EN BANC

A.M. No. 13-05-04-SC – RE: REQUEST OF ASSOCIATE JUSTICE ROBERTO A. ABAD FOR SALARY ADJUSTMENT DUE TO LONGEVITY OF SERVICE.

Promulgated:
August 14, 2019

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DISSENTING OPINION

LEONEN, *J.*:

I dissent. This Court must vacate its ruling that recognizes justices' and judges' services rendered outside the judiciary in computing longevity pay.

Once again, we are asked to do this on the ground that formerly held *executive* positions carry the same rank as their counterparts in the judiciary. Former Associate Justice Roberto A. Abad (former Associate Justice Abad) is before this Court requesting that his services in the Office of the Solicitor General from 1975 to 1986 be included in the computation of his longevity pay. He served as this Court's Associate Justice for four (4) years, eight (8) months, and 16 days, which, as the majority points out, "short of the five years required by the law to qualify for longevity pay."[1]

This is not a case of first impression. This Court had previously denied a similar request[2] involving the same factual milieu, albeit reversed on motion for reconsideration. I strongly recommend that we enjoin this baseless practice.

Batas Pambansa Blg. 129[3] granted monthly longevity pay to members of the judiciary. Initially, the benefit excluded the Chief Justice and Associate Justices of this Court, among others, but was later extended to them through Presidential Decree No. 1927. Section 42 of Batas Pambansa Blg. 129 states:

> SECTION 42. *Longevity Pay.* — A monthly longevity pay equivalent to 5% of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service rendered in the judiciary; *Provided*, That

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1 Resolution, p. 2.
2 *Re: Vicente S.E. Veloso*, 760 Phil. 62, 108 (2015) [Per J. Brion, En Banc].
3 The Judiciary Reorganization Act of 1980 (1981).

> in no case shall the total salary of each Justice or Judge concerned, after this longevity pay is added, exceed the salary of the Justice or Judge next in rank. (Emphasis supplied)

Granted on top of salary, longevity pay is five percent (5%) of the *justices' and judges'* monthly basic salary "for each five years of ***continuous, efficient, and meritorious service rendered in the judiciary***[.]"[4] The salary then "increases by an increment of 5% for every additional cycle of five (5) years of *continuous, efficient, and meritorious service.*"[5] It is paid while the official is in service, and becomes part of his or her monthly pension upon retirement or survivorship benefit upon death.[6]

Longevity pay is incurred in favor of a justice or judge during his or her years of actual, active service in the judiciary. Crediting service in the Office of the Solicitor General for longevity pay entails that the government pay the retiree *for work that was not rendered in the judiciary.* This blatantly contradicts the longevity pay's purpose: to compensate lengthy service "from the lowest to the highest court in the land."[7] As this Court had previously explained:

> [T]he payment of longevity pay is premised on a continued, efficient, and meritorious service: *(1) in the Judiciary; and (2) of at least five years.* ***Long and continued service in the Judiciary*** is the basis and reason for the payment of longevity pay; ***it rewards the loyal and efficient service*** *of the recipient* ***in the Judiciary.***[8] (Emphasis supplied)

Fidelity to the letter of the law commands this reading. In no way does this modify the provision or append what was not in it—both of which are undertakings that the Constitution proscribes this Court to do.

Yet, in its Resolution, the majority grants former Associate Justice Abad's request on doubtful grounds.

I

None of the cited laws sanction the practice of crediting service in the executive branch to the length of judiciary service to avail of or increase longevity pay. The laws do not extend the benefit of longevity pay to those of the same rank.

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4 Batas Pambansa Blg. 129 (1981), sec. 42.

5 *Re: Martin S. Villarama, Jr.,* Adm. Matter No. 15-11-01-SC, March 6, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63859> [Per J. Martires, En Banc].

6 Id.

7 Id.

8 *Re: Vicente S.E. Veloso*, 760 Phil. 62, 108 (2015) [Per J. Brion, En Banc].

The majority enunciated that "[a]s early as 1916, the Administrative Code of the Philippines provided that the qualifications for appointment to the position of Solicitor General shall be the same as those prescribed for judges of the Courts of First Instance."[9] But having similar qualifications required for two (2) positions is plain, unambiguous, and has nothing to do with our present concern.

Similarly, the majority invoked Presidential Decree No. 1726, which "upgraded the salary of the legal positions in the OSG in a manner similar to that approved for legal positions in the Ministry of Justice[,]"[10] and Executive Order No. 780, series of 1982,[11] which dealt with the salaries of executive officials. These, however, find no application here. It is indefensible to consider that the Office of the Solicitor General or the Ministry of Justice forms part of the judiciary.

The majority enumerated laws that amended the Administrative Code such that they "adjusted upward the judicial rank given to the Solicitor General, First Assistant Solicitor General, and Assistant Solicitors Generals."[12] However, a perusal of the cited laws, Republic Act Nos. 945,[13] 2068,[14] 3465,[15] and 3596,[16] disproves this assertion.

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9 Resolution, p. 5.

10 Id. at 6.

11 Id. at 7. The majority stated that the executive order "reinforced the intention to align the salaries of the Solicitors and lawyers in the OSG with the lawyers in the Ministry of Justice (now the Department of Justice) in the light of new salary rates under P.D. 1726."

12 Id. at 5.

13 Republic Act No. 945 (1953), sec. 1 partly provides:

SECTION 1. Section one thousand six hundred and fifty-nine of the Revised Administrative Code, as amended, is hereby further amended to read as follows:

"Sec. 1659. *Chief Officials of Office of the Solicitor General.* — The Office of the Solicitor General shall have one chief to be known as the Solicitor General whose salary shall be twelve thousand *per annum* and shall have the **rank of an Undersecretary of a Department**. . . .

. . . .

"The **qualifications for appointment** to the position of Solicitor General, the First Assistant Solicitor General and the four Assistant Solicitors General shall be the same as those prescribed for Judges of Courts of First Instance and those of Solicitors shall be the same as those prescribed for provincial fiscals."

14 Republic Act No. 2068 (1958), sec. 1 partly provides:

SECTION 1. Section sixteen hundred fifty-nine of the Administrative Code, as amended by Republic Act Numbered Nine hundred forty-five, is further amended to read as follows:

"SEC. 1659. *Chief Officials of Office of the Solicitor General.* — The Office of the Solicitor General shall have one chief to be known as the Solicitor General whose salary shall be twelve thousand pesos *per annum* and shall have the **rank of an Undersecretary of a Department**. . . .

. . . .

"The **qualifications for appointment** to the position of Solicitor General, the First Assistant Solicitor General and the Assistant Solicitor General shall be the same as those prescribed for Judges of Courts of First Instance, and those of Solicitors shall be the same as those prescribed for provincial fiscals, except those for Solicitors mentioned in paragraphs (e) and (f) of this section which must be actual practice of law for at least three years or having occupied a position requiring a lawyer's diploma for the same period."

15 Republic Act No. 3465 (1962), sec. 1 partly provides:

"The **rank and qualifications for appointment** to the position of Solicitor General shall be the same as an Associate Justice of the Court of Appeals; the rank and qualifications for appointment to the position of the First Assistant Solicitor General and the Assistant Solicitors General shall be the same as those prescribed for Judges of Courts of First Instance, and those Solicitors shall be the same as those prescribed for provincial fiscals."

16 Republic Act No. 3596 (1963), sec. 1 partly provides:

The first two (2) laws provide that the solicitor general shall have the rank of a department undersecretary, and the same qualifications for appointment as a court of first instance judge. The latter two (2) laws uniformly prescribe that the positions of solicitor general, first assistant solicitor general and assistant solicitor general, and solicitor shall be of the same rank and qualifications as those of a Court of Appeals associate justice, court of first instance judge, and provincial fiscals, respectively. I cannot discern in any way how these laws "adjusted upward the judicial rank."

Likewise suspect is the majority's pronouncement that Presidential Decree No. 1347 granted the solicitor general and associate solicitor general "the same rank, prerogatives, and privileges as those of the *Presiding Justice*"[17] of the Court of Appeals and a court of first instance judge, respectively.

Presidential Decree No. 1347 declared that the solicitor general and assistant solicitors general "*shall receive the same monthly allowances*" as the Court of Appeals *associate justices* and courts of first instance judges. To interpret the law such that it granted them "the same rank, prerogatives, and privileges" is to unduly expand its text. In any case, the monthly allowance cannot be construed to include longevity pay, which, again, "is premised on a continued, efficient, and meritorious service: (1) in the Judiciary; *and* (2) of at least five years."[18] It is not readily granted to all associate justices. It may never be availed by a member of the judiciary who, as in this case, falls short of the required length of service.

As to Republic Act No. 9417, this Court explained in *Re: Vicente S.E. Veloso*:[19]

> RA 9417 passed into law on March 30, 2007. As in the case of RA 9347, this law was passed to address the plight of the members of the Office of the Solicitor General (OSG) by upgrading their salaries and benefits to improve their efficiency as the Republic's counsel.
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> . . . .

"Sec. 1569. *Chief Officials of the Office of the Solicitor General.* — The office of the Solicitor General shall have one chief to be known as the Solicitor General whose **salary shall be the same as that of a justice of the court of appeals**. He shall be assisted by one First Assistant Solicitor General who shall have the same salary as that of a judge of the court of first instance. . . .

. . . .

"The **rank and qualifications for appointment** to the position of Solicitor General shall be the same as an Associate Justice of the Court of Appeals; the rank and qualifications for appointment to the position of the First Assistant Solicitor General and the Assistant Solicitors General shall be the same as those prescribed for Judges of Courts of First Instance, and those of Solicitors shall be the same as those prescribed for provincial fiscals."

17 Resolution, p. 6.

18 *Re: Vicente S.E. Veloso*, 760 Phil. 62, 108 (2015) [Per J. Brion, En Banc].

19 760 Phil. 62 (2015) [Per J. Brion, En Banc].

As in the case of the NLRC, it must again be noted that this enumeration is specific with respect to the benefits granted to members of the OSG: ***it particularly referred to the benefits to be granted.***

Although Section 3 of RA 9417 provides that the Solicitor General shall have the same qualifications for appointment, rank, prerogatives, salaries, allowances, benefits and privileges as the Presiding Justice of the CA (and an Assistant Solicitor General as that of a CA Associate Justice), RA 9417 still allocated express provisions for the other benefits to be enjoyed by the members of the OSG. These provisions are the following:

Section 4- Compensation
Section 5- Benefits and Privileges
Section 6- Seminar and Other Professional Fees
Section 7- Transportation Benefits
Section 8- Other Benefits
Section 10- Grant of Special Allowances

Had Congress really intended to grant the benefit of longevity pay to the members of the OSG, then it should have also included in the list of benefits granted under RA 9417 a provision pertaining to longevity pay. This provision is glaringly missing and thus cannot be included via this Court's decision without running afoul of the rule that prohibits judicial legislation. Nor can this Court recognize the past service rendered by a current judge or justice in the OSG for purposes of longevity pay.

A closer examination of this law shows that what Congress did was to grant benefits that were applicable to the type of service that the OSG provides.

For example, OSG lawyers are entitled to honoraria and allowances from client departments, agencies and instrumentalities of the Government. This benefit is only proper as the main function of the OSG is to act as the counsel of the Government and its officers acting in their official capacity. On the other hand, this benefit is not applicable to members of the Judiciary as they do not act as advocates but rather as impartial judges of the cases before them, for which they are not entitled to honoraria and allowances on a per case basis.

Another indicator that should be considered from the congressional handling of RA 9417 is that *Congress did not intend to introduce a strict one-to-one correspondence between the grant of the same salaries and benefits to members of the executive department and of the Judiciary.* The congressional approach apparently was for laws granting benefits to be of specific application that pertains to the different departments according to their personnel's needs and activities. ***No equalization or standardization of benefits was ever intended on a generalized or across-the-board basis***.[20] (Emphasis supplied, citations omitted)

Simply put, Republic Act No. 9417 did not extend the award of longevity pay to those serving in the Office of the Solicitor General.

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[20] Id. at 116–120.

In any case, the law was passed on March 30, 2007, long after former Associate Justice Abad had served in the Office of the Solicitor General from 1975 to 1986.[21] In the Resolution on the Motion for Reconsideration in *Re: Vicente S.E. Veloso*,[22] this Court granted Associate Justice Angelita A. Gacutan's request to credit her service in the National Labor Relations Commission in computing her longevity pay, as she was still with the Commission upon Republic Act No. 9347's effectivity. In extending her longevity pay, this Court engaged in judicial legislation. Retroactively applying the law to this case now is liberally construing the law further. This should not be countenanced.

II

The majority, citing three (3) cases as examples, spoke of an "enduring practice of including years served outside the Judiciary in positions statutorily given judicial rank in the computation of longevity pay of members of the Bench."[23] These cases deserve scrutiny.

Request of Judge Fernando Santiago for the Inclusion of His Services as Agrarian Counsel in the Computation of His Longevity Pay,[24] for one, was a Minute Resolution that did not cite any law as basis for its approval of Judge Fernando Santiago's request.

Likewise, in a Minute Resolution, this Court in *Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco*[25] approved Justice Emilio Gancayco's request to include his service as chief prosecuting attorney from 1963 to 1972 in computing his longevity pay. It noted that "under Republic Act No. 4140, the Chief State Prosecutor is given the same rank, qualification, and salary" as a court of first instance judge.

In another Minute Resolution in *Re: Adjustment of Longevity Pay of former Associate Justice Buenaventura S. dela Fuente*,[26] this Court cited the two (2) previous cases in approving Associate Justice Buenaventura dela Fuente's request for re-computation of his longevity pay. It noted that he served as the chief legal counsel of the Department of Justice from 1963 to 1974, which, pursuant to Republic Act Nos. 2705 and 4152, had the same rank and salary as "the first and next ranking assistant solicitors general."

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21 Resolution, p. 1.
22 791 Phil. 177 (2016) [Per J. Leonardo-De Castro, En Banc].
23 Resolution, pp. 9–10.
24 Adm. Matter No. 85-8-8334-RTC, September 12, 1985 Resolution [En Banc].
25 July 25, 1991 Resolution [En Banc].
26 November 19, 1992 Resolution [En Banc].

Parity in rank, salary, or benefit, or having the same "judicial rank," does not equate to service in the judiciary, which is the one that longevity pay seeks to reward.

Finally, the majority quotes[27] portions of former Chief Justice Teresita Leonardo-De Castro's *ponencia* in the Resolution on the Motion for Reconsideration in *Re: Vicente S.E. Veloso.*[28] I reiterate former Associate Justice Arturo D. Brion's position[29] on these justifications:

> Laws subsequent to BP 129 conferred the same salaries and benefits granted to members of the judiciary, and to certain public officials in the executive who had been given ranks equivalent to those granted in the judiciary. **The Court clarified in the June 16, 2015 Resolution that these laws do not expand the concept of longevity pay as provided in Section 42 of BP 129, and do not operate to include services in executive positions in determining the grant of longevity pay.**
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> The Court reached this conclusion for the following reasons:
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> 1. The Grant of Longevity Pay is only for Judges and Justices for Service in the Judiciary.
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> ***The language and terms of Section 42 of BP 129 are very clear and unambiguous***. A plain reading of Section 42 shows that it grants longevity pay to a judge or justice (and to none other) who has rendered five years of continuous, efficient, and meritorious ***service in the Judiciary***. The granted monthly longevity pay is equivalent to 5% of the monthly basic pay.
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> Notably, Section 42 of BP 129 ***on longevity pay is separate from the provision on the salary*** of members of the judiciary found in Section 41 of BP 129. This separate placement reflects the longevity pay's status as a ***separate benefit for members of the judiciary*** who have rendered "continuous, efficient and meritorious service in the judiciary;" longevity pay is not part of the salary that judges and justices are granted under Section 41.
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> In other words, all judges and justices are entitled to the salary prescribed for them under Section 41 of BP 129, but only those who have complied with the requisites of Section 42 are entitled to receive the additional longevity pay benefit.
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> Thus, when Section 42 of BP 129 required that the total salary of judges and justices receiving longevity pay should not exceed the salary of those next in rank, it simply meant that the addition of longevity pay cannot result in judges and justices of lower rank receiving a bigger total compensation than those with higher rank.
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> The salary of judges and justices depend on the salary grade (and subsequent step increments) of their positions under the Compensation

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27 Resolution, pp. 4–5.
28 791 Phil. 177 (2016) [Per J. Leonardo-De Castro, En Banc].
29 Id. at 203–212.

and Classification System referred to in Section 41 of BP 129. The *proviso* in Section 42 of the same law operates to limit the amount of longevity pay granted when it disrupts the compensation system referred to in Section 41. It does not integrate longevity pay in the salary due to judges and justices under the compensation system, as not all of them are entitled to receive longevity pay in the first place.

2. Justice Gacutan's Request has no Basis in Law.

The inclusion of past services in another branch of government in the computation of longevity pay in the judiciary has no express basis in law.

. . . .

In Justice Gacutan's case, her services as past National Labor Relations Commission Commissioner (NLRC) places her under the operation of Republic Act No. 9347 (RA No. 9347), which amended Article 216 of the Labor Code to read:

> ART. 216. Salaries, benefits and other emoluments. — The Chairman and members of the Commission shall have the ***same rank, receive an annual salary equivalent to, and be entitled to the same allowances, retirement and benefits*** as those of the Presiding Justice and Associate Justices of the Court of Appeals, respectively. Labor Arbiters shall have the same rank, receive an annual salary equivalent to and be entitled to the same allowances, retirement and other benefits and privileges as those of the judges of the regional trial courts. In no case, however, shall the provision of this Article result in the diminution of the existing salaries, allowances and benefits of the aforementioned officials.

The "salary" that Article 216 of the Labor Code speaks of pertains to the "compensation and allowances" under Section 41 of BP 129, as found in the salary schedule of the government's Compensation and Position Classification System. Thus, Article 216 provided NLRC commissioners with the same salary received by Associate Justices of the Court of Appeals as prescribed in the salary schedule found in the government's Compensation and Position Classification System.

. . . .

As an additional benefit, NLRC commissioners may be granted the longevity pay that judges and justices receive under Section 42 of BP 129, for the commissioners' meritorious, efficient, and continuous service in the NLRC. But this is ***for CONGRESS, NOT FOR THIS COURT, to decide upon and grant***. The grant to the members of the Executive Department of this kind of benefit is an act that the Constitution exclusively assigns to Congress. This is an authority and prerogative that the Constitution exclusively grants to Congress.

To recapitulate, RA No. 9347 merely used the salary, allowances, and benefits received by CA Justices as a yardstick for the salary, allowances, and benefits to be received by NLRC commissioners. This is

what RA No. 9347 meant when it granted NLRC commissioners the same salary, allowances, and benefits as CA Associate Justices.

The grant of an equivalent judicial rank does not (and cannot) make an official in the executive a member of the judiciary; thus, benefits that accrue only to members of the judiciary cannot be granted to executive officials. This is a consequence of the separation of powers principle that underlies the Constitution.

In more concrete terms, incumbent judges and justices who had previous government service ***outside the judiciary*** and who had been ***granted equivalent judicial rank*** under these previous positions, cannot credit their past non-judicial service as service in the judiciary for purposes of securing benefits applicable only and earned while a member of the judiciary, ***unless Congress by law says otherwise and only for purposes of entitlement to salaries and benefits.***

3. The Grant of Longevity Pay Prayed for is an Act of Judicial Legislation.

The grant of longevity pay for past services in the NLRC, based on the grant of longevity pay to judges and justices of the judiciary, amounts to *prohibited judicial legislation.*

. . . .

It must be pointed out that the grant of the requested longevity pay can be a *blow disastrous to the reputation of the judiciary and to this Court's role as the final authority in interpreting the Constitution*, when the public realizes that this Court engaged in judicial legislation, through interpretation, to undeservedly favor its own judges and justices.

4. A Grant would effectively be a Misplaced Exercise of Liberality at the Expense of Public Funds and to the Prejudice of Sectors who are More in Need of these Funds.

. . . .

The Court should not forget that liberality is not a magic wand that can ward off the clear terms and import of express legal provisions; it has a place only when, between two positions that the law can both accommodate, the Court chooses the more expansive or more generous option. ***It has no place where no choice is available at all because the terms of the law are clear and do not at all leave room for discretion.***

In terms of the longevity pay's purpose, liberality has no place where service is not to the judiciary, as the element of loyalty — the virtue that longevity pay rewards — is not at all present.

I cannot overemphasize too that ***the policy of liberal construction cannot and should not be to the point of engaging in judicial legislation — an act that the Constitution absolutely forbids this Court to do.*** The Court may not, in the guise of interpretation, enlarge the scope of a statute or include, under its terms, situations that were not provided nor intended by the lawmakers. ***The Court cannot rewrite the law to conform to what it or certain of its Members think should be the law.***

> *Not to be forgotten is the effect of this Court's grant on the use of public funds: funds granted to other than the legitimate beneficiaries are* ***misdirected funds*** *that may be put to better use* ***by those sectors of society who need them more.***[30] (Emphasis supplied, citations omitted)

By legal fiction, this Court would have assumed that former Associate Justice Abad served in the judiciary from 1975 to 1986, when he had been employed in the Office of the Solicitor General. Moreover, we would have construed his time there as part of his "continuous service in the judiciary," where he served from 2009 to 2014, much later than his years in the executive positions.

This reading is unconstitutional. While this Court generally adopts a liberal approach in construing retirement laws, we cannot countenance judicial legislation for the self-serving interest of our members.

ACCORDINGLY, I vote to **DENY** former Associate Justice Roberto A. Abad's request that his services in the Office of the Solicitor General be included in the computation of his longevity pay.

MARVIC M.V.F. LEONEN
Associate Justice

[30] Id. at 206–212.

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court