

EN BANC

[A.M. No. RTJ-04-1868 (formerly A.M. No. 04-7-359-RTC), August 13, 2004]

RE: REQUEST OF JUDGE TITO G. GUSTILO THAT THE SECOND 25% GRANT OF THE SPECIAL ALLOWANCE FOR JUDGES BE INCLUDED IN THE COMPUTATION OF HIS RETIREMENT BENEFITS.

RESOLUTION

CALLEJO, SR., J.:

In his Letter dated May 26, 2004 addressed to Chief Justice Hilario G. Davide, Jr., Judge Tito G. Gustilo of the Regional Trial Court of Iloilo City, Branch 23, avers that he is due to retire at the age of 70 (compulsory retirement) on September 29, 2004. By then, he would have served the Judiciary for 21 years; 7 years and 11-and-1/2 months of which as Executive Judge of the RTC of Iloilo City. Judge Gustilo requests that, considering his retirement is "barely one month from November 2004," the second tranche of the Special Allowance granted to judges under Republic Act No. 9227^[1] be included in the computation of his retirement benefits.

To recall, Rep. Act No. 9227, which took effect on November 11, 2003,^[2] granted additional compensation in the form of Special Allowance to justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court. Section 2 thereof reads:

Sec. 2. Grant of Special Allowances. – All justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws shall be granted special allowances equivalent to one hundred percent (100%) of the basic monthly salary specified for their respective salary grades under Republic Act No. 6758, as amended, otherwise known as the Salary Standardization Law, to be implemented for a period of four (4) years.

The grant of special allowances shall be implemented uniformly in such sums or amounts equivalent to twenty-five percent (25%) of the basic salaries of the positions covered hereof. Subsequent implementation shall be in such sums and amounts and up to the extent only that can be supported by the funding source specified in Section 3 hereof.

Further, Section 5 of the same law provides:

Sec. 5. Inclusion in the Computation of Retirement Benefits. – For purposes of retirement, only the allowances actually received and the tranche or tranches of the special allowance already implemented and received pursuant to this Act by the justices, judges and all other

positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws shall, at the date of their retirement, be included in the computation of their respective retirement benefits.

On March 9, 2004, in A.M. No. 03-12-04-SC (*Re: Possible Means to Implement the Special Allowance under R.A. 9227 and to Increase the Judiciary Development Fund*), the Court promulgated the GUIDELINES ON THE GRANT OF ADDITIONAL COMPENSATION IN THE FORM OF SPECIAL ALLOWANCE FOR JUSTICES AND JUDGES IN THE JUDICIARY AND ALL OTHER OFFICIALS WITH THE EQUIVALENT RANK OF JUSTICES OF THE COURT OF APPEALS AND JUDGES OF THE REGIONAL TRIAL COURT. The Guidelines provide for the manner of the implementation in this wise:

4.1 The Special Allowance shall be implemented uniformly in such sums or amounts equivalent to twenty-five percent (25%) of the actual basic monthly salaries for the positions covered starting 11 November 2003 until the one hundred percent (100%) special allowance is fully implemented.

If the source of fund is insufficient to cover the twenty-five percent (25%) special allowance for any year, it shall be granted in such sums and amounts and up to the extent only that can be supported by the funding source specified in Section 3 of Rep. Act No. 9227; *provided* that annually the special allowance shall always be twenty-five percent (25%) of the actual "basic monthly salary."

The Guidelines, likewise, reiterate that:

4.2 For purposes of computing the retirement benefits, only the special allowance actually received and that which has accrued at the time of retirement shall be included.

Paragraph 7.0 thereof states that cases not covered thereby shall be referred to the Chief Justice for resolution.

Judge Gustilo claims that pursuant to OCA Circular No. 48-2004 dated March 3, 2004, the first tranche of the Special Allowance equivalent to 25% was implemented starting November 11, 2003. The next 25% (second tranche) will be implemented on November 11, 2004. In this connection, Judge Gustilo appeals to the Chief Justice that, in the computation of his retirement benefits, the second tranche of the Special Allowance be included since his retirement is only one (1) month and twelve (12) days before its implementation on November 11, 2004.

In support thereof, Judge Gustilo points out that "in the past, Judges who retire in October are included in the grant of the December 13th month pay." He, thus, invokes the "liberal policy" of the Court "in granting benefits to the underpaid Trial Court Judges."

In the Memorandum dated June 18, 2004 for the Chief Justice, the Office of the Court Administrator (OCA)^[3] recommends that the request of Judge Gustilo be granted. The OCA cites Judge Gustilo's service record in the Judiciary, which started on January 18, 1983, including his exemplary record of disposing cases at an

average of 2.25 cases each month. It also mentions that Judge Gustilo, as Executive Judge, introduced several innovations in the Iloilo City courts and was able to manage well the 17 judges under his administrative supervision. Further, Judge Gustilo was the recipient of several "awards and recognitions."^[4] Considering the foregoing, the OCA concludes that "it is but just and fair that the second additional Special Allowance of 25% be granted to him and included in the computation of his retirement benefits."^[5]

In compliance with the Court's Resolution dated July 6, 2004, referring Judge Gustilo's letter and the OCA's memorandum to her for study and recommendation, Chief Attorney Edna E. Diño submitted her Report dated July 15, 2004. The Chief Attorney recommends that Judge Gustilo's request be denied for not being in accord with Rep. Act No. 9227 and the Guidelines promulgated by the Court.

After a careful evaluation of Judge Gustilo's letter, the OCA's memorandum and the Chief Attorney's report, the Court, regrettably, cannot grant the request of Judge Gustilo.

It is axiomatic that when the law is clear, the function of the courts is simple application, not interpretation or circumvention.^[6] With respect to the manner of computation of the retirement benefits in light of the Special Allowance granted under Rep. Act No. 9227, Section 5 thereof, quoted anew below, could not be any clearer:

Sec. 5. Inclusion in the Computation of Retirement Benefits. – For purposes of retirement, only the allowances actually received and the tranche or tranches of the special allowance already implemented and received pursuant to this Act by the justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws shall, at the date of their retirement, be included in the computation of their respective retirement benefits.

A plain reading of the above provision shows that, for purposes of retirement, only the allowances "*actually received*" and the tranche or tranches "*already received and implemented,*" upon the date of retirement, shall be included in the computation of the retirement benefits. Otherwise put, before the Special Allowance could be considered in the computation of retirement benefits, it should have been "*actually received*" and the tranche or tranches thereof should have been "*already implemented and received*" at the date of retirement.

Section 5 of Rep. Act No. 9227 is clear and unambiguous. There is no room for its interpretation. Further, the foregoing exchange among the members of the Bicameral Conference Committee^[7] on the Disagreeing Provisions of Senate Bill (SB) No. 2018 and House Bill (HB) No. 5178^[8] is particularly instructive:

...

THE CHAIRMAN (SEN. PANGILINAN). Accepted.

Section 4. No questions? (Silence)

Section 5. (Silence)

Just again for purposes of record and clarification, Section 5, lines 3 and 4, "For purposes of retirement, only the allowances actually received...", and so forth and so on, I just like to make it clear that the computation of retirement would include the salary already being received, plus the special allowance.

THE CO-CHAIRMAN (REP. ANDAYA). Yes.

THE CHAIRMAN (SEN. PANGILINAN). Because this seems to suggest that you compute, rather the computation of retirement will be on the basis only of the special allowance. So, at least, let's make that on record.

THE CO-CHAIRMAN (REP. ANDAYA). Yes. On record, yes.

And I think that first word in the title of Section 5, "Inclusion" also explains that.

REP. LIBANAN. Mr. Chairman.

THE CO-CHAIRMAN (REP. ANDAYA). Congressman Libanan.

REP. LIBANAN. For the sake of further clarification, would it mean that if, for example, a judge retires on the second year of the implementation, so his retirement benefits would be only computed....

THE CHAIRMAN (SEN. PANGILINAN). On the basis of what he is already receiving.

REP. LIBANAN. ... on the basis of [what] he is receiving, not on the 100 percent.

THE CO-CHAIRMAN (REP. ANDAYA). Actually receiving. That is correct.

REP. LIBANAN. Thank you, Mr. Chairman.

...

THE CHAIRMAN (SEN. PANGILINAN). Can we now go back to Section 5?

THE CHAIRMAN (REP. ANDAYA). Section 5, Mr. Chairman, just a suggestion but in the House panel ...

SEN. ARROYO. Kasi kung mandatory, doon sa voluntary, hindi naman dapat iyon.

THE CHAIRMAN (REP. ANDAYA). I'll be constrained to withdraw my proposal.