

**ALBANO, Leonardo C.**

**Re: Accreditation of Service**

**Motion for Reconsideration**

**(CSC Resolution No. 00-2805)**

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**RESOLUTION NO. 011746**

Claudia Coloma vda. de Albano of Laoag City requests the reconsideration of Civil Service Commission (CSC) Resolution No. 00-2805 dated December 19, 2000, which denied the request for accreditation of the extended service of her late husband, Leonardo C. Albano, former State Auditing Examiner of the Commission on Audit (COA), from October 17, 1986 to February 27, 1989.

Claudia Albano, in her motion for reconsideration, alleged, among other things, that the COA, in its liberal interpretation of the provisions of Presidential Decree (PD) 1146, authorized her husband Leonardo to work even after the latter has already reached the mandatory age of retirement as evidenced by the promotional appointment from Audit Examiner III to State Auditing Examiner, issued him in September 1, 1986, which is fifteen (15) days before his 65th birthday.

Records disclose that Albano worked with the Commission on Audit from February 20, 1974 to February 27, 1989. He reached his compulsory retirement age of 65 years on October 16, 1986 but continued his service until February 27, 1989 to complete his fifteen years of government service without informing his office that he has already reached his compulsory age of retirement. No prior authority was likewise secured from the Civil Service Commission before Albano went on extended service. A careful scrutiny of the records of the case made clear that this request is made to include such extended service in the computation of retirement benefits.

Applicable to the instant case is the ruling of the **Supreme Court** in the case of **Cena vs. Civil Service Commission**<sup>[1]</sup>, which held that a government employee who has reached the compulsory retirement age of sixty-five (65), but has not completed

fifteen (15) years of government service required under Section 11 (b) of PD No. 1146 to qualify for the Old-Age Pension Benefit, may, **at the discretion of the agency concerned, be granted an extension of his government service for such a period of time as may be necessary to “fill up” or comply with the fifteen (15)-year service requirement.**

Although the Cena case was still non-existent at the time of Albano’s retirement in 1986, it still constitutes the case law on the matter as it can be made to apply retroactively in favor of the subject, it being a social/remedial legislation. Thus, the Supreme Court cited in the case of Cena, the canon of liberal construction often invoked as regards retirement statutes:

*“Being remedial in character, a statute granting a pension or establishing [a] retirement plan should be liberally construed and administered in favor of persons intended to be benefited thereby. The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security and well-being of government employees may be enhanced.”*

Moreover, by their very nature, curative or remedial statutes are retroactive. They are forms of retroactive legislations which reach back on past events to correct errors or irregularities and to render valid and effective attempted acts which would be otherwise ineffective for the purpose the parties intended.<sup>[2]</sup> Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with.<sup>[3]</sup>

Likewise, it is evident that the case of **Dionisio M. Rabor vs. Civil Service Commission**<sup>[4]</sup> which overturned the Cena ruling, could not be applied to the instant case because of its prospective application. At the time Leonardo Albano's services were extended on October 17, 1986, the Cena ruling was in effect.

In this connection, the Supreme Court held that, *"the doctrine of Rabor vs Civil Service Commission cannot yet be applied to the case of an employee where, at the time his service was extended, it was the rule in Cena vs. Civil Service Commission, that was still in effect. Where the applicable doctrine is that enunciated in the case of Cena, the extension of an employer's service beyond 1992 is at the discretion of the head of government agency"*.<sup>[5]</sup>

With respect to the extension of service of Leonardo Albano, in the light of the Cena ruling, it is clear that no authority was

necessary to effect his extension of service. The said ruling basically leaves the extension of service of a compulsorily retired employee at the discretion of the head of agency. Although there is no clear showing that Albano was formally authorized by COA to extend his service, there seems to be an implied authority from COA when Albano was given promotional appointment days before his compulsory retirement and subsequently, another appointment was issued to him on January 1, 1988 when he was already 66 years, 2 months and 16 days old. It can reasonably be said that the COA could not have overlooked the fact that at the time of the issuance of the two (2) promotional appointments, Leonardo Albano was already beyond the compulsory age of retirement. Indeed, there is a tacit approval of his extension of service. Moreover, the fact that the extension of service of Leonardo Albano is without authority of the Commission is excusable not only because it was not necessary under the Cena ruling but also because at the time of his compulsory retirement, CSC Memorandum Circular 27, series of 1990, which requires approval of the Commission in extension of service, was not yet effective.

Finally, as stated, the Commission notes that Leonardo Albano was promoted 15 days before his mandatory age of retirement. While, strictly speaking, the promotion could have been a pre-retirement promotion, however, considering that Leonardo Albano continuously served the government for more than two (2) years after his 65th birthday and that the completion of his 15 years of service requirement was still far from the date of his last promotion, it seems that the promotion was done in good faith, was well deserved and was not intended as a pre-retirement promotion.

Under the peculiar circumstances of the present controversy, the demand for equity prompts this Commission to regard spirit not letter, and intent not form, in according substantial justice.<sup>[6]</sup> Thus, the Commission will accredit the service rendered by Leonardo Albano beyond the compulsory retirement age. As it is apparent that the promotion was based on the performance of Leonardo Albano and was done in good faith, the same is valid. His salary for purposes of retirement is the salary of the position of State Auditing Examiner.

**WHEREFORE**, the Commission hereby rules that the accreditation of the extended service beyond the mandatory retirement age of 65 years of Leonardo C. Albano, specifically, from October 17, 1986 to February 27, 1989 is hereby **GRANTED**. For purposes of computing his retirement gratuity, the basis thereof shall be his last highest salary received, which is the salary of the position of State Auditing Examiner. Accordingly, CSC Resolution No. 00-2805 dated December 19, 2000 is reversed.

Let a copy of this Resolution be furnished the Government Service Insurance System to properly effect the computation and release of said benefits to the heirs of Leonardo C. Albano.

Quezon City, **October 30, 2001**

**(SIGNED)**

**J. WALDEMAR V. VALMORES**

Commissioner

**(SIGNED)**

**KARINA CONSTANTINO-DAVID**

Chairman

**(O.B.)**

**JOSE F. ERESTAIN, JR.**

Commissioner

Attested by:

**(SIGNED)**

**ARIEL G. RONQUILLO**

Director III

FPG/KPZ/X3/X14/8/jrl

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[\[1\]](#) 211 SCRA 179, July 31, 1992

[\[2\]](#) Development Bank of the Philippines vs. Court of Appeals, 96 SCRA 342

[3] Briad Agro Dev. Corp. vs. Dela Serna, 174 SCRA 524

[4] 244 SCRA 614, May 31, 1995

[5] Toledo vs. Commission on Elections, 319 SCRA 100

[6] CSC Resolution No. 99-2353, dated October 14, 1999