]</sup> Thus, the petitioners **merely served as Comelec Commissioners for more than four months, or from February 16, 1998 to June 30, 1998.**<sup>[8]</sup>

Subsequently, on March 15, 2005, the petitioners applied for their retirement benefits and monthly pension with the Comelec, pursuant to R.A. No. 1568.<sup>[9]</sup> The Comelec initially approved the petitioners' claims pursuant to its Resolution No. 06-1369<sup>[10]</sup> dated December 11, 2006 whose dispositive portion reads:

[T]he Commission RESOLVED, as it hereby RESOLVES, to approve the recommendation of Director Alioden D. Dalaig, Law Department, to grant

the request of former Comelec Commissioners Evalyn Fetalino and Amado Calderon for the payment of their retirement benefits, subject to release of funds for the purpose by the Department of Budget and Management.<sup>[11]</sup>

On February 6, 2007, the Comelec issued Resolution No. 07-0202 granting the petitioners a pro-rated gratuity and pension.<sup>[12]</sup> Subsequently, on October 5, 2007, the petitioners asked for a re-computation of their retirement pay on the principal ground that R.A. No. 1568,<sup>[13]</sup> does not cover a pro-rated computation of retirement pay. In response, the Comelec issued a resolution referring the matter to its Finance Services Department for comment and recommendation.<sup>[14]</sup> On July 14, 2009, the Comelec issued another resolution referring the same matter to its Law Department for study and recommendation.<sup>[15]</sup>

In the presently assailed Resolution No. 8808<sup>[16]</sup> dated March 30, 2010, the Comelec, on the basis of the Law Department's study, completely disapproved the petitioners' claim for a lump sum benefit under R.A. No. 1568. The Comelec reasoned out that:

Of these four (4) modes by which the Chairman or a Commissioner shall be entitled to lump sum benefit, only the first instance (completion of term) is pertinent to the issue we have formulated above. It is clear that the ***non-confirmation and non-renewal of appointment*** is not a case of resignation or incapacity or death. The question rather is: Can it be considered as retirement from service for having completed one's term of office?

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The full term of the Chairman and the Commissioners is seven (7) years. When there has been a partial service, what remains is called the "unexpired term." The partial service is usually called tenure. There is no doubt in the distinction between a term and tenure. Tenure is necessarily variable while term is always fixed. When the law, in this case, RA 1568 refers to completion of term of office, it can only mean finishing up to the end of the seven year term. By completion of term, the law could not have meant partial service or a variable tenure that does not reach the end. It could not have meant, the "expiration of term" of the Commissioner whose appointment lapses by reason of non-confirmation of appointment by the Commission on Appointments and non-renewal thereof by the President. It is rightly called expiration of term but note: it is not completion of term. RA 1568 requires 'having completed his term of office' for the Commissioner to be entitled to the benefits.

Therefore, one whose ad interim appointment expires cannot be said to have completed his term of office so as to fall under the provisions of Section 1 of RA 1568 that would entitle him to a lump sum benefit of five (5) years salary.<sup>[17]</sup> (emphasis, italics and underscores ours)

On this basis, the Comelec ruled on the matter, as follows:

Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to APPROVE and ADOPT the study of the Law Department on the payment of retirement benefits to members of the Commission.

Consequently, the following former Chairman and Commissioners of this Commission whose appointments expired by reason of non- approval by Commission on Appointments and non-renewal by the President **are not entitled to a lump sum benefit under Republic Act 1528** (sic):

| Name                     | Position     | Date of Service                  |
|--------------------------|--------------|----------------------------------|
| 1. Alfredo Benipayo, Jr. | Chairman     | Feb. 16, 2001 to June 5, 2002    |
| 2. Evalyn Fetalino       | Commissioner | Feb. 16, 1998 to June 30, 1998   |
| 3. Amado Calderon        | Commissioner | Feb. 16, 1998 to June 30, 1998   |
| 4. Virgilio Garcilano    | Commissioner | Feb. 12, 2004 to June 10, 2005   |
| 5. Manuel Barcelona, Jr. | Commissioner | Feb. 12, 2004 to June 10, 2005   |
| 6. Moslemen Macarambon   | Commissioner | Nov[.] 05, 2007 to Oct. 10, 2008 |
| 7. Leonardo Leonida      | Commissioner | July 03, 2008 to June 26, 2009   |

This resolution shall also apply to all requests of former COMELEC Chairmen and Commissioners similarly situated. All previous resolutions which are inconsistent herewith are hereby AMENDED or REVOKED accordingly.

Let the Finance Services and Personnel Departments implement this resolution.<sup>[18]</sup> (emphasis ours)

### **The Petitions**

The petitioners sought the nullification of Comelec Resolution No. 8808 *via* a petition for *certiorari* under Rule 65 of the Rules of Court. Petitioner-intervenor Manuel A. Barcelona, Jr. later joined the petitioners in questioning the assailed resolution. Like the petitioners, Barcelona did not complete the full seven-year term as Comelec Commissioner since he served only from February 12, 2004 to July 10, 2005. The petitioners and Barcelona commonly argue that:

(1) the non-renewal of their *ad interim* appointments by the CA until Congress already adjourned qualifies as *retirement* under the law and entitles them to the full five-year lump sum gratuity;

(2) Resolution No. 06-1369 that initially granted the five-year lump sum gratuity is

already final and executory and cannot be modified by the Comelec; and

(3) they now have a vested right over the full retirement benefits provided by RA No. 1568 in view of the finality of Resolution No. 06-1369.<sup>[19]</sup>

In the main, both the petitioners and Barcelona pray for a liberal interpretation of Section 1 of R.A. No. 1568. They submit that the involuntary termination of their *ad interim* appointments as Comelec Commissioners should be deemed by this Court as a retirement from the service. Barcelona, in support of his plea for liberal construction, specifically cites the case of *Ortiz v. COMELEC*.<sup>[20]</sup> The Court ruled in this cited case that equity and justice demand that the involuntary curtailment of Mario D. Ortiz's term be deemed a completion of his term of office so that he should be considered retired from the service.

In addition, the petitioners also bewail the lack of notice and hearing in the issuance of Comelec Resolution No. 8808. Barcelona also assails the discontinuance of his monthly pension on the basis of the assailed Comelec issuance.<sup>[21]</sup>

### **The Case for the Respondents**

On July 22, 2010, the Comelec filed its Comment<sup>[22]</sup> through the Office of the Solicitor General. The Comelec prays for the dismissal of the petition on the grounds outlined below:

*First*, it submits that the petitioners' reliance on Section 13, Rule 18 of the Comelec Rules of Procedure to show that Resolution No. 06-1369 has attained finality is misplaced as this resolution is not the final decision contemplated by the Rules. It also argues that estoppel does not lie against the Comelec since the erroneous application and enforcement of the law by public officers do not estop the Government from making a subsequent correction of its errors.<sup>[23]</sup>

*Second*, the Comelec reiterates that the petitioners are not entitled to the lump sum gratuity, considering that they cannot be considered as officials who retired after completing their term of office. It emphasizes that R.A. No. 1568 refers to the completion of the term of office, not to partial service or to a variable tenure that does not reach its end, as in the case of the petitioners. The Comelec also draws the Court's attention to the case of *Matibag v. Benipayo*<sup>[24]</sup> where the Court categorically ruled that an *ad interim* appointment that lapsed by inaction of the Commission on Appointments does not constitute a term of office.<sup>[25]</sup>

*Third*, it argues that the petitioners do not have any vested right on their retirement benefits considering that the retirements benefits afforded by R.A. No. 1568 are purely gratuitous in nature; they are not similar to pension plans where employee participation is mandatory so that they acquire vested rights in the pension as part of their compensation. Without such vested rights, the Comelec concludes that the petitioners were not deprived of their property without due process of law.<sup>[26]</sup>

### **The Court's Ruling**

**We DISMISS the petition and DENY Barcelona's petition for intervention.**

## ***Preliminary Considerations***

R.A. No. 1568 provides two types of retirement benefits for a Comelec Chairperson or Member: a *gratuity* or five-year lump sum, and an *annuity* or a lifetime monthly pension.<sup>[27]</sup> Our review of the petitions, in particular, Barcelona's petition for intervention, indicates that he merely questions the discontinuance of his monthly pension on the basis of Comelec Resolution No. 8808.<sup>[28]</sup> As the assailed resolution, by its plain terms (cited above), only pertains to the lump sum benefit afforded by R.A. No. 1568, it appears that Barcelona's petition for intervention is misdirected. We note, too, that Barcelona has not substantiated his bare claim that the Comelec discontinued the payment of his monthly pension on the basis of the assailed Resolution.

To put the case in its proper perspective, the task now before us is to determine whether the petitioners are entitled to the full five-year lump sum gratuity provided for by R.A. No. 1568. We conclude under our discussion below that they are not so entitled as they did not comply with the conditions required by law.

### ***The petitioners are not entitled to the lump sum gratuity under Section 1 of R.A. No. 1568, as amended***

That the petitioners failed to meet conditions of the applicable retirement law — Section 1 of R.A. No. 1568<sup>[29]</sup> — is beyond dispute. The law provides:

Sec. 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 or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of his term of office, 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, incapacity, death or resignation, as the case may be: Provided, That in case of resignation, he has rendered not less than twenty years of service in the government; 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 he was receiving on the date of retirement, incapacity or resignation. [italics supplied]

To be entitled to the five-year lump sum gratuity under Section 1 of R.A. No. 1568, any of the following events must transpire:

- (1) **Retirement from the service for having completed the term of office;**
- (2) Incapacity to discharge the duties of their office; (3) Death while in the service; and
- (4) Resignation after reaching the age of sixty (60) years but before the expiration