

## THIRD DIVISION

[ G.R. No. 189649, April 20, 2015 ]

**ADORACION CAROLINO (SPOUSE AND IN SUBSTITUTION OF THE DECEASED JEREMIAS A. CAROLINO), PETITIONER, VS. GEN. GENEROSO SENG, AS CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES (AFP); BRIG. GEN. FERNANDO ZABAT, AS CHIEF OF THE AFP FINANCE CENTER; COMMO. REYNALDO BASILIO, AS CHIEF OF THE AFP-GHQ MANAGEMENT AND FISCAL OFFICE; AND COMMO. EMILIO MARAYAG, PENSION AND GRATUITY OFFICER, PENSION AND GRATUITY MANAGEMENT CENTER, AFP FINANCE CENTER, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before us is a petition for review under Rule 45 seeking to reverse and set aside the Decision<sup>[1]</sup> dated May 25, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 103502 and the Resolution<sup>[2]</sup> dated September 10, 2009 denying reconsideration thereof.

The factual and legal antecedents are as follows:

On December 1, 1976, Jeremias A. Carolino, petitioner's husband, retired<sup>[3]</sup> from the Armed Forces of the Philippines (AFP) with the rank of Colonel under General Order No. 1208 dated November 29, 1976, pursuant to the provisions of Sections 1(A) and 10 of Republic Act (RA) No. 340,<sup>[4]</sup> as amended. He started receiving his monthly retirement pay in the amount of P18,315.00 in December 1976 until the same was withheld by respondents in March 2005. On June 3, 2005, Jeremias wrote a letter<sup>[5]</sup> addressed to the AFP Chief of Staff asking for the reasons of the withholding of his retirement pay. In a letter reply,<sup>[6]</sup> Myrna F. Villaruz, LTC (FS) PA, Pension and Gratuity Officer of the AFP Finance Center, informed Jeremias that his loss of Filipino citizenship caused the deletion of his name in the alpha list of the AFP Pensioners' Payroll effective March 5, 2005; and that he could avail of re-entitlement to his retirement benefits and the restoration of his name in the AFP Pensioners' Masterlist Payroll by complying with the requirements prescribed under RA No. 9225, or the *Dual Citizenship Act*.

It appeared that the termination of Jeremias' pension was done pursuant to Disposition Form<sup>[7]</sup> dated October 29, 2004, which was approved by the Chief of Staff and made effective in January 2005. In the said Disposition Form, the AFP Judge Advocate General opined that under the provisions of Sections 4, 5, and 6 of RA No. 340, retired military personnel are disqualified from receiving pension benefits once incapable to render military service as a result of his having sworn allegiance to a foreign country. It was also mentioned that termination of retirement

benefits of pensioner of the AFP could be done pursuant to the provisions of Presidential Decree (PD) No. 1638<sup>[8]</sup> which provides that the name of a retiree who loses his Filipino citizenship shall be removed from the retired list and his retirement benefits terminated upon such loss. It being in consonance with the policy consideration that all retirement laws inconsistent with the provisions of PD No. 1638 are repealed and modified accordingly.

On August 24, 2006, Jeremias filed with the Regional Trial Court (RTC) of Quezon City, a Petition for Mandamus<sup>[9]</sup> against Gen. Generoso Senga, as Chief of Staff of the AFP, Brig. Gen. Fernando Zabat, as Chief of the AFP Finance Center, Comm. Reynaldo Basilio, as Chief of the AFP-GHQ Management and Fiscal Office, and Comm. Emilio Marayag, Pension and Gratuity Management Officer, Pension and Gratuity Management Center, AFP Finance Center, seeking reinstatement of his name in the list of the AFP retired officers, resumption of payment of his retirement benefits under RA No. 340, and the reimbursement of all his retirement pay and benefits which accrued from March 5, 2005 up to the time his name is reinstated and, thereafter, with claim for damages and attorney's fees. The case was docketed as Civil Case No. Q-06-58686, and raffled off to Branch 220.

On February 26, 2007, the RTC rendered its Decision<sup>[10]</sup> granting the petition for mandamus, the dispositive portion of which reads:

**WHEREFORE,** judgment is hereby rendered ordering General Hermogenes Esperon, Jr., as Chief of Staff of the AFP, Brigadier General Fernando Zabat, as the Commanding Officer of the AFP Finance Center, Commodore Reynaldo Basilio, as Chief of the AFP-GFIQ Management and Fiscal Office, and Captain Theresa M. Nicdao, as Pension and Gratuity Officer of the Pension and Gratuity Management Center, or any of their respective successors and those taking instructions from them as agents or subordinates, to:

- a. immediately reinstate the name of petitioner in the list of retired AFP Officers, and to resume payment of his retirement benefits under RA 340; and
- b. release to [petitioner] all retirement benefits due him under RA 340 which accrued to him from March 2005 continuously up to the time his name is reinstated in the list of AFP retired officers.<sup>[11]</sup>

The RTC found that the issue for resolution is the applicability of RA No. 340 and PD No. 1638 upon Jeremias' retirement benefits. It found that he retired as a commissioned officer of the AFP in 1976; thus, RANo. 340 is the law applicable in determining his entitlement to his retirement benefits and not PD No. 1638 which was issued only in 1979. Article 4 of the Civil Code provides that "laws shall have no retroactive effect unless the contrary is provided." PD No. 1638 does not provide for such retroactive application. Also, it could not have been the intendment of PD No. 1638 to deprive its loyal soldiers of a monthly pension during their old age especially where, as here, the right had been vested to them through time. RA No. 340 does not provide that the loss of Filipino citizenship would terminate one's retirement benefits; and that PD No. 1638 does not reduce whatever benefits that any person has already been receiving under existing law.

Respondents sought reconsideration,<sup>[12]</sup> but the RTC denied the same in an Order<sup>[13]</sup> dated May 25, 2007, the decretal portion of which reads:

**WHEREFORE,** premises considered, the instant Motion for Reconsideration is hereby **DENIED**, considering that the questioned decision has not yet attained its finality. The Motion for Execution in the meantime is hereby **DENIED**.<sup>[14]</sup>

Aggrieved, respondents elevated the case to the CA. After the submission of the parties' respective memoranda, the case was submitted for decision.

Jeremias died on September 30, 2007<sup>[15]</sup> and was substituted by his wife, herein petitioner.

On May 25, 2009, the CA granted respondents' appeal. The dispositive portion of the CA decision reads:

**WHEREFORE,** premises considered, the instant appeal is **GRANTED**.  
The appealed decision is **REVOKED** and **SET ASIDE**.<sup>[16]</sup>

In so ruling, the CA found that while it is true that Jeremias retired in 1976 under the provisions of RA No. 340, as amended, which does not contain any provision anent cessation or loss of retirement benefits upon acquiring another citizenship, PD No. 1638, which was signed in 1979, effectively repealed RA No. 340, as amended. Section 27 of PD No. 1638, which provides that the name of a retiree who loses his Filipino citizenship shall be removed from the retired list and his retirement benefits terminated upon such loss, was correctly made applicable to Jeremias' retirement benefits. Logic dictates that since Jeremias had already renounced his allegiance to the Philippines, he cannot now be compelled by the State to render active service and to render compulsory military service when the need arises. The CA found that for the writ of mandamus to lie, it is essential that Jeremias should have a clear legal right to the thing demanded and it must be the imperative duty of respondents to perform the act required which petitioner failed to show; thus, mandamus will not lie.

Petitioner's motion for reconsideration was denied in a Resolution dated September 10, 2009.

Hence, this petition raising the following:

RESPONDENT COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RENDERING THE ASSAILED DECISION AND RESOLUTION WHICH SET ASIDE AND REVERSED THE 26 FEBRUARY 2007 DECISION OF THE QC RTC BECAUSE:

PD 1638 should not have been applied and cannot be used against petitioner as her husband's retirement and pension were granted to him by the AFP under RA 340 which was not superseded by PD 1638, a later statute.

Petitioner correctly availed of the remedy of mandamus to

compel the reinstatement of his pension and benefits from the AFP under RA 340 as PD 1638 was not applicable to him.

Petitioner contends that her husband's retirement from the active service in 1976 was pursuant to the provisions of RA No. 340 as PD No. 1638 was not yet in existence then, and there was nothing in RA No. 340 that disqualifies a retired military personnel from receiving retirement benefits after acquiring foreign citizenship. The concept of retirement benefits is such that one is entitled to them for services already rendered and not for those to be made at a future time. Retirement benefits due petitioner's husband under RA No. 340, is an acquired right which cannot be taken away by a subsequent law. PD No. 1638 does not expressly provide for its retroactive application. Respondents, being officers of the AFP tasked to implement the provisions of RA No. 340 have neglected their function thereunder by delisting petitioner's husband as a retiree, thus, mandamus is proper.

In his Comment, the Solicitor General argues that PD No. 1638 applies to all military personnel in the service of the AFP whether active or retired; hence, it applies retroactively to petitioner's husband. Even when a retiree is no longer in the active service, his being a Filipino still makes him a part of the Citizen Armed Forces; that whether a military personnel retires under the provisions of RA No. 340 or under PD No. 1638, he is still in the service of the military and/or the State only that he is retired, thus, they should not be treated differently upon the loss of Filipino citizenship. He argues when there is an irreconcilable conflict between the two laws of different vintages, *i.e.*, RA No. 340 and PD No. 1638, the latter enactment prevails.

The Solicitor General argues that mandamus will not issue to enforce a right to compel compliance with a duty which is questionable or over which a substantial doubt exists. In this case, petitioner's husband does not have a well-defined, clear and certain legal right to continuously receive retirement benefits after becoming an American citizen. Likewise, the AFP does not have a clear and imperative duty to grant the said benefits considering that Section 27 of PD No. 1638 provides that the name of a retiree who loses his Filipino citizenship shall be removed from the retired list and his retirement benefits terminated upon such loss.

Petitioner filed her reply thereto. We find merit in the petition.

Petitioner's husband retired in 1976 under RA No. 340. He was already receiving his monthly retirement benefit in the amount of P18,315.00 since December 1976 until it was terminated in March 2005. Section 5, RA No. 340 provides:

Sec. 5. Officers and enlisted men placed in the retired list shall be subject to the rules and articles of war and to trial by court-martial for any breach thereof. At any time said officers and enlisted men may be called to active service by the President. Refusal on the part of any officer or enlisted man to perform such services shall terminate his right to further participation in the benefits of this Act provided he resides in the Philippines and is physically fit for service. Such fitness for service shall be determined by applicable regulations.

The afore-quoted provision clearly shows how a retiree's retirement benefits may be terminated, *i.e.*, when the retiree refuses to perform active service when called to do so provided that (1) the retiree resides in the Philippines and (2) is physically fit

for service. There is no other requirement found in the law which would be the reason for the termination of a retiree's retirement benefits. Petitioner's husband was never called to perform active service and refused to do so, however, his retirement benefit was terminated. The reason for such termination was his loss of Filipino citizenship based on Section 27 of PD No. 1638, to wit:

Section 27. Military personnel retired under Sections 4, 5, 10, 11 and 12 shall be carried in the retired list of the Armed Forces of the Philippines. The name of a retiree who loses his Filipino citizenship shall be removed from the retired list and his retirement benefits terminated upon such loss.

We find that the CA erred in applying PD No. 1638 to the retirement benefits of petitioner's husband.

*Firstly*, PD No. 1638 was signed by then President Ferdinand Marcos on September 10, 1979. Under Article 4 of the Civil Code, it is provided that laws shall have no retroactive effect, unless the contrary is provided. It is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions;<sup>[17]</sup> that all statutes are to be construed as having only prospective operation, unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used; and that every case of doubt must be resolved against retrospective effect.<sup>[18]</sup> These principles also apply to amendments of statutes.

PD No. 1638 does not contain any provision regarding its retroactive application, nor the same may be implied from its language. In fact, Section 36 of PD No. 1638 clearly provides that the decree shall take effect upon its approval. As held in *Parreno v. COA*,<sup>[19]</sup> there is no question that PD No. 1638, as amended, applies prospectively. Since PD No. 1638, as amended, is about the new system of retirement and separation from service of military personnel, it should apply to those who were in the service at the time of its approval.<sup>[20]</sup> Conversely, PD No. 1638 is not applicable to those who retired before its effectivity in 1979. The rule is familiar that after an act is amended, the original act continues to be in force with regard to all rights that had accrued prior to such amendment.<sup>[21]</sup>

Moreover, Section 27 of PD No. 1638 specifically provides for the retirees to whom the law shall be applied, to wit:

Section 27. **Military personnel retired under Sections 4, 5, 10, 11 and 12** shall be carried in the retired list of the Armed Forces of the Philippines. The name of a retiree who loses his Filipino citizenship shall be removed from the retired list and his retirement benefits terminated upon such loss, (emphasis supplied)

Notably, petitioner's husband did not retire under those above-enumerated Sections of PD No. 1638 as he retired under RA No. 340.

*Secondly*, it has been held that before a right to retirement benefits or pension vests in an employee, he must have met the stated conditions of eligibility with respect to the nature of employment, age, and length of service.<sup>[22]</sup> Undeniably, petitioner's