

EN BANC

[A.M. No. 9777-Ret, August 26, 1999]

REQUEST OF CLERK OF COURT TESSIE L. GATMAITAN, COURT OF APPEALS, FOR PAYMENT OF RETIREMENT BENEFITS OF HON. COURT OF APPEALS ASSOCIATE JUSTICE JORGE S. IMPERIAL (ACTING PRESIDING JUSTICE), BASED ON THE SALARY AND ALLOWANCES OF A PRESIDING JUSTICE.

RESOLUTION

PURISIMA, J.:

At bar is a question of utmost importance not only to retired Associate Justice Jorge S. Imperial of the Court of Appeals but to the entire Court of Appeals, the second highest Court of this Republic, as well.

On January 25, 1999, Atty. Tessie L. Gatmaitan, Clerk of Court of the Court of Appeals, addressed the following letter to the Honorable Chief Justice, to wit:

"This letter refers to the forthcoming retirement of February 4, 1999 of Acting Presiding Justice Jorge S. Imperial.

Upon the promotion of Justice Arturo B. Buena to the Supreme Court on January 5, 1999, the most senior Associate Justice Jorge S. Imperial assumed the position of Acting Presiding Justice of this Court, by operation of law, pursuant to Section 8-a, Rule 1 of the Revised Internal Rules of the Court of Appeals which provides:

"Sec. 8. Application of the Rule on Precedence. - The rule on precedence shall be observed and applied in the following instances:

a. In case of vacancy in the office of the Presiding Justice or in the event of his absence or inability to perform the powers, functions and duties of his office, the Associate Justice who is first in precedence shall perform his powers, functions, and duties until such disability is removed or another Presiding Justice is appointed and has qualified."

Consequently, Acting Presiding Justice Imperial now receives the salary and allowance of the Presiding Justice.

Moreover, Sec. 3, Presidential Decree 1438 amending R.A. 910 as amended by R.A. 5095 states that upon retirement, a justice of the Court of Appeals `xxx shall be automatically entitled to a lump sum of five years gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, living and representation allowances he was receiving on the date of his retirement xxx.'

Considering the foregoing, advice is therefore respectfully requested on the propriety/validity of computing Justice Imperial's compulsory retirement benefits based on the salary and allowances of a Presiding Justice.

xxx"

On February 1, 1999, there was received by the Court from Court Administrator Alfredo L. Benipayo a memorandum for the Chief Justice, recommending that the aforesaid request of Atty. Tessie L. Gatmaitan on the "propriety/validity of computing the compulsory retirement benefits of Justice Jorge S. Imperial on the basis of the salary and allowances of a Presiding Justice", be denied.

In the same memorandum, the Court Administrator quoted in part Section 9 of Executive Order No. 964 dated June 22, 1984, thus:

"Section 9 - HIGHEST BASIC SALARY RATE

The compensation of salary or pay which may be used in computing retirement benefits shall be limited to the highest basic salary rate actually received by an official/employee as fixed by law and/or indicated in his duly approved appointment xxx."

and Section 259 of Government Auditing Rules and Regulations which reads:

"Section 259. Retirement - Government employees holding two or more positions retire only from his regular or main position and not from his additional position or positions and consequently, the salaries attached to the additional positions will not be included in the computation of the gratuity or annuity of the employee (CSC MC 40, s. 1989)."

After a careful study, it is submitted that the provisions of law cited by the Court Administrator are not applicable to the case under consideration.

To begin with, it is undisputed that on January 5, 1999, upon the promotion of the then Acting Presiding Justice Arturo B. Buena to this Court, Justice Imperial became the Acting Presiding Justice of the Court of Appeals, performed the duties and received the salary of Presiding Justice of the Court of Appeals, pursuant to Section 5 of BP Blg. 129 otherwise known as The Judiciary Reorganization Act of 1980, and Section 8(a), Rule 1 of the Revised Internal Rules of the Court of Appeals (RIRCA).

Section 5 of BP 129 reads:

"Sec. 5. Succession to Office of Presiding Justice. - In case of a vacancy in the Office of the Presiding Justice or in the event of his absence or inability to perform the powers, functions, and duties of his office, the Associate Justice who is first in precedence shall perform his powers, functions, and duties until such disability is removed, or another Presiding Justice is appointed and has qualified."

Section 8 (a) of the RIRCA provides: