

EN BANC

[G.R. No. 116422, November 04, 1996]

**AVELINA B. CONTE AND LETICIA BOISER-PALMA, PETITIONERS,
VS. COMMISSION ON AUDIT (COA), RESPONDENT.**

DECISION

PANGANIBAN, J.:

Are the benefits provided for under Social Security System Resolution No. 56 to be considered simply as "financial assistance" for retiring employees, or does such scheme constitute a supplementary retirement plan proscribed by Republic Act No. 4968?

The foregoing question is addressed by this Court in resolving the instant petition for certiorari which seeks to reverse and set aside Decision No. 94-126^[1] dated March 15, 1994 of respondent Commission on Audit, which denied petitioners' request for reconsideration of its adverse ruling disapproving claims for financial assistance under SSS Resolution No. 56.

The Facts

Petitioners Avelina B. Conte and Leticia Boiser-Palma were former employees of the Social Security System (SSS) who retired from government service on May 9, 1990 and September 13, 1992, respectively. They availed of compulsory retirement benefits under Republic Act No. 660.^[2]

In addition to retirement benefits provided under R.A. 660, petitioners also claimed SSS "financial assistance" benefits granted under SSS Resolution No. 56, series of 1971.

A brief historical backgrounder is in order. SSS Resolution No. 56,^[3] approved on January 21, 1971, provides financial incentive and inducement to SSS employees qualified to retire to avail of retirement benefits under RA 660 as amended, rather than the retirement benefits under RA 1616 as amended, by giving them "financial assistance" equivalent in amount to the difference between what a retiree would have received under RA 1616, less what he was entitled to under RA 660. The said SSS Resolution No. 56 states:

"RESOLUTION NO. 56

WHEREAS, the retirement benefits of SSS employees are provided for under Republic Acts 660 and 1616 as amended;

WHEREAS, SSS employees who are qualified for compulsory retirement at age 65 or for optional retirement at a lower age are entitled to either

the life annuity under R.A. 660, as amended, or the gratuity under R.A. 1616, as amended;

WHEREAS, a retirement benefit to be effective must be a periodic income as close as possible to the monthly income that would have been due to the retiree during the remaining years of his life were he still employed;

WHEREAS, the life annuity under R.A. 660, as amended, being closer to the monthly income that was lost on account of old age than the gratuity under R.A. 1616, as amended, would best serve the interest of the retiree;

WHEREAS, it is the policy of the Social Security Commission to promote and to protect the interest of all SSS employees, with a view to providing for their well-being during both their working and retirement years;

WHEREAS, the availment of life annuities built up by premiums paid on behalf of SSS employees during their working years would mean more savings to the SSS;

WHEREAS, it is a duty of the Social Security Commission to effect savings in every possible way for economical and efficient operations;

WHEREAS, it is the right of every SSS employee to choose freely and voluntarily the benefit he is entitled to solely for his own benefit and for the benefit of his family;

NOW, THEREFORE, BE IT RESOLVED, That all the SSS employees who are simultaneously qualified for compulsory retirement at age 65 or for optional retirement at a lower age be encouraged to avail for themselves the life annuity under R.A. 660, as amended;

RESOLVED, FURTHER, That SSS employees who availed themselves of the said life annuity, in appreciation and recognition of their long and faithful service, be granted financial assistance equivalent to the gratuity plus return of contributions under R.A. 1616, as amended, less the five year guaranteed annuity under R.A. 660, as amended;

RESOLVED, FINALLY, That the Administrator be authorized to act on all applications for retirement submitted by SSS employees and subject to availability of funds, pay the corresponding benefits in addition to the money value of all accumulated leaves." (underscoring supplied)

Long after the promulgation of SSS Resolution No. 56, respondent Commission on Audit (COA) issued a ruling, captioned as "3rd Indorsement" dated July 10, 1989,^[4] disallowing in audit "all such claims for financial assistance under SSS Resolution No. 56", for the reason that: --

"x x x the scheme of financial assistance authorized by the SSS is similar to those separate retirement plan or incentive/separation pay plans adopted by other government corporate agencies which results in the increase of benefits beyond what is allowed under existing retirement

laws. In this regard, attention x x x is invited to the view expressed by the Secretary of Budget and Management dated February 17, 1988 to the COA General Counsel against the proliferation of retirement plans which, in COA Decision No. 591 dated August 31, 1988, was concurred in by this Commission. x x x.

Accordingly, all such claims for financial assistance under SSS Resolution No. 56 dated January 21, 1971 should be disallowed in audit." (underscoring supplied)

Despite the aforequoted ruling of respondent COA, then SSS Administrator Jose L. Cuisia, Jr. nevertheless wrote^[5] on February 12, 1990 then Executive Secretary Catalino Macaraig, Jr., seeking "presidential authority for SSS to continue implementing its Resolution No. 56 dated January 21, 1971 granting financial assistance to its qualified retiring employees".

However, in a letter-reply dated May 28, 1990,^[6] then Executive Secretary Macaraig advised Administrator Cuisia that the Office of the President "is not inclined to favorably act on the herein request, let alone overrule the disallowance by COA" of such claims, because, aside from the fact that decisions, order or actions of the COA in the exercise of its audit functions are appealable to the Supreme Court^[7] pursuant to Sec. 50 of PD 1445, the benefits under said Res. 56, though referred to as 'financial assistance', constituted additional retirement benefits, and **the scheme partook of the nature of a supplementary pension/retirement plan proscribed by law.**

The law referred to above is RA 4968 (The Teves Retirement Law), which took effect June 17, 1967 and amended CA 186 (otherwise known as the Government Service Insurance Act, or the GSIS Charter), making Sec. 28 (b) of the latter act read as follows:

"(b) Hereafter, no insurance or retirement plan for officers or employees shall be created by employer. All supplementary retirement or pension plans heretofore in force in any government office, agency or instrumentality or corporation owned or controlled by the government, are hereby declared inoperative or abolished; Provided, That the rights of those who are already eligible to retire thereunder shall not be affected." (underscoring supplied)

On January 12, 1993, herein petitioners filed with respondent COA their "letter-appeal/protest"^[8] seeking reconsideration of COA's ruling of July 10, 1989 disallowing claims for financial assistance under Res. 56.

On November 15, 1993, petitioner Conte sought payment from SSS of the benefits under Res. 56. On December 9, 1993, SSS Administrator Renato C. Valencia denied^[9] the request in consonance with the previous disallowance by respondent COA, but assured petitioner that should the COA change its position, the SSS will resume the grant of benefits under said Res. 56.

On March 15, 1994, respondent COA rendered its COA Decision No. 94-126 denying petitioners' request for reconsideration.

Thus this petition for certiorari under Rule 65 of the Rules of Court.

The Issues

The issues^[10] submitted by petitioners may be simplified and re-stated thus: Did public respondent abuse its discretion when it disallowed in audit petitioners' claims for benefits under SSS Res. 56?

Petitioners argue that the financial assistance under Res. 56 is not a retirement plan prohibited by RA 4968, and that Res. 56 provides benefits different from and "aside from" what a retiring SSS employee would be entitled to under RA 660. Petitioners contend that it "is a social amelioration and economic upliftment measure undertaken not only for the benefit of the SSS but more so for the welfare of its qualified retiring employees." As such, it "should be interpreted in a manner that would give the x x x most advantage to the recipient -- the retiring employees whose dedicated, loyal, lengthy and faithful service to the agency of government is recognized and amply rewarded -- the rationale for the financial assistance plan." Petitioners reiterate the argument in their letter dated January 12, 1993 to COA that:

"Motivation can be in the form of financial assistance, during their stay in the service or upon retirement, as in the SSS Financial Assistance Plan. This is so, because Government has to have some attractive remuneration programs to encourage well-qualified personnel to pursue a career in the government service, rather than in the private sector or in foreign countries ...'

A more developmental view of the financial institutions' grant of certain forms of financial assistance to its personnel, we believe, would enable government administrators to see these financial forms of remuneration as contributory to the national developmental efforts for effective and efficient administration of the personnel programs in different institutions."^[11]

The Court's Ruling

Petitioners' contentions are not supported by law. We hold that Res. 56 constitutes a supplementary retirement plan.

A cursory examination of the preambular clauses and provisions of Res. 56 provides a number of clear indications that its financial assistance plan constitutes a supplemental retirement/pension benefits plan. In particular, the fifth preambular clause which provides that "it is the policy of the Social Security Commission to promote and to protect the interest of all SSS employees, with a view to *providing for their well-being during both their working and retirement years*", and the wording of the resolution itself which states "Resolved, further, that SSS employees who availed themselves of the said life annuity (under RA 660), *in appreciation and recognition of their long and faithful service*, be granted financial assistance x x x" can only be interpreted to mean that the benefit being granted is none other than a kind of amelioration to enable the retiring employee to enjoy (or survive) his retirement years and a reward for his loyalty and service. Moreover, it is plain to see that the grant of said financial assistance is **inextricably linked with and**

inseparable from the application for and approval of retirement benefits under RA 660, i.e., that availment of said financial assistance under Res. 56 may not be done independently of but only in conjunction with the availment of retirement benefits under RA 660, and that the former is in augmentation or supplementation of the latter benefits.

Likewise, then SSS Administrator Cuisia's historical overview of the origins and purpose of Res. 56 is very instructive and sheds much light on the controversy:^[12]

"Resolution No. 56, x x x, applies where a retiring SSS employee is qualified to claim under either RA 660 (pension benefit, that is, 5 year lump sum pension and after 5 years, life time pension), or RA 1616 (gratuity benefit plus return of contribution), at his option. The benefits under RA 660 are entirely payable by GSIS while those under RA 1616 are entirely shouldered by SSS except the return of contribution by GSIS.

Resolution No. 56 came about upon observation that qualified SSS employees have invariably opted to retire under RA 1616 instead of RA 660 because the total benefit under the former is much greater than the 5-year lump sum under the latter. As a consequence, the SSS usually ended up virtually paying the entire retirement benefit, instead of GSIS which is the main insurance carrier for government employees. Hence, the situation has become so expensive for SSS that a study of the problem became inevitable.

As a result of the study and upon the recommendation of its Actuary, the SSS Management recommended to the Social Security Commission that retiring employees who are qualified to claim under either RA 660 or 1616 should be 'encouraged' to avail for themselves the life annuity under RA 660, as amended, with the SSS providing a 'financial assistance' equivalent to the difference between the benefit under RA 1616 (gratuity plus return of contribution) and the 5-year lump sum pension under RA 660.

The Social Security Commission, as the policy-making body of the SSS approved the recommendation in line with its mandate to 'insure the efficient, honest and economical administration of the provisions and purposes of this Act.' (Section 3 (c) of the Social Security Law).

Necessarily, the situation was reversed with qualified SSS employees opting to retire under RA No. 660 or RA 1146 instead of RA 1616, resulting in substantial savings for the SSS despite its having to pay 'financial assistance.'

Until Resolution No. 56 was questioned by COA." (underscoring part of original text; italics ours)

Although such financial assistance package may have been instituted for noble, altruistic purposes as well as from self-interest and a desire to cut costs on the part of the SSS, nevertheless, it is beyond any dispute that such package effectively constitutes a supplementary retirement plan. The fact that it was designed to equalize the benefits receivable from RA 1616 with those payable under RA 660 and