

EN BANC

[A.M. No. P-95-1167, February 09, 2010]

**CARMELITA LLEDO, COMPLAINANT, VS. ATTY. CESAR V. LLEDO,
BRANCH CLERK OF COURT, REGIONAL TRIAL COURT, BRANCH
94, QUEZON CITY, RESPONDENT.**

R E S O L U T I O N

NACHURA, J.:

May a government employee, dismissed from the service for cause, be allowed to recover the personal contributions he paid to the Government Service Insurance System (GSIS)?

This is the question that confronts this Court in the instant case, the factual antecedents of which are as follows:

On December 21, 1998, this Court promulgated a Decision^[1] in the above-captioned case, dismissing from the service Atty. Cesar V. Lledo, former branch clerk of court of the Regional Trial Court of Quezon City, Branch 94. Cesar's wife, Carmelita, had filed an administrative case against him, charging the latter with immorality, abandonment, and conduct unbecoming a public official.

During the investigation, it was established that Cesar had left his family to live with another woman with whom he also begot children. He failed to provide support for his family. The investigating judge recommended Cesar's dismissal from the service. The Office of the Court Administrator (OCA) adopted the recommendation.

The Court, in its December 21, 1998 Decision, disposed of the case in this wise:

WHEREFORE, Cesar V. Lledo, branch clerk of court of RTC, Branch 94, Quezon City, is hereby **DISMISSED** from the service, with forfeiture of all retirement benefits and leave credits and with prejudice to reemployment in any branch or instrumentality of the government, including any government-owned or controlled corporation. This case is **REFERRED** to the IBP Board of Governors pursuant to Section 1 of Rule 139-B of the Rules of Court.

SO ORDERED.^[2]

In a letter^[3] dated January 15, 1999, Carmelita and her children wrote to then Chief Justice Hilario G. Davide, Jr., begging for humane consideration and asking that part of the money due Cesar be applied to the payment of the arrearages of their amortized house and lot then facing foreclosure by the GSIS. They averred that

Cesar's abandonment had been painful enough; and to lose their home of 26 years would be even more painful and traumatic for the children.

The Court directed the OCA to comment. The OCA recommended that the Court's December 21, 1998 Decision be reconsidered insofar as the forfeiture of Cesar's leave credits was concerned, underscoring, however, that said benefits would only be released to Carmelita and her children.^[4]

In a Resolution dated August 3, 1999,^[5] the Court resolved to deny the motion for reconsideration for lack of merit.

On April 3, 2006, Cesar L. Lledo, Jr., Cesar's son, wrote a letter^[6] to then Chief Justice Artemio V. Panganiban. He related that his father had been bedridden after suffering a severe stroke and acute renal failure. He had been abandoned by his mistress and had been under Cesar Jr.'s care since 2001. The latter appealed to the Court to reconsider its December 21, 1998 Decision, specifically the forfeiture of leave credits, which money would be used to pay for his father's medical expenses. Cesar Jr. asked the Court for retroactive application of the Court's ruling subsequent to his father's dismissal, wherein the Court ruled that despite being dismissed from the service, government employees are entitled to the monetary equivalent of their leave credits since these were earned prior to dismissal.

Treating the letter as a motion for reconsideration, the Court, on May 3, 2006, granted the same, specifically on the forfeiture of accrued leave credits.^[7]

Cesar Jr. wrote the Court again on November 27, 2006, expressing his gratitude for the Court's consideration of his request for his father's leave credits. He again asked for judicial clemency in connection with his father's claim for refund of the latter's personal contributions to GSIS.^[8]

The Court directed the GSIS to comment, within 10 days from notice, on Cesar Jr.'s letter.^[9] For failing to file the required Comment, the Court, in a Resolution dated December 11, 2007,^[10] required the GSIS to show cause why it should not be held in contempt for failure to comply with the Resolution directing it to file its Comment. The Court reiterated its December 11, 2007 Resolution on June 17, 2008, and directed compliance.

In a letter^[11] dated April 16, 2009, Jason C. Teng, Regional Manager of the GSIS Quezon City Regional Office, explained that a request for a refund of retirement premiums is disallowed. He explained:

The rate of contribution for both government and personal shares of retirement premiums was actuarially computed to allow the GSIS to generate enough investment returns to be able to pay off future claims. During actuarial computation, the expected demographics considered the percentages of different types of future claims (and non-claims). As such, if those that were expected to have no future claim (e.g. those with forfeited retirement benefits) were suddenly allowed to receive claims for

payment of benefits, this would have a negative impact on the financial viability of the GSIS.

Even as the Court noted the letter in its June 30, 2009 Resolution,^[12] it further required the Board of Directors of the GSIS (GSIS Board) to file a separate Comment within 10 days from notice.

In its Comment,^[13] the GSIS Board said that Cesar is not entitled to the refund of his personal contributions of the retirement premiums because "it is the policy of the GSIS that an employee/member who had been dismissed from the service with forfeiture of retirement benefits cannot recover the retirement premiums he has paid unless the dismissal provides otherwise." The GSIS Board pointed out that the Court's Decision did not provide that Cesar is entitled to a refund of his retirement premiums.

There is no gainsaying that dismissal from the service carries with it the forfeiture of retirement benefits. Under the Uniform Rules in Administrative Cases in the Civil Service, it is provided that:^[14]

Section 58. Administrative Disabilities Inherent in Certain Penalties.

a. The penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

However, in the instant case, Cesar Jr. seeks only the return of his father's personal contributions to the GSIS. He is not claiming any of the benefits that Cesar would have been entitled to had he not been dismissed from the service, such as retirement benefits.

To determine the propriety of Cesar Jr.'s request, a reexamination of the laws governing the GSIS is in order.

The GSIS was created in 1936 by Commonwealth Act No. 186. It was intended to "promote the efficiency and welfare of the employees of the Government of the Philippines" and to replace the pension systems in existence at that time.^[15]

Section 9 of Commonwealth Act No. 186 states:

Section 9. Effect of dismissal or separation from service. -- **Upon dismissal for cause of a member of the System, the benefits under his membership policy shall be automatically forfeited to the System, except one-half of the cash or surrender value, which amount shall be paid to such member, or in case of death, to his beneficiary.** In other cases of separation before maturity of a policy, the Government contributions shall cease, and the insured member shall have the following options: (a) to collect the cash surrender value of the

policy; or (b) to continue the policy by paying the full premiums thereof; or (c) to obtain a paid up or extended term insurance in such amount or period, respectively, as the paid premiums may warrant, in accordance with the conditions contained in said policy; o[r] (d) to avail himself of such other options as may be provided in the policy.^[16]

In 1951, Commonwealth Act No. 186 was amended by Republic Act (R.A.) No. 660. R.A. No. 660 amended Sections 2(a), (d), and (f); 4; 5; 6; 7; 8; 10; 11; 12; 13; 14; 15; and 16 of Commonwealth Act No. 186. R.A. No. 660 likewise added new provisions to the earlier law, one of which reads:

Section 8. The following new sections are hereby inserted in Commonwealth Act Numbered One hundred and eighty-six:

II. -- Retirement Insurance Benefit

"Section 11. (a) Amount of annuity. -- Upon retirement a member shall be automatically entitled to a life annuity payable monthly for at least five years and thereafter as long as he live. (sic) The amount of the monthly annuity at the age of fifty-seven years shall be twenty pesos, plus, for each year of service rendered after the approval of this Act, one and six-tenths per centum of the average monthly salary received by him during the last five years of service, plus, for each year of service rendered prior to the approval of this Act, if said service was at least seven years, one and two-tenths per centum of said average monthly salary: Provided, That this amount shall be adjusted actuarially if retirement be at an age other than fifty-seven years: Provided, further, That the maximum amount of monthly annuity at age fifty-seven shall not in any case exceed two-thirds of said average monthly salary or five hundred pesos, whichever is the smaller amount: And provided, finally, That retirement benefit shall be paid not earlier than one year after the approval of this Act. In lieu of this annuity, he may prior to his retirement elect one of the following equivalent benefits:

"(1) Monthly annuity during his lifetime;

"(2) Monthly annuity during the joint-lives of the employee and his wife or other designated beneficiary, which annuity, however, shall be reduced upon the death of either to one-half and be paid to the survivor;

"(3) For those who are at least sixty-five years of age, lump sum payment of present value of annuity for first five years and future annuity to be paid monthly; or

"(4) Such other benefit as may be approved by the System.

"(b) Survivors benefit. -- Upon death before he becomes eligible for retirement, his beneficiaries as recorded in the application of retirement

annuity filed with the System shall be paid his own premiums with interest of three per centum per annum, compounded monthly. If on his death he is eligible for retirement, then the automatic retirement annuity or the annuity chosen by him previously shall be paid accordingly.

"(c) Disability benefit. -- If he becomes permanently and totally disabled and his services are no longer desirable, he shall be discharged and paid his own contributions with interest of three per centum per annum, compounded monthly, if he has served less than five years; if he has served at least five years but less than fifteen years, he shall be paid also the corresponding employer's premiums, without interest, described in subsection (a) of section five hereof; and if he has served at least fifteen years he shall be retired and be entitled to the benefit provided under subsection (a) of this section.

"(d) Upon dismissal for cause or on voluntary separation, he shall be entitled only to his own premiums and voluntary deposits, if any, plus interest of three per centum per annum, compounded monthly."^[17]

Thus, Section 11(d) of R.A. No. 660 should be deemed to have amended Commonwealth Act No. 186.

In 1977, then President Ferdinand Marcos issued Presidential Decree (P.D.) No. 1146, an act "Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment thereof under Commonwealth Act No. 186, as amended, and for other purposes."

Section 4 of P.D. No. 1146 reads:

Section 4. *Effect of Separation from the Service.* A member shall continue to be a member, notwithstanding his separation from the service and, unless the terms of his separation provide otherwise, he shall be entitled to whatever benefits which shall have accrued or been earned at the time of his separation in the event of any contingency compensable under this Act.

There is no provision in P.D. No. 1146 dealing specifically with GSIS members dismissed from the service for cause, or their entitlement to the premiums they have paid.

Subsequently, R.A. No. 8291 was enacted in 1997, and it provides:

Section 1. Presidential Decree No. 1146, as amended, otherwise known as the "Revised Government Service Insurance Act of 1977", is hereby amended to read as follows:

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