

MILLAN, Carlito H.

Re: Motion for Reconsideration of
CSC Resolution No. 01-1534
Dated September 14, 2001

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RESOLUTION NO. 021204

Former Chairman Benjamin S. Abalos, Metropolitan Manila Development Authority (MMDA), MMDA Building, EDSA corner Orense Street, Guadalupe, Makati City, moves for the reconsideration of Civil Service Commission Resolution No. 01-1534 dated September 14, 2001. In the said resolution, the Commission ordered the inclusion of the services rendered by the officials and employees in the Metropolitan Manila Authority (MMA) and other agencies in the computation of their retirement pay from the MMDA.

The pertinent portions of the said resolution read, as follows:

"The sole issue to be resolved is whether or not the refusal of the MMDA to count the services rendered by its officials/employees prior to their appointment in the said agency in computing their retirement pay is in order.

"Relevant to the instant case is Section 11 of Republic Act No. 7924 . . .

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"Section 34 of Rule VIII of the Rules and Regulations Implementing R.A. No. 7924 elaborates further, as follows:

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"From the foregoing, it is clear that two (2) situations may arise. Firstly, when the official/employee is separated by virtue of the reorganization of the said agency and he is not yet entitled to retirement benefits. Secondly, when an official/employee is separated from the said agency by virtue of reorganization but he is qualified to retire in which case he may opt for the separation gratuity benefits of the retirement benefits, whichever is more beneficial to him.

"In the first case, the computation of an employee's separation pay shall be limited to the period of service he/she rendered whether in the MMA and/or other agencies . . .

"On the other hand, if the official/employee who is retiring from the service opts to claim the benefits due him/her from the MMDA, he/she will receive his/her retirement pay for every year of government service.

"The ruling of the Supreme Court in the case of Santos vs. Court of Appeals . . . is not applicable in the present case. This is so, since the petitioner therein opted to claim separation gratuity benefits while herein appellants who opted to avail of retirement benefits and second, the petitioner therein already claimed his retirement pay from his previous agency before his appointment in the MMDA . . .

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"In the present case, the official/employee of MMDA would be retiring from the service for the first time. Therefore, they have not received any gratuity pay before.

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"WHEREFORE, the appeal of Carlito H. Millan is hereby GRANTED. Accordingly, the Metropolitan Manila Development Authority . . . is hereby ordered to include the services rendered by officials/employees in the Metropolitan Manila Authority . . . and other agencies in the computation of their retirement pay from the Metropolitan Manila Development Authority . . . "

On the other hand, the grounds relied upon by former MMDA Chairman Abalos in his motion are, as follows:

"A. Given the nature, character and purpose of the benefits prescribed under Section 11 of RA No. 7924, the same cannot be strictly and/or otherwise exclusively construed as retirement benefits for employees of MMDA who for reasons other than the happening of the compulsory retirement age of 60 or 65 years old, as the case may be, opt to voluntarily separate or will voluntarily separate from MMDA service upon effectivity of RA 7924. On the contrary, the benefit prescribed under Section 11 of RA No. 7924 is a separation benefit that is, by law, distinct from retirement benefit.

"A . . . reading of Section 11 of RA No. 7924 yet reveals another distinct characteristic of separation benefit due to 'displaced employees' of MMDA. It is not made dependent on whether a 'displaced employee' has reached the age of retirement or has been rendered eligible as a retiree under existing retirement laws. A 'displaced employee' of MMDA may or may not be of compulsory retireable age when he/she is separated from the service. It is only in a specific instance when a 'displaced employee' has reached the age of retirement or has qualified as a retiree under existing retirement laws at the time of displacement that the 'displaced employee' is given an option whether he/she wants to receive his retirement benefit under other existing retirement laws in lieu

of separation benefits under Section 11 of RA No. 7924.

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" . . . the entitlement to retirement benefits which is also known as old-age pension benefits accrues to a member-employee as a matter of right upon the happening of an only event which is the employee's having reached the age of 60 or 65 years old, as the case may be, provided he has rendered at least 15 years of continuous service in the government . . . An employee who is separated from service prior to his reaching the age of 60 or 65 years old do not and will not expect to receive an old-age pension benefit. Old-age pension benefit, in turn, is based on is revalued average monthly compensation and his creditable service in the government as defined under Sections 9 and 10 of RA 8291.

"On the other hand, the entitlement to separation benefit is a function of the termination of official relation for reasons other than the happening of the compulsory retirement age of 60 or 65 years old. Thus, under Sections 11 and 12 of RA 8291, an employee-member becomes entitled to separation benefits upon his separation from government service, be it voluntary or involuntary, as when he resigns or was involuntarily separated from service by reason of reorganization, provided he has rendered service for a minimum of one [1] year and less than fifteen [15] years.

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"In sum, given the nature and purpose of Section 11 of RA 7924 which is to effect a reorganization of MMA/MMDA, the benefit prescribed therein is a separation rather than a retirement benefit. And as a separation benefit that is made exclusive and particularly covers only those government employees who are in the service of a particular government agency, i.e., the MMDA as successor-in-interest of MMA, and none other, said separation benefit must, by law, similarly pertain only to the years of service rendered with MMA/MMDA to the exclusion of all other government agencies.

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"B. Not being a retirement benefit, the service of an MMDA employee with agencies other than the Metropolitan Manila Authority (MMA) and MMDA cannot be tacked-in or included in the computation of his years of service for the purpose of granting the benefit under Section 11 of 7924.

"C. The reliance of the Commission in the application of the rulings of the Supreme Court in the cases of Dario vs. Mison and Domingo vs. Development Bank of the Philippines is erroneous, misplaced and/or otherwise inappropriate to this instant case. While MMDA concedes that retirement laws and thus, retirement benefits are to be liberally construed in favor of government retirees, the same is neither abrogated, diminished or cancelled with the grant of the separation benefit under RA 7924. On the contrary, the benefit under RA 7924 is an

additional benefit to MMDA employees who voluntarily separate from its service irrespective of whether or not they have reached the compulsory retireable age of 60 or 65 years old.

"In the instant case, the availment by MMDA employees of their retirement benefits as provided . . . under RA No. 8291 are neither violated, abrogated or otherwise diminished. Employees of MMDA who have voluntarily separated in the past and who will separate from its service pursuant to Section 11 of RA No. 7924 continue to be entitled to the retirement benefits due them from GSIS based on their combined and entire length of service in the government. In fact, the separation benefits of MMDA as prescribed under Section 11 of RA No. 7924 is an additional benefit that accrues to them as a matter of right in addition to the retirement benefits due them from GSIS under RA No. 8291.

"In fine, on the basis of law and jurisprudence, more than sufficient basis exist to modify the assailed Resolution . . . and thus, affirming the opinion earlier rendered by the Commission that the separation benefit mandated under RA No. 7924 should be computed based on the number of years that an employee has served the MMA/MMDA, and excluding those years served under other government agencies.

"WHEREFORE, the foregoing considered, MMDA most respectfully prays that this Honorable Commission reconsider its Resolution No. 01-1534 dated September 14, 2001 and thus, a modification thereof be made directing the MMDA to exclude the services rendered by its officers/employees with government agencies other than MMA and MMDA in the computation of their separation pay pursuant to Section 11 of RA No. 7924."

Records show that on March 1, 1995, Republic Act No. 7924 (AN ACT CREATING THE METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFORE AND FOR OTHER PURPOSES) was enacted. The said law abolished the Metropolitan Manila Authority (MMA) and thereafter created the Metropolitan Manila Development Authority (MMDA). On May 9, 1996, the Rules and Regulations implementing the said law were approved by the President.

Effective May 16, 1996, the said law and its implementing rules and regulations provided that all officials and employees of the previous agency, the MMA, shall continue to exercise their duties and functions and receive their salaries and allowances until they shall have been given notice of change of duties and functions, and of their transfer to another office or position. Moreover, it established a fund which may be used to pay the benefits accruing to displaced employees by reason of the creation of the new agency, the MMDA.

Subsequently, Carlito H. Millan, Pangulo, Kapisanan para sa Kalakhang Maynila-Metropolitan Manila Development Authority (KKK-MMDA), appealed the non-inclusion of the services rendered in other government agencies by the officials/employees concerned in the computation of their "separation gratuity pay". Notably, Millan used interchangeably the phrases "separation gratuity pay" and "retirement pay", which are two different matters.

In Civil Service Commission Resolution No. 01-1534, the Commission ordered the MMDA to include the services rendered by said officials/employees in the other government agencies in the computation of their retirement benefits. In his motion for reconsideration dated September 14, 2001, then MMDA Chairman Abalos claims that the computation of the separation pay due to its officials/employees shall be limited to the services they rendered in the abolished MMA.

Hence, this motion.

Since the GSIS is tasked with computing the years of service rendered by a government official/employee for the purpose of determining the amount of benefits payable to him/her under the GSIS Law¹ and is empowered to formulate rules and regulations necessary to carry out the provisions of the said law² and to aid the Commission in resolving the said motion, in a letter dated January 14, 2002 the Commission requested Government Service Insurance System (GSIS) President Winston F. Garcia to render an opinion on the following issues:

1. The benefits available to a government official/employee who is qualified to retire under the GSIS Law but was also involuntarily separated by virtue of his/her agency's reorganization;
2. The benefits available to a government official/employee who is not qualified to retire under the GSIS law but involuntarily separated by virtue of his/her agency's reorganization;
3. Which agency (reorganized agency or the GSIS) shall be liable for the payment of the separation and/or retirement benefits due him;
4. The length of service included in the computation of the separation or retirement benefits due to the official/employee concerned.

In a letter dated February 15, 2002 and received by the Commission on March 5, 2002, the GSIS, through Senior Vice President Asuncion C. Sindac, Social Insurance Group, enlightened the Commission, in the following manner:

"This pertains to your request for opinion on issues regarding benefits of employees, particularly with the Metropolitan Manila Development Authority (MMDA) as the employer.

"RA 7924, a special law created to pay benefits of MMDA employees at the rate of one and one-fourth (1 & $\frac{2}{4}$) months of salary for every year of service is a separation benefit, where the separation pay must relate only to the services rendered with the MMA/MMDA, irrespective of age. However, if an employee is eligible for retirement under RA 1616, said employee may opt to receive the benefits thereunder, inclusive of service rendered with other government agencies. The retiree under this retirement law shall receive the gratuity benefit payable by the last employer and the refund of retirement premiums (Personal and Government Share) payable by the GSIS.

"An employee who avails of the separation benefits under RA 7924 is still entitled to receive retirement benefits under the GSIS Retirement Laws (RA 660, PD 1146, RA 8291), to which the member has a vested right, having paid to the System the personal share of the premium contributions with corresponding government share paid by

the agency concerned provided that he/she meets the conditions for entitlement to the benefit dependent on the length of creditable government service and age at the time of separation."

After a careful reevaluation of the allegations of the parties and the records of the case, the Commission finds that there is no need for a reconsideration of CSC Resolution No. 01-1534 since, as the dispositive portion of the said decision would show, the MMA's interpretation of the law (Section 11 of R.A. 7894) is actually upheld by the Commission on the questioned resolution. However, a clarification is in order in the second to the last paragraph of page 4 of the said resolution which should read: "in the first place the computation of an employees separation pay shall be limited to the period of service he/she rendered in the MMA. This means that he/she will receive one and one-fourth (1 $\frac{29}{4}$) month's salary for every year of service in the MMA.

Relevant to the instant motion is **Section 11 of Republic Act No. 7924 (AN ACT CREATING THE METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES)**, which provides:

"SEC. 11. Transitory Provisions. – To prevent disruption in the delivery of basic urban services pending the full implementation of the MMDA's organizational structure and staffing pattern, all officials and employees of the interim MMA shall continue to exercise their duties and functions and receive their salaries and allowances until they shall have been given notice of change of duties and functions, and of being transferred to another office or position.

"All assets and properties presently in use or under the accountability of the interim MMA all its obligations, indebtedness, or liabilities shall be transferred to and assumed by the MMDA created under this Act, subject to the conditions that may be established by the Department of Budget and Management, Office of the President, and Commission on Audit.

"The civil service laws, rules and regulations pertinent to the displacement of personnel affected by this Act shall be strictly enforced. The national government shall provide such amounts as may be necessary to pay the benefits accruing to displaced employees at the rate of one and one-fourth (1 $\frac{29}{4}$) month's salary for every year of service: Provided, That, if qualified for retirement under existing laws, said employees may opt to receive the benefits thereunder." (Emphasis supplied)

Although the ruling in the case of Santos vs. Court of Appeals³ is not on all fours with the present case, since, unlike the officials/employees in the instant case, petitioner therein already claimed his retirement pay from his previous agency before his appointment in the MMDA, the same is useful in interpreting the provision mentioned above.

The pertinent portions of the said decision read, as follows:

" . . . the last paragraph of Section 11 of R.A. No. 7924 on the grant of separation pay at the rate of 'one and one fourth (1²⁵/₄) months of salary for every year of service' cannot by any stretch of the imagination be interpreted to refer to the total length of service of an MMA employee in the government, i.e., to include such service in the government outside the MMA. Since it allows the grant of separation pay can be based only on the length of service in the MMA. The displacement amounted to an abolition of the office or position of the displaced employees, such as that of petitioner . . .

"Second, petitioner himself must have realized that Section 11 does not allow the tacking in of his previous government service. If he were convinced that it does he could have instead applied for retirement benefits, since by adding his years of service in the MMA to his previous years of service in the Government he could have retired under the third paragraph of Section 11 . . . " (Emphasis supplied)

It is important to note that Section 12 of the Government Service Insurance System Act of 1997⁴ also provides for the payment of involuntary separation benefits to a government official/employee who was separated by virtue of his/her agency's reorganization. Further, Section 13 of the said law provides for the retirement benefits to all qualified government employees.

The pertinent portions of Sections 12, 13 and 13-A of the said law provide:

"SEC. 12. Unemployment or Involuntary Separation Benefits. – Unemployment benefits in the form of monthly cash payments equivalent to fifty percent (50%) of the average monthly compensation shall be paid to a permanent employee who is involuntarily separated from the service due to the abolition of his office or position usually resulting from reorganization . . .

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"The GSIS shall prescribe the detailed guidelines in the operationalization of this section in the rules and regulation implementing this Act.

"SEC. 13. Retirement Benefits. – (a) Retirement benefits shall be:

`(1) the lump sum payment as defined in this Act payable at the time of retirement plus an old-age pension benefit equal to the basic monthly pension payable monthly for life, starting upon expiration of the five-year (5) guaranteed period covered by the lump sum; or

`(2) cash payment equivalent to eighteen (18) months of his basic monthly pension plus monthly pension for life payable immediately with no five-year (5) year guarantee.

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"SEC. 13-A. Conditions for Entitlement. – A member who retires from the service shall be entitled to the retirement benefits enumerated in paragraph (a) of Section 13 hereof: Provided, That:

`(1) he has rendered at least fifteen (15) years of service;

`(2) he is at least sixty (60) years of age at the time of retirement; and

`(3) he is not receiving monthly pension benefit from permanent total disability."

To reiterate in case of an agency's reorganization, two (2) situations may arise. Firstly, when the official/employee is separated by virtue of the reorganization of the said agency and he/she is not yet entitled to retirement benefits. Secondly, when an official/employee is separated from the said agency by virtue of reorganization but he/she is qualified to retire.

In the first case, the computation of an employee's separation pay shall be limited to the period of service he/she rendered in a particular agency prior to its reorganization. This means that a separated employee will receive one and one-fourth month's salary for every year of service he/she rendered in the MMA.

On the other hand, an official/employee who is separated from the service by virtue of his/her agency's reorganization and who is qualified to retire under the GSIS Law has two (2) options. He/she may opt to claim separation or retirement benefits from the MMDA.

Pertinent to the discussion is the decision of the Commission in the case of **CERILLES, Aurora Enerio (Civil Service Commission Resolution No. 02-1112 dated August 22, 2002)**, which provides:

"Let it be stressed that . . . `separation pay' and `retirement' benefits are given for the same purpose, to give financial assistance to retirees or separated employees during the time that they are out of the service. Thus, entitlement to one of the two benefits will already serve the purpose. If both are given to the employees concerned, there shall be duplication of purpose that may cause the depletion of government resources . . .

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"Clearly, an employee affected by reorganization can not be granted separation pay in addition to retirement benefits. If an employee is entitled and has actually received either separation pay or retirement benefits, the receipt of one necessarily bars entitlement to the other. This is in view of the fact that both benefits arise from one and the same cause, that is, the employee's separation from the service.

"Significantly, there seems to be no apparent reason for granting an employee the separation pay provided for under R.A. 6656 in addition to retirement benefits. This is so because to assume otherwise would not only be an act of `ver-liberality' on the part of the government or State but likewise inconsistent with its policy

against double pension or double compensation for the same service.

"The separation pay or gratuity provided for under R.A. 6656 is obviously in consideration of the employee's services to the government. It is similarly obvious that the retirement benefits granted under existing retirement laws are in consideration of the same services to the government. Therefore, for an affected employee to receive both benefits would amount to allowing him to receive double pension or compensation for the same services as consideration.

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"It is clear from the foregoing that an affected employee is entitled only to separation pay in addition to other monetary benefits, such as the money value of leave credits, but not to include retirement benefits.

"WHEREFORE, the Commission hereby rules and so holds that separated employees due to a valid reorganization are not entitled to both separation pay and retirement benefits. The concerned employee may avail of the separation pay or opt to retire, if qualified under existing laws."

Therefore, if a retired MMA employee claims the separation pay with the MMDA, he/she shall receive an equivalent of one and one-fourth month's salary for every year of service he/she rendered in the said agency.

However, if he/she chooses to claim his/her retirement benefits from the MMDA then he/she is entitled to the following:

1. Retirement Benefits under the GSIS payable based on his/her number of years of service he/she rendered in the government payable by the MMDA; and
2. Refund of retirement premiums (personal and government share) payable by the GSIS.

In sum, it must be emphasized that the computation of the separation pay due to the official/employee of the MMA, whether qualified for retirement or not, shall be limited to the service he/she rendered with the said agency (MMA) and nothing more. On the other hand, the retirement benefits due to the official/employee concerned shall include the length of service they have rendered in the government.

WHEREFORE, the motion for reconsideration of MMDA Chairman Benjamin S. Abalos is hereby **DENIED**. Accordingly, CSC Resolution No. 01-1534 dated September 14, 2001 stands. However, for clarity the dispositive portion is modified as follows:

"WHEREFORE, the appeal of Carlito H. Millan is hereby GRANTED. Accordingly, the Metropolitan Manila Development Authority (MMDA) is hereby ordered to include the services rendered by officials/employees in the Metropolitan Manila Authority (MMA) and other agencies in the computation of their retirement pay from the Metropolitan Manila Development Authority (MMDA) (created).

"However, in the computation of their separation pay, if retirement is not yet possible or if the employee chooses to avail of separation pay, the employee will receive one and one-fourth (1 $\frac{1}{4}$) months's salary for every year of service in the MMA."

Quezon City, SEP 23 2002

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

¹Section 10 of Republic Act No. 8291 (AN ACT AMENDING PRESIDENTIAL DECREE NO. 1146, AS AMENDED, EXPANDING AND INCREASING THE COVERAGE AND BENEFITS OF THE GOVERNMENT SERVICE INSURANCE SYSTEM, INSTITUTING REFORMS THEREIN AND FOR OTHER PURPOSES)

²Section 41 (a) of the same law

³G.R. No. 139792 dated November 22, 2000

⁴Republic Act No. 8291 (AN ACT AMENDING PRESIDENTIAL DECREE NO. 1146, AS AMENDED, EXPANDING AND INCREASING THE COVERAGE AND BENEFITS OF THE GOVERNMENT SERVICE INSURANCE SYSTEM, INSTITUTING REFORMS THEREIN AND FOR OTHER PURPOSES)

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