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FIRST DIVISION

[G.R. No. 152058, September 27, 2004]

SOCIAL SECURITY COMMISSION AND SOCIAL SECURITY SYSTEM, PETITIONERS, VS. COURT OF APPEALS AND JOSE RAGO, RESPONDENTS.

DECISION

DAVIDE JR., C.J.:

This is a petition for the review of the decision[1] of 18 October 2001 and the resolution of 30 January 2002 of the Court of Appeals in CA-G.R. SP No. 63389 entitled *Jose Rago vs. Social Security Commission and Social Security System*. The decision reversed the 20 December 2000 Resolution of the Social Security Commission (SSC) in SSC Case No. 4-15009-2000 denying respondent Jose Rago's request to convert his monthly pension from permanent partial disability to permanent total disability. The resolution denied the motion to reconsider the decision.

Private respondent Jose Rago (hereafter Rago) worked as an electrician for Legend Engineering in Basak, Pardo, Cebu City. On 1 December 1993, at about 6:15 p.m., while working on the ceiling of a building, he stepped on a weak ceiling joist. The structure gave way and he crashed into the corridor twelve feet below. The x-rays taken that day revealed that he had a (1) marked compression fracture of L1 vertebra without signs of dislocation and bone destruction; and (2) slight kyphosis at the level of L1 vertebrae, with the alignment of the spine still normal.[2] He was confined at the Perpetual Succour Hospital in Cebu City for twenty-four (24) days from 1 December 1993 to 24 December 1993,[3] and, thereafter, he was confined in his home from 25 December 1993 to 25 August 1994.[4]

On 20 May 1994, Rago filed a claim for permanent partial disability with the Cebu City office of the Social Security System (SSS). Since he had only 35 monthly contributions, he was granted only a lump sum benefit.[5] He made additional premium contributions on 6 November 1995, and sought the adjustment of his approved partial disability benefits from lump sum to monthly payments. The adjustment was resolved in his favor on 18 October 1995.[6]

On 9 November 1995, Rago filed a claim for Employee's Compensation (EC) sickness benefit, which was supported by an x-ray report dated 1 December 1993. This was approved for a maximum of 120 days to cover the period of illness from 1 December 1993 to 30 March 1994.

On 7 June 1996, Rago filed another claim to convert his SSS disability to EC disability. Again, it was resolved in his favor on 14 June 1996.[7]

Two years later, on 16 June 1998, Rago claimed for the extension of his EC partial disability. A rating of 50% OB (of the body) was granted corresponding to the maximum benefit allowed under the Manual on Ratings of Physical Impairment.[8]

Thereafter, Rago filed several requests for the adjustment of his partial disability to total disability. This time, his requests were denied by the Cebu City office of the SSS in its letters of 11 April 1999, 10 September 1999, 28 September 1999, 4 April 2000, and 17 April 2000. The denial was based on the medical findings of the Cebu City office that he was not totally prevented from engaging in any gainful occupation.[9]

Undaunted, on 3 April 2000, Rago filed with the petitioner Social Security Commission (SSC) a petition for total permanent disability benefits based on the following grounds:

1. his convalescence period from the time of his hospital confinement to home confinement totaled 268 days and under SSS guidelines, if the injury persisted for more than 240 days, the injury would be considered as a permanent total disability;

2. his x-ray results showed a deterioration of his condition without any visible improvement on the disabilities resulting from the accident; and

3. he had lost his original capacity to work as an electrician and has been unemployed since the accident.

The petition was docketed as SSC Case No. 4-15009-2000.[10]

In its position paper dated 24 August 2000, the SSS argued that Rago had already been granted the maximum partial disability benefits. The physical examination conducted by the Cebu City office of the SSS showed that he was more than capable of physically engaging in any gainful occupation and that there was no manifestation of progression of illness. Thus, the SSS recommended the denial of Rago's petition. [11]

In a resolution dated 20 December 2000, the SSC denied Rago's petition for lack of merit. The SSC ruled that he was not entitled to permanent partial disability more than what was already granted, more so to permanent total disability benefits since he was already granted the maximum allowable benefit for his injury.[12]

Without filing a motion for reconsideration, Rago appealed to the Court of Appeals by filing a petition for review and reiterating his claim for permanent disability benefits under Section 13-A (g) of R.A. No. 1161, as amended by R.A. No. 8282.[13] The petition was docketed as CA-G.R. SP No. 63389.

In its decision of 18 October 2001, the Court of Appeals reversed the SSC's resolution, and decreed as follows:

> WHEREFORE, the assailed decision of the Social Security Commission is hereby reversed and set aside. Petitioner's plea for conversion of his disability status from permanent partial to permanent total is granted.

> The SSS is hereby directed to pay him the necessary compensation benefits in accordance with the proper computation.

The SSS seasonably filed a motion for reconsideration on the ground that the Court of Appeals should have considered an order issued by the SSC dated 11 July 2001 which affirmed, but clarified, its 20 December 2000 Resolution under appeal. The SSS then referred to the findings and conclusions of the SSC in said 11 July 2001 order, which emphasized that: (1) Rago failed to file a motion for reconsideration with the SSC, which is mandatory, before filing a petition for review with the Court of Appeals; (2) the manual verification of the monthly contributions of Rago revealed that he had only 35 contributions and not 59; and (3) thus, whether or not the sickness or disability of Rago had showed signs of progression, a conversion of the same from permanent partial disability to permanent total disability could not be granted. This is because Rago lacked the required number of contributions mentioned in Section 13-A (a) of R.A. 1161, as amended, which reads:

> SEC. 13-A. *Permanent disability benefits*. – (a) Upon the permanent total disability of a member who has paid at least thirty-six (36) monthly contributions prior to the semester of disability, he shall be entitled to the monthly pension: *Provided*, That if he has not paid the required thirty-six (36) monthly contributions, he shall be entitled to a lump sum benefit equivalent to the monthly pension times the number of monthly contributions paid to the SSS or twelve (12) times the monthly pension, whichever is higher. A member who (1) has received a lump sum benefit and (2) is re-employed or has resumed self-employment or has resumed self-employment not earlier than one (1) year from the date of his disability shall again be subject to compulsory coverage and shall be considered a new member.

With that, the SSC ordered the SSS to re-compute the lump sum benefit due Rago and his EC benefit on the basis of the actual monthly contributions remitted in his behalf and to collect all excess payments made to him.[14]

In its resolution of 30 January 2002, the Court of Appeals denied the motion for reconsideration. It explained the denial in this wise:

> At the outset, the Court strikes down the Commission's July 11, 2001 clarificatory order as an exercise of grave abuse of authority amounting to lack and/or excess of jurisdiction. The said Order was issued at a time when the Commission itself was knowledgeable of the petition for review pending before this Court. …It must be pointed out that when petitioner timely filed his petition for review, [the] appeal from the Commission's resolution had thus become perfected, and it is this Court which therefore had jurisdiction over the matter, and sole authority to make any affirmation or modification of the assailed resolution. Once appeal is perfected, the lower tribunal loses its jurisdiction over the case, in favor of the appellate tribunal. The Court deems it the height of injustice for the Commission to add to and bolster its final ruling with additional observations and justifications, not otherwise embodied in the original ruling, after the losing claimant had already perfected and was actively pursuing his appeal. It behooves upon the Commission, therefore, to refrain from making any substantial addition, or modification of its assailed ruling, such authority in law, now having been transferred to this

> Court. What prompted the Social Security Commission to issue its clarificatory order is not made clear in its motion for reconsideration, nor in the clarificatory order itself. In any case, any modification of the tenor and justification of the assailed resolution of the Commission by the same body effectively altered the tenor of the earlier ruling, amounting to a violation of the petitioner's right to due process and fair play, and, therefore, null and void.
>
> Moreover, the specific arguments raised by the Commission are not convincing to encourage a reversal of our earlier decision.
>
> To be sure, the alleged failure to file a motion for reconsideration of the Commission's December 20, 2000 resolution is not a fatal mistake, it appearing that the same was in clear violation of the petitioner's rights and claims, as a member of the Social Security System. It is the established rule that the filing of a motion for reconsideration may be dispensed with when the assailed ruling is a patent nullity. Furthermore, the fact that the petitioner as credited by SSS monthly contributions short to entitle him to be qualified for permanent total disability benefits appear to be largely due to the SSS' and its branches' failure to accurately account the petitioner's total payments, and not on the petitioner's or his employers' failure to do so. The same July 11, 2001 Order shows that the SSS Cotabato City Branch and the SSS Davao Hub Branch Office were unable to account for the complete contributions of the petitioner while he was employed by the San Miguel Corporation.[15]

Thus, in their petition in the case at bar, the SSS and the SSC pray to set aside the Court of Appeals' decision of 18 October 2001 and resolution of 30 January 2002 and to remand the case to the SSC for further proceedings.[16]

In support of their prayer, the petitioners assert that the Court of Appeals erred in disregarding the established jurisprudence that the filing of a motion for reconsideration is a prerequisite to the filing of a petition for review to enable the tribunal, board or office concerned to pass upon and correct its mistakes without the intervention of the higher court. Failure to do so is a fatal procedural defect.[17]

The petitioners likewise argue that they had not violated Rago's rights; hence, his case does not fall within the purview of *Arroyo v. House of Representatives Electoral Tribunal*[18] where we held that a prior motion for reconsideration could be dispensed with if fundamental rights to due process were violated.

Additionally, the petitioners contend that the SSC's 11 July 2001 clarificatory order was issued to rectify its perceived error in the 20 January 2000 resolution relative to the number of Rago's contributions which directly affected the computation of his disability benefits. Petitioners further maintain that the Court of Appeals relied heavily on the x-ray reports which contained no statement that Rago could no longer work. However, a certain Alvin C. Cabreros attested in an affidavit that Rago went out "disco[e]ing" after the accident, for which reason, Rago is not totally helpless as he portrayed himself to be.

On 20 March 2003, we received a handwritten letter from Rago informing us that his

lawyer had withdrawn from the case and of his difficulty in securing a new counsel. After naming Attys. Pedro Rosito, Arturo Fernan or Fritz Quiñanola of the IBP Cebu City at Capitol Compound as his "informal lawyers," he asked us to consider, in lieu of his Comment, an attached copy of the opposition to the motion for reconsideration he filed with the Court of Appeals. In said pleading, Rago argued that the word "may" as used in the provision concerning the filing of a motion for reconsideration in the SSC's 1997 Revised Rules of Procedure is not mandatory but merely permissive. He also agreed with the conclusion of the Court of Appeals that a very strict interpretation of procedural rules would defeat the constitutional mandate on social justice.

We gave due course to the petition and required the parties to submit their Memoranda, which they did.

We shall first dispose of the procedural issue of prematurity raised by petitioners which is Rago's failure to file a motion for reconsideration. Section 5, Rule VI of the SSC's 1997 Revised Rules of Procedure provides:

> The party aggrieved by the order, resolution, award or decision of the Commission **may** file a motion for reconsideration thereof within fifteen (15) days from receipt of the same. Only one motion for reconsideration shall be allowed any party.
>
> The filing of the motion for reconsideration shall interrupt the running of the period to appeal, unless said motion is *pro forma*.

The ordinary acceptations of the terms "may" and "shall" may be resorted to as guides in ascertaining the mandatory or directory character of statutory provisions. As regards adjective rules in general, the term "may" is construed as permissive and operating to confer discretion, while the word "shall" is imperative and operating to impose a duty which may be enforced.[19] However, these are not absolute and inflexible criteria in the vast areas of law and equity. Depending upon a consideration of the entire provision, its nature, its object and the consequences that would follow from construing it one way or the other, the convertibility of said terms either as mandatory or permissive is a standard recourse in statutory construction.[20]

Conformably therewith, we have consistently held that the term "may" is indicative of a mere possibility, an opportunity or an option. The grantee of that opportunity is vested with a right or faculty which he has the option to exercise.[21] If he chooses to exercise the right, he must comply with the conditions attached thereto.[22]

Applying these guidelines, we can construe Section 5, Rule VI as granting Rago, or any member of the System aggrieved by the SSC's resolution, the option of filing a motion for reconsideration which he may or may not exercise. Should he choose to do so, he is allowed to file only one motion for reconsideration within fifteen days from the promulgation of the questioned resolution.

This is as far as we go in construing the provision in isolation because a second procedural rule now comes into play: the requirements for appeals filed against the rulings of quasi-judicial agencies in the exercise of its quasi-judicial functions.