

## SECOND DIVISION

[ G.R. No. 179217, February 02, 2011 ]

**METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM,  
PETITIONER, VS. GABRIEL ADVINCULA, ET AL., RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

Before the Court is a petition for review on certiorari<sup>[1]</sup> assailing the Resolution dated 14 August 2007<sup>[2]</sup> and Decision dated 28 February 2007<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 92391.

#### The Facts

Sometime in 1996, petitioner Metropolitan Waterworks and Sewerage System (MWSS) was reorganized<sup>[4]</sup> pursuant to Republic Act No. 8041<sup>[5]</sup> (RA 8041) or the National Water Crisis Act of 1995, and its implementing guidelines Executive Order No. 286<sup>[6]</sup> (EO 286). Because of the reorganization, MWSS offered separation benefits<sup>[7]</sup> to its affected official and employees through the Revised Early Retirement Incentive Package (ERIP I). MWSS Memorandum Circular (MC) Nos. 26-96<sup>[8]</sup>, 26-96(b)<sup>[9]</sup>, 26-96(c) and 26-96(d) governed the implementation of ERIP I, which was availed of by around 2,000 MWSS employees.

MC No. 26-96, provided, among others, that MWSS pay separation benefits to its affected permanent officials and employees who have served at least one year:

#### Years of Service

#### Equivalent ERIP Gratuity

First 20 years	1.5 per year x Basic Monthly Pay
20 to 30 years	2.0 per year x Basic Monthly Pay
Over 30 years	2.5 per year x Basic Monthly Pay

In 1997, MWSS entered into concession agreements with Maynilad Water Services, Inc. and Manila Water Company, Inc. for the privatization of its waterworks and sewerage systems. On account of the privatization, MWSS again offered a retirement plan called Early Retirement Incentive Package II (ERIP II) to around 5,000 of its employees who would be affected or terminated if they were not absorbed by the concessionaires.

Under ERIP II, MWSS paid separation and other benefits in this manner: (1) all employees, regardless of the length of service, were given one month pay for every year of service; (2) those who served for 15 to 20 years received one month pay for

every year of service in addition to the retirement package under Republic Act No. 8291,<sup>[10]</sup> cash payment from the Government Service Insurance System (GSIS) equivalent to 18 months salary plus monthly pension upon reaching the age of 60; and (3) those who served for more than 20 years received a return of their premium from GSIS.

On 21 January 2004, respondents, who comprise 550 of MWSS's past and present employees,<sup>[11]</sup> and who were all qualified to retire at the time ERIP I and ERIP II were issued, filed a petition for mandamus<sup>[12]</sup> against MWSS with the Regional Trial Court (RTC) of Quezon City, Branch 87, for the alleged non-payment of their separation pay.

In their petition, respondents prayed that MWSS be compelled to pay them their full separation benefits provided under MC No. 26-96, in addition to the retirement gratuity they received under Republic Act No. 1616<sup>[13]</sup> (RA 1616). Respondents averred that they only received from the MWSS these separation benefits: (1) under ERIP I, 1.5 month salary for every year of service; and (2) under ERIP II, 1 month salary for every year of service. As a result, they alleged that they did not receive the full separation benefits due them: (1) under ERIP I, an additional of 0.5 month salary for every year of service; and (2) under ERIP II, an additional 1 month pay for every year of service.

In an Order dated 18 August 2005, the RTC granted the issuance of the writ of mandamus. The dispositive portion states:

WHEREFORE, let a Writ of Mandamus [issue] against the respondent MWSS, through its Chairman and Board of Directors, directing said respondent to release the payment of the following:

- 0.5 of the equivalent monthly salary times (x) the number of years of service, to each petitioner, regular employee, who retired in 1996 under ERIP I; and
- one (1) month salary times (x) the number of years of service, to each petitioner, regular employee who retired in 1997 under ERIP II;
- twelve (12%) percent interest per annum on the amount payable to each petitioner computed since 1996 and 1997, respectively, until the full amount is satisfied;

from which ten (10%) percent of the total amount payable to the petitioners as and for attorney's fees and other litigation expenses must be segregated/deducted and be payable as such, to the legal representation.

SO ORDERED.<sup>[14]</sup>

MWSS filed an appeal with the CA.

## **The Ruling of the Court of Appeals**

In a Decision dated 28 February 2007, the CA partially granted the appeal and affirmed with modification the RTC's Order dated 18 August 2005. The dispositive portion of the CA Decision states:

WHEREFORE, the appeal is PARTIALLY GRANTED.

The assailed Order is AFFIRMED WITH THE MODIFICATION that the *Writ of Mandamus* issued against appellant Metropolitan Waterworks and Sewerage System (MWSS) commands it to release the payment of the balance of the ERIP separation pay in the amount equivalent to 0.5 per year times BMP (basic monthly pay) only to the following employees who retired in 1997 under ERIP II, to wit: (1) employees who have rendered less than fifteen (15) years of service provided they were not excluded by paragraph 1, MC No. 26-96(c), and provided further, that they were not absorbed by the private concessionaires during the reorganizations; and (2) those who have served for more than thirty (30) years.

The rest of the Order is reversed and set aside.

SO ORDERED.<sup>[15]</sup>

Both parties filed their respective motions for reconsideration which the CA denied for lack of merit in a Resolution dated 14 August 2007.

Respondents filed a petition for review on certiorari with this Court docketed as G.R. No. 179365 and entitled "*Gabriel A. Advincula, et al. v. Metropolitan Waterworks and Sewerage System.*" The petition was denied in a Resolution<sup>[16]</sup> dated 10 October 2007 for failure to comply with the necessary requirements stated in Rule 45 of the Revised Rules of Court. Respondents filed a motion for reconsideration which was denied in a Resolution<sup>[17]</sup> dated 12 December 2007. Through an Entry of Judgment<sup>[18]</sup> issued by this Court, the case became final and executory on 4 February 2008.

On 25 October 2007, petitioner filed this petition for review on certiorari dated 21 September 2007.

## **The Issue**

The main issue is whether the Court of Appeals erred in allowing the writ of mandamus against petitioner commanding it to pay the balance of 0.5 month salary for every year of service of unpaid separation benefits to those employees who have served for more than 30 years and retired in 1997 under ERIP II.

## **The Court's Ruling**

The petition lacks merit.

Petitioner agrees with the ruling of the CA with regard to the additional payment of separation benefit amounting to 0.5 month salary for every year of service to an employee who has rendered at least 15 years of service and not excluded by paragraph 1 of MC No. 26-96(c) which states: "x x x those who shall be offered appointments for positions they applied for but shall refuse such appointments shall not be entitled to ERIP." This payment, however, is still conditioned on whether or not the employee decides to resign instead of continuing his employment within the prescribed period under the Concession Agreement between MWSS and the private concessionaire.

On the other hand, petitioner disagrees with the same ruling that an employee who has served for more than 30 years is entitled to the same benefit of 0.5 month salary for every year of service. Petitioner contends that according to MC No. 26-96(b), those who have served for more than 30 years are entitled to 2.5 month salary for every year of service. In the 2.5 month salary computation, 1 month had already been paid by petitioner while the other month was covered by RA 1616. The remaining balance of 0.5 is not mandatory but is still dependent on whether the employee had been absorbed by the private concessionaire or actually resigned from the service.

We disagree.

It is undisputed that respondents were all qualified to retire under RA 1616 at the time of the reorganization and privatization of MWSS in 1996 and 1997, respectively.

Section 1 of RA 1616 provides:

Section 1. Section twelve of Commonwealth Act Numbered One hundred eighty-six, as amended, is hereby further amended by adding two new paragraphs after paragraph (a) which reads as follows:

"(b) x x x

(c) **Retirement is likewise allowed to a member, regardless of age, who has rendered at least twenty years of service. The benefit shall, in addition to the return of his personal contributions plus interest, be only a gratuity equivalent to one month salary for every year of service,** based on the highest rate received, but not to exceed twenty-four months. This gratuity is payable by the employer or office concerned which is hereby authorized to provide the necessary appropriation or pay the same from savings in its appropriations."  
(Emphasis supplied)

It is clear from the provision that an employee who has rendered at least 20 years of service may retire under RA 1616 and receive a retirement gratuity of 1 month salary for every year of service.

MC No. 26-96, on the other hand, provides for the computation of the separation benefit applicable to permanent officials who are not qualified to retire under any

existing law and those who are qualified to retire. Those who are not qualified to retire, for as long as they served for more than a year, may avail of the gratuity corresponding to their length of service. As for those employees who are qualified to retire, they may only receive a separation pay equivalent to the difference between the incentive package and the retirement benefit under any existing retirement law.

[19] The relevant portions of MC No. 26-96 state:

## II. NATURE OF THE ERIP

A. The ERIP for affected permanent officials and employees of the MWSS who have served at least one (1) year shall be computed as follows:

<u>Years of Service</u>	<u>Equivalent ERIP Gratuity</u>
First 20 years	1.5 per year x Basic Monthly Pay
20 to 30 years	2.0 per year x Basic Monthly Pay
Over 30 years	2.5 per year x Basic Monthly Pay

For this purpose, basic monthly pay shall be based on the full implementation of the Salary Standardization Law II salary rates at the designated salary step as of December 31, 1995. The number of service years for qualified retirees under GSIS existing retirement laws shall be certified by the GSIS.

The ERIP to be paid by MWSS to officials or employees qualified to retire shall be the difference between the incentive package and the retirement benefit under any existing retirement law (RA 1616, 1146 or 660). [20]

Taking into consideration the provisions of both RA 1616 and MC No. 26-96, the separation benefit due to the affected employees should be the balance received in MC No. 26-96 and the retirement benefit received in RA 1616. Hence, those who have rendered at least 20 but less than 30 years of service should receive 1 month salary for every year of service; and those who have rendered more than 30 years should receive 1.5 month salary for every year of service.

In the present case, MWSS already gave the affected employees under ERIP II, regardless of the length of service, a separation benefit equivalent to 1 month salary for every year of service. Thus, those employees who have rendered at least 20 but less than 30 years of service already received the payment due them. However, MWSS is still obligated to pay those affected employees who have rendered more than 30 years for the balance of 0.5 month salary for every year of service.

The reasoning forwarded by petitioner that the remaining balance of 0.5 is not mandatory but is still dependent on whether the employee had been absorbed by the private concessionaire or actually resigned from the service only applies to those employees who have served less than 15 years. As correctly observed by the CA:

x x x [T]here are three (3) categories of employees-beneficiaries under the ERIP: