

TWENTIETH DIVISION

[CA-G.R. CV. No. 03478, March 28, 2014]

ANITA DELEÑA, PETITIONER-APPELLANT, VS GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), RESPONDENT-APPELLEE.

DECISION

LAGURA-YAP, J.:

The present appeal seeks to nullify the July 14, 2010 Decision^[1], issued by Regional Trial Court, Branch 14, Cebu City (RTC-Branch 14) in Civil Case No. OS-08-145 for Declaratory Relief and Mandamus with TRO/Preliminary Injunction.

THE ANTECEDENTS

On May 17, 2001, the Office of the Ombudsman - Visayas (Ombudsman) issued a *Decision* dated February 23, 2001,^[2] finding appellant guilty of dishonesty, in an administrative case entitled, "Commission on Audit v. Deleña, et al.," docketed as OMB-VIS-ADM-98-0609. The dispositive portion of the decision reads:

WHEREFORE, finding the respondents guilty of dishonesty, the penalty of dismissal from service with forfeiture of all benefits is hereby imposed.

Appellant filed a motion for reconsideration.^[3]

On May 12, 2002, appellant retired^[4] as Municipal Treasurer of Oslob, Cebu.^[5] She received from the appellee GSIS, the amount of P739,171.80, representing her 5-year lump sum retirement benefit under RA 8291.^[6]

On July 10, 2002, the Ombudsman issued the *Order* dated March 4, 2002,^[7] denying appellant's motion for reconsideration to the February 23, 2001 Decision. Its dispositive portion states:

WHEREFORE, finding respondents' Motion for Reconsideration insufficient to modify and/or reverse the Decision of this office dated February 23, 2001, the same is hereby DENIED.

Appellant did not appeal the decision and order of the Ombudsman.^[8]

Meanwhile, on March 8, 2004, the Regional Trial Court, Branch 62, Oslob, Cebu (RTC-Branch 62), in a criminal case^[9] involving the same acts committed as those in the administrative case, issued the Decision,^[10] acquitting appellant of the crime charged, the dispositive portion thereof reads:

WHEREFORE, for want of criminal intent or gross negligence on the part of the accused persons, judgment is hereby rendered acquitting both

accused of the crime charged.

x x x

On August 28, 2007, the GSIS, received a written protest against appellant's claim for retirement benefit and was informed of appellant's case before the Ombudsman for which she was meted the penalty of dismissal from service with forfeiture of benefits.^[11] Consequently, the GSIS suspended the payment of appellant's monthly pension and sent to appellant several demand letters dated December 13, 2007,^[12] and January 28, 2008,^[13] requiring her to refund the P739,171.80, plus interest representing the five-year lump sum retirement benefits she received under RA 8291.^[14]

On February 5, 2008, appellant wrote a letter^[15] essentially saying that because she has been acquitted in the criminal case she cannot be compelled to return the benefits she already received.

On February 7, 2008, the GSIS reiterated its demand^[16] for refund contending that it is based not in the criminal but the administrative case, where appellant was dismissed from service with forfeiture of benefits.

On February 26, 2008, appellant filed the instant case,^[17] seeking to stop the GSIS from making demands for a refund and to compel it to pay her monthly pension.

On March 14, 2008, the GSIS filed its *Answer with Counterclaim*,^[18] praying among others, that appellant should be ordered to refund the P739,171.80.

On July 14, 2010, the RTC-Branch 14 issued the assailed Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is rendered in favor of respondent GSIS DISMISSING the petition for lack of cause of action and petitioner's failure to exhaust administrative remedies in violation of the principle of primary jurisdiction; and ordering petitioner to refund to the GSIS the amount of SEVEN HUNDRED THIRTY-NINE THOUSAND, ONE HUNDRED SEVEN(TY)-ONE PESOS and 80/100 (PHP739,171.80) with TWELVE PERCENTUM (12%) PER ANNUM INTEREST.

Petitioner is also ordered to pay the costs of these proceedings.

SO ORDERED.

Hence, this appeal.^[19]

ISSUES

- I. WHETHER AN ACTION FOR DECLARATORY RELIEF AND MANDAMUS IS PROPER IN THE PRESENT CASE;
- II. WHETHER THERE IS LACK OF CAUSE OF ACTION FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES UNDER THE PRINCIPLE OF PRIMARY

JURISDICTION;

III. III. WHETHER THE DECISION OF THE RTC-Branch 62 IN CRIMINAL CASE NOS. OS-01-185 AND OS-01-186 ENTITLED "*PEOPLE V. ANITA DELENA, ET AL.*," SHOULD BE GIVEN PROBATIVE VALUE IN THE JUDGMENT OF THE PRESENT CASE;

IV. WHETHER APPELLANT IS BOUND TO REFUND APPELLEE P739,171.80 REPRESENTING HER FIVE-YEAR LUMP SUM RETIREMENT BENEFIT UNDER RA 8291 IN VIEW OF HER RETIREMENT ON MAY 12, 2002;

V. WHETHER APPELLANT IS STILL ENTITLED TO HER MONTHLY PENSION BENEFITS UNDER RA 8291.

In dismissing the instant case, the RTC-Branch 14 ruled among others, that the final order of the Ombudsman cannot be the subject of an action for declaratory relief because only a deed, will, contract or other written instruments may be a subject thereof.

Appellant, however, says that she filed the instant action for declaratory relief not to seek the reversal of the ruling of the Ombudsman but to establish her rights under RA 8291 in view of the conflicting findings of the Ombudsman in the administrative case and the RTC-Branch 62 in the criminal case. Moreover, she says that the action for declaratory relief was coupled with an action for mandamus which is within the jurisdiction of the RTC-Branch 14.

This latter court also dismissed the instant case, ruling that appellant should have first brought the matter before the GSIS, under the doctrine of exhaustion of administrative remedies, as it has exclusive jurisdiction over the application and interpretation of RA 8291. The appellant contends otherwise, arguing that the issue involves a pure legal question, which is an exception to the above doctrine.

Appellant likewise insists that RTC-Branch 14 should have given the criminal case probative value. Citing the case of *Larin v. Executive Secretary*,^[20] she stresses that since she was acquitted in the criminal case, the separate and independent administrative case arising out of the same act should be adjudged without basis.

Finally, appellant argues that RTC-Branch 14 committed serious error in directing her to refund the lump sum she received. She asserts that retirements benefits due to her are exempt from legal processes, including the decision of the Ombudsman.

In its comment, the GSIS points out that appellant's brief did not contain a subject index, thus, this Court should dismiss this case, citing *Mendoza v. United Coconut Planters Bank, Inc.*^[21] Likewise the GSIS said that the dismissal of this case is inevitable because the decision of the Ombudsman cannot be a subject of a petition for declaratory relief, especially since it has attained finality. Appellant should have interposed an appeal if she felt aggrieved by it.

In addition, the GSIS also argues that the acquittal in the criminal case does not carry with it relief from administrative liability, and in the absence of a declaration from a higher court, the decisions of the Ombudsman remains valid and binding. Considering that the forfeiture of benefits in the administrative case was not