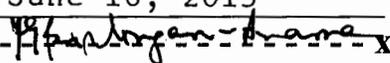


EN BANC

- A.M. No. 12-8-07-CA Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for His Services as Commission Member III of the National Labor Relations Commission;
- A.M. No. 12-9-5-SC Re: Computation of Longevity Pay of Court of Appeals Justice Angelita A. Gacutan;
- A.M. No. 13-02-07-SC Re: Request of Court of Appeals Justice Remedios A. Salazar-Fernando that Her Services as MTC Judge and as COMELEC Commissioner be Considered as Part of Her Judicial Service and Included in the Computation/Adjustment of Her Longevity Pay.

Promulgated:

June 16, 2015

x -----  ----- x

CONCURRING and DISSENTING OPINION

LEONARDO-DE CASTRO, J.:

Justice requires that every person be given his or her due under the law. Thus, when the law seeks to treat two classes similarly, the courts should treat them similarly. Courts should neither create distinctions nor impose conditions. Corollarily, when the law treats two classes differently, courts should regard them dissimilarly.

These are the underlying considerations of this opinion on the matter of the requests of Associate Justices Vicente S.E. Veloso, Angelita A. Gacutan, and Remedios A. Salazar-Fernando of the Court of Appeals for the application in their favor of the longevity pay provision under Section 42 of Batas Pambansa Blg. 129, otherwise known as "The Judiciary Reorganization Act of 1980," as amended.

The dispositive portion of Justice Arturo D. Brion's *ponencia* is quoted hereunder:

**WHEREFORE**, premises considered, we resolve to:

(1) **NOTE** the Memorandum dated February 18, 2013 of Atty. Eden T. Candelaria and the Report and Recommendation dated February 15, 2013 of Atty. Corazon G. Ferrer-Flores;

(2) **GRANT** the request of Associate Justice Remedios A. Salazar-Fernando that her services as Judge of the Municipal Trial Court of Sta. Rita, Pampanga be included in the computation of her longevity pay;



(3) **DENY** the request of Associate Justice Remedios A. Salazar-Fernando that her services as COMELEC Commissioner be included in the computation of her longevity pay;

(4) **DENY** the request of Associate Justice Angelita Gacutan that her services as NLRC Commissioner be included in the computation of her longevity pay from the time she started her judicial service;

(5) **DENY** with finality the motion for reconsideration of Associate Justice Vicente S.E. Veloso for lack of merit; and

(6) **DIRECT** the Clerk of this Court to proceed with the handling of granted longevity pay benefits under Section 42 of Batas Pambansa Blg. 129, pursuant to the guidelines and declarations outlined in the Moving On portion of this Resolution.

I concur with items (1), (2), (3) and (5), but not with respect to item (4) regarding Justice Gacutan. As to the latter, I propose the following ruling:

That Justice Gacutan's request that her services as Commissioner IV of the NLRC from March 3, 1998 to November 5, 2009 be credited as part of her judicial services for purposes of retirement be **GRANTED**; her request that she be given a longevity pay equivalent to 10% of her salary be **DENIED**; to **GRANT** her longevity pay equivalent only to 5% of her basic monthly salary from August 26, 2006, with the corresponding adjustment of her salary, allowances and benefits from the said date.

I further disagree with Justice Brion's sweeping and dismissive statement that previous rulings of this Court which espouse the long-standing interpretation of the term "longevity pay" as part of "salary" as all being "strained and erroneous application[s]" of the law and should be abandoned. To the contrary, I believe that said rulings are in accord with law and should be upheld.

## **FACTUAL BACKGROUND**

### **I. A.M. No. 12-8-07-CA**

Court of Appeals Justice Veloso moves for reconsideration of this Court's Resolution dated October 23, 2012, which denied his request that his services as Commissioner of the National Labor Relations Commission (NLRC) prior to his appointment to the Court of Appeals on February 4, 2004 be credited as service in the Judiciary for purposes of adjusting his salary and benefits, specifically his longevity pay.

The matter was referred to the Financial Management and Budget Office (FMBO) which, after study, submitted its Report and Recommendation dated February 15, 2013 with the proposal that Justice

Veloso's motion be denied as he simply rehashed his arguments in his July 30, 2012 letter-request.

II. A.M. No. 12-9-5-SC

For her part, Court of Appeals Justice Gacutan requests the following:

(a) That her services as Commissioner IV of the NLRC from March 3, 1998 to November 5, 2009 be credited as part of her judicial services for purposes of retirement;

(b) That she be given a longevity pay equivalent to 10% of her salary; and

(c) That an adjustment on her salary, allowances and benefits be made from the time she assumed office as a Court of Appeals Justice on November 6, 2009.

The FMBO was required to comment on the matter. The FMBO recommended that Justice Gacutan's request as to the crediting of her services as Commissioner IV of the NLRC as part of her judicial services be granted, but only for purposes of her retirement benefits, to take effect on her compulsory retirement on December 3, 2013. The FMBO, however, recommended the denial of the adjustment of her salary and allowances retroactive to her assumption of office as Court of Appeals Justice.

III. A.M. No. 13-02-07-SC

Court of Appeals Justice Salazar-Fernando, on the other hand, requests that her services as Judge of the Municipal Trial Court (MTC) of Sta. Rita, Pampanga from February 15, 1983 to July 31, 1987, and as Commissioner of the Commission on Elections (COMELEC) from February 14, 1992 to February 14, 1998 be considered as part of her judicial services. Accordingly, she asks that her longevity pay be adjusted from the current 10% to 20% of her basic salary effective May 25, 1999.

The matter was referred to the Office of Administrative Services (OAS) which, after study, submitted its Memorandum dated February 18, 2013 recommending that Justice Salazar-Fernando's services as MTC Judge be considered as creditable service in the Judiciary that can be added in the computation of her present longevity pay. The OAS, however, proposed the denial of Justice Salazar-Fernando's request that her services in the COMELEC be credited for the purpose of adjusting her present longevity pay; but nonetheless stated that her services in the COMELEC can be included in the computation of her longevity pay upon her retirement "as in the case of Justice Pardo."

## DISCUSSIONS

My disagreement with Justice Brion's opinion pertains to his interpretation of the term "salary" provided in the laws which accord certain executive officials the "same salary," rank, and retirement benefits as the members of the Judiciary.

### *The Narrow and Strict Approach*

The denial of the respective requests of Justices Veloso, Gacutan, and Salazar-Fernando is urged on the ground that the longevity pay for members of the Judiciary under Section 42 of Batas Pambansa Blg. 129, as amended, is given in consideration of "continuous, efficient, and meritorious service rendered **in the judiciary**" and not service in any other branch of government. It is Justice Brion's view that the longevity pay for members of the Judiciary is unique to the Judiciary and can be enjoyed only for services actually rendered, and by those who retired, in the judicial branch of the government. Thus, according to this view, services rendered outside the Judiciary should not be recognized as additional judicial service for purposes of longevity pay on retirement.

This construction of Batas Pambansa Blg. 129 disregards the language and intent of relevant laws. It not only negates those laws, but also overturns this Court's long-standing interpretation on the matter.

### *The Literal Language of the Law*

Section 42 of Batas Pambansa Blg. 129, otherwise known as "The Judiciary Reorganization Act of 1980," as amended, provides:

SEC. 42. *Longevity pay.* – A monthly longevity pay equivalent to [five percent] 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 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.)

As a rule, therefore, the grant of longevity pay under Section 42 of Batas Pambansa Blg. 129 is premised on the rendition of continuous, efficient, and meritorious service in the Judiciary. That is the express language of the law.

Nonetheless, there are existing laws which expressly require the qualifications for appointment, confer the rank, and grant the salaries, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department, such as the following:

(a) the Solicitor General and Assistant Solicitor Generals of the Office of the Solicitor General (OSG);<sup>1</sup> and

(b) the Chief Legal Counsel and the Assistant Chief Legal Counsel,<sup>2</sup> the Chief State Prosecutor,<sup>3</sup> and the members of the National Prosecution Service (NPS)<sup>4</sup> in the Department of Justice.<sup>5</sup>

The intention of the above laws is to establish a parity in qualifications required, the rank conferred, and the salaries and benefits given to members of the Judiciary and the public officers covered by the said laws. The said laws seek to give equal treatment to the specific public officers in the executive department and the Judges and Justices who are covered by Batas Pambansa Blg. 129, as amended, and other relevant laws. In effect, these laws recognize that public officers who are expressly identified in the laws by the special nature of their official functions render services which are as important as the services rendered by the Judges and Justices. They acknowledge the respective roles of those public officers and of the members of the Judiciary in the promotion of justice and the proper functioning of our legal and judicial systems.

Thus, the laws operate under the principle of “equal in qualifications and equal in rank, equal in salaries and benefits received.” The reasonable and logical implication of this principle is that, in the context of the dispute resolution mechanism in particular and of the justice system in general, the services rendered by the public officers concerned and the members of the Judiciary are equal in importance.

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<sup>1</sup> Section 3, Republic Act No. 9417. Its relevant portion provides:

SEC. 3. *Standards.* – The Solicitor General shall have a cabinet rank and the same qualifications for appointment, rank, prerogatives, salaries, allowances, benefits and privileges as the Presiding Justice of the Court of Appeals; and Assistant Solicitor General, those of an Associate Justice of the Court of Appeals.

<sup>2</sup> Section 1, Republic Act No. 2705, as amended by Republic Act No. 4152. Its relevant portion provides:

Section 1. In the performance of his duties as Attorney General of the Philippines and as *ex officio* legal adviser of government-owned and controlled corporations or enterprises, the Secretary of Justice shall be assisted by a Legal Staff which shall have one chief to be known as Chief Legal Counsel and two assistant chiefs whose salaries shall be as hereinafter provided x x x

The **qualifications for appointment** to the position of chief of the legal staff and those of assistant chiefs, and their **ranks and respective salaries**, shall be the same as those prescribed for the first and next ranking assistant solicitors general. x x x.

<sup>3</sup> Section 2-A, Republic Act No. 3783, as amended by Republic Act No. 4140. It states:

Sec. 2-A. The **rank and qualifications for appointment** to the position of chief state prosecutor, assistant chief state prosecutors and chief prosecutor of the Deportation Board shall be the same as those prescribed for judges of courts of first instance[.]

<sup>4</sup> Section 16, Republic Act No. 10071.

<sup>5</sup> Other public officers with a similar provision on qualifications, rank and salary are the Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys and Assistant Regional Public Attorneys in the Public Attorney’s Office under Republic Act No. 9406; the Government Corporate Counsel, Deputy Government Corporate Counsel and Assistant Government Corporate Counsels in the Office of the Government Corporate Counsel under Executive Order No. 878, s. 1981; the Chairman and Members of the NLRC, as well as the Labor Arbiters under the Labor Code, as amended by Republic Act No. 9347; and, the Agrarian Counsel under Republic Act No. 3844.

I respectfully submit the following arguments:

- (1) **The law is clear: the term “salary” covers basic monthly pay plus longevity pay.**
- (2) **The concept of longevity pay as “salary” should not be confused with “rank.”**
- (3) **The legislative intent of salary increases for certain Executive officials accords with “salary” as inclusive of longevity pay.**
- (4) **The Court’s long-standing interpretation of the term “longevity pay” as part of “salary” is correct.**
- (5) **The executive contemporaneous construction of longevity pay is consistent with the law, as interpreted by the Supreme Court.**
- (6) **Longevity pay is not a mere “benefit.”**

Each of these arguments is discussed in detail below.

***The law is clear: the term “salary” covers basic monthly pay plus longevity pay.***

That the language of the law itself, in this case, Section 42 of Batas Pambansa Blg. 129, is the starting and referential point of discussion of longevity pay under that law is not in dispute. It provides:

SEC. 42. *Longevity pay.* – A monthly longevity pay equivalent to [five percent] 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 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. (Emphases supplied.)

There is disagreement, however, on the construction of the above-quoted provision with other relevant laws, such as Section 3 of Republic Act No. 9417, Article 216 of the Labor Code, as amended by Republic Act No. 9347, and Section 16 of Republic Act No. 10071, which require the qualifications for appointment, confer the rank, and grant the same **salaries**, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department.

For Justice Brion, “salary” used in the aforesaid other laws should not include longevity pay. He insists that Section 42 of Batas Pambansa Blg.

129 is clear and unequivocal, that longevity pay is granted to a Judge or Justice who has rendered five years of continuous, efficient, and meritorious service in the Judiciary. Service in the Judiciary within the required period is the only condition for entitlement to longevity pay under Section 42 of Batas Pambansa Blg. 129.

The approach of Justice Brion on the matter is novel. It is, however, negated by the language and intent of relevant laws, as well as by the long-standing interpretation of the Court and the Executive Branch on the matter.

*The concept of longevity pay as “salary” should not to be confused with “rank.”*

Under Section 42 of Batas Pambansa Blg. 129, longevity pay is an amount equivalent to 5% of the monthly basic pay given to Judges and Justices for each five years of continuous, efficient, and meritorious service rendered in the Judiciary. It is not only an amount given as an addition to the basic monthly pay but, more importantly, **it forms part of the salary of the recipient thereof.**<sup>6</sup>

In other words, **longevity pay is “salary”** and it should not be confused with **“rank.”**

That is how this Court has treated the longevity pay under Section 42 of Batas Pambansa Blg. 129 since 1986, particularly in *Re: Longevity Pay of the Associate Justices of the Sandiganbayan*.<sup>7</sup> It is a treatment which reflects the Court’s reading of the text of the law and its understanding of the law’s legislative intent.

As judicial decisions applying or interpreting the law form part of our legal system,<sup>8</sup> the Court’s treatment of the longevity pay under Section 42 of Batas Pambansa Blg. 129 is part of that law as of the date of enactment of that law since the Court’s application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.<sup>9</sup>

The extensive discussions of Justice Brion **intermingle** the concept of “rank” with “salary” so that his arguments delve into the meaning of the term “rank” which is entirely different from the term “salary.” Hence, the settled meaning of “rank,” particularly that it does not include the privilege to use the title of Judge or Justice should not be used to determine the import

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<sup>6</sup> *Re: Longevity Pay of the Associate Justices of the Sandiganbayan*, A.M. No. 86-9-2394-0, Resolution dated September 30, 1986.

<sup>7</sup> *Id.*

<sup>8</sup> Civil Code, Article 8.

<sup>9</sup> *People v. Licera*, 160 Phil. 270, 273 (1975).

of the term “salary” as used in the different laws. Otherwise, there would be no point in mentioning in the laws “rank” separately from “salary.” “Rank” unquestionably has nothing to do with the amount of compensation or pay an official is entitled to under the law. The said term pertains only to the “class” or “standing” in an organization or societal structure.

*The legislative intent of salary increases for certain Executive officials accords with “salary” as inclusive of longevity pay.*

In conferring upon certain officials in the Executive the same salaries, aside from their rank, as those of their respective judicial counterparts, Congress intended to make the salaries of the former at par with the latter. The legislative records support this.

In particular, the following portion of the interpellations in connection with Senate Bill No. 2035, which became Republic Act No. 9347, is enlightening:

Asked by the Chair whether the proposed amendment (Section 4) to Article 216 of the Labor Code means an increase in **salaries**, Senator Ejercito Estrada (J) clarified that the section proposes that **the arbiters be at par with the judges of the regional trial courts, and the commissioners at par with the justices of the Court of Appeals.**<sup>10</sup> (Emphases supplied.)

In his sponsorship speech of Senate Bill No. 2659, which became Republic Act No. 10071, Senator Francis Joseph Escudero adopted as part of his sponsorship speech several explanatory notes of related bills, including the explanatory note of Senator Edgardo Angara for Senate Bill No. 213. The relevant portion of the explanatory note reads:

At the heart of a strong justice system is the indispensable and complementary role of the State’s prosecutorial and counselling arm. The National Prosecution Service [NPS] and the Office of the Chief State Counsel [OCSC] are mandated to uphold the rule of law as a component of the justice system.

It is sad to note, however, that our prosecutors and state counselors earn less than those in the Judiciary. Such situation has produced a migratory effect. After spending a few years in the NPS or the OCSC, they resign and join the ranks of the judiciary. x x x.

This bill seeks to correct the aforementioned inequities. The increase in **salaries** and the granting of additional services and privileges to the members of the National Prosecution Service and the Office of the Chief State Counsel, will place them **at par with those in the Judiciary**

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<sup>10</sup> JOURNAL, SENATE 13TH CONGRESS, SESSION No. 18, p. 201 (September 5, 2005).

[and] would deter the current practice of migration. x x x.<sup>11</sup> (Emphases supplied.)

This legislative intent to grant certain officials of the Executive Department the same salaries as that of their respective judicial counterparts should be read in conjunction with how salary is defined in the law and treated vis-a-vis longevity pay in prevailing case law. In enacting a statute, the legislature is presumed to have been aware of, and have taken into account, prior laws and jurisprudence on the subject of legislation. *Manila Lodge No. 761 v. Court of Appeals*<sup>12</sup> instructs:

[I]t is presumed that when the lawmaking body enacted the statute, it had full knowledge of prior and existing laws and legislation on the subject of the statute and acted in accordance or with respect thereto. (Citation omitted.)

Thus, Congress knew, or is presumed to have known, the concept of longevity pay under Section 42 of Batas Pambansa Blg. 129 as **part of the total salary** of members of the Judiciary when it enacted Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the OSG, the NLRC, and the NPS, respectively, the same salary as their respective counterparts in the Judiciary. Moreover, armed with that knowledge, Congress is presumed to have intended to adopt the definition of “salary” (as constituting basic monthly salary plus longevity pay) when it enacted Republic Act Nos. 9417, 9347, and 10071, which will be in keeping with the legislative intent to equalize the salary of certain executive officials with members of the Judiciary. To do otherwise will negate the express legislative intent.

As it is part of the salary of a member of the Judiciary, it should perforce be part of the salary of the public officers granted by law with the same rank and salary as their counterparts in the Judiciary. Accordingly, the increase in the salary of Judges and Justices by virtue of the longevity pay should also result in the corresponding increase in the salary of the public officers who, under relevant laws, enjoy the same rank and salary as their judicial counterparts. Otherwise, the law’s express language and its intention to grant the same rank and salary of a member of the Judiciary to the said public officers will be defeated.

An example will make the disparity and injustice clearer. Under Section 3 of Republic Act No. 9417, the Solicitor General shall have “the same qualifications for appointment, rank, prerogatives, salaries, allowances, benefits and privileges as the Presiding Justice of the Court of Appeals.” If one was appointed Presiding Justice of the Court of Appeals and another, Solicitor General, on the same date, after five years of continuous, efficient,

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<sup>11</sup> <http://www.senate.gov.ph/lisdata/43133709!.pdf>, last visited June 15, 2015.

<sup>12</sup> 165 Phil. 161, 181 (1976).

and meritorious service, the Presiding Justice would be receiving longevity pay equivalent to 5% of his monthly basic pay. As the longevity pay forms part of the salary, the Presiding Justice's monthly salary would be his basic pay plus the longevity pay. If the Solicitor General was not to similarly enjoy the longevity pay despite his effective and loyal service, then he would still be receiving only his basic salary in an amount that is no longer the same as that of the Presiding Justice. In effect, the Solicitor General would be enjoying the same rank but not the same salary as the Presiding Justice in violation of the express provision of law. The disparity becomes more glaring if the Presiding Justice and the Solicitor General are both elevated to the Supreme Court on the same date, say, March 15, 2010. The former Presiding Justice would receive his basic salary plus longevity pay. On the other hand, the former Solicitor General would receive his basic monthly salary only, even if the latter was supposed to have the same rank and salary at the time when they served as Solicitor General and Presiding Justice, respectively. Undoubtedly, the discrepancy in salary will also have a substantial impact on their respective retirement pay, which will be based on the highest monthly salary they had been receiving at the time of retirement.

In other words, by enacting Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the Executive Department the same salary as their respective counterparts in the Judiciary, Congress manifested its intent to treat "salary" the way it has been treated in Batas Pambansa Blg. 129 as interpreted by this Court, that is, basic monthly pay plus longevity pay.

Since the above-mentioned laws do not make any distinction with respect to the term "salary" as it is expressly provided for in Section 42 of Batas Pambansa Blg. 129, we should not make any distinction. *Ubi lex non distinguit nec nos distinguere debemus.*

It is in light of the legislative intent that the insistence of Justice Brion to strictly adhere to the sentence structure of Section 42 of Batas Pambansa Blg. 129, without regard to other laws on the matter, contradicts such legislative intent and constitutes judicial legislation, which will in effect treat "salary" in a way that is not borne out by the language of the law and the established Court rulings on the matter.

The longevity pay forms part of the salary of a Judge or Justice, since Section 42 of Batas Pambansa Blg. 129 says it is "added" to the said salary. Thus, the salary of the members of the Judiciary refers to their respective basic pay plus the longevity pay to which they may be entitled by virtue of their continuous, efficient, and meritorious service in the Judiciary. That should also be the definition of the "salary" of the concerned public officers who enjoy the same rank and salary as Judges or Justices, if the word "same" employed in the laws pertaining to executive officials is to be

understood in its plain and ordinary meaning.<sup>13</sup>

A narrow and restrictive approach which limits the longevity pay under Section 42 of Batas Pambansa Blg. 129, as amended, to service rendered in the Judiciary only is to unduly restrict the definition of salary, fixing it to the basic pay. To depart from the meaning expressed by the words, is to alter the statute, to legislate and not to interpret. It is to amend the laws by judicial fiat, a reprehensible act of judicial legislation.

***The Court's long-standing interpretation of the term "longevity pay" as part of "salary" is correct.***

This Court has long recognized that the longevity pay under Section 42 of Batas Pambansa Blg. 129 is among the salaries and benefits enjoyed by members of the Judiciary that are extended to the public officers conferred by law with the rank of Judges of the lower courts or Justices of the Court of Appeals.

The Court's Resolution dated September 12, 1985 in *Request of Judge Fernando Santiago for the Inclusion of His Services as Agrarian Counsel in the Computation of His Longevity Pay*<sup>14</sup> granted Judge Santiago's request and his longevity pay was computed "from the date of his assumption of office as Agrarian Counsel on August 9, 1963 and not from the date he assumed office as Judge of the Court of First Instance on June 1, 1970." The basis of this is Section 160 of Republic Act No. 3844 which provides:

Section 160. *Creation of Office of Agrarian Counsel.* – To strengthen the legal assistance to agricultural lessees and agricultural owner-cultivators referred to in this Code, the Tenancy Mediation Commission is hereby expanded and shall hereafter be known as the Office of the Agrarian Counsel. **The head of the Office shall hereafter be known as Agrarian Counsel and shall have the rank, qualifications and salary of First Assistant Solicitor General.** He shall be assisted by a Deputy Agrarian Counsel, who shall have the rank, qualifications and salary of Assistant Solicitor General. The Agrarian Counsel and Deputy Agrarian Counsel shall be appointed by the President with the consent of the Commission on Appointments of Congress and shall be under the direct supervision of the Secretary of Justice. (Emphasis supplied.)

Under Republic Act No. 335, as amended by Presidential Decree No. 478, the Assistant Solicitor General has the "same rank, qualifications for appointment, and salary as a Judge of the Court of First Instance," now Regional Trial Court.

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<sup>13</sup> "Same" means "identical," "equal," "even" (Merriam-Webster's Dictionary and Thesaurus).  
<sup>14</sup> A.M. No. 85-8-8334-RTC.

In the Resolution dated July 25, 1991 in *In Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco*, this Court said:

The Court approved the request of Justice Emilio A. Gancayco for the adjustment of his longevity pay not only for purposes of his retirement but also for his entire judicial service by including as part thereof his period of service from August 9, 1963 to September 1, 1972 as Chief Prosecuting Attorney (Chief State Prosecutor) considering that under Republic Act No. 4140, the Chief State Prosecutor is given the **same rank, qualification and salary** of a Judge of the Court of First Instance.<sup>15</sup> (Emphasis supplied.)

In the Resolution dated November 19, 1992 in *Re: Adjustment of Longevity Pay of former Associate Justice Buenaventura S. dela Fuente*, this Court adverted to the *Santiago* and *Gancayco* Resolutions and said:

This refers to the letter of former Associate Justice Buenaventura S. dela Fuente, dated September 27, 1992, requesting a recomputation of his longevity pay. It appears that former Justice dela Fuente had been the Chief Legal Counsel, Department of Justice, since June 22, 1963 until his promotion to the Court of Appeals in 1974, the **qualifications** for the appointment to which position as well as its **rank and salary**, pursuant to R.A. 2705, as amended by R.A. 4152, shall be the **same** as those prescribed for the first and next ranking assistant solicitors general. Accordingly, in line with the rulings of this Court in *Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco*, dated July 25, 1991 and Administrative Matter No. 85-8-8334-RTC. – *Re: Request of Judge Fernando Santiago for the inclusion of his services as Agrarian Counsel in the computation of his longevity pay*, dated September 12, 1985, the Court Resolved to (a) APPROVE the aforesaid request of former Associate Justice Buenaventura S. dela Fuente[,] and (b) AUTHORIZE the recomputation of his longevity pay from June 22, 1963, when he assumed office and began discharging the functions of Chief Legal Counsel.

In *Re: Request of Justice Josefina Guevara-Salonga, Court of Appeals, that Her Services as Assistant Provincial Fiscal of Laguna be Credited as Part of Her Services in the Judiciary for Purposes of Her Retirement*,<sup>16</sup> this Court stated:

[Republic Act No. 10071] validates the recognition of the services of *Justice Emilio A. Gancayco*, whom we credited for his service as Chief Prosecuting Attorney (Chief State Prosecutor), based on *Republic Act No. 4140* which likewise grants his office (as Chief Prosecuting Attorney) the rank, qualification and salary of a Judge of the Court of First Instance. In the same manner, the current law also validates the crediting of past service to *Justice Buenaventura dela Fuente* who was the Chief Legal Counsel of the Department of Justice. (Citations omitted.)

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<sup>15</sup> As cited in *Re: Request of Justice Josefina Guevara-Salonga, Court of Appeals, that Her Services as Assistant Provincial Fiscal of Laguna be Credited as Part of Her Services in the Judiciary for Purposes of Her Retirement*, A.M. No. 11-10-7-SC, February 14, 2012, 665 SCRA 646, 649-650.

<sup>16</sup> *Id.* at 651-652.

Also, in *Guevara-Salonga*, this Court granted the request of Court of Appeals Justice Guevara-Salonga for the crediting of her services as Assistant Provincial Fiscal of Laguna as part of her services in the Judiciary for purposes of her retirement pursuant to Sections 16 and 24 of Republic Act No. 10071 which respectively provide:

Sec. 16. *Qualifications, Ranks and Appointments of Prosecutors and Other Prosecution Officers.* – x x x.

Prosecutors with the rank of Prosecutor IV shall have the **same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits** as those of a judge of the Regional Trial Court.

Prosecutors with the rank of Prosecutor III shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Metropolitan Trial Court.

Prosecutors with the rank of Prosecutor II shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in cities.

Prosecutors with the rank of Prosecutor I shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in Municipalities.

Sec. 24. *Retroactivity.* – The benefits mentioned in Sections 14 and 16 hereof shall be granted to all those who retired prior to the effectivity of this Act. (Emphasis supplied.)

The Resolutions in *Santiago, Gancayco, Dela Fuente, and Guevara-Salonga* reveal that this Court has consistently approached and applied the longevity pay provision under Section 42 of Batas Pambansa Blg. 129 liberally, that is, as applicable by statutory extension to those covered by the same qualifications and given the same rank and salary as the members of the Judiciary. They evince the view that the services rendered in their respective offices by the public officers required by law to have the same qualifications, rank, and salary of their counterparts in the Judiciary are considered to be **substantially the same as service in the Judiciary** for purposes of the said public officers' enjoyment of the longevity pay under

Section 42 of Batas Pambansa Blg. 129.

The narrow and strict approach considers *Santiago, Gancayco, Dela Fuente*, and *Guevara-Salonga* as the products of misinterpretation and misunderstanding of Section 42 of Batas Pambansa Blg. 129. In doing so, however, the narrow and strict approach fails to take into account that the effect of abandoning the past actions of the Court is to negate the applicable laws, which themselves mandated similarity of rank and salary, as longevity pay forms part of “salary.” Rather than promoting the parity and similarity of rank and salary intended by the said laws and upheld in *Santiago, Gancayco, Dela Fuente*, and *Guevara-Salonga*, the narrow and strict approach will lead to inequality and disparity of salary thereby rendering similarity of rank meaningless and hollow.

That the said laws manifest a liberal attitude towards the public officers they respectively cover is reinforced by this Court’s treatment in *Re: Longevity Pay of the Associate Justices of the Sandiganbayan*<sup>17</sup> of the longevity pay under Section 42 of Batas Pambansa Blg. 129 as something that “forms part of the salary of the recipient thereof.” In particular, the Court adopted a liberal stance and ruled:

[L]ongevity pay once earned and enjoyed becomes a vested right and **forms part of the salary of the recipient thereof** which may not be reduced, despite the subsequent appointment of a justice or judge next higher in rank who is not entitled to longevity pay for being new and not having acquired any longevity in the government service. Furthermore, diminution or decrease of the salary of an incumbent justice or judge is prohibited by Section 10 of Article X of the Constitution; hence, such recipient may continue to earn and receive additional longevity pay as may be warranted by subsequent services in the judiciary, because the purpose of the Longevity Pay Law is to reward justices and judges for their long and dedicated service as such. The provision of the law that the total salary of each justice or judge concerned, after adding his longevity pay, should not exceed the salary plus longevity pay of the justice or judge next higher in rank, refers only to the initial implementation of the law and does not proscribe a justice or judge who is already entitled to longevity pay, from continuing to earn and receive longevity pay for services rendered in the judiciary subsequent to such implementation, by the mere accident of a newcomer being appointee to the position next higher in rank. x x x. (Emphasis supplied.)

Justice Brion, however, claims that the said cases are not controlling herein, as they are allegedly a strained and erroneous application of Section 42 of Batas Pambansa Blg. 129 that should be abandoned.

Such claim of grave mistake should be premised on a clear finding that prior rulings were wrong. In this case, I do not find Justice Brion’s characterization of *Santiago, Gancayco, Dela Fuente*, and *Guevara-Salonga*

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<sup>17</sup> Supra note 6.

as “erroneous” and mere “aberrations” as proper.

The problem with the position of Justice Brion, I believe, is its basic premise that the longevity pay should be strictly construed to apply to members of the Judiciary only, and laws enacted by Congress should not be deemed to have put them on equal footing in terms of rank and salary with executive officials. In particular, even if the laws speak of “same rank” and “same salary,” he is averse to the idea or rationale behind the laws providing for the equal rank and salaries of members of the Judiciary, prosecutors, and public officers in the OSG and the NLRC. **While certain members of the Judiciary may feel an exclusive franchise to the rank, salary, and benefits accorded to them by law, we cannot impose our own views on Congress which has ample power to enact laws as it sees fit, absent any grave abuse of discretion or constitutional infraction on its part.**

There are several other Resolutions issued by the Court involving court officials, who are not Judges or Justices, but accorded judicial rank, salaries, and privileges, such as *Re: Request of Retired Deputy Court Administrator Bernardo T. Ponferrada for Automatic Adjustment of His Retirement Benefits to Include the Special Allowance Under Republic Act No. 9277*,<sup>18</sup> *Re: Request of Atty. Ma. Piedad B. Ferrer-Campana, Deputy Clerk of Court and Reporter to Retire under Republic Act No. 910*,<sup>19</sup> and *Re: Request of DCA Reynaldo L. Suarez (Ret.) to be Granted the Special Allowances under Republic Act No. 9227*,<sup>20</sup> cited by Justice Brion in his opinion. Significantly, these cases do not directly address the issue of longevity pay as being included in said court officials’ salaries, but their retirement claims in relation to the special allowances granted under Republic Act No. 9227,<sup>21</sup> and/or the automatic adjustment of retirement benefits under Republic Act No. 910.<sup>22</sup>

Republic Act No. 9227 specifically grants to all Justices, Judges, as well as other positions in the Judiciary with the equivalent rank of Court of Appeals Justices and Regional Trial Court (RTC) Judges, special allowances amounting to 100% of their basic salaries. Such special allowances shall be included in the computation of the retirement benefits of the Justices, Judges, and other court officials with judicial rank. However, Republic Act No. 9227 cannot be applied retroactively, not only because of the absence of a clause to such effect, but also because Section 5 thereof effectively provides only for prospective application as it reads:

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<sup>18</sup> A.M. No. 11838-Ret., December 9, 2008.

<sup>19</sup> A.M. No. 08-10-7-SC, March 3, 2009.

<sup>20</sup> A.M. No. 08-12-6-SC, January 12, 2010.

<sup>21</sup> An Act Granting Additional Compensation in the Form of Special Allowances for 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, and for Other Purposes.

<sup>22</sup> An Act to Provide for the Retirement of Justices of the Supreme Court and of the Court of Appeals, for the Enforcement of the Provisions Thereof by the Government Service Insurance System and to Repeal Commonwealth Act Numbered Five Hundred and Thirty-Six.

SECTION 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.** (Emphases supplied.)

The cases of *Ponferrada*, *Ferrer-Campaña*, and *Suarez* distinguished among: (1) Justices of the Supreme Court and the Court of Appeals; (2) court officials granted the same judicial rank, salaries, and privileges **by law**; and (3) court officials granted the same judicial rank, salaries, and privileges **by Court resolution**, in so far as their claims for retirement benefits under Republic Act No. 9227, in relation to Republic Act No. 910, are concerned. Here, we are dealing with the grant of the “same salary” by law, not by Court resolution, upon certain public officers.

***The executive contemporaneous construction of longevity pay is consistent with the law, as interpreted by the Supreme Court.***

Contemporaneous construction is the interpretation or construction placed upon the statute by an executive or administrative officer called upon to execute or administer the statute. It includes the construction by the Secretary of Justice in his capacity as the chief legal adviser of the government.<sup>23</sup>

In this connection, the contemporaneous construction by the Department of Justice and other offices in the executive branch disclose a similar treatment of the longevity pay provision of Batas Pambansa Blg. 129 as shown by the following pertinent portions of the 2<sup>nd</sup> Indorsement dated November 21, 1988 by the then Secretary of Justice, Sedfrey A. Ordoñez:

1. Longevity pay forms part of the salary of the recipient (Resolution of the Supreme Court in Adm. Matter No. 86-9-2394-0, Re: Longevity Pay of the Associate Justices of the Sandiganbayan). Thus, **when the law grants to certain officials of the executive department the “rank and salary” of a member of the Judiciary, it should be deemed to include longevity pay, which is part of salary; otherwise, the law’s intention to grant the same rank and salary of a justice/judge to executive officials would be defeated or nullified.**

2. The statement x x x that those executive officials who were granted longevity pay “were either justice or judge of the court at the time

<sup>23</sup>

*See* Agpalo, Ruben, *Statutory Construction* (6th edition), pp. 190-191.

of the grant” is not entirely correct. Former Chief State Counsel, now Court of Appeals Justice Minerva P.G. Reyes, was granted longevity pay in 1985 when she was the incumbent Chief State Counsel. Assistant Solicitors General Ramon Barcelona, Romeo dela Cruz, Zoilo Andin and Amado Aquino are presently receiving longevity pay for their length of service as Assistant Solicitors General.

3. The Supreme Court computed the longevity pay of Judge Fernando Santiago “from the date of his assumption of office as Agrarian Counsel [which was an executive office] on August 9, 1963 and not from the date he assumed office as Judge of the Court of First Instance on June 1, 1970” (Adm. Matter No. 85-8-8384-RTC). The same thing was done in the case of Justices Vicente Mendoza, Santiago Kapunan, Jose Racela, Lorna L. de la Fuente and Minerva P.G. Reyes, whose respective services in the Executive Department were credited in their favor for purposes of the longevity pay.

It bears reiterating that in the case of Justice Reyes, she has been receiving longevity pay since before her appointment in the Judiciary, that is, while she was, and on the basis of her being, Chief State Counsel x x x. The inclusion by the Supreme Court of her services as Assistant Chief State Counsel and[,] later, as Chief State Counsel in the computation of her longevity pay as a member of the Judiciary constitutes a judicial affirmance by the highest court of the land of the validity of the grant of longevity pay to her way back in 1985 while she was still an official of the Executive Department. (Emphasis supplied.)

To reiterate, the above opinion of then Justice Secretary Ordoñez constitutes contemporaneous construction of the issue at hand.

Justice Brion asserts that administrative construction is merely advisory and is not binding upon the courts. He is absolutely correct. That is the rule. In the same vein, that rule also means that courts should respect the contemporaneous construction placed upon a statute by the executive officers whose duty is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby.<sup>24</sup>

As I have shown above, the contemporaneous construction of the then Justice Secretary is in accordance with both statutory law and case law.

***Longevity pay is not a mere  
“benefit.”***

Another fundamental premise of Justice Brion’s position is that longevity pay is only a benefit. This premise is readily apparent in his discussion of the background of the amendments introduced by Republic Act Nos. 9417 and 9347. In particular, Justice Brion says:

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<sup>24</sup> *Heirs of Wilson Gamboa v. Teves*, G.R. No. 176579, October 9, 2012, 682 SCRA 397.

In the discussions and exchanges among the members of Congress – among them, the explanatory note of Senator Ramon Revilla, Jr. in Senate Bill No. 1204 and the sponsorship speech of Senator Jinggoy Ejercito Estrada of Senate Bill No. 2035 (the same bill that led to RA 9347) – nowhere did they deal with the issue of longevity pay as a benefit that should be accorded to labor arbiters and commissioners of the NLRC. (Citations omitted.)

and then again:

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. x x x. (Emphasis supplied.)

Justice Brion also points out that prior to Republic Act No. 9347, the entitlement to equivalence under Article 216 of the Labor Code was limited to “salaries, allowances and benefits.” Republic Act No. 9347 expressly included “retirement” in the enumeration. According to Justice Brion, the need for such amendment by Republic Act No. 9347 proves that the general word “benefit” in the old Article 216 of the Labor Code did not include all the benefits then being enjoyed by Judges and Justices of the Judiciary. In effect, he is saying that since longevity pay is not expressly mentioned in either the old or the amended Article 216, then it is not among the benefits granted to Judges and Justices to which NLRC officials should also be entitled.

Article 216 of the Labor Code was amended by Republic Act No. 9347 to include “retirement” in the enumeration because the long-standing definition of “benefits” does not cover retirement pay unless expressly provided by law. Hence, in *Ponferrada*, the Court ruled:

We stress that the grant of judicial rank was merely intended to equalize the salaries of certain officials, while they are in the service, with the Justices of the Supreme Court or of the Court of Appeals. Parity in rank and salaries does not automatically mean parity in retirement benefits under Section 3-A of RA 910. PD 828 which created the Office of the Court Administrator merely provides that the Deputy Court Administrator "shall have the same rank, privileges and compensation as those of Associate Justices of the Court of Appeals." There is nothing in PD 828 that expressly extended the retirement benefits of Section 3-A of RA 910 to the Deputy Court Administrator.

In contrast, law, jurisprudence, and executive contemporaneous construction have long established and/or applied the term “salary” as including “longevity pay,” hence, there is no more need to explicitly mention “longevity pay” in the enumeration in Article 216 of the Labor Code.

**Which brings me to my next and more important point, longevity pay is not a mere benefit, but is salary, as it is a component of the “total salary.”** That is how this Court treated longevity pay as a contemporaneous interpretation of Section 42 of Batas Pambansa Blg. 129. That is also how Congress presumably intended to treat longevity pay when it granted a salary which is the same as that of members of the Judiciary to certain officials in the Executive Department under relevant laws, including Republic Act Nos. 9417, 9347, and 10071, as Congress did not qualify or limit the term “salary” in these laws.

Section 42 of Batas Pambansa Blg. 129 clearly states that the longevity pay is “**added**” to the basic monthly salary and forms part of the “**total salary**” of a Judge or Justice. Thus, the salary of the members of the Judiciary refers to their respective basic pay plus the longevity pay to which they may be entitled by virtue of their continuous, efficient, and meritorious service in the Judiciary. That should also be the definition of the “salary” of the concerned public officers who enjoy the same salary as Judges or Justices, if the word “same” employed in the laws pertaining to executive officials is to be understood in its plain and ordinary meaning.

To treat longevity pay as a mere benefit and not as salary contradicts the language and intent of Section 42 of Batas Pambansa Blg. 129. That is definitely judicial legislation. To treat longevity pay as salary and not mere benefit as Batas Pambansa Blg. 129 provides and yet not to apply the same treatment to certain officials in the Executive Department who are, by law, granted the same salary as their counterparts in the Judiciary, violates the language and spirit of the law. That, too, is judicial legislation.

Therefore, longevity pay under Section 42 of Batas Pambansa Blg. 129 must be treated as salary and to extend it to certain officials in the Executive Department who are, by law, granted the same salary as their counterparts in the Judiciary. That is, after all, how Congress intended it to be. That is how it was interpreted in *Santiago*, *Gancayco*, *Dela Fuente*, and *Guevara-Salonga*.

## CONCLUSION

### *Some Final Matters*

During deliberations, Justice Brion asked whether the view on longevity pay which I advocate in my Concurring and Dissenting Opinion intends to claim that any new salary or benefit in the legislative or executive branches of government should also be automatically replicated in the Judiciary on the basis of the principles of equality and equalization.

With due respect, I do not make that claim and I do not wish to make that claim. In the first place, the focus of the discussion here is the matter of longevity pay under Section 42 of Batas Pambansa Blg. 129 and other relevant laws. **It would be best to limit the discussion on that matter. Any new salary or benefit in the other branches of government may be possible yet they are hypothetical or conjectural at this time. We cannot second guess what law Congress will enact in the future. Moreover, the effect of such hypothetical new salary or benefit to the members of the Judiciary is not in issue here. The essence of the Court's judicial power is to settle actual controversies involving rights which are legally demandable and enforceable under existing laws.**<sup>25</sup>

**Moreover, under the existing laws, the salary (composed of basic monthly pay and longevity pay) of the members of the Judiciary is the peg or standard for the salary of certain officials of the Executive Department under certain laws and not the other way around.** The latter may be the situation in the future but not here or now. If that happens, an amendatory law to put in equal footing the Members of the Judiciary and Executive officials is necessary.

Lastly, the resolution of these consolidated administrative matters is not limited to the three Justices whose respective requests we consider today. The issue involved here has far-reaching implications as it affects members of the Judiciary situated similarly to Justices Veloso, Gacutan, and Salazar-Fernando, as well as executive officials granted by law with the same salary as members of the Judiciary. Thus, the Court should uphold the clear language of the law, sustain the legislative intent behind it, and respect the long history of its judicial interpretation and executive construction.

### ***The Instant Requests Considered***

Justices Veloso and Gacutan anchor their claim on Article 216 of the Labor Code, as amended by Republic Act No. 9347, which reads:

Article 216. *Salaries, Benefits and 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. (Emphases supplied.)

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<sup>25</sup> Constitution, Article VIII, Section 1.

Republic Act No. 9347 took effect on August 26, 2006. Prior to its amendment by Republic Act No. 9347, Article 216 of the Labor Code, as amended by Republic Act No. 6715, provides:

Article 216. *Salaries, benefits and other emoluments.* - The Chairman and **members of the Commission shall receive an annual salary at least equivalent to, and be entitled to the same allowances and benefits as, those of the Presiding Justice and Associate Justices of the Court of Appeals**, respectively. The Executive Labor Arbiters shall receive an annual salary at least equivalent to that of an Assistant Regional Director of the Department of Labor and Employment and shall be entitled to the same allowances and benefits as that of a Regional Director of said department. The Labor Arbiters shall receive an annual salary at least equivalent to, and be entitled to the same allowances and benefits as, that of an Assistant Regional Director of the Department of Labor and Employment. In no case, however, shall the provision of this Article result in the diminution of existing salaries, allowances and benefits of the aforementioned officials. (Emphases supplied.)

I. A.M. No. 12-8-07-CA

Justice Veloso invokes the retroactive application of Republic Act No. 9347 in his favor and cites *Guevara-Salonga* in support of his claim.

The rule is that laws shall have no retroactive effect, unless the contrary is provided.<sup>26</sup> Justice Veloso was appointed as Associate Justice of the Court of Appeals on February 4, 2004, that is, before the effectivity of Republic Act No. 9347. That is sufficient to defeat his claim.

Justice Veloso cannot piggyback on *Guevara-Salonga* because the law applicable there, Republic Act No. 10071, expressly provided for retroactivity.<sup>27</sup>

Thus, Justice Veloso's services as Commissioner of the NLRC were governed by the pre-Republic Act No. 9347 version of Article 216 of the Labor Code. By invoking the Republic Act No. 9347 amendment, he impliedly recognizes that he cannot make a successful claim under the Republic Act No. 6715 version of the Labor Code.

Under Article 216 of the Labor Code, amended by Republic Act No. 6715, only equivalence in salary, allowances, and benefits of the Commissioners of the NLRC with the Associate Justices of the Court of Appeals was provided for. It is significant to note that the law did not confer judicial rank to the NLRC Commissioners, which may be taken to mean as legislative intent to differentiate their service from and not to equate it with service in the Judiciary. Thus, the law itself created a distinction and made a

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<sup>26</sup> Civil Code, Article 4.

<sup>27</sup> See Republic Act No. 10071, Section 24.

dissimilar treatment between the NLRC Commissioners and the Associate Justices of the Court of Appeals. The law did not provide for full parity and equality and therefore did not intend to put the former in exactly the same footing as the latter. The situation of NLRC Commissioners pre-Republic Act No. 9347 was not in consonance with the principle of “equal in qualifications and equal in rank, equal in salaries and benefits received.”

## II. A.M. No. 12-9-5-SC

Justice Gacutan was still a Commissioner of the NLRC when Republic Act No. 9347 took effect. From the date of effectivity of the law onwards, her services as NLRC Commissioner are therefore covered by the beneficial effect of the amendment of Article 216 of the Labor Code by Republic Act No. 9347, which gave the NLRC Commissioners the same rank and salary as Associate Justices of the Court of Appeals. As Republic Act No. 9347 expresses the intent to place the NLRC Commissioners in exactly the same footing as their counterparts in the Court of Appeals, and “salary” includes longevity pay, then Justice Gacutan’s longevity pay should be reckoned from August 26, 2006, the date Republic Act No. 9347 took effect, at which time she was still NLRC Commissioner. Thus, five years after that date, or on August 26, 2011, she became entitled to receive longevity pay equivalent to 5% of her monthly basic pay at that time; and, she is now entitled to adjustment of salary, allowances, and benefits only as of that date.

As regards her request that her entire services as NLRC Commissioner be credited as part of her government service for the purpose of retirement under Republic Act No. 910, as amended by Republic Act No. 9946, the same may be allowed as it is in accordance with Section 1 of Republic Act No. 910, as amended by Republic Act No. 9946, which requires fifteen (15) years service in the Judiciary or in any other branch of the Government as a condition for coverage of the said law.

## III. A.M. No. 13-02-07-SC

Justice Salazar-Fernando’s service as MTC Judge of Sta. Rita, Pampanga from February 15, 1983 to July 31, 1987 constitutes continuous, efficient, and meritorious service rendered in the Judiciary. They may therefore be included in the computation of her longevity pay pursuant to Section 42 of Batas Pambansa Blg. 129.

However, Justice Salazar-Fernando cannot successfully rely on the case of Justice Pardo to support her claim for the inclusion of her services as COMELEC Commissioner in the computation of her longevity pay. Her situation is substantially and significantly different from that of Justice Pardo.

In *In Re: Request of Justice Bernardo P. Pardo for Adjustment of His Longevity Pay*,<sup>28</sup> the service record of Justice Pardo has been shown as follows:

[H]e occupied the positions of District Judge, Court of First Instance of Rizal, Branch 34, Caloocan City, from 3 May 1974 to 17 January 1983; Regional Trial Court, Branch 43, Manila, from 18 January 1983 to 29 March 1993; Associate Justice of the Court of Appeals, from 30 March 1993 to 16 February 1995; Chairman, COMELEC, from 17 February 1995 to 6 October 1998; and Associate Justice of the Supreme Court, from 7 October 1998 to 10 February 2002. x x x.

Justice Pardo's service, particularly from the Court of Appeals to the COMELEC then to this Court has been unbroken and without interruption.

In contrast, the services of Justice Salazar-Fernando had not been continuous and uninterrupted. After her service as MTC Judge in July 1987, she served as Chairperson of the Land Transportation Franchising and Regulatory Board from August 1987 to February 13, 1992; she then served as Commissioner of the COMELEC on February 14, 1992 until February 15, 1998. After three days, or on February 18, 1998, she acted as consultant to the COMELEC until October 6, 1998.<sup>29</sup> Then five months later, or on March 25, 1999, she was appointed as Associate Justice of the Court of Appeals.

There being significant breaks in her government service, Justice Salazar-Fernando's situation is markedly different from that of Justice Pardo. Thus, her services as COMELEC Commissioner may not be included in the computation of her longevity pay.

As applied to the the specific cases of Justices Veloso, Gacutan, and Salazar-Fernando, the above-discussions entail the following results:

In A.M. No. 12-8-07-CA, the motion for reconsideration of Justice Veloso should be denied because he was appointed to the Court of Appeals before the effectivity of Republic Act No. 9347, which cannot be applied retroactively in his favor.

In A.M. No. 12-9-5-SC, Justice Gacutan should be entitled to longevity pay from the date of effectivity of Republic Act No. 9347 on August 26, 2006 pursuant to that law.

In A.M. No. 13-02-07-SC, the request of Justice Salazar-Fernando should be denied as her situation is substantially different from that of Justice Bernardo Pardo.

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<sup>28</sup> 547 Phil. 170, 171 (2007).

<sup>29</sup> As a rule, consultancy is not considered as government service.

**WHEREFORE**, I vote as follows:

(a) Justice Vicente S.E. Veloso's motion for reconsideration of this Court's Resolution dated October 23, 2012 be **DENIED**;

(b) Justice Angelita A. Gacutan's request that her services as Commissioner IV of the NLRC from March 3, 1998 to November 5, 2009 be credited as part of her judicial services for purposes of retirement be **GRANTED**; her request that she be given a longevity pay equivalent to 10% of her salary be **DENIED**; her request that her longevity pay equivalent only to 5% of her basic monthly salary from August 26, 2006, with the corresponding adjustment of her salary, allowances, and benefits from the said date also, be **GRANTED**; and

(c) Justice Remedios A. Salazar-Fernando's request that her services as Judge of the Municipal Trial Court from February 15, 1983 to July 31, 1987 be included in the computation of her longevity pay be **GRANTED**, but her request for the inclusion in the computation of her longevity pay her services as Commissioner of the COMELEC be **DENIED**.

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice