



Republic of the Philippines
Supreme Court
Manila

EN BANC

MELINDA L. OCAMPO,
Petitioner,

G.R. No. 188716

Present:

SERENO, C.J.,
CARPIO,*
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, JJ.

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

JUNE 10, 2013

X-----X

DECISION

PEREZ, J.:

This is a Petition for *Certiorari* under Rule 65, in relation to Rule 64, of the Rules of Court assailing Decision No. 2008-017¹ dated 15 February

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On Official Leave under the Court's Wellness Program.

¹ Rollo, pp. 17-23.

2008 and Decision No. 2009-038² dated 1 June 2009 of the Commission on Audit (COA) sustaining Notice of Disallowance (ND) No. 2003-021 dated 3 September 2003 disallowing the payment of retirement gratuity to petitioner Melinda L. Ocampo (Ocampo) as Board Member and Chairperson, respectively, of the Energy Regulatory Board (ERB), amounting to ₱1,449,450.48.

On 1 March 1996, Ocampo retired from the National Electrification Administration under Commonwealth Act No. 186³ as amended, by Republic Act No. 1616,⁴ after more than seventeen (17) years of service. Ocampo availed of the lump sum payment with a net gratuity of ₱358,917.01.

Three days thereafter, on 4 March 1996, under Letter of Appointment dated 16 February 1996, Ocampo assumed office as Board Member of the ERB. On 30 June 1998, upon expiration of her term, Ocampo retired under Executive Order No. 172, “Creating the Energy Regulatory Board” in relation to Republic Act No. 1568, “An Act to Provide Life Pension to the Auditor General and the Chairman or any Member of the Commission on Elections.” Ocampo availed of the five year lump sum benefit and the corresponding monthly pension to be paid out for the remainder of her life. This first gratuity lump sum payment based on sixty (60) months or five (5) years advance salary was immediately received by Ocampo after her retirement. Likewise, Ocampo began to receive her monthly pension.⁵

On 25 August 1998, Ocampo was again appointed, this time as Chairman of ERB with a term of four (4) years. On 15 August 2001, the ERB was abolished and replaced by the Energy Regulatory Commission (ERC) as a consequence of the enactment of Republic Act No. 9136, the Electric Reform Act of 2001. For the second time, Ocampo sought retirement under Executive Order No. 172. Ocampo’s claim was endorsed by the then Chairperson of the ERC, Fe C. Barin (Chairperson Barin), to the Department of Budget and Management (DBM). Upon release by the DBM of the Special Allotment Release Order (SARO) and the corresponding Notice of Cash Allocation (NCA), Chairperson Barin approved the payment thereof to Ocampo.

² Id. at 24-25.

³ Otherwise known as the Government Insurance Act.

⁴ An Act further Amending Section 12 of Commonwealth Act Number One Hundred Eighty-Six, as amended, by prescribing the other modes of retirement and for other purposes.

⁵ *Rollo*, pp. 99-100.

However, on post-audit of the transaction with Ocampo as payee, State Auditor IV, Nelda R. Monterde (Auditor Monterde), issued Notice of Suspension (NS) No. 2002-002-101 dated 10 July 2002: (1) suspending payment of the amount of ₱1,452,613.71 covering Ocampo's second retirement gratuity computed on a pro-rata basis equivalent to only two years, eleven months, and twenty days;⁶ and (2) requiring submission by the ERC of "legal basis for [the payment of] retirement gratuity twice under the same law (EO 172)."⁷

In a letter dated 23 July 2002, Chairperson Barin responded:

1. The application for retirement and or claims for retirement benefits of former Chairman Melinda L. Ocampo [were] endorsed to DBM for its proper disposition together with the pertinent information or circumstances attendant thereto. Please see the attached letter of endorsement dated April 2, 2002 and the matrix of information on Chairman Ocampo's appointment and tenure in office. This was received by DBM on April 5, 2002.
2. In its letter dated April 24, 2002, the Department of Budget and Management (DBM) issued the Special Allotment Release Order (SARO) and the corresponding Notice of Cash Allocation (NCA) to cover the payment of Chairman Ocampo's second gratuity benefits.
3. Under the above-mentioned circumstances there was no more cogent reason nor basis for this Office to defer the release to Chairman Ocampo of the amount corresponding to the DBM approved gratuity benefits, especially considering the follow-up efforts by the beneficiaries. To do otherwise could expose the undersigned to charges of unreasonable delayed action.⁸

On 28 October 2002, Ocampo likewise wrote Auditor Monterde asking for the lifting of NS No. 2002-002-101 dated 10 July 2002 and asseverating her entitlement to the second retirement gratuity:

1. That the basic law (E.O. 172, as amended) provides no prohibition to receive second retirement gratuity;
2. That I retired under different positions, first as Board Member and second as Chairman of the Energy Regulatory Board;

⁶ Id. at 98.

⁷ Id. at 26.

⁸ Id. at 27.

3. Retirement laws are liberally construed in favor of the employee because the level of retirement compensation is below the cost of living requirements of a retiree. A grateful nation owes the retiree at the very least a liberal interpretation.⁹

Acting on Chairperson Barin's request for the lifting of NS No. 2002-001-101 dated 10 July 2002, the Legal and Adjudication Office-National (LAO-N) of the COA issued LAO-N-2003-132 dated 12 June 2003 denying the request:

Of pertinence is the last paragraph of Section 1 of EO 172, quoted hereunder, thus:

The Chairman and the Members of the Board, **upon completion of their terms or upon becoming eligible for retirement under existing laws** shall be entitled to **the same retirement benefits and privileges provided for the Chairman and Members of the Commission on Elections**.

The retirement benefits of the Members of the Commission on Elections is found in RA 3595, amending RA 1568. Section 1 thereof states:

Section 1. When the Auditor General or the [Chairman] or any Member of the Commission on Elections retires from the service for having completed his term [of office] x x x, he or his heirs shall be paid **in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement**, x x x; And, provided, further, That he shall receive **an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary that he was receiving on the date of retirement**, incapacity or resignation. (Emphasis theirs).

The above provision of law is integral to the matter on hand since RA 1568 merely extends to the Auditor General and the Chairman or any Member of the Commission on Elections the retirement benefits granted under RA 910. EO 172, on the other hand, explicitly provides that the Chairman and Members of the Board shall be entitled to the same retirement benefits given to the Chairman and Members of the COMELEC. Having claimed retirement benefits under EO 172 twice, x x x Ms. Ocampo, therefore, would in all certainty be receiving double pension for the remainder of [her life].

The above-situation is predictable considering that under Paragraph 2 of Section 1 of EO 172, a person may be appointed to the Board for a minimum of two terms, to wit: "No person may be appointed to serve more than two (2) successive terms in the Board." It follows then

⁹

Id. at 29.

that upon meeting the condition of completion of terms or eligibility for retirement each time, the concerned official would apply for retirement benefits, as a matter of course. While this could have been the scenario, it bears emphasizing that EO 172, however, does not have a parallel provision that would allow a Board Member to claim the full benefits of the law for as long as the number of term [of] office of such official would allow. The most practical solution that would not run counter to the prohibition against double pension is to deduct the amount of lump sum and monthly pensions already received on the first retirement under EO 172 from the gratuity claimed on the second retirement under the same law. While there is no hard and fast rule requiring such deduction, for reasons of equity however, it would be proper and logical that said benefits should nevertheless be deducted from the retirement pay to be received by the employee concerned. x x x.

x x x x

EO 172 sets forth the condition when the Chairman and the Members of the Board of the ERB shall be entitled to retirement benefits provided under RA 3595. For clarity, the condition is “upon completion of their terms or upon becoming eligible for retirement under existing laws.” A quick review of the circumstances herein obtaining would show that x x x Ms. Ocampo had met such condition when [her] term [was] completed upon the abolition of ERB. As then ERB Chairman, [she was] originally appointed to a term of four years which was however shortened to less than three years. x x x Of equal importance is the fact that [she was] also eligible for retirement under existing laws. Records bear that x x x Ms. Ocampo had previously retired on March 3, 1996.

Section 1 of RA 3595 is clear as to the extent of the gratuity: lump sum of salary for one year, not exceeding five years, for every year of service plus the life pension. In the attached pertinent documents, it is shown that [Ocampo was] granted retirement gratuity in the amount of x x x ₱1,472,155.43, x x x computed as follows:

x x x x

Highest Monthly Salary (Per NOSA) x No. of Gratuity Months =
Gratuity Pay

$$₱41,275.00 \times 35.667 = [₱]1,472,155.43$$

As already mentioned, [she is] also entitled to an annuity payable monthly during the residue of [her] natural [life]. The payment of pension starts after the expiration of the five year period as provided for under Section 3 of RA 910, the retirement law of the Members of the Judiciary, thus:

Section 3. Upon retirement a Justice of the Supreme Court or of the Court of Appeals shall be automatically entitled to a lump sum payment of the monthly salary that said Justice was receiving at the time of his retirement for five years, **and thereafter upon survival after the expiration of this period**

of five years, to a further annuity payable monthly during the residue of his natural life equivalent to the amount of the monthly salary he was receiving on the date of his retirement. (Emphasis theirs).

In our jurisdiction, the legal precept is against double pension. The rule in construing or applying pension and gratuity laws is that, in the absence of express provision to the contrary, they will be so interpreted as to prevent any person from receiving double compensation x x x. There must be a provision, clear and unequivocal, to justify a double pension. x x x It is therefore, incumbent upon x x x Ms. Ocampo to show that they are exempt from this general rule.

The provision of second paragraph of Section 8 of Article IX-B of the Constitution which states “Pensions or gratuities shall not be considered as additional, double, or indirect compensation[,]” may not be invoked. This provision simply means that a retiree receiving pension or gratuity can continue to receive such pension or gratuity even if he accepts another government position to which compensation is attached x x x.

WHEREFORE, premises considered, the herein request for lifting of NS. No. 2002-001-101 (2002) is hereby DENIED.¹⁰

On motion for reconsideration of Ocampo, the COA LAO-N issued ND No. 2003-021 dated 3 September 2003 affirming NS No. 2002-001-101 disallowing Ocampo’s receipt of a second retirement gratuity under Executive Order No. 172.

On appeal, COA, in Decision No. 2008-017 dated 15 February 2008, partially affirmed ND No. 2003-021 and allowed Ocampo’s receipt of a pro-rated retirement gratuity based on her salary as Chairperson of the ERB:

WHEREFORE, in view of the foregoing, this Commission affirms in part the disallowance, under ND No. 2003-021 dated September 03, 2003, and rules that [Ocampo] is entitled to a pro-rata retirement gratuity, conformably to her years in service as Chairman of ERB which is, two years, eleven months and twenty days. In accordance with the computation prepared by the Office of the Supervising Auditor, Energy Regulatory Board hereto attached as Annex A and made an integral part hereof, of the total amount of ₱4,138,086.71, inclusive of gratuities and pensions, received by Ms. Ocampo only ₱2,688,636.23 is allowable. In fine, this Commission affirms the disallowance up to the amount of ₱1,449,450.48.

Accordingly, the monthly pension that [Ocampo] should receive shall only correspond to one monthly pension based on the computation of her last retirement benefit.

¹⁰

Id. at 31-34.

The Auditor concerned is hereby ordered to require the adjustment in the books of accounts of the agency as regards the payment of the first lump sum gratuity.¹¹

In its Decision No. 2009-038 dated 1 June 2009, COA denied Ocampo's motion for reconsideration and affirmed the disallowance of the amount of ₱1,449,450.48 and of the double monthly for Ocampo.

Hence, this petition for *certiorari* alleging grave abuse of discretion by the COA.

The singular issue for our resolution is framed by Ocampo:

WHETHER OR NOT RESPONDENT COA ERRED IN RULING THAT PETITIONER IS ENTITLED TO RECEIVE ONLY THE BENEFITS CORRESPONDING TO HER RETIREMENT AS ERB CHAIR, AND THE PERIOD DURING WHICH SHE SERVED AS MEMBER OF THE SAID BOARD SHOULD BE MERELY TACKED IN TO THE PERIOD DURING WHICH SHE SERVED AS SUCH CHAIR.¹²

In sum, Ocampo posits that she should be separately paid retirement benefits for her respective terms as Board Member and Chairperson of the ERB. In other words, Ocampo claims two (2) lump sum payments, and payment thereafter of two (2) monthly pensions.

While Ocampo accedes that the "rule is against a retiree's receiving double pension," she claims exemption to the application thereof because of the absence of a prohibition, whether express or implied, in Executive Order No. 172 or Republic Act No. 3595 "for a covered official to retire twice thereunder and receive the corresponding benefits each time." Ocampo stresses that the applicable laws, Executive Order No. 172 and Republic Act No. 3595, were intended specifically to accord special privileges to covered government officials who are considered, for retirement purposes, on the same level as Members of Constitutional Commissions; and the "very enactment [of these laws] are unequivocal expressions of the intention to remove the covered officials from the operation of the general rule." Thus, a liberal interpretation thereof must follow.

The Office of the Solicitor General, in its Comment, ostensibly defending COA's stance, concluded that:

¹¹ Id. at 21-22.

¹² Id. at 7.

Hence, [Ocampo] is entitled only to a pro-rata amount on her retirement gratuity to be computed based on her two (2) years, eleven (11) months and twenty (20) days actual creditable service as Chairman of ERB considering that she cannot anymore tack her previous stint as member of the Board of the ERB since her retirement benefits were already awarded to her.¹³

In her Reply, Ocampo counters that:

1. With due respect, the Comment of the OSG in behalf of COA did not fully support the COA Decision dated February 15, 2008 and Resolution dated June 1, 2009.

1.1 x x x [T]he OSG Comment argued that “[Ocampo] is entitled only to a pro-rata amount of her retirement gratuity to be computed based on her two (2) years, eleven (11) months, and twenty (20) days actual creditable service as Chairman of ERB x x x.” This is contrary to the COA Decision dated February 15, 2008 being questioned which ruled that “[Ocampo] should have received only pro-rata amount on her retirement gratuity to be computed based on two years and four months actual creditable service as Board Member of the ERB. Likewise [Ocampo] is entitled to a pro-rata retirement gratuity as ERB chairman, based on two years, eleven months, and twenty days of service as ERB Chairman.”

1.2 x x x [T]he OSG x x x, posits that [Ocampo], after legally receiving the first gratuity pay equivalent to a lump sum of five years as Board member III of ERB in the total amount of Php1,784,040.00, is also entitled to a pro-rata computation of her retirement gratuity as ERB Chairman equivalent to two years, eleven months, and twenty days in the amount of Php1,452,613.71. However, the COA’s Decision subject of this case ruled that [Ocampo] is entitled to the pro-rata computation of her retirement **BOTH** as ERB Board Member III and as ERB Chairman for a total of five (5) years, three (3) months, and 20 days in the total amount of Php 2,688,636.23 only.

1.3 x x x This is significant because in the COA Decision, [Ocampo] is being required to refund the amount of Php1,449,450.48 while in the OSG position before this Honorable Court, [Ocampo] will not refund any amount. x x x.¹⁴ (Emphasis theirs).

Considering the foregoing asseverations, we list the following issues for our resolution:

1. Whether Ocampo is entitled to a second lump sum retirement gratuity as ERB Chairperson under Executive Order No. 172, given that she

¹³ Id. at 89.

¹⁴ Id. at 97-98.

had already received in full, as admitted by Ocampo herself, a five year lump sum retirement gratuity as ERB Board Member;

2. Corollary thereto, whether Ocampo is entitled to double monthly pensions as part of her two retirement gratuities for having held the positions of ERB Board Member and Chairperson, respectively.

To obviate confusion, we state at the outset that the parties make no issue of Ocampo's second retirement as a consequence of the abolition of the ERB and its replacement by the ERC. The issues for our resolution relate only to Ocampo's retirement benefits in the two instances of her retirement from the ERB.

For easy reference, a recital of the applicable laws:

1. Section 1, paragraphs 2 and 6 of Executive Order No. 172.

[2] The term of office of the Chairman and the Board Members shall be four (4) years, but the first Chairman to be appointed shall hold office for four (4) years, and of the first four (4) Members, two (2) shall hold office for a term of two (2) years, and two (2) shall hold office for a term of three (3) years. No person may be appointed to serve more than two (2) successive terms in the Board.

x x x x

[6] The Chairman and the Members of the Board, upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the Commission on Elections.

2. Section 1 of Republic Act No. 3595.

Section 1. When the Auditor General or the Chairman or any Member of the Commission on Elections retires from the service for having completed his term [of] office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of [his] term of office, he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement, incapacity, death or resignation, as the case may be; Provided, That in case of resignation, he has rendered not less than twenty years of service in the government: And, provided, further,

That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation.

3. Item No. 4, Administrative Order No. 444.

4. Upon retirement, the lump sum of five years' gratuity as provided under R.A. 3595 for the Chairman/Commissioner of a Constitutional Commission shall be computed on the basis of the highest monthly salary plus the duly authorized transportation, living and representation allowances in the last month prior to retirement or expiration of term.¹⁵

Textually, the rules on the retirement benefits under Executive Order No. 172, in relation to Republic Act No. 3595, are:

1. The employee must have completed his term of office, or become incapacitated to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of his term of office;

2. The lump sum is to be paid out according to the employee's number of years of service with the ERB;

3. The lump sum gratuity to be paid is the employee's salary for one year, **not to exceed five years**;¹⁶

4. The lump sum is based on the employee's last annual salary that he was receiving at the time of retirement, incapacity, death or resignation, as the case may be;

5. In case of resignation, the employee should have rendered not less than twenty years of service in the government; and,

6. The employee shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation.

¹⁵ Id. at 20.

¹⁶ Emphasis supplied.

In affirming ND No. 2003-021 dated 3 September 2003, the COA ruled that: (1) the phrase “for every year of service” limits the payment of the lump sum to the employee’s length of service and does not automatically entitle an employee to a lump sum gratuity of five years; (2) Ocampo is not entitled to two (2) lump sum benefit of five years for each term as it would run counter to the “common-sense principle” laid down in jurisprudence; (3) payment to Ocampo of two retirement benefits under Executive Order No. 172 for both her retirements, albeit under different positions and offices, is unconstitutional as it violates the provision against additional or double compensation; and (4) ultimately, Ocampo should have received only a pro-rated amount on her retirement gratuity based on her two years and four months as ERB Board Member, and two years, eleven months and twenty days as ERB Chairperson.

We note that, while COA’s decisions did not state whether Ocampo, for her first retirement gratuity, received the maximum lump sum benefit of five years which an employee may receive, Ocampo asseverated in her Reply, and the records of this case categorically show that for her retirement as ERB Board Member, she received the maximum lump sum benefit of five years although her actual creditable service for that position and period is less than five (5) years, *i.e.*, two years and four months. This has already been paid to, and received by Ocampo, and has never been the subject of any audit or disallowance by the COA prior to Ocampo’s claim for a second retirement benefit as ERB Chairperson.

Ocampo is surprised, therefore, that her first retirement gratuity, which she had long received, was audited by the COA. In short, Ocampo argues that the foregoing expenditure is not the proper subject of COA’s jurisdiction, as COA should confine itself to its disallowance of Ocampo’s second retirement gratuity in the amount of ₱1,452,613.71 computed on a pro-rated basis equivalent to Ocampo’s length of service as ERB Chairperson for two years, eleven months and twenty days.

In fact, in the dispositive portion of COA’s Decision 2008-017, COA’s pro-rated computation of Ocampo’s first and second retirement benefits as ERB Board Member and Chairperson, respectively, exceeded the five-year limit set forth in the law. The pro-rated computation of COA of Ocampo’s retirement benefits corresponded to Ocampo’s total period of employment as both ERB Board Member and Chairperson for five (5) years, three (3) months, and twenty (20) days, in the total amount of ₱2,688,636.23. Thus, in the Decisions 2008-017 and 2009-038, COA affirmed the disallowance of ₱1,449,450.48. COA noted that Ocampo had already received the total amount of ₱4,138,086.71 as retirement benefits,

and ordered the Auditor concerned to adjust the books of accounts of the agency respecting the payment of the first lump sum gratuity.

First. We disagree with Ocampo that COA should not have audited the first retirement benefit paid to Ocampo as ERB Board Member. COA's plenary authority, consisting of pre and post audit, is enshrined in the Constitution,¹⁷ and as oft observed in jurisprudence.¹⁸ COA validly looked into the government expenditure relating to the first retirement benefit paid to Ocampo because she now claims payment of a second retirement benefit under the same law. Part of the scope of the COA's power, authority and duty is to "promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties."

Second. Before examining the correctness of the COA audit, however, it is imperative to ascertain first, in view of the circumstances herein obtaining, as to how much Ocampo is entitled to receive as retirement benefits under Executive Order No. 172 in relation to Republic Act No. 1568 as amended by Republic Act No. 3595. We can recall that Ocampo retired twice from the ERB under the following circumstances:

¹⁷

ART. IX-D, Section 2.

1. The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis:
 - a. constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;
 - b. autonomous state colleges and universities;
 - c. other government-owned or controlled corporations with original charters and their subsidiaries; and
 - d. such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
2. The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

¹⁸

Development Bank of the Philippines v. Ballesteros, 531 Phil. 677 (2006); *Euro-Med Laboratories Phil., Inc. v. Province of Batangas*, 527 Phil. 623 (2006).

- a. Ocampo first retired from the ERB on 30 June 1998, after serving a total of two (2) years and four (4) months as a member thereof (*first retirement*).
- b. After her *first retirement*, Ocampo was re-appointed to the ERB, this time, as its chairman on 25 August 1998.
- c. Ocampo retired once again from the ERB on 15 August 2001, after serving a total of two (2) years, eleven (11) months and twenty (20) days as chairman thereof (*second retirement*).

Owing to her two retirements from the ERB, Ocampo now claims that she is likewise entitled to two (2) sets of retirement benefits under Executive Order No. 172 in relation to Republic Act No. 1568 as amended by Republic Act No. 3595.

We disagree.

Claim of Ocampo for Two Sets of Retirement Benefits Not a Claim of Double Compensation

At the outset, it must be clarified that the claim of Ocampo for two (2) sets of retirement benefits under Republic Act No. 1568 is not, strictly speaking, a claim for double compensation prohibited under the first paragraph of Section 8, Article IX-B of the Constitution. Claims for double retirement benefits fall under the prohibition against the receipt of double compensation when they are based on exactly the same services and on the same creditable period.¹⁹ This is not, however, the case herein.

In this case, Ocampo is *not* claiming two (2) sets of retirement benefits for one and the same creditable period. Rather, Ocampo is claiming a set of retirement benefits for each of her two (2) retirements from the ERB. In other words, each set of retirement benefits claimed by Ocampo is based on distinct creditable periods *i.e.*, one for her term as member of the ERB and another for her term as chairman of the same agency.

What Ocampo is merely claiming, therefore, is that she is entitled to two (2) sets of retirement benefits for her two (2) retirements from the ERB under Republic Act No. 1568, as amended. Hence, in order to resolve her

¹⁹ See *Santos v. Court of Appeals*, 399 Phil. 298, 307-308 (2000).

claim, what is only required is an interpretation of Republic Act No. 1568, as amended.

Republic Act No. 1568 as Amended Does Not Justify Payment of More than One Gratuity and Annuity as a Consequence of Several Retirements from the Same Agency

As can be seen from our discussion above, the success of Ocampo's claim actually depends on the existence of a provision in Republic Act No. 1568 that allows her to recover two (2) set of retirement benefits as a consequence of her two (2) retirements from the ERB. Ocampo hinges her claim for two (2) sets of retirement benefits **solely on the provisions of Republic Act No. 1568 as amended by Republic Act No. 3595.**

We rule against her.

There is nothing in Republic Act No. 1568 as amended by Republic Act No. 3595 that allows a qualified retiree to therein recover two (2) sets of retirement benefits as a consequence of two (2) retirements from the same covered agency. As worded, Republic Act No. 1568, as amended, only allows payment of only a single gratuity and a single annuity out of a single compensable retirement from any one of the covered agencies.

In fact, the contingency of multiple retirements from the same covered agency could not have been contemplated by the law. We can confirm this if we take into consideration that Republic Act No. 1568 is a law that, first and foremost, was intended to cover the retirement benefits of the chairmen and members of the COA (formerly the Office of the Auditor General) and of the Commission on Elections (COMELEC)²⁰ and that it has been the consistent policy of the State, indeed since the 1935 Constitution, to prohibit any appointment of more than one term in the said constitutional bodies. Hence, Republic Act No. 1568, as it was passed and in its present form, cannot be said to have sanctioned the payment of more than one set of

²⁰ Originally, Republic Act No. 1568 only covers retirement benefits of chairmen and members of the Commission on Audit (formerly the Office of the Auditor General) and the Commission on Elections. Presidential Decree No. 1582, however, extended the coverage of Republic Act No. 1568 to members of the Civil Service Commission.

retirement benefits to a retiree as a consequence of multiple retirements in one agency.

The mere circumstance that members and chairmen of the ERB may be appointed to serve therein for more than one term (but not for two consecutive terms)²¹ does not mean that they would be entitled a set of retirement benefits under Republic Act No. 1568 for each of their completed term. Section 1 of Executive Order No. 172 merely extends to members and chairmen of the ERB *similar* retirement benefits that retiring members and chairmen of the COA and COMELEC are entitled to under the law. *Similar* does not mean greater.

Since Republic Act No. 1568, as amended by Republic Act No. 3595 clearly does not justify the payment of more than one gratuity and one annuity to a qualified retiree, Ocampo cannot claim two (2) sets of retirement benefits under the same law.

How Much Ocampo is Entitled to Recover As Retirement Benefits

Having settled that Ocampo is only entitled to receive **only one set of retirement benefits** under Republic Act No. 1568 as amended, We now proceed to the determination of how much Ocampo is entitled to receive as retirement benefits under the same law.

Section 1 of Republic Act No. 1568 grants two (2) types of retirement benefits to a qualified retiree, *i.e.*, a *gratuity* or a lump sum payment and an *annuity* or monthly pension, *viz*:

Section 1. When the Auditor General or the Chairman or any Member of the Commission on Elections **retires from the service for having completed his term or office** or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of this term of office, **he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement**, incapacity, death or resignation, as the case may be: Provided, That in case of resignation, he has rendered not less than twenty years of service in the government; And, provided, further, **That he shall receive an annuity payable monthly during the residue of his natural life**

²¹

Section 1 of Executive Order No. 172.

equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation. (Emphasis supplied).

Applying the above provision, We discern that Ocampo may recover **one gratuity** in an amount equivalent to her **last annual salary** *multiplied* by her **actual years of service** in the ERB but not to exceed five (5) years. In addition, Ocampo is entitled to receive only **one annuity** equivalent to the amount of her **last monthly salary**.

While Ocampo is entitled to receive only one set of retirement benefits under Republic Act No. 1568, as amended, despite her two (2) retirements, **We believe that her subsequent stint as Chairman of the ERB and her consequent *second retirement* necessitated an adjustment of the retirement benefits she is entitled to under the law.** This is because Republic Act No. 1568, as amended, reckons the amount of gratuity on the retiree's **last annual salary** and **actual years of service** not exceeding five (5) years, and it bases the amount of annuity on the retiree's **last monthly salary**.

Hence, for purposes of computing her gratuity, Ocampo's last annual salary shall be that which she was receiving at the time of her *second retirement* and her actual years of service shall be the sum of her years of service both as ERB member and chairman, but not to exceed five (5) years. On the other hand, for purposes of computing her annuity, Ocampo's last monthly salary shall be that which she was receiving monthly as of the date of her *second retirement*.

Third. We now come to COA's findings. As can be seen from the factual narration, the disallowance made by the COA with respect to some of the retirement benefits already received by Ocampo rests on a different premise than that We have settled in the previous discussions. Hence, for the sake of accuracy, We require a remand of this case to the COA with the following directives:

1. To recompute the gratuity and annuity of Ocampo in accordance with the principles enunciated in this Decision;
2. To require the adjustment of Ocampo's account to reflect such recomputed gratuity and annuity;

3. To compare such recomputed gratuity and annuity with the gratuity and annuity already received by Ocampo so far; and,
 - a. In the event that the recomputed gratuity or annuity is greater than the gratuity or annuity already received by Ocampo, to allow the payment to Ocampo of only the excess,
 - b. In the event that the recomputed gratuity or annuity is lesser than the gratuity or annuity already received by Ocampo, to disallow the excess payments to Ocampo and require the refund thereof.

It is in this light that We are constrained to grant this petition.

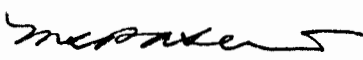
WHEREFORE, premises considered, the petition is **GRANTED**. This case is remanded to the Commission on Audit with the following directives:

1. To recompute the gratuity and annuity of Ocampo in accordance with the principles enunciated in this Decision;
2. To require the adjustment of Ocampo's account to reflect such recomputed gratuity and annuity;
3. To compare such recomputed gratuity and annuity with the gratuity and annuity already received by Ocampo so far; and,
 - a. In the event that the recomputed gratuity or annuity is greater than the gratuity or annuity already received by Ocampo, to allow the payment to Ocampo of only the excess,
 - b. In the event that the recomputed gratuity or annuity is lesser than the gratuity or annuity already received by Ocampo, to disallow the excess payments to Ocampo and require the refund thereof.

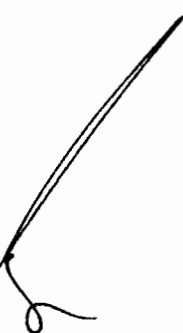
SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

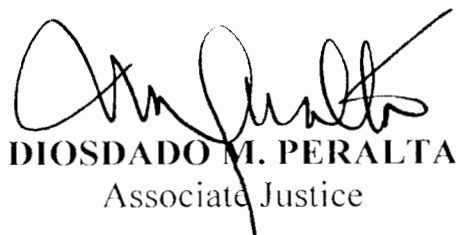

MARIA LOURDES P. A. SERENO
Chief Justice

(On Official Leave)
ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice



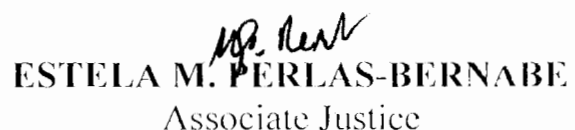
MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice