

## EN BANC

**[ A.M. No. 10-9-15-SC, February 12, 2013 ]**

**RE: REQUEST OF (RET.) CHIEF JUSTICE ARTEMIO V. PANGANIBAN FOR RE-COMPUTATION OF HIS CREDITABLE SERVICE FOR THE PURPOSE OF RE-COMPUTING HIS RETIREMENT BENEFITS.**

### R E S O L U T I O N

**PERLAS-BERNABE, J.:**

The Court is asked to pass upon the request of former Chief Justice Artemio V. Panganiban (CJ Panganiban) to include as creditable government service the period from January 1962 to December 1965 when he served the Department of Education (DepEd), its Secretary, and the Board of National Education (BNE) to enable him to meet the present service requirement of fifteen (15) years for entitlement to retirement benefits.

When CJ Panganiban reached the compulsory age of retirement on December 7, 2006, he was credited with eleven (11) years, one (1) month and twenty-seven (27) days or 11.15844 years of government service. The Office of Administrative Services (OAS) did not include in the computation his 4-year service as Legal Counsel to the DepEd and its then Secretary, Alejandro R. Roces (Former Education Secretary Roces), and as Consultant to the BNE in a concurrent capacity, from January 1962 to December 1965, on the ground that consultancy "is not considered government service pursuant to Rule XI (Contract of Services/Job Orders) of the Omnibus Rules Implementing Book V of Executive Order No. 292."<sup>[1]</sup> Having failed to meet the twenty (20) years length of service then required under Republic Act (R.A.) No. 910,<sup>[2]</sup> the OAS considered him eligible to receive only the 5-year lump sum payment under said law.

On January 10, 2010, then President Gloria Macapagal-Arroyo approved R.A. 9946,<sup>[3]</sup> which not only reduced the requisite length of service under R.A. 910 from twenty (20) years to fifteen (15) years to be entitled to the retirement benefits with lifetime annuity, but provided also for a survivorship clause, among others.

Thus, the instant letter-request of CJ Panganiban seeking a re-computation of his creditable government service to include the previously- excluded 4-year government service to enable him to meet the reduced service requirement of fifteen (15) years for entitlement to retirement benefits under R.A. 9946.

On December 14, 2010, the Court issued a Resolution<sup>[4]</sup> directing CJ Panganiban to submit additional documentary evidence to support his appointment as Legal Counsel to the DepEd and its Secretary and Consultant to the BNE. In compliance,

he submitted the January 19, 2011 Certifications<sup>[5]</sup> of Former Education Secretary Roces and Retired Justice Bernardo P. Pardo (Retired Justice Pardo) attesting to the fact of his tenure as Legal Counsel to the DepEd and its Secretary and Consultant to the BNE.

The Court finds merit in CJ Panganiban's request.

A careful perusal of the actual functions and responsibilities of CJ Panganiban as outlined in his compliance with attached Sworn Statements of Former Education Secretary Roces and Retired Justice Pardo reveal that he performed actual works and was assigned multifarious tasks necessary and desirable to the main purpose of the DepEd and the BNE.

Former Education Secretary Roces certified that:

[C]hief Justice Panganiban rendered actual services to the BNE and the Department [of Education] and to me in my official capacity as Secretary of Education for said period [from January 1962 to December 1965], having been officially appointed by me as then Secretary of Education and as Chairman of the Board of Education, he having been paid officially by the government a monthly compensation for rendering such services to the government specifically to the Department of Education and to the Board of National Education. He worked with the Office of the Solicitor General on legal matters affecting the Department and the Board, collaborating closely with then Solicitor Bernardo P. Pardo who was assigned by the Office of the Solicitor General to the Department of Education.

Apart from legal issues, he devoted time and attention to matters assigned to him by the Department or by the Board, like the development of educational policies, the selection and distribution of textbooks and other educational materials, the setting of school calendars, the procurement of equipment and supplies, management of state schools, etc.<sup>[6]</sup>

His services both as Legal Counsel to the DepEd and its Secretary and as Consultant to the BNE during the period 1962-1965 was corroborated by Retired Justice Pardo who, in his affidavit, certified that in his "capacity as Solicitor assigned by the Office of Solicitor General to the Department of Education and Board of National Education"<sup>[7]</sup> he and CJ Panganiban "collaborated in many cases representing both the Board of National Education and Department of Education, particularly then Secretary of Education Alejandro R. Roces, as well as in rendering legal opinions to such offices."<sup>[8]</sup>

CJ Panganiban performed work ranging from high level assignments involving policy development and implementation to the more humble tasks of selection and distribution of educational materials and setting of school calendars. He himself views his work, thus: "[u]nlike some present day consultants or counsels of government offices and officials, I rendered full and actual service to the Philippine government, working daily at an assigned desk near the Office of the Secretary of

Education throughout the full term of Secretary Alejandro R. Roces, January 1962 to December 1965.”<sup>[9]</sup>

Associate Justice Arturo D. Brion (Justice Brion) is not persuaded by the evidence. He holds the view that there must be an appointment to a position that is part of a government organizational structure before any work rendered can be considered government service.

Under the old Administrative Code (Act No. 2657),<sup>[10]</sup> a government “employee” includes any person in the service of the Government or any branch thereof of whatever grade or class. A government “officer,” on the other hand, refers to officials whose duties involve the exercise of discretion in the performance of the functions of government, **whether such duties are precisely defined or not.** Clearly, the law, then and now, did not require a specific job description and job specification. Thus, the absence of a specific position in a governmental structure is not a hindrance for the Court to give weight to CJ Panganiban’s government service as legal counsel and consultant. It must be remembered that retired Chief Justice Andres R. Narvasa’s (CJ Narvasa) stint in a non-plantilla position as Member of the Court Studies Committee of the Supreme Court, created under Administrative Order No. 164 of then Chief Justice Querube C. Makalintal, was considered sufficient for purposes of crediting him with an additional five (5) years of government service, reckoned from September 2, 1974 to 1979.<sup>[11]</sup>

In any case, having previously ruled to include as creditable government service the post-retirement work of Justice Abraham T. Sarmiento as **Special Legal Counsel** to the University of the Philippines System<sup>[12]</sup> and to credit former CJ Narvasa with the legal counselling work he did for the Agrava Fact-Finding Board to which he was appointed **General Counsel** by then President Marcos,<sup>[13]</sup> the Court sees no reason not to likewise credit in CJ Panganiban’s favor the work he had performed as Legal Counsel to the DepEd and its Secretary, not to mention his concurrent work as consultant to the BNE, and accordingly, qualify him for entitlement to retirement benefits.

In A.M. No. 07-6-10-SC,<sup>[14]</sup> apart from his work as Member of the Court Studies Committee of the Supreme Court, CJ Narvasa was credited his term as General Counsel to the Agrava Fact-Finding Board for one (1) year (from October 29, 1983 to October 24, 1984), as well as his 10-month post-retirement service as Chairperson of the Preparatory Commission on Constitutional Reforms created under Executive Order No. 43, thus, entitling him to monthly pension computed from December 1, 2003. In A.M. No. 03-12-08-SC,<sup>[15]</sup> the Court favorably considered Justice Sarmiento’s post-retirement work as Special Legal Counsel to the University of the Philippines (from August 24, 2000 to January 15, 2002) as part of his creditable government service apart from his service as Member of the UP Board of Regents (from January 16, 2002 to December 31, 2003) and Chairman of the UP Board of Regents (from January 1, 2004 to December 31, 2005).

Justice Brion views the Court’s favorable disposition of CJ Panganiban’s request for lifetime annuity as another case of flip-flopping, believing that **the Court already denied former Chief Justice Panganiban’s request for full retirement benefits under R.A. No. 910** and would, thus, be making a complete turnabout

even as CJ Panganiban makes a request **for the second time and for the same previously-denied services.**<sup>[16]</sup>

Justice Brion, however, is mistaken in his belief that the Court is reversing itself in this case. There is no flip-flopping situation to speak of since this is the first instance that the Court *En Banc* is being asked to pass upon a request concerning the computation of CJ Panganiban's creditable service for purposes of adjusting his retirement benefits. It may be recalled that Deputy Clerk of Court and OAS Chief Atty. Eden T. Candelaria had simply responded to a query made by CJ Panganiban when she wrote<sup>[17]</sup> him, thus:

June 10, 2008

Hon. Artemio V. Panganiban  
Retired Chief Justice

Your Honor:

This refers to your query through Ms. Vilma M. Tamoria on why your Honor's service in the Board of National Education was not included in the computation of retirement benefits.

In connection with his Honor's Application for Compulsory Retirement, a Certification dated November 14, 2006 issued by former Secretary of Education, the Honorable Alejandro R. Roces, was submitted attesting that you had served as consultant to the Board of National Education and concurrently Legal Counsel to the Secretary of Education from January 1962 to December 1965.

Consultancy or Contract of Service is not considered government service pursuant to Rule XI (Contract of Services/Job Orders) of the Omnibus Rules Implementing Book V of Executive Order No. 292. Hence, your Honor's service as consultant to the Board of National Education from January 1962 to December 1965 was not credited in the computation of creditable government service.

Your Honor is therefore entitled only to the benefits under Section 2 of R.A. 910 as amended which provides for a lump sum equivalent to five (5) years salary based on the last salary you were receiving at the time of retirement considering that you did not attain the length of service as required in Section 1. Thus, you Honor only has a total of 11 years, 1 month and 27 days or 11.15844 government service.

Very truly yours,

(Sgd.)  
EDEN T.  
CANDELARIA  
Deputy Clerk of  
Court and

CJ Panganiban no longer pursued the matter with the OAS presumably because a converse ruling allowing credit for his service with the BNE would still have left his total length of government service short of the 20-year requirement as to entitle him to a lifetime annuity under Section 1 of R.A. 910. However, in view of the passage of R.A. 9946, which reduced the requisite period of service from twenty (20) years to fifteen (15) years to benefit from a grant of lifetime annuity, CJ Panganiban sought the Court's approval to include his 4-year service as Legal Counsel to the DepEd and its Secretary, and as Consultant to the BNE as creditable government service.

Besides, nothing prevents the Court from taking a second look into the merits of a request and overturning a ruling determined to be inconsistent with principles of fairness and equality. In particular, the grant of life annuity benefit to Justice Sarmiento was a result of the Court's reversal of its earlier Resolution denying the request for re-computation. Notably, the Court found merit in Justice Sarmiento's plea for liberality and considered his post-retirement work creditable government service to complete the 20-year length of service required for him to avail of full retirement benefits under R.A. 910.

It bears emphasis that treatment must be without preference especially between persons similarly situated or in equal footing. Just as CJ Narvasa's work as General Counsel to the Agrava Board, and Justice Sarmiento's service as Special Legal Counsel to UP were considered creditable government service, so should the consideration be for CJ Panganiban's work, at least, as Legal Counsel to the DepEd and its Secretary.

Justice Brion asserts that CJ Panganiban's own claim in his Bio-Data and Personal Data Sheet that he remained in active private law practice at the same time that he acted as Legal Counsel to the DepEd and its Secretary and as Consultant to the BNE prevents him from asserting any claim to the contrary. It should be stressed that CJ Panganiban only filed his request for re-computation of his retirement benefits in the hope that the Court will credit in his favor the work he rendered both as Legal Counsel to the DepEd and its Secretary and as Consultant to the BNE in the same way that it credited retired Justice Sarmiento's and retired CJ Narvasa's services as Special Legal Counsel to the UP and General Counsel to the Agrava Board, respectively. When CJ Panganiban submitted his claims to the Court's sense of fairness and wisdom, it was the Court that directed him to present additional evidence in support of the true nature of the services he rendered to these government agencies.

The alleged inconsistency between his earlier statements of being in private law practice in his Bio-Data and Personal Data Sheet and his proffered evidence now showing the nature and extent of his services to the DepEd and its Secretary and to the BNE is more apparent than real. The perception of continuous and uninterrupted exercise of one's legal profession, despite periodic interruptions foisted by public service, is not uncommon among legal practitioners. After all, legal counselling work, even if rendered to a government agency, is part of legal practice. During the time that CJ Narvasa served as Member of the Court Studies Committee