

## SECOND DIVISION

[ G.R. No. 230953, June 20, 2018 ]

**GOVERNMENT SERVICE INSURANCE SYSTEM BOARD OF TRUSTEES AND CRISTINA V. ASTUDILLO, PETITIONERS, VS. THE HON. COURT OF APPEALS - CEBU CITY AND FORMER JUDGE MA. LORNA P. DEMONTEVERDE, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

This is a petition for *certiorari* filed under Rule 65 of the Rules of Court seeking the review and nullification of the Resolutions of the Court of Appeals (CA) dated February 17, 2016<sup>[1]</sup> and February 16, 2017<sup>[2]</sup> in CA-G.R. SP No. 08362, for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts are as follows:

Private respondent, retired Judge Ma. Lorna P. Demonteverde (*Demonteverde*) started her service in the government on July 1, 1963 with the National Electrification Administration (*NEA*) until her resignation on February 15, 1967.<sup>[3]</sup> She then transferred to the Development Bank of the Philippines (*DBP*) - Bacolod and served until December 31, 1986. On January 29, 1987, she transferred to the Public Attorney's Office (*PAO*) where she served until June 29, 1995. All in all, Demonteverde served in the said government agencies for a total of 32 years, from 1963 to 1995.

On June 30, 1995, Demonteverde joined the Judiciary as Presiding Judge of the Municipal Trial Court in Cities (*MTCC*) of Bacolod City until her retirement on February 22, 2011.

In a letter dated July 28, 1995, Demonteverde requested from the Government Service Insurance System (*GSIS*) a refund of the retirement premiums she paid under Presidential Decree (*P.D.*) No. 1146<sup>[4]</sup> and Republic Act (*R.A.*) No. 660<sup>[5]</sup> in excess of the retirement premiums that she should pay under R.A. No. 910, as amended, the law on retirement benefits for Judges and Justices applicable to her when she joined the Judiciary on June 30, 1995.

However, instead of issuing a refund only of the excess of the contributions paid, the *GSIS*, on August 23, 1995, refunded to Demonteverde the amount of P16,836.60 representing her retirement premiums, or her total personal share with interest, under R.A. No. 660.

On February 11, 2011, Demonteverde filed with the Supreme Court her retirement application under R.A. No. 910,<sup>[6]</sup> as amended, for her service in the Judiciary from

June 30, 1995 until her retirement on February 22, 2011.

On March 3, 2011, Demonte Verde likewise filed an application with the GSIS for retirement benefits under R.A. No. 8291<sup>[7]</sup> covering her government service outside of the Judiciary from July 1, 1963 until June 29, 1995.

In a letter dated October 14, 2011, the manager of the GSIS Bacolod informed Demonte Verde that the retirement laws covering her service in the government from July 1, 1963 to June 29, 1995 were P.D. No. 1146,<sup>[8]</sup> R.A. No. 660, and R.A. No. 1616. The GSIS thus returned the application of Demonte Verde so that she may choose from the modes of retirement enumerated.

On November 28, 2011, Demonte Verde wrote a letter to the GSIS requesting a re-evaluation of her application for retirement under R.A. No. 8291.

Demonte Verde's request was referred to the GSIS Committee on Claims (COC) for evaluation, and on May 18, 2012, GSIS Bacolod informed her of the COC's issuance of Resolution No. 021-2012 denying her request to retire under R.A. No. 8291. Demonte Verde then appealed the COC's Resolution to the GSIS Board of Trustees (GSIS BOT).

Given the issues raised in Demonte Verde's case, the GSIS inquired with both the PAO and the Supreme Court as to whether Demonte Verde received gratuity benefits and if her entire government service was covered in her retirement under R.A. No. 910, respectively.

In response to the inquiry, the PAO replied that Demonte Verde did not apply for nor receive gratuity benefits from the said agency when she transferred to the Judiciary in 1995.<sup>[9]</sup>

On the other hand, the Supreme Court, through the Office of the Court Administrator (OCA), advised the GSIS that pursuant to R.A. No. 910, as amended by R.A. No. 9946, and its implementing guidelines, judges who have rendered at least fifteen (15) years of service in the Judiciary or in any branch of the government, or both, and who retired compulsorily upon reaching the age of seventy (70) years, shall, upon retirement, be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary, plus the highest monthly Representation and Transportation Allowance and other allowances which they were receiving on the date of their retirement.<sup>[10]</sup>

The OCA confirmed that:

3. Judge Demonte Verde was able to meet the minimum fifteen (15) years government service required to be entitled to full pension benefits under Section 1 of R.A. No. 910, as amended, and thus, her services rendered outside of the Judiciary is no longer needed in the determination/computation of her retirement benefits under R.A. No. 910, as amended.<sup>[11]</sup>

The OCA likewise clarified that the monetary value of the accrued terminal leave benefits that Demonte Verde earned in her government service prior to joining the

Judiciary was already included by this Court in the payment of her retirement benefits under R.A. No. 910. The OCA added that this Court will request reimbursement from Demonteverde if the GSIS decides to grant retirement benefits.  
[12]

In a Decision dated October 10, 2013, the GSIS BOT granted Demonteverde's petition, to wit:

Wherefore, all the foregoing considered, the Petition is **GRANTED**. The Petitioner is allowed to retire under R.A. No. 8291 for her period of services outside the judiciary from 01 July 1963 to 29 June 1995. The payment of her benefits shall be reckoned from 22 February 2011, the date when her actual separation from service took place.

SO ORDERED.[13]

On December 12, 2013, Demonteverde filed a Motion for Execution<sup>[14]</sup> of the Decision of the GSIS BOT, stating therein that she received a notice of the October 14, 2013 Decision on November 11, 2013; that more than 15 days had elapsed since her receipt of the copy of the decision; and that the same had become final and executory and ripe for implementation.<sup>[15]</sup> Said Motion for Execution was granted by the GSIS BOT on even date.

However, on January 6, 2014, Demonteverde filed a Motion for Reconsideration (*Partial MR*) and Withdrawal of Motion for Execution<sup>[16]</sup> of the October 10, 2013 GSIS BOT Decision. She questioned the accrual date of her retirement benefits under R.A. No. 8291, arguing that the date of her retirement should be the date when she reached sixty (60) years of age, even when she was still in active government service at that time, and not on February 22, 2011, or the date of her actual retirement from government service. Demonteverde likewise denied receiving a copy of the GSIS BOT Decision, and denied that the later Notice of Decision dated November 19, 2013 contained a copy of the GSIS BOT Decision.

In its Resolution No. 12<sup>[17]</sup> dated February 13, 2014, the GSIS BOT denied Demonteverde's Partial MR and Withdrawal of Motion for Execution, for allegedly having been filed out of time.

Aggrieved, Demonteverde filed before the CA a Petition for Certiorari, Mandamus, and Prohibition under Rule 65 dated March 21, 2014, seeking to modify and set aside the October 10, 2013 Decision and Resolution No. 12 dated February 13, 2014 of the GSIS BOT.<sup>[18]</sup>

In a Resolution<sup>[19]</sup> dated June 19, 2014, the CA dismissed the said petition, ratiocinating that the course of action taken by Demonteverde was erroneous as the proper mode of appeal from a decision of a quasi-judicial agency such as the GSIS is by filing a verified petition for review with the CA under Rule 43. The appellate court added that a perusal of Demonteverde's petition showed procedural defects, to wit:

- a. Petitioner failed to incorporate therein a written explanation why the preferred personal mode of filing the petition under Section 11,

Rule 13 of the 1997 Rules of Court was not availed of.

- b. Petitioner failed to attach a clearly legible duplicate original or certified true copy of the assailed October 10, 2013 Decision, December 12, 2013 Order and February 13, 2014 Resolution of the GSIS, in violation of Section 3, Rule 46 of the 1997 Rules of Civil Procedure. While petitioner appended to the Petition copy of the assailed October 10, 2013 Decision and February 13, 2014 Resolution of the GSIS they were mere photocopies. The assailed December 12, 2013 Order of the Hearing Officer of the GSIS appears also to be a mere photocopy.
- c. Petitioner failed to properly verify the Petition in accordance with A.M. No. 00-2-10-SC amending Section 4, Rule 7 in relation to Section 1, Rule 65 of the 1997 Rules of Civil Procedure which now requires that a pleading must be verified by an affidavit that the affiant has read the pleading and the allegations therein are true and correct of his personal knowledge or based on authentic records. Petitioner did not to (*sic*) incorporate in the Verification and Certification of Non Forum Shopping the phrase "or based on authentic records."
- d. Petitioner failed to attach copies of all pleadings and documents, which are necessary for a thorough understanding and resolution of the instant Petition, such as, but not limited to, following:
  - 1. Petitioner's July 28, 1995 letter to the GSIS requesting for a refund of her retirement premiums.
  - 2. Petitioner's February 11, 2011 and March 3, 2011 applications for claim of retirement benefits field (*sic*) with the GSIS, Baco1od Branch.
  - 3. The October 14, 2011 letter of the GSIS' Bacolod Branch Manager, Ms. Vilma Fuentes.
  - 4. Petitioner's November 28, 2011 letter to the GSIS requesting for a re-evaluation of her application for retirement benefits.
  - 5. Petitioner's Petition filed with the GSIS [C]ommittee on Claims.
  - 6. The GSIS Committee on Claims' Answer to petitioner's Petition.
  - 7. The March 26, 2013 letter of the Public Attorney's Office (PAO Chief Administrative Officer. (*sic*)
  - 8. The July 23, 2013 and September 17, 2013 letters of the Office of the Court Administrator of the Supreme Court.

- e. The Notarial Certificate in the Verification and Certification of Non-Forum Shopping and in the Affidavit of Service did not contain the province or city where the notary public was commissioned, the office address of the notary public, in violation of Section 2(c) and (d), Rule VIII of the 2004 Rules on Notarial Practice.<sup>[20]</sup>

Upon Demonteverde's motion for reconsideration, the CA, in the assailed February 17, 2016 Resolution, reversed itself and reinstated Demonteverde's Petition. It agreed with Demonteverde that the case may be classified as an exception to the general rule that *certiorari* is not a substitute for a lost appeal under any of the following grounds: where appeal does not constitute a speedy and adequate remedy, and for certain special considerations, such as public welfare or public policy.<sup>[21]</sup> Thus:

**WHEREFORE**, the Court resolves to:

1. **GRANT** the Motion for Extension to file Comment and the Second Motion for Extension of Time to File Comment filed by respondent Government Service Insurance System (GSIS).
2. **ADMIT** the Comment and Opposition (To the Motion for Reconsideration of the Resolution dated June 19, 2014) filed by the GSIS.
3. **GRANT** the Motion for Reconsideration of petitioner and **SET ASIDE** the June 19, 2014 Resolution.
4. **REINSTATE** the instant petition and **DIRECT** respondents to **FILE** their **COMMENT** (not a Motion to Dismiss) to the petition within **TEN (10) days** from receipt of this Resolution. Petitioner is given five (5) days from receipt of Comment within which to file a Reply, if petitioner so desires.

**SO ORDERED.**<sup>[22]</sup>

GSIS BOT moved for reconsideration and filed an Opposition to the Petition, but the CA, in its February 16, 2017 Resolution, denied the said motion for reconsideration and directed the GSIS BOT to file its comment to Demonteverde's petition.

Hence, this petition for *certiorari*, with the GSIS BOT raising the issue of whether the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its February 17, 2016 Resolution reinstating Demonteverde's Petition for *Certiorari*, Prohibition, and Mandamus; and February 16, 2017 Resolution denying GSIS' Motion for Reconsideration of the February 17, 2016 Resolution. It alleges the following issues in support of its petition:

I.

THE ASSAILED GSIS BOT DECISION IS FINAL AND EXECUTORY AND NOT SUBJECT TO ANY MOTION FOR RECONSIDERATION OR APPEAL.

II.