

EN BANC

[A. M. No. 07-6-10-SC, July 23, 2008]

RE: REQUEST OF CHIEF JUSTICE ANDRES R. NARVASA (RET.) FOR RE-COMPUTATION OF HIS CREDITABLE GOVERNMENT SERVICE.

R E S O L U T I O N

CARPIO MORALES, J.:

By letter dated March 10, 2008, Chief Justice (CJ) Andres R. Narvasa (Ret.) thanked the Court for its Resolution of January 15, 2008 approving his entitlement to monthly pension and directing the Fiscal Management and Budget Office (FMBO) to immediately determine the value of the 142 days leave that he was required to reimburse to the Court to pave the way for the payment of his monthly pensions starting December 1, 2003. He informed the Court that he received payment of his accumulated monthly pensions, Special Allowance for the Judiciary (SAJ), and monthly annuities with SAJ components on February 16, 2008.

The retired CJ, assisted by Justice Bernardo P. Pardo (Ret.), however, comes before this Court anew, this time to request the re-computation of his retirement benefits based on a Basic Monthly Salary (BMS) that includes the step increments he claims to have accrued in his favor as provided for in the Salary Standardization Law, Republic Act No. 6758.^[1] His letter contains his own computations of his monthly pension and SAJ since December 1, 2003 as well as the money value of the 142 leave credits he was required to reimburse. In all, his computations show a total deficiency of P224,198.74, the amount allegedly still due him as of February 29, 2008.

The Court, by Resolution of March 25, 2008,^[2] noted the letter of the retired CJ and referred his request for comment within 30 days from notice to the Deputy Clerk of Court and FMBO Chief Atty. Corazon Ferrer-Flores (Flores) or FMBO Chief.

By Comment dated May 28, 2008, ^[3] Flores stresses at the outset that the FMBO based the computation of the retired CJ's monthly pension on the January 30, 2008 memorandum of the Office of the Administrative Services (OAS) which keeps track of the creditable services of Supreme Court officials and employees and furnishes the necessary supporting documents for the preparation of the vouchers for the payment of retirement benefits.

Regarding the monetary value of the 142 leave credits that the retired CJ was required to reimburse, Flores clarifies that the correct amount is P386,963.61 as computed by the retired CJ, and not P393,752.45 which was deducted from his accumulated monthly pensions following the OAS' computation. The difference of P6,788.84 has thus to be reimbursed to him, she says.

Flores points out that in computing the total monetary value of the retired CJ's leave credits which he was asked to reimburse, the OAS factored the Personnel Emergency Relief Allowance (PERA) and the additional compensation (ADCOM), apparently in accordance with the Court's Resolution of February 29, 2000 in A.M. No. 99-8-05-SC^[4] holding that the same be included in the computation of retirement benefits and terminal leave pay of justices and judges. The monetary value of the leave credits actually received by the CJ did not, however, include the PERA and ADCOM in the computation thereof.

Regarding the retired CJ's entitlement to step increments,^[5] Flores refers to the provisions of applicable laws and this Court's resolutions, *viz*:

1. Section 13 (c) of R.A. No. 6758 or the SSL, that "effective January 1, 1990, step increments shall be granted based on merit and/or length of service in accordance with rules and regulations that will be promulgated jointly by the DBM and the Civil Service Commission."
2. CSC and DBM Joint Circular No. 1, s. 1996, as amended by Joint CSC and DBM Circular No. 2 series of 1991 dated July 5, 1991.

Section 1 of the aforementioned circular, as amended, makes the rules and regulations applicable to all officials and employees in the national and local governments x x x who are appointed on a permanent status in the career and non-career service. Section 2 meanwhile provides the grant of step increments to all deserving officials and employees based, among other criteria, on the rendition of "continuous service in a particular position for at least three (3) years." Section 3 further provides that a one (1) step increment shall be granted for every 3 years of continuous satisfactory service in the position.

3. Resolution of January 25, 2000 in A.M. No. 99-12-01-SC, which granted justices and judges "increment through length of service, in addition to their longevity pay, subject to the condition that payments of increments shall include only those that have accrued effective January 1999 and subject further to availability of funds."
4. Resolution dated May 28, 2002, in A.M. No. 02-5-06-SC, which approved the formula for computing the longevity pay (LP) and step increments (SI) of justices and judges of lower courts, as follows:

"(1) x x x

(2) The proper step increments that have accrued from 1 January 1990 until 1 January 1999 shall be paid starting from the latter date provided that there shall be no back pay for step increments that accrued from 1 January 1990 to 31 December 1998, as the difference between salary actually received and the earned step increments during the period shall be deemed waived and forfeited."

As the service record of the retired CJ shows that he served as Chief Justice from December 8, 1991 to November 29, 1998, Flores emphasizes that he had earned step increments equivalent to three (3) steps during the said period. The non-crediting of these step increments, she opines, may have been due to the interpretation by the OAS of the Court's Resolutions dated January 25, 2000 and May 28, 2002 that the step increments apply only to incumbent justices and judges as of January 1999.

Flores states, however, that January 1, 1999 was set in the aforementioned Court Resolutions only for the purpose of reckoning the payments for step increments without precluding incumbent justices and judges who had rendered service from January 1, 1990 to January 1, 1999 from earning step increments. This interpretation is more in accord with the liberality of retirement laws, she adds.

Flores thus submits that the monthly pension of the retired CJ should have been computed on the basis of the basic monthly salary of a Chief Justice at SG 32, Step 3, of P48,539. This amount, she points out, is the basis of the re-computation by the OAS^[6] of the monthly pension of the retired CJ, which also shows the adjustment of the Representation and Traveling Allowance (RATA)^[7] and the ADCOM.^[8]

Flores reports that a total of P243,409.90 is still due the retired CJ for his accumulated monthly pensions (including the SAJ component thereof) beginning December 1, 2003 up to February 29, 2008. Together with the P6,788.84 which he overpaid, the retired CJ is entitled to a total of P250,198.74, she says.

Flores further recommends that the corresponding adjustments be made on the monthly pension of the former CJ to reflect the 10% salary increase authorized by Executive Order (E.O.) No. 611 and the corresponding deduction from the monthly SAJ component in accordance with the resolution of the Court dated March 31, 2008 in A.M. No. 07-8-3-SC. This adjustment, she says, is also in consonance with Section 3-A of Republic Act (R.A.) No. 910, as amended:

Sec. 3-A. In case the salary of Justices of the Supreme Court or the Court of Appeals is increased or decreased, such increased or decreased salary shall, for the purpose of this Act, be deemed to be the salary or the retirement pension which a Justice who as of June twelve, nineteen hundred fifty-four had ceased to be such to accept another position in the Government or who retired was receiving at the time of his cessation in the office: Provided, That any benefits that have already accrued prior to such increase or decrease shall not be affected thereby.

The Court finds the comments of the FMBO chief well taken.

The inclusion by the OAS of both the PERA and the ADCOM in the computation of the monetary value of the 142 days leave credits that the retired CJ was required to reimburse to the Court may have indeed been prompted by the Court's Resolution of February 29, 2000 in A.M. No. 99-8-05-SC declaring that the PERA and the ADCOM must be included in the computation of retirement benefits and terminal leave pay of justices and judges, viz:

Republic Act 8250 (GAA for CY 1997) granted PERA to all government employees and officials as a replacement of the [Cost of Living Allowance} COLA. Effective January 1, 1999, ADCOM was granted pursuant to RA 8745. **Both PERA and ADCOM are financial benefits given to augment the take-home pay of government employees in view of the increasing cost of living. Both financial benefits are part of compensation embraced in the term "living" allowance provided under Republic Act No. 910, as amended.** In the Borromeo case,^[9] we included COLA in the computation of retirement benefits because COLA was part of the basic salary, thereby recognizing that COLA must be part of the retirement package. **Both PERA and ADCOM are part of the compensation of government employees, including members of the judiciary.** x x x . (Emphasis and underscoring supplied)

As reflected earlier, however, the terminal leave pay received by the retired CJ did not include the PERA and ADCOM in the computation thereof. The computer printout of his Voucher^[10] for Terminal Leave shows that the commutation of the money value of his terminal leave with pay as Chief Justice was based on the following: (a) monthly salary of P40,000; (b) LP of P4,000; and (c) RATA at P13,000 from November 30, 1998 to December 3, 2001.

Early on in *Borromeo v. Civil Service Commission*,^[11] this Court held that RATA and COLA (now the PERA) should be included in the highest monthly salary in computing the terminal leave pay of the therein petitioner, retired chairperson of the Civil Service Commission. The Court ruled:

A different law, R.A. 910 as amended, governs the petitioner. In the case of members of the Judiciary and Constitutional Commissions, the basis in computing the retirement gratuity is the highest monthly aggregate of transportation, living and representation allowance (COLA and RATA). x x x.

x x x x.

Since terminal leave pay may also be considered a gratuity, then applying the rule on liberal interpretation of retirement laws, the basis for its computation in the case of members of the Judiciary and Constitutional Commissions must be the same as that used in computing the 5-year lump sum gratuity under RA 910 as amended and Administrative Order No. 444.^[12]

Borromeo, however, held that the inclusion of COLA and RATA in the computation of terminal leave pay applied only to "those qualified members of the Judiciary and Constitutional Commissions who retired or shall retire on or after the change of government in February, 1986."^[13]

Clearly then, the retired CJ's terminal leave pay must be computed with the PERA and ADCOM components. As such, the P6,788.84 that the FMBO chief recommends to be refunded to former CJ Narvasa should not be considered an overpayment but, more appropriately, a deficiency payment or differential between the amount actually due him as terminal leave pay (P393,752.45) and the amount actually

received by him (P386,963.618).

As to the inclusion of the step increments claimed by the retired CJ, the FMBO likewise correctly points out that his pension starting December 1, 2003 should be recomputed based on the total BMS of an incumbent CJ at SG 32, Step 3.

It may be recalled that by Resolution of January 25, 2000 in A.M. No. 99-12-01-SB, ^[14] the Court "grant[ed] justices and judges increment through length of service, in addition to their longevity pay, subject to the condition that payments of increments should include only those that have accrued effective January 1999 and subject further to availability of funds."

Further to the computation of the LP and step increments of judges of the lower courts, the Court in A.M. No. 02-5-06-SC^[15] resolved to approve the formula recommended by the Chief Attorney for computing the LP^[16] and step increments of lower court judges, as follows:

(1) Longevity pay shall be computed as follows:

(a) For the first five-year period, by multiplying the basic monthly salary **including** step increments and salary increases, by five percent (5%) x x x;

(b) For the second five-year period, by multiplying the basic monthly salary **including** step increments, salary increases and the earned longevity pay, by five percent (5%) x x x.

x x x x.

2) **The proper step increments that have accrued from 1 January 1990 until 1 January 1999** shall be paid starting from the latter date **provided that there shall be no back pay for step increments that accrued from 1 January 1990 to 31 December 1998**, as the difference between salary actually received and the earned step increments during that period shall be deemed waived and forfeited. (Emphasis and underscoring supplied)

The foregoing recognized that step increments accrued from January 1, 1990 to January 1, 1998 although the same could not be the subject of back pay. It cannot be gainsaid, however, that the step increments already earned should form part of the BMS of the government officials or employees concerned at the time of their compulsory retirement for the purpose of computing retirement gratuity and monthly pension.

The Court, by Resolution of February 24, 2004 in A.M. No. 03-12-04-SC, has clarified that the BMS under Section 2^[17] of R.A. No. 9227 is the "actual basic monthly salary of Justices and Judges, **including step increments and longevity pay**." Insofar as the inclusion of step increments is concerned, the Court held:

1. **Section 2 of Republic Act No. 9227 provides that "basic monthly salary" shall be that which is in accordance with the basic monthly salary specified for the respective salary**