



REPUBLIC OF THE PHILIPPINES

Department of Budget and Management
Malacañang, Manila

LEGAL OPINION NO. N-C-2001-02

SUBJECT : National Government Compensation

ISSUES : Whether or not Engr. Corazon Gonzales should be paid her retirement gratuity without deduction despite the penalty of one (1) year suspension belatedly imposed upon her.

FACTS : The Civil Service Commission (CSC) rendered a decision finding Engr. Gonzales guilty of the offense of conduct prejudicial to the best interest of the service per Resolution No. 992438. The penalty was one (1) year suspension without pay. The decision was rendered on 29 October 1999 but was received by the DPWH-VII only on December 1999. However, Engr. Gonzales had already retired on 09 June 1999 or about four (4) months before the rendition of the subject decision or six (6) months before receipt thereof by the DPWH, as she was already given a clearance by the Office of the Ombudsman and by the DPWH Central and Regional Offices despite the fact that she was facing administrative charges before the CSC.

Initially, the DPWH RO-VII inquired from the CSC if it can convert the penalty of suspension to a refund of one (1) year's pay deductible from the retirement gratuity benefits of Engr. Gonzales but the CSC ruled otherwise, hence, the DPWH-VII thereafter interposed no objection to the payment of the retirement gratuity of Engr. Gonzales.

OPINION : Engr. Gonzales may be paid her retirement gratuity without deduction pertaining to the penalty belatedly imposed upon her by the CSC in Resolution No. 992438, on the ground that the same is no longer enforceable, hence, moot and academic, for having been issued long after the subject employee has compulsorily retired.

This resolution, however, is premised on the fact that only the penalty of

This resolution, however, is premised on the fact that only the penalty of suspension was meted out against Engr. Gonzales and that no decision as to forfeiture of her retirement benefits or fine was laid down by the CSC.

In Supreme Court (SC) Administrative Matter Nos. RTC-95-1332 dated 02 February 1998 entitled, Zamudlo vs. Penas; and RTJ-98-1398 dated 24 February 1998, entitled Arejola vs. Penas, both involving administrative cases for improper conduct against a judge, the SC had the occasion to rule on the fact of retirement during the pendency of a case, as follows:

"x x x During the pendency of this case, respondent judge reached the compulsory age of retirement from the government service. Consequently, the penalty of either suspension from the service or dismissal therefrom can no longer be imposed on him, x x x."

Such ruling in the actual SC case is applicable in the case of Engr. Gonzales, hence, the CSC should have considered the status of employment of the former or that the DPWH should have informed the CSC of the fact of her compulsory retirement before the penalty (of suspension) was imposed. It would be absurd if Engr. Gonzales would be faulted for the belated rendition of judgment and the form of penalty against her, over which she has no control.

Be that as it may, on the premise that Engr. Gonzales had continuously rendered government service until her retirement, she should be able to savor the fruits of her retirement, as actually due her. Further, it would be unjust if her retirement benefits would be reduced by the amount corresponding to her salaries for the period (1 year) she was penalized to be suspended. What is most worthwhile noting is the fact that she had rendered service (without interruption due to suspension) until she retired. In this case, the general principle in labor law, that is, "A fair day's pay for a fair day's labor", should prevail.

Relatedly, it may be informed that the issuance of the Ombudsman Clearance by the Office of the Ombudsman in favor of Engr. Gonzales was pursuant to Memorandum Circular No. 10, series of 1995 of the same office, partly quoted hereunder, to wit:

"Until a judicial pronouncement as to the correct interpretation of Sections 12 and 13 of R.A. 3019 has been made, this Office hereby revises its existing guidelines on the issuance of Ombudsman clearance. henceforth, a person retiring from government service whether optional or

retiring from government service whether optional or compulsory, needs only to present a certification from this office whether or not he has a pending criminal or administrative case with it. In the event the certification presented states that the prospective retiree has a pending case, the responsibility of determining whether OT release his retirement benefits, as well as the imposition of necessary safeguards to ensure restitution thereof in the event retiree is found guilty rests upon and shall be left at the sound discretion of the head of the department, office or agency concerned." (emphasis supplied)

REFERENCE: Memorandum of the Secretary dated 28 June 2001 to DBM RO-VII

Recommended:


JANET B. ABUEL
Director, LLS

Approved:


EMILIA T. BONCODIN
Secretary