

## EN BANC

[ G.R. No. 125982, January 22, 1999 ]

### GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. COMMISSION ON AUDIT AND MARIANO C. GABORNE, RESPONDENTS

### DECISION

#### PARDO, J.:

The case before the Court is a special civil action of certiorari seeking to review the decision of the Commission on Audit that affirmed the ruling of Corporate Auditor Mariano C. Gaborne disallowing in audit the payment of death benefits in the amount of P43,107.19, to the heirs of the late Brig. General Arturo T. Asuncion, who died on November 16, 1987, in a helicopter crash, for the reason that a reserve officer like him of the Armed Forces of the Philippines was not at that time a compulsory member of the Government Service Insurance System.

The facts may be succinctly related as follows:

In November 1936, Congress enacted Commonwealth Act No. 186, creating the Government Service Insurance System (hereafter GSIS) to provide insurance coverage and retirement benefits to government officials and employees, replacing the existing pension systems established in prior laws.

Section 4 of Com. Act No. 186 provided that:

"Sec. 4. Scope of application of System.- Regular membership in the system shall be compulsory upon -

x x x

"(d) All officers and enlisted men of the Regular Force, Philippine Army;"

The original act has undergone various amendments that increased its coverage and the insurance benefits granted to members of the System.

On December 2, 1986, President Corazon C. Aquino, exercising legislative powers enacted Executive Order No. 79, Section 1 (c) of which provides:

"Sec. 1 (c). A reserve officer who has satisfactorily rendered a total of ten (10) years continuous active commissioned military service shall not be reverted to inactive status, except upon his own request or for cause, up to the time he reaches the compulsory retirement of thirty (30) years of service or fifty six (56) years of age, whichever comes later but not later than sixty (60) years of age."

On November 16, 1987, Brig. General Arturo T. Asuncion met his untimely death in a helicopter crash.

On December 11, 1987, the board of trustees of the GSIS in resolution No. 566, approved the compulsory insurance coverage of reserve officers of the Armed Forces of the Philippines (hereafter AFP) falling under the provisions of Executive Order No. 79.

In time, the heirs of the late General Asuncion filed a claim with the GSIS for payment of death benefits due to him as a member of the System.

On January 12, 1987, GSIS Deputy General Counsel Meynardo A. Tiro gave an opinion that "Reserve Officers with ten (10) years of continuous service have now the same status as regular members of the AFP under Executive Order No. 79 of President Aquino and are therefore, entitled to the same insurance coverage and benefits as regular officers of the AFP."<sup>[1]</sup>

On September 4, 1990, Melanio D. Fabia, vice-president, Legal Services Group, GSIS, also gave an opinion that compulsory coverage of reserve officers AFP took effect on December 23, 1986, the day following E. O. 79's publication in the Official Gazette.<sup>[2]</sup>

On the basis of the aforesaid legal opinion, on January 4, 1991, the GSIS Quezon City Branch (military) paid the claim of the heirs of Brig. General Asuncion.

In the course of audit of the account, Auditor Mariano C. Gaborne, then corporate auditor's office officer in charge, GSIS, disallowed in audit the payment of the claim, pointing out that at the time of his death, General Asuncion was not a member of the GSIS despite E. O. 79.

The Manager, GSIS, Quezon City Branch I (Military) elevated the case on appeal to the Commission on Audit en banc.

On January 24, 1995, the Commission on Audit (en banc) denied the appeal and affirmed the decision of the local auditor.

On August 5, 1996, the Legal Services Group of the GSIS received copy of the COA decision duly transmitted by letter dated July 26, 1996 of Assistant Commissioner Sofronio L. Flores of the Commission on Audit.

Hence, this petition for certiorari. We grant the petition.

The disallowance of the payment of death benefits to the heirs of the late Brig. General Arturo T. Asuncion was based on the ruling that he was not a member of the GSIS at the time of his death on November 15, 1987, in a helicopter crash. According to auditor Gaborne, Executive Order No. 79, dated December 2, 1986, was effective only on its implementation by resolution (No. 566) of the GSIS board of trustees adopted on December 11, 1987, which was after the death of Gen. Asuncion.

We do not agree. The aforesaid executive order provides for compulsory