Republic of the Philippines
Supreme Court
Manila

EN BANC

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. 12-8-07-CA**
x - x	
Re: Computation of Longevity Pay of Court of Appeals Justice Angelita A. Gacutan	**A.M. No. 12-9-5-SC**
x - x	
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	**A.M. No. 13-02-07-SC**

Present:

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

Promulgated:

June 16, 2015

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

* On official leave.

RESOLUTION

BRION, *J.*:

Prefatory Statement

The Consolidated Cases and the Affected Parties

For the Court's consideration are the following: (1) letter-request dated August 22, 2012, of Court of Appeals **(*CA*) Associate Justice Remedios A. Salazar-Fernando**;[1] (2) letter-request dated September 11, 2012, of CA **Associate Justice Angelita A. Gacutan;**[2] and (3) motion for reconsideration[3] dated November 7, 2012, of **CA Associate Justice Vicente S.E. Veloso**.[4]

The petitioners are all Justices of the Court of Appeals. Justices Veloso and Fernando claim **longevity pay** for **services rendered within and outside the Judiciary** as part of their compensation package**.** Justice Gacutan, who has recently retired, claims deficiency payment of her longevity pay for the services she had **rendered before she joined the Judiciary**, as well as a re-computation of her retirement pay to include the claimed longevity pay.

Interest in the outcome of these consolidated cases goes beyond that of the petitioners; some incumbent justices and judges, before joining the Judiciary, also served in the Executive Department and would like to see these previous services credited in the computation of their longevity pay. Others who had also previously served with the Executive Department currently enjoy longevity pay credit for their executive service; they would like to see their mistakenly granted longevity pay credits maintained.

Thus, the Court's decision on these consolidated cases, whether to find for or against the petitioners, will likewise affect the interests of other judges and justices in similar circumstance, including several members of this honorable court participating in these matters.

---

1 *Rollo*, A.M. No. 13-02-07-SC, unnumbered page.

2 *Rollo*, A.M. No. 12-9-5-SC, pp. 4-5.

3 *Rollo*, A.M. No. 12-8-07-CA, pp. 33-41.

4 In the Court's Resolution (A.M. No. 12-9-5-SC, *rollo*, p. 24) of December 11, 2012, we consolidated A.M. No. 12-9-5-SC (Re: Computation of Longevity Pay of Court of Appeals Justice Angelita A. Gacutan) with 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). We further consolidated these cases with 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) in our Resolution dated July 2, 2013 (*rollo*, A.M. No. 12-8-07-CA), unnumbered page).

Antecedents

A. Letter-Request of Justice Salazar-Fernando

In her letter dated August 22, 2012,[5] Justice Salazar-Fernando requested 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 "as in the case of Hon. Bernardo P. Pardo, Retired Associate Justice of the Supreme Court." Accordingly, Justice Salazar-Fernando requested that her longevity pay be adjusted "from the current 10% to 20% of [her] basic salary effective May 25, 1999."

We referred this letter-request to Atty. Eden T. Candelaria, Chief of the Office of Administrative Services (*OAS*), for study and recommendation.

In her February 18, 2013 Memorandum,[6] Atty. Candelaria recommended that Justice Salazar-Fernando's services as MTC Judge be credited as judicial service that can be added to her present longevity pay. Atty. Candelaria, however, recommended the denial of Justice Salazar-Fernando's request that her services at the COMELEC be also credited for her present longevity pay. Nonetheless, she recommended that Justice Salazar-Fernando's services in the COMELEC be included in the computation of her longevity pay upon retirement "as in the case of Justice Pardo."

B. Letter-Request of Justice Gacutan

In her letter[7] dated September 11, 2012, Justice Gacutan requested that: (a) her services as **Commissioner IV of the National Labor Relations Commission (*NLRC*)**, from March 3, 1998 to November 5, 2009, be credited as judicial service for purposes of retirement; (b) she be given a longevity pay equivalent to 10% of her basic salary; and (c) an adjustment of her salary, allowances and benefits be made from the time she assumed as CA Justice on November 6, 2009.

In the Court's Resolution[8] of November 13, 2012, we required the Fiscal Management and Budget Office (*FMBO*) to comment on Justice Gacutan's letter.

---

5 *Supra* note 1.
6 Ibid.
7 *Supra* note 2.
8 Id. at 23.

In her Comment of January 4, 2013, Atty. Corazon G. Ferrer-Flores, Deputy Clerk of Court and Chief of Office of the FMBO, recommended that: (1) Justice Gacutan's request for the crediting of her services as Commissioner IV of the NLRC as judicial service be granted, but only for purposes of her retirement benefits, to take effect on her compulsory retirement on December 3, 2013; and (2) Justice Gacutan's request that her salary and allowances be adjusted retroactive from her assumption of office in the CA on November 6, 2009, be denied.[9]

C. Motion for Reconsideration of Justice Veloso

In his November 7, 2012 motion for reconsideration,[10] Justice Veloso assailed the Court's October 23, 2012 Resolution[11] that denied his request for the crediting of his **services as NLRC Commissioner** as judicial service for purposes of adjusting his salary and benefits, specifically his longevity pay.

Justice Veloso claimed that Republic Act No. (*RA*) 9347 □ which amended Article 216 of the Labor Code □ should be applied retroactively since it is a curative statute. He maintained under this view that he already had the rank of a CA Justice as NLRC Commissioner before he was appointed to the appellate court on February 4, 2004.

We referred Justice Veloso's motion for reconsideration to the FMBO for report and recommendation in our Resolution of November 27, 2012.[12] In her Report and Recommendation dated February 15, 2013,[13] Atty. Ferrer-Flores recommended that Justice Veloso's motion for reconsideration be denied since the points he raised were a rehash of his arguments in his July 30, 2012 letter-request.[14]

Our Rulings

I. Letter of Justice Salazar-Fernando in A.M. No. 13-02-07-SC

---

9 Id. at 29-37.
10 *Supra* note 3.
11 Id. at 42.
12 Id. at 52.
13 Id. at 60-72.
14 Atty. Ferrer-Flores also recommended that the Personnel Division of the CA be reminded to be more cautious in applying resolutions and other issuances of the Court in order to avoid erroneous interpretation/application; id. at 72.

a. Services as MTC Judge

We grant the request of Justice Salazar-Fernando to credit as judicial service her previous services as MTC Judge of Sta. Rita, Pampanga, as judicial service in the computation of her longevity pay.

Section 42 of *Batas Pambansa Bilang* (*B.P. Blg.*) 129 provides:

> Section 42. *Longevity pay*. – A monthly longevity pay equivalent to 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. [Italics supplied; emphasis and underscoring ours]

We find it undisputed that Justice Salazar-Fernando served as MTC Judge from February 15, 1983 to July 31, 1987. This service constitutes continuous, efficient, and meritorious service rendered *in the Judiciary* and, hence, should be included in the computation of her longevity pay.

b. Service as COMELEC Commissioner

We deny, however, the inclusion of Justice Salazar-Fernando's request to credit her services as COMELEC Commissioner, from February 14, 1992 to February 14, 1998, as judicial service for longevity pay purposes.

The only service recognized for purposes of longevity pay under Section 42 of B.P. Blg. 129 is service ***in the Judiciary***, not service in any other branch of government. The COMELEC is an agency independent of the Judiciary; hence, service in this agency cannot be considered as service rendered in the Judiciary.

We find Justice Salazar-Fernando's invocation of the case of Justice Pardo, to support her claim to longevity pay, misplaced.

b.1. Our* Pardo *Ruling

In *In Re: Request of Justice Bernardo P. Pardo for Adjustment of His Longevity Pay,*[15] we held that the inclusion of Justice Pardo's service in the COMELEC in the computation of his longevity pay upon his retirement was

---

15 547 Phil. 170 (2007).

predicated on the factual circumstances peculiar to him: ***he was an incumbent CA Justice when he was appointed COMELEC Chairman, and was appointed to the Supreme Court after his service with the COMELEC, without any interruption in his service***.

The Court — based on its reading of Section 3 of B.P. Blg. 129[16] — did not consider his intervening service in the COMELEC, an office outside the Judiciary, as a disruption of his service in the Judiciary.

Notably, the Court in *In Re: Justice Pardo* ***liberally interpreted the phrase "the Court" in Section 3 of BP 129 to mean the entire judiciary***, not just the Court of Appeals. The provision reads:

> Any member who is ***reappointed to the Court*** after rendering service in any other position in the government shall retain precedence to which he was entitled under his original appointment, and his service ***in the Court*** shall, for all intents and purposes, be considered as continuous and uninterrupted. (emphases supplied)

This provision was an amendment to Section 3 of BP 129 which, as originally worded, referred only to the organization of the CA, the appointment process of its justices, and the means by which seniority of rank is determined among the CA justices. Executive Order No. 33 added this phrase, and hence Section 3 now reads as:

> Sec. 3. Organization. There is hereby created a Court of Appeals which shall consist of a Presiding Justice and fifty Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and the Associate Justice shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President. Any member who is reappointed to the Court after rendering in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in the Court shall, for all intents and purposes, be considered as continuous and uninterrupted.

Thus, had the Court given a more literal interpretation of the phrase added by EO No. 33, then it would have interpreted its application to refer to an incumbent CA justice only. The phrase, after all, had been added to Section 3 of BP 129, which referred to the organization of the CA. Following this interpretation, Justice Pardo's service in the COMELEC

---

[16] Any member who is reappointed to the Court after rendering service in any other position in the government shall retain precedence to which he was entitled under his original appointment, and his service in the Court shall, for all intents and purposes, be considered as continuous and uninterrupted.

would not have been appreciated in determining his longevity pay, as he was reappointed not to the CA, but to the Supreme Court.

Instead, the Court, taking a more liberal approach, interpreted the phrase "the Court" to mean the entire judiciary. It noted that the additional phrase in Section 3 used the generic word "Court" instead of Court of Appeals, and that to apply the stricter application of interpreting "Court" to mean "Court of Appeals" would "lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers."

Thus, following this more liberal approach, Justice Pardo's one-time service outside of the judiciary was considered part of his service in the judiciary for purposes of determining his longevity pay. The same may be applied, for instance, to a trial court judge who rendered service outside the judiciary and then returned to being a member of the bench.

Thus, the Court's ruling in *In Re: Justice Pardo* is authority for expanding EO No. 33's amendment to Section 3 of BP 129 to all members of the judiciary.

b.2. The liberal* Pardo *ruling cannot and should not be extended to allow members of the judiciary to leave and return more than once, without interrupting the continuity of their service.

The next question to be asked, then, refers to the frequency by which members of the judiciary may be able to serve in other branches of government without breaking their 'continuous and uninterrupted' service. Did the ruling in Justice Pardo's case allow members of the judiciary to leave for other branches of government numerous times, and still maintain continuous and uninterrupted service in the judiciary? The answer to this question is a resounding **no**.

A critical aspect of Justice Pardo's case was the absence of any gap in his service from the time he was appointed as Caloocan City Judge in 1974, until he retired as an Associate Justice of the Supreme Court in 2002. He occupied the positions of District Judge, Court of First Instance of Rizal, Branch 34, Caloocan City, from May 3, 1974 to January 17, 1983; Regional Trial Court (*RTC*), Branch 43, Manila, from January 18, 1983 to March 29, 1993; Associate Justice of the CA, from March 30, 1993 to February 16, 1995; Chairman, COMELEC, from February 17, 1995 to October 6, 1998; and Associate Justice of the Supreme Court, from October 7, 1998 to February 10, 2002.

In these lights, ***Justice Pardo's case has nothing to offer by way of jurisprudential precedent in terms of determining whether Section 3 of BP 129 allows judges and justices to leave the judiciary several times without breaking their continuous service***. There was no occasion to rule on this issue, as Justice Pardo left the judiciary only once, to serve in the COMELEC.

Proceeding from this conclusion, the next level of inquiry leads us to examine whether Section 3 of BP 129 allows multiple breaks in judicial office and considers these breaks as part of a continuous and uninterrupted judicial service.

The amendment to Section 3, as worded and interpreted in *In Re: Justice Pardo*, refers to the reappointment of a member of the judiciary after serving in another branch of government. The judge shall retain the precedence to which he was entitled under his original appointment, and his judicial service shall be considered uninterrupted.

This service outside the judiciary, however, should only occur once, as in Justice Pardo's case. Section 3 refers to an ***original appointment***, which is the first appointment by which a lawyer becomes a member of the judiciary. As he progresses in the judiciary — whether by staying in his original post or by being appointed in other posts — he acquires seniority, which is especially applicable in determining his retirement and longevity pay. Once he leaves the judiciary, however, his original appointment is cut off; hence, Section 3 can only refer to the judge's ***return to the judiciary as a "reappointment."*** He needs to get re-appointed back to the judiciary, as he is no longer part of it.

Section 3 works to bridge the gap between the time the judge left his original appointment and his reappointment to the judiciary, provided the gap in service was rendered in another branch of government. Once reappointed to the judiciary, however, he can no longer avail of Section 3, as Section 3 speaks of an original appointment. A second reappointment, after another service in a different government agency, would be succeeding the first reappointment, and not the original appointment. Section 3 operates to bridge an original appointment with a reappointment, and not to connect a reappointment with a second appointment. Had the latter interpretation been the intent behind the law, then it should and would have made this situation clearer.

Further, the application of Section 3 appears to be limited to service in a single position in government outside of the judiciary. Section 3 speaks of "any other ***position*** in the government," and thus uses a singular noun. After this single service, the judge or justice invoking the application of

Section 3 must have returned to the judiciary in order for his service to be deemed uninterrupted.

Additionally, it must not be lost on us that we have already given Section 3 a liberal interpretation in *In Re: Justice Pardo*. To top this exercise of liberality with another liberal interpretation of the same provision, when the law is clear regarding its application, would amount to judicial legislation that furthers the interests within our ranks.

To recapitulate, Section 3 applies to any judge or justice, who left the judiciary, served in a single non-judicial governmental post, and returned to the judiciary. This was what happened in the case of Justice Pardo, when after a long and continuous service in the judiciary, he left to serve in the COMELEC and from there was subsequently appointed to the Supreme Court.

b.3. *Justice Fernando is not entitled to her request even under the liberal* Pardo *ruling*.

Justice Salazar-Fernando effectively asks us in her present case to give her the benefit of our *Pardo* ruling although the attendant facts of her case differ from those of Justice Pardo's and do not approximate the factual situation that Section 3 requires.

In the first place, her record shows that her services in between her judicial services were not continuous and uninterrupted.

We find that after Justice Salazar-Fernando's stint as MTC Judge in July 1987, she was named Chairman of the Land Transportation Franchising and Regulatory Board (LTFRB) where she served from August 1987 to February 13, 1992. During this period, she concurrently held directorship posts at the Light Rail Transit Authority (LRTA) and at the Office of Transport Cooperatives (OTC). In the later part of 1991, Justice Salazar-Fernando held the position of Officer-in-Charge/Assistant Secretary of the Land Transportation Office.

It was only after Justice Salazar-Fernando's stints at the LTFRB, LRTA, and OTC all non-judicial offices that she was appointed as Commissioner of the COMELEC on February 14, 1992, and served in this capacity until February 15, 1998. ***Three (3) days later***, or on February 18, 1998, she started to serve as a **consultant in the COMELEC** until October 6, 1998.

Parenthetically, her service as consultant is not a "position in government" that should be considered a part of her government service as she did not occupy any specific position in government. Moreover, it was

only *five (5) months* after her COMELEC consultancy, or on March 25, 1999, that Justice Salazar-Fernando was appointed as Associate Justice of the CA. Thus, significant gaps in her judicial service intervened so that her situation did not comply with the requirement in Section 3 that only a single non-judicial position should intervene in her judicial service record.

Reduced to the bare essentials, the issue for us is whether we should apply with liberality a ruling that had already been very liberally interpreted by this Court, under facts that do not entitle Justice Fernando to recognition of continuous service under the requirements of Section 3.

Our brief and direct answer is that we cannot and must not allow the crediting of Justice Salazar-Fernando's COMELEC service for longevity pay purposes. Acceding to her request will constitute an outright judicial legislation that the Court cannot undertake under the Constitution. As earlier noted, Justice Salazar-Fernando's details do not at all approximate the factual circumstances Section 3 of BP 129 that speaks of, nor the factual situation in *In Re: Justice Pardo*.

If we had been liberal in the past and this liberal ruling is now cited, we should, at the very least, not go beyond the facts under which our past liberality had been extended. If we *further read liberally a Court ruling that only came to being because of past liberality,* we stand to hear a re-echo of the charge that this Court **selectively applies its liberality in favor of its own**. (***In fact, a favorable ruling in these consolidated cases may already raise eyebrows and questions as the Court will be ruling on matters that will directly affect some of its participating Members***.)

To sum up, Justice Salazar-Fernando's services as COMELEC Commissioner cannot be included in the computation of her longevity pay, now or upon her retirement.

II. Letter-Request of Justice Gacutan in A.M. No. 12-9-5-SC

a. Longevity Pay for Services as NLRC Commissioner

We **deny** Justice Gacutan's request that her past services in the NLRC be recognized ***for purposes of her longevity pay.*** She served as a Commissioner IV of the NLRC from March 3, 1998 to November 5, 2009, or for a period of eleven years and eight months.

Section 42 of B.P. Blg. 129 is clear and explicit: a judge or justice should have rendered five years of continuous, efficient and meritorious service **in the Judiciary** in order to qualify for a monthly longevity pay equivalent to 5% of the monthly basic pay.

We point out that the NLRC is an agency attached to the Department of Labor and Employment – an adjunct of the Executive Department – *albeit* for policy and program coordination only. Under the circumstances, *Justice Gacutan's past service as NLRC Commissioner cannot be credited as judicial service for longevity pay purposes since she did not render such service while with the Judiciary.*

b. NLRC Services Considered in Retirement Pay

Nonetheless, Justice Gacutan's service as NLRC Commissioner is ***creditable*** as part of **overall government service *for retirement purposes*** under RA 910, as amended. Section 1 of this law provides:

> Section 1. When a Justice of the Supreme Court or of the Court of Appeals who has rendered at least twenty years' service either in the judiciary or in any other branch of the Government, or in both, (a) retires for having attained the age of seventy years, or (b) resigns by reason of his incapacity to discharge the duties of his office, he shall receive during the residue of his natural life, in the manner hereinafter provided, the salary which he was receiving at the time of his retirement or resignation. And when a Justice of the Supreme Court or of the Court of Appeals has attained the age of fifty-seven years and has rendered at least twenty years' service in the Government, ten or more of which have been continuously rendered as such Justice or as judge of a court of record, he shall be likewise entitled to retire and receive during the residue of his natural life, in the manner also hereinafter prescribed, the salary which he was then receiving. It is a condition of the pension provided for herein that no retiring Justice during the time that he is receiving said pension shall appear as counsel before any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office, or collect any fee for his appearance in any administrative proceedings to maintain an interest adverse to the Government, insular, provincial or municipal, or to any of its legally constituted officers.

Considering the express wordings of RA 910, which include ***service "in all other branches of the Government"*** as creditable service in the computation of the retirement benefits of a justice or judge, Justice Gacutan's service as NLRC Commissioner should be credited as part of her government service *for retirement purposes under RA 910, as amended.*

III. Motion for Reconsideration of Justice Veloso in A.M. No. 12-8-07-CA

a. Background.

The chairman and members of the NLRC were entitled to receive an annual salary at least equivalent to the allowances and benefits of the Presiding Justice and Associate Justices of the CA, respectively, ***prior to the amendment of Article 216 of the Labor Code by RA 9347***.

Under RA 9347 (which took effect on August 26, 2006),[17] NLRC commissioners were given the equivalent rank of a CA Justice. The Labor Code, as now amended by Section 4 of RA 9347, 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 and Associate Justices of the Court of Appeals, respectively. [italics supplied, emphasis ours]

In his present motion, Justice Veloso claims that RA 9347 should be given a retroactive application. With the equivalent rank of a CA Justice from the time RA 9347 was amended, his service as NLRC Commissioner should be considered as judicial service for purposes of his longevity pay.

b. Our ruling and the reasons therefor

b.1. RA 9347 does not provide for retroactivity.

We disagree with Justice Veloso's position and thus deny his motion.

First, nothing in the language of RA 9347 expressly indicates the intention to give it retroactive effect. We emphasize that statutes, as a rule, apply prospectively, unless the legislative intention to give them retrospective effect is expressly declared or is necessarily implied from the language used.[18] In "case of doubt, the doubt must be resolved against the retroactive effect."[19]

---

[17] RA 9347 lapsed into law on July 27, 2006, without the signature of the President, and took effect on August 26, 2006.

[18] See *PERT/CPM Manpower Exponent Co. Inc. v. Vinuya,* G.R. No. 197528, September 5, 2012, 680 SCRA 284, 305.

[19] See *PSVSIA v. NLRC*, 330 Phil. 665, 676 (1996).

Nor is retroactivity discernible, even by implication, from the provisions of RA 9347. It is not implied from the law's legislative intent, nor from the deliberations in Senate Bill No. 2035 (which became RA 9347).[20]

In *Re: Request of Retired Deputy Court Administrator Bernardo T. Ponferrada for Automatic Adjustment of His Retirement Benefits to Include Special Allowance Under R.A. 9227*,[21] the Court refused to extend the benefits provided by RA 9227 to officials of the Judiciary who retired prior to the passage of this law. RA 9227 granted a special allowance to justices, judges, and all other positions in the Judiciary with the equivalent rank of justices of the CA or judges of the RTC. Since the position of Deputy Court Administrator (*DCA*) carries the same rank as an Associate Justice of the CA,[22] retired DCA Ponferrada asked for the inclusion of the RA 9227 special allowance in his retirement pay.

The Court denied the request, noting that RA 9227 did not expressly provide for retroactivity so that those who had retired at the time of its enactment, would be covered. Although the grant was extended to retired SC and CA justices, this was justified under Section 3-A of RA 910, as amended, which states:

> SEC. 3-A. In case the salary of Justices of the Supreme Court or of the Court Appeals is increased or decreased, salary shall, for the purpose of this Act, be deemed to be the salary or the retirement pension which a Justice x x x who retired was receiving at the time of his cessation in the office: Provided, That any benefits that have already accrued prior to such increase or decrease shall not be affected thereby.[23] [underscore ours]

---

[20] See http://www.senate.gov.ph/lisdata/38556011!.pdf. (last visited on July 22, 2013); Senate Journal, Session No. 96, June 8, 2005, Thirteenth Congress (First Regular Session), p. 375, which provides:

> Committee Report No. 27 finally proposes to amend Article 216 of the Labor Code, providing for the same retirement benefits to the NLRC commissioners and labor arbiters equivalent to that of the Court of Appeals and the Regional Trial Court judges, respectively.
>
> As presently provided for in the Labor Code, the NLRC Chairman holds a position equivalent to that of the presiding justice of the Court of Appeals with a salary grade level of SG-31 while the commissioners hold a position equivalent to that of members of the Court of Appeals with a salary grade level of SG-30.
>
> On the other hand, labor arbiters now hold a position equivalent to that of a Regional Trial Court judge with the same salary grade level of SG-29.
>
> However, while the commissioners and the labor arbiters are holding the same salary grade level as that of the justices of the Court of Appeals and the Regional Trial Court judges, respectively, they do not enjoy the same retirement benefits.
>
> No less than Sen. Aquilino Q. Pimentel Jr., in his Senate Bill No. 1543, which was incorporated in the instant Committee Report No. 27, proposed the increase in the allowances and retirement benefits of the commissioners and the labor arbiters[.]

[21] A.M. No. 11838-Ret., December 9, 2008.

[22] Section 2, Presidential Decree No. 828 entitled *Creating the Office of the Court Administrator in the Supreme Court and Providing Funds Therefor and for Other Purposes.*

[23] Section 3-A of RA No. 310 has been amended by Section 4 of RA No. 9946 (enacted January 13, 2013). Section 3-A of RA No. 310, as amended, now reads as:

According to the Court, parity in rank and salary does not automatically mean parity in retirement benefits under Section 3-A of RA 910. Notably, the automatic adjustment of retirement benefits was expressly extended by RA 910, as amended, but only to Justices of the SC and the CA, not to judicial officials with the equivalent rank. Additionally, since he retired prior to the passage of RA 9227, DCA Ponferrada could not even invoke the automatic adjustment of his retirement pay under Section 3-A of RA No. 910, as amended, to support his request.[24]

In the same way, RA 9347 was enacted into law only on July 27, 2006. Justice Veloso had, by then (on February 4, 2004) left his post as NLRC Commissioner to assume the position of Associate Justice of the Court of Appeals. In the absence of any clear intent to give RA 9347 any retroactive effect, Justice Veloso cannot validly claim that he held the rank of a CA justice during his stint as NLRC Commissioner from 1989 to 2004.

b.2. RA 9347 is not a curative statute.

"A curative statute is enacted to cure defects in a prior law or to validate legal proceedings, instruments or acts of public authorities[,] which would otherwise be void for want of conformity with certain existing legal requirements."[25] Simply put, curative laws are enacted to validate acts done that otherwise would be invalid under existing laws.

RA 9347 is not a curative statute since it was not intended to supply deficiencies, abridge superfluities in existing laws, or curb evils; the insertion of the word "rank" in Article 216 was merely to emphasize the increase in salaries and benefits of the NLRC Commissioners and labor arbiters.

b.3. Grant of Equivalent Rank is not Service in the Judiciary

At any rate, even if we recognize retroactivity as requested, the conferment of the rank of a CA Justice to Justice Veloso during his tenure as NLRC Commissioner would not entitle him to longevity pay.

SEC. 3 - A. All pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired.

[24] The Court, in its resolution dated February 17, 2009 in A.M. No. 11838-Ret., resolved to partially reconsider its December 9, 2008 resolution and declared that those granted "judicial rank" by law or by En Banc Resolution, without being a judge or justice in the Judiciary, are given the benefits under R.A. No. 9227 as long as they are in the service. Their retirement benefits and monthly pension are computed under R.A. No. 910, including the benefits under R.A. No. 9227, according to the latest compensation they received at the time of their retirement. However, they are not entitled to receive adjustments in their monthly pension under Section 3-A of R.A. No. 910.

[25] See *Erectors, Inc. v. NLRC*, 326 Phil. 640, 647 (1996).

Section 42 of B.P. Blg. 129 is clear: a judge or justice shall be paid a monthly longevity pay equivalent to 5% of the monthly basic pay for each five years of continuous, efficient, and meritorious **service rendered in the Judiciary.** Service in the NLRC, even with the rank of a CA Justice, is not service with the Judiciary for purposes of longevity pay. **Justice Veloso's service in the NLRC, however, may be credited as part of his government service for retirement purposes under RA 910, as in the case of Justice Gacutan**.

IV. ***General Discussions***

With each of the consolidated petitions directly ruled upon, the following discussions are submitted to expound on the conclusions reached and to generally comment on the issues the Dissents raised.

At the core of the issues raised is the question: should the **past service** of incumbent justices and judges, **rendered at the Executive Department,** be **recognized under Section 42 of BP 129** (*the longevity pay provision*) on the ground that **their previous executive positions now carry the rank, salary, and benefits of their counterparts in the Judiciary?**

The law governing this issue is of course the longevity pay provision, heretofore quoted,[26] whose salient points are summarized below:

1. The longevity pay is a **monthly** pay equivalent to **5% of monthly basic pay**;
2. Recipients are the **Justices and Judges** of courts;
3. For **each five years of continuous, efficient and meritorious service**;
4. The service is to be **rendered in the Judiciary**;
5. In no case shall the **total salary** of each Justice or Judge, after his longevity pay is added, **exceed the salary of the Justice or Judge next in rank**.

What would otherwise be a simple stand-alone provision is complicated by subsequent laws that grant the same ranks, salaries and benefits –

---

[26] Section 42 of BP 129 provides:

Section 42. Longevity pay. – A monthly longevity pay equivalent to 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.

- ***"as those of" their counterpart judge or justice*** (for the National Prosecution Service), or
- ***"as those of the Presiding Justice and Associate Justices of the Court of Appeals*** (for the National Labor Relations Commission), and
- the [***"rank, prerogatives, salaries, allowances, benefits and privileges"***] ***as their counterpart Justice or Judge*** (for the Office of the Solicitor General).

These new levels of rank and salary are essentially what the present petitioners and the incumbent justices and judges cite as basis for the grant or increase of their longevity pay.

Another complicating factor involves the past rulings of this Court where past executive service had been recognized, not only for retirement pay purposes, but for longevity pay purposes upon retirement. Interestingly, no in-depth look appears to have been made in these past rulings, although their results cannot be in doubt — the Court recognized past executive services for longevity pay purposes.

Interestingly, the Dissents, led by Justice De Castro, take a multi-pronged critique of the *ponencia*, generally chastising it for being overly strict in its reading of Section 42.

Among others, she posits that the *ponencia* disregards long established rulings of the Court on longevity pay without a clear finding of the legal error made, and disregards as well the liberal interpretation the Court has applied in these rulings; that the *ponencia* disregards too the intent of the relevant laws (referring to the subsequent laws that grants ranks, salaries and benefits similar to those of their counterparts in the Judiciary), the legal presumption of legislative awareness, and consideration of prior laws and jurisprudence in enacting a statute; and claims that the contemporaneous construction given by the Department of Justice and other Executive branch officers, which discloses a similar treatment of the longevity pay provision of Section 42, deserves the court's respect. Last but not the least, Justice De Castro analyzes Section 42 and concludes that longevity pay is not a mere benefit but is a component of the salary that should not be withheld from executive officers with the same rank, salary and benefits as their counterparts in the Judiciary.

For his part, Justice Velasco essentially joins the Dissent of Justice De Castro and questions the *ponencia's* proposal to "freeze" the longevity pay grants for justices and judges who have been credited with their past service in the Executive Department. He posits too that "what matters is their receiving, for purposes of computing longevity pay, the salary of a Justice of

the CA at the time they served as NLRC Commissioners." If this is the case, Justice Veloso claims they should be credited with their service with the NLRC for purposes of their longevity pay.

Faced with these complications and dissents, the Court should not forget that our duty, first and foremost, is to correctly interpret the law as written, not to stick to our past rulings at all costs nor to consider our personal interests. In doing this, we must also be reminded that at the center of the dispute is Section 42 of BP 129 – the provision on longevity pay that we must consider with a fresh eye.

The consolidated cases, too, do not embody claims by executive officers against their own Department for the enforcement of what the law involving their Department provides. These cases involve claims by CA justices – members of the Judiciary – who look up to laws involving the Executive Department to secure, maintain or increase the longevity pay that provides benefit for judges and justices. Our primary focus, however, must be the interpretation of our own law — BP 129 and its Section 42.

A. ***Statutory Construction & Interpretation Perspectives***

a. First rule of statutory construction: the plain meaning rule.

The primary rule in addressing any problem relating to the understanding or interpretation of a law (in this case, the provision granting longevity pay) is to examine the law itself to see what it plainly says. **This is the plain meaning rule of statutory construction.**[27]

The first aspect that offers itself in the examination of the law is its title, which gives us a direct indicator of the exact subject matter of the law. In the present cases, the law under which the disputed longevity provision can be found is **B.P. Blg. 129, *An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and For Other Purposes* (simplified as *BP 129* or the *Judiciary Reorganization Act of 1980*).**

This title alone already suggests that its provisions specifically relate to members of the judiciary, unless an express contrary intent is made by the legislature. No such exception clause is evident under the terms of BP 129 or in any of the other related laws (specifically, in R.A. 9347, 9417, and 10071) discussed in this *ponencia*.

---

[27] *Padua v. People*, G.R. No. 168546, July 23, 2008, 559 SCRA 519, 531.

As discussed more extensively below, these other general laws do not specifically mention at all the longevity provision under BP 129, a specific grant made only to the judges and justices in the Judiciary.

Section 42 of this law has heretofore been quoted, but for convenience is again quoted below –

> Section 42. *Longevity pay*. – A monthly longevity pay equivalent to 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. [*italics supplied; emphasis and underscore ours*]

As written, the language and terms of this provision are very clear and unequivocal: longevity pay is granted **to a judge or justice (and to none other)** who has rendered **five years** of continuous, efficient and meritorious **service in the Judiciary**. The granted monthly longevity pay is equivalent to 5% of the monthly basic pay.

The plain reading of Section 42 shows that longevity pay is not available even to a **judicial officer who is not a judge or justice**. It is likewise not available, for greater reason, to an **officer in the Executive** simply because he or she is not serving as a judge or justice. It cannot also be available t**o a judge or justice for past services he or she did not render within the Judiciary** as **services** rendered outside the Judiciary for purposes of longevity pay is not contemplated by law.

Significantly, the Court has had occasion to speak about the purpose of longevity pay. In *In Re: Request of Justice Bernardo P. Pardo for Adjustment of His Longevity Pay*,[28] the Court categorically declared that the purpose of the law in granting longevity pay to judges and justices is to recompense them for each five years of continuous, efficient, and meritorious service **rendered in the Judiciary; it is the long service in the Judiciary - from the lowest to the highest court of the land – and not in any other branch of government, that is rewarded**,[29]

In the case of the judge or justice now asking for the tacking of his/her past executive service, the reason for the denial is simple and needs no intricate or complicated exercise in interpretation: these past services were undertaken outside the Judiciary and are not the services the law

---

[28] 547 Phil. 170 (2007).

[29] This ruling is reiterated in *Re Longevity Pay of Associate Justices of the Sandiganbayan*, A.M. No. 86-9-2394-0, September 30, 1986, more fully discussed on pages 43 to 44.

contemplates. The tacking, to put it bluntly, violates the clear purpose and wording of Section 42 of BP 129.

To look at Section 42 from another perspective, if indeed (as some would argue) the intent is to grant executive officers longevity pay pursuant to their respective grants of benefits similar to that provided under Section 42 of BP 129, this presumed grant should be understood to be limited to the executive officer's continued, efficient and meritorious service in the Executive Department, to be given while the executive officer is still with that department.

When the public officer with equivalent rank, salary and benefits transfers to the Judiciary, the longevity pay to which he may have been entitled under the law applicable to his previous Executive Department position, and which he may have been receiving because of his continued service in that department, will simply have to be disregarded and discontinued.

At the point of transfer, Section 42 of BP 129 will now apply and operate, and will require five (5) years of continued and efficient service in the Judiciary before it can start to be earned. This application may sound hard and illiberal, but this is the logical consequence of the combined effect of the Judiciary's BP 129 longevity provision and the laws granting parity to benefits applicable to the Judiciary.

To reiterate for emphasis, for a transferring public official, now a new justice or judge, to be entitled to longevity pay under the terms of Section 42, he must first render continued, efficient and meritorious service in the Judiciary for at least five years; **his prior continued service in his previous department will not and should not be counted.**

b. The general laws that the Dissents cite cannot prevail over a specific law.

General laws (such as Republic Act Nos. [*RA*] 9347, 9417, and 10071) that generally grant the same ranks, salaries and benefits to public officers in the Executive Department as those of their specified counterparts in the Judiciary, cannot prevail over a special law such as BP 129 that specifically grants longevity pay **solely** to justices and judges who have rendered five (5) years of continuous, efficient, and meritorious service rendered **in the Judiciary**.

A basic principle of statutory construction is that a special law prevails over a general law.[30] A later enactment like RA 9347 and RA 10071 cannot override BP 129 because the latter, as a special law, must prevail regardless of the dates of the enactment of these other laws.[31]

As we held in *Hon. Bagatsing v. Judge Ramirez,*[32] a general provision must give way to a particular provision. As a special provision on the grant of longevity pay, Section 42 of BP 129 governs and is controlling; to hold otherwise, as the dissent suggests, is to violate its clear mandate.

Following the rule on general and special laws, the general laws granting the same salaries and benefits cannot apply to the longevity pay provision that, by its specific and express terms, is solely for the benefit of judges and justices who have shown loyal service to the Judiciary; it is not for those who have been granted similar ranks, salaries and benefits as those of their counterpart judges and justices. That they cannot be beneficiaries of longevity pay is clinched by its purpose – the reward is intended for those with loyal service to the Judiciary.

c. Is there room for liberality in reading and interpreting Section 42?

As a general rule and contrary to the Dissent's view, no room or occasion exists for any liberal construction or interpretation; only the application of the letter of the law is required by basic statutory construction principles.

We should not forget that liberality is not a magic wand that can ward off the clear terms and import of express legal provisions; it has a place only when, between two positions that the law can both accommodate, the Court chooses the more expansive or more generous option. It has no place where no choice is available at all because the terms of the law are clear and do not at all leave room for discretion.

In terms of the longevity pay's purpose, liberality has no place where service is not to the Judiciary, as the **element of loyalty** – the virtue that longevity pay rewards – is not at all present.

We cannot overemphasize too that the policy of **liberal construction** cannot and should not be **to the point of engaging in judicial legislation** – an act that the Constitution absolutely forbids this Court to do. We may not,

---

30 *Remo v. Secretary of Foreign Affairs,* G.R. No. 169202, March 5, 2010, 614 SCRA 281, 290.
31 *Manzano v. Valera,* 354 Phil. 66, 75 (1998).
32 165 Phil. 909 (1976).

in the guise of interpretation, enlarge the scope of a statute or include, under its terms, situations that were not provided nor intended by the lawmakers. We cannot rewrite the law to conform to what we think should be the law.

In the present case, where the law is clear, we should likewise be clear and decisive in its application lest we be accused of favoritism or accommodating former colleagues, or indirectly, ourselves, who will all inevitably retire from our judicial posts.

d. Administrative construction is merely advisory and is not binding upon the courts.

We take exception to the Dissent's invocation of the doctrine of contemporaneous construction to support its expansive reading of RA 9347 in relation with Section 42 of BP 129.

The Dissent conveniently fails to mention that contemporaneous constructions of administrative or executive agencies are merely at best advisory and not binding on the courts, for by the Constitution and the law, the courts are given the task of finally determining what the law means.[33] We do so under our authority to state what the law is[34] and deference to an agency's statutory interpretation should be withheld whenever it conflicts with the language of the statute, as in the present case.

In *Peralta v. Civil Service Commission,*[35] the Court had occasion to state and held:

> Administrative construction, if we may repeat, is not necessarily binding upon the courts. Action of an administrative agency may be disturbed or set aside by the judicial department if there is an error of law, or abuse of power or lack of jurisdiction or grave abuse of discretion clearly conflicting with either the letter or the spirit of a legislative enactment.

Thus, while the Executive possesses discretion in the implementation of laws, we should not forget the reason for the Judiciary's existence. We are the interpreters of the law and the Constitution, not the Executive, and when a legal error exists, we must step in and intervene, however long and hard the Executive's previous implementation of the law had been.

---

33 *Peralta v. Civil Service Commission,* G.R. No. 95832, August 10, 1992, 212 SCRA 425, 432-433.

34 *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections,* 633 Phil. 590 (2010).

35 *Supra* note 33, at 432-433.

e. The question of Judicial Legislation

Judicial legislation, in simplest terms, happens when the Court adds to what the law provides and does so in the guise of interpretation, as the present dissents now want to do by seeking to tack and to credit, for longevity pay purposes, the past services that justices and judges rendered in the Executive Department.

In fact, in their discussions, the Dissents take the view that the *ponencia* has engaged in judicial legislation because it restricts the concept of salary merely to the "basic pay."

This Resolution does, in fact, reflect the views imputed to it and it has not been shy or hesitant from the very start in taking this position. But rather than being narrow and illiberal in doing this, we believe that our position hews to the letter of the law so that our stance cannot be the basis for the charge of judicial legislation.

Judicial legislation in fact transpires when the Court reads into the law an interpretation that the four corners of that law cannot bear. This expansive interpretation – *i.e.,* that the term "salary" under Section 42 includes longevity pay so that equivalency of "salary" translates to the mandatory recognition of longevity pay – is unfortunately what the dissents espouse, driven perhaps by thoughts of what the law ought to be.

What "ought to be" as a matter of policy is not within the jurisdiction of this Court to decide upon. The Court eloquently spoke in *Canet v. Mayor Decena* about this judicial limit, *albeit* in the context of discussing the maxim ***expressio unius est exclusio alterius*** (literally, *what* is expressed puts an end to what is implied). The Court said:[36]

> In other words, it is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others, as expressed in the oft-repeated maxim *expressio unius est exlusio alterius.* Elsewise stated, *expressium facit cessare tacitum* – what is expressed puts an end to what is implied. The rule proceeds from the premise that the legislative body would not have made specific enumerations in a statute, if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned.
>
> Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of interpretation, enlarge

---

[36] 465 Phil. 325, 332-333 (2004); italics supplied, emphases and underscores ours; citations omitted.

> the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.
>
> **Courts should not, by construction, revise even the most arbitrary and unfair action of the legislature, nor rewrite the law to conform with what they think should be the law.** Nor may they interpret into the law a requirement which the law does not prescribe. Where a statute contains no limitations in its operation or scope, courts should not engraft any. **And where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation. To do any of such things would be to do violence to the language of the law and to invade the legislative sphere**. [emphases ours]

Applied to the present consolidated cases, we cannot go beyond the terms of Section 42 by expanding its terms to what it does not include: when the law speaks of service ***"in the Judiciary,"*** it means what it says and cannot include service outside the Judiciary. To relate this to the statutory construction rule discussed above given the express and clear terms of the law, the basic rule to apply is: "legislative intent is to be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction."[37]

B. *The Grant of Rank, Benefits and their Implications*

a. Judicial Rank and Executive Rank.

The grant of a "rank" equivalent to (or even *"the same as"*) "*those of the*" grantee's counterpart judge or justice is a matter that has not been the subject of extensive jurisprudential coverage. Hence, the subject of this Resolution proceeds on a path that so far remains untrodden. The novelty of the issue posed need not deter us as the matters before us call for resolution and should be written about if only to serve as guides for the future.

The Judiciary recognizes the ranks that the law accords to judges and justices. These judicial ranks wholly pertain to the Judiciary as an independent, separate and co-equal branch of government. Under our current constitutional set-up, no legislative or executive grant, fiat or recognition of rank can make the grantee, who is not a judge or justice, a

---

[37] *Fetalino v. Commission on Elections,* G.R. No. 191890, December 4, 2012, 686 SCRA 813, 841.

judicial officer, without violating the constitutional principles of separation of powers and independence of the Judiciary.

As a consequence, the grant of rank at the same level as the grantees' counterpart judges or justices is not and cannot be a conferment of "judicial rank" and does not thereby accord the grantees recognition as members of the Judiciary. For incumbent **judges and justices *who had previous government service outside the Judiciary***, it follows that the grant of rank to them under their old executive positions does not render their service in these previous positions equivalent to and creditable as judicial service, unless Congress by law says otherwise and only for purposes of entitlement to salaries and benefits.

To be sure, Congress can create and recognize ranks outside of the Judiciary that are equivalent to the ranks it has created for the Judiciary, but again, this recognition does not thereby create "judicial ranks" outside of the Judiciary, nor constitute the grantees of these ranks as judges and justices. Technically, what Congress creates or grants are **executive ranks that are equivalent to judicial ranks**.

Notably, even for those within the Judiciary itself, the recognition of "judicial rank" in favor of those who are not justices or judges does not thereby make the grantee a justice or a judge who is entitled to this formal title; the grantee may be entitled to the benefits of the rank but he/she remains an administrative official in the Judiciary, separate and distinct from the justices and judges who directly exercise judicial power, singly or collegially.

b. Commonalities and Divergence of Terms and Conditions of Government Service.

The principle of separation of powers between the Executive, Legislative, and Judicial branches of government ordains that each of these three (3) great branches of government has exclusive cognizance of, and is supreme in matters falling within its own constitutionally allocated sphere.[38] Each branch cannot *invade* the domain of the others.[39] This principle presupposes *mutual respect* by and between the Executive, Legislative, and Judicial departments and entitles them to be left alone to discharge their assigned duties as they see fit.[40]

---

38 See *Defensor Santiago v. Guingona, Jr.*, 359 Phil. 276, 284 (1998).
39 See *The Senate Blue Ribbon Committee v. Majaducon*, 455 Phil. 61, 71 (2003).
40 See *Anak Mindanao Party-List Group v. Ermita*, 558 Phil. 338, 353 (2007).

We generally draw attention to this constitutional principle to emphasize that while all officials in the three branches of government are government officials, vast differences may exist in the terms and conditions of their government service; these are ultimately traceable to the separation of power principle.

Government officials perform specifically assigned functions peculiar to their respective departments and these functions justify their differing terms and conditions of government service. In the context of the present consolidated cases, distinctions must necessarily exist between one who is appointed to the position of a judge or justice, (which position carries law-defined salaries, benefits, and conditions specific to judges and justices), and one who is appointed to an executive position with the equivalent rank, salary or benefits of a justice or judge in the Judiciary.

The extent to which those with equivalent executive and judicial ranks have commonalities or diverge in their salaries and benefits is a matter that the Constitution leaves, within limits, to the discretion of the Legislature as a matter of policy. **What is important to recognize is the legal reality that the divergence of salaries and benefits across government, even among those with equivalent ranks, is not at all unusual because these positions belong to different branches of government and undertake functions peculiar to their departments.**

A convenient example to cite is the allowance benefit that members of the Office of the Solicitor General are given as peculiarly their own – ***honoraria and allowances*** from client departments, agencies and instrumentalities.[41] Members of the Judiciary do not enjoy these same benefits.

On the part of the Judiciary, the disputed longevity pay also serves as a good example. By its terms, longevity pay is peculiar to the Judiciary as discussed above. Significantly, in all the cited laws that grant similarity of ranks, salaries, and benefits between executive officials and their counterparts in the Judiciary, **no mention at all is made of longevity pay and its enjoyment outside the Judiciary.** Longevity pay, of course, is not unique as a feature of judicial life that is wholly the Judiciary's own; there are other benefits that the Judiciary enjoys – by law, by rule or by practice – that are not replicated in the executive agencies, in the same manner that there are benefits in executive agencies that the Judiciary does not share.

---

[41] Section 10, RA 9417.

In this sense, it approximates the absurd to claim that the grant of the "same" benefits to executive officials with the "same" rank should encompass all the benefits that the comparator judge or justice enjoys.

b.1. The Question of Fairness.

A tempting question to raise when comparisons are made across branches of government and when equivalency of salaries and benefits comes into focus, is the essential fairness, or lack of it, that results or should result.

The Judiciary, for example, may raise the point – if we are the comparators and all our benefits should be enjoyed by the Solicitors, is there no resulting unfairness because no law grants the Judiciary the same privilege of enjoying the benefits that the Office of the Solicitor General enjoys?

To be sure, unfairness may ***factually*** result, but this is not a matter for the Judiciary to examine in the absence of a case where this factual issue is raised and is relevant. Nor is there any indefensible inequality ***as a matter of law*** viewed from the prism of the legal measuring standard — the equal protection clause. Notably, the Judiciary and the Executive Department belong to different branches of government whose roles and functions in government differ as pointed out above. Thus, ground/s for distinctions may exist that render any seeming unfairness not legally objectionable.

If the issue of unfairness will surface at all, this would transpire when the terms of the longevity provision under BP 129 would be disregarded, *i.e.,* if longevity pay would be recognized in favor of the NLRC, the prosecutors and the solicitors under the terms of their respective laws, when longevity pay – by the express terms fashioned out by Congress – should be granted only to those who have served continuous, efficient, and meritorious service in the judiciary.

Similarly unfair would be the tacking of previous services outside of the Judiciary rendered by judges and justices, incumbent or retired, *for purposes of longevity pay* under Section 42. Of course, the main issue in this situation would be legality, but this situation, to our mind, is one that is both illegal and unfair. Unfairness comes in because of the grant of what is not legally due.

D. The Salary and Longevity Pay

a. The Applicable Law on Salary

An examination of BP 129 shows that its **Section 41** treats of "salaries" of judges, while **Section 42** provides for longevity pay.

Under Section 41, the **"salaries" or compensation** (and allowances) that judges shall receive shall be the amount that the President may authorize following the guidelines set forth in Letter of Implementation *(LOI)* No. 93, pursuant to Presidential Decree *(PD)* No. 985, as amended by PD 1597.

PD 985, as amended by PD 1597, implemented a position classification and compensation standardization scheme *(Scheme)*:

(1) under which positions are classified by occupational groups, series and classes according to the similarities or differences in duties, responsibilities, and qualification requirements; and

(2) by which the rates of pay for each of the positions and employee groups/classes are determined according to the salary and wage schedules fixed by the Decree to be uniformly applied to all belonging to a particular position.

Under Section 4 of PD 985, this position classification and compensation standardization scheme shall apply to all positions in the national government, that under PD 1597's amendment now includes the justices and judges in the Judiciary.

Section 11 of PD 985 provides for the "**Salary Schedule**" under the compensation system for positions paid on annual or monthly basis. ***The Schedule consists of twenty-eight grades with each grade having eight prescribed steps. Each grade represents a level of work difficulty and responsibility that distinguishes it from the other grades in the Schedule***. Each class of position in the Position Classification System is assigned a "salary grade" and determines the position's salary rate.[42]

Under the Scheme, every covered position receives a "**salary**" or compensation corresponding to the position's "salary grade" under the "Salary Schedule." Otherwise stated, all covered positions or employees belonging to a particular "**salary grade**," regardless of the department, bureau, office, etc., to which they belong, shall receive the same "***salary***

---

[42] See RA 6758 or "Compensation and Position Classification Act of 1989" also known as the "Salary Standardization Law." Enacted on August 21, 1989. It provides for a similar Scheme under PD 985, as amended by PD 1597, albeit it increased the salary grades from 28 to 33."

rate," expressed as annual, in pesos, as fixed under the "Salary Schedule" (subject to certain salary rate increments for each step within each salary grade). ***In short, a particular "salary grade" equates to a specific, fixed "salary rate."***

Prior to its amendment by PD 1597, Section 4 of PD 985 exempted from the position classification and compensation standardization scheme the following positions or group of government officials and employees: (1) elected officers and those whose compensation is fixed by the Constitution; (2) heads of executive departments and officials of equivalent rank: (3) chiefs of diplomatic missions, ministers, and Foreign Service officers; (4) **Justices and Judges of the Judicial Department**; (5) members of the armed forces; (6) heads and assistant heads of GOCCs, including the senior management and technical positions; (7) heads of state universities and colleges; (8) positions in the career executive service; and (9) provincial, city, municipal and other local government officials and employees. The salaries or compensation and allowances of these exempted positions are those to be authorized by the President.

Pursuant to PD 985's mandate, then President Ferdinand E. Marcos issued Letter of Implementation (LOI 93) adopting an integrated compensation scheme for positions in the Judiciary. In almost the same fashion as PD 985, Paragraph 3.0 of LOI 93 enumerated the various positions in the Judicial Component of the Judiciary, *i.e.,* Justices and Judges of the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, Court of Agrarian Relations, the First and Second Level Courts, the Clerks of Court of the Supreme Court and Court of Appeals, and the corresponding "***salary rates" for each position, expressed as annual, in pesos***.

With PD 1597's amendment, those previously exempted positions, *i.e.,* Justices and Judges of the Judicial Department, are now included in the coverage of Section 4 of PD 985. PD 985, as amended by PD 1597, now limits the exemptions to elected officers; to those whose compensation is fixed by the Constitution; and to local government officials and employees.

Note that Section 11 of PD 985, as amended by PD 1597, and even Paragraph 3.0 of LOI 93, provided for **fixed** "***salary rates" for each "salary grade" expressed as annual, in pesos***. As matters now stand, **the "salary" or compensation that an employee or a position in the government will receive is the prevailing "salary rate," fixed under the "Salary Schedule," that corresponds to the employee or position's "salary grade.**"

The "salary rate" as expressed in annual fixed rates, based on the "salary grade" referred to under LOI 93 pursuant to PD 985, as amended by PD 1597 is the "**salary**" referred to in Section 41 of BP 129, *i.e.,* an **amount**

or salary rate fixed as annual, in pesos, that is based on the recipient's salary grading.

b. Longevity Pay under Section 42.

Section 42 of BP 129 provides for the payment and the manner of computing longevity pay, *i.e.,* to be paid monthly, based on the recipient's monthly basic pay at the rate of 5% for each five years of continuous, efficient and meritorious service rendered in the judiciary. ***Note that the amount of longevity pay to which a recipient shall be entitled is not a fixed amount, in contrast with the "salary" under Section 41; it is a percentage of the recipient's monthly basic pay which, at the least, is equivalent to 5%.***

Also, the payment of longevity pay is premised on a continued, efficient, and meritorious service**: (1) in the Judiciary; and (2) of at least five years**. Long and continued service in the Judiciary is the basis and reason for the payment of longevity pay; it rewards the loyal and efficient service of the recipient in the Judiciary.

From these perspectives, longevity pay is both a **branch specific** (i.e., to the judges and justices of the Judiciary) and **conditional** (i.e., due only upon the fulfillment of certain conditions) grant. In negative terms, it is **not an absolute grant** that is easily transferrable to other departments of government.

b.1. *Salary and Longevity Pay compared*.

In contrast with longevity pay, the "**salary**" under Section 41 entitles the official or employee to its ***receipt from day one (or the first day of the first month) of his service***. Its basis or reason for payment is the **actual performance of service** or assigned duties, without regard to the months or years the recipient has been rendering the service.

Note, too, that the service contemplated under Section 42 for entitlement to longevity pay is **service in the judiciary**. This intent is clear not only from Section 42's explicit use of the word "judiciary" to qualify "service," but also from the title of the statute to which this specific provision belongs, *i.e.,* "The Judiciary Reorganization Act of 1980."

In these lights, the "**same salary**" that **Article 216 of the Labor Code** speaks of and to which the NLRC Commissioners shall be entitled, should be read and understood as ***the salary under Section 41 or the "salary rate," as provided under the "Salary Schedule" that corresponds to the "salary grade" of their counterpart justice or judge***. Other laws that grant other public officers in the executive department with the "same salary" as their

counterpart justice or judge (*i.e.,* RA Nos. 9417 and 10071) should likewise be read and understood in this way.

b.2. *Nature of Longevity Pay*.

Based on these considerations, ***longevity pay should be treated as a benefit or an "add-on" and not a part, let alone an integral component of "salary,"*** contrary to the Dissents' position.

This consequence necessarily results as "salary" and longevity pay: **(1) are treated under different sections of BP 129; (2) have different bases for determination or computation; and (3) have different reasons for the payment or grant**.

In addition, Section 42 of BP 129 **does not categorically state that the monthly longevity pay shall form part of the "salary"** or is an integral or inseparable component of "salary." Even the most liberal interpretation of Section 42 does not reveal any intention to treat longevity pay in this manner — as part, or as an integral component, of "salary."

On the contrary, Section 42 makes it clear that the "salary," which the Dissents submit serve as basis of the "salary" of executive officers with the same rank of a justice or judge, is that referred to or contemplated in Section 41.

b.3. *Section 42 Analyzed*.

Note in this regard that the last clause of Section 42 which states 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."*

The use of the term "**total salary**" under the first portion of Section 42's last clause, presupposes an addition of components, and should be understood to refer to the **total compensation received**. This "total salary" is the "***salary***" (or the salary rate fixed under the "Salary Schedule" as the recipient's monthly compensation corresponding to his "salary grade") ***plus*** the "***add-on" longevity pay*** (or that portion or percentage of the "salary" as fixed under the Salary Schedule) equivalent to at least 5% of the monthly salary.

In formula form, this should read –

Section 41 Salary + Section 42 Longevity Pay = Total Salary

Where:

Salary = monthly salary rate of position per the Salary Schedule

Longevity Pay = monthly salary rate x 5%.

That the word "total" was added to "salary" under the first portion of Section 42's last clause, in no way signifies that longevity pay is an integral part of the "salary" which a Justice or Judge will receive each month by virtue of his position/rank/salary grade.

The word "total" was added simply to qualify "salary" (the recipient's "salary" fixed under the "Salary Schedule") plus any longevity pay to which he may be entitled. This treatment, to be sure, does not make the longevity pay a part of the "salary."

In short, "total" simply modified "salary," and in effect denotes that amount received or to be received as **total compensation**, and distinguishes this resulting amount from the ***"salary" received each month by virtue of the position/salary grade***.

Note, too, the word "salary" under the last portion of Section 42's last clause which is not qualified or modified by the word "total," in contrast with the "total salary" under the first portion.

The last portion states: *the **salary** of the Justice or Judge next in rank:* this "salary" of the Justice or Judge next in rank should not be exceeded by the "total salary" (or total compensation) of the recipient. The "salary" under the last phrase, when read together with the "total salary" under the first phrase, shows that "salary" is distinct, and to be paid separately from longevity pay, so that the latter cannot be an integral part of "salary."

To sum up, the "same salary" to be received by the public officials in the Executive Department, with the same rank of justice or judge, is the "salary" of the justice or judge under Section 41. The "salary" referred to in Section 41, in turn, and as explained above, is the "salary rate" fixed under the "Salary Schedule" corresponding to the position's "salary grade."

Notably, **Justice De Castro's proposition** that the term "salary" constitutes the basic monthly salary plus the longevity pay when the Congress enacted RA Nos. 9417, 9347, and 10071 **is not reflected in any of the congressional deliberations**. What the deliberations clearly reveal is simply the intention to increase the "salaries" of the covered public officers in the Executive Department to the level of the "salaries" received by or granted to their counterpart in the Judiciary.

This "salary" cannot but refer to the **fixed sum** that the system of "salary rate," "Salary Schedule," and "salary grade" speaks of. It cannot refer to the variable amount of "total salary" that the dissent refers to, as the basis or comparator **cannot be a variable amount** that reflects the seniority that a judge or justice has attained after years in the service.

Ironically, Justice De Castro's cited case – *Re Longevity pay of Justices of the Sandiganbayan*, appearing at page 42 of this *ponencia* – best illustrates how the "salary" and "total salary" concepts operate.

E. The complete parity that the dissent advocates is a policy matter that Congress has not so far expressed.

The legislative history and record of the laws (that grant the same ranks, salaries, and benefits to officers in the Executive department equivalent to their specified counterparts in the Judiciary) do not support the Dissent's view that these laws grant **full parity** in rank, salaries, and benefits or equal treatment between the executive officers/grantees and the comparator judges and justices whose longevity pay arises from BP 129.

In fact, the legislative history and record of these statutes positively show that Congress has not yet gone as far as the Dissents would want them to go—to recognize full parity that includes the grant of longevity pay *under BP 129* to executive officers in the Executive Department.

As the discussions below will show, the Dissent, without delving deep into legislative history and record of the statutes it cited as bases, took the easy route of resorting to hasty generalizations to support its tenuous theory that these laws operate under the principle of ***"equal in qualifications and equal in rank, equal in salaries and benefits received."***

This interpretative route may be easy but is **a very dangerous one in its implications**, as Congress has not in any way shown that it has intended officers with the same rank and qualifications **across government** to receive equal pay and equal benefits.

For this kind of "equalization" to prevail, the government must be ready to embark on a comparison, not only of rank and qualifications, but on the **quantification of job content and valuation of jobs of equal value, involving similar or allied activities undertaken across government.**

This is the requirement that the "equal pay for equal work" principle established in jurisdictions with more advanced social legislation than the

Philippines.[43] To be sure, this is a **serious policy matter** that, under the terms of the Constitution, is **not for this Court but for Congress to establish**.

To fully support these contentions, we embark on a brief look into the laws that the Dissent itself cited.

a. RA 9347[44] affecting the NLRC.

RA 9347 lapsed into law on July 27, 2006. This law was passed to address the then urgent need to improve the administrative and operational efficiency of the National Labor Relations Commission (*NLRC*), particularly its rate of disposition of pending cases and the reduction of its ballooning backlog of labor cases.[45] In dealing with these issues, Congress then focused on measures that would encourage productivity and efficiency and boost the morale of NLRC officials.

The congressional measures Congress passed included the increase in the number of commissioner-members of the NLRC, the creation of positions for commission attorneys who would assist the NLRC commissioners in deciding the labor cases, and a provision for retirement benefits to NLRC commissioners and labor arbiters equivalent to the retirement benefits of justices of the CA and judges of the RTCs, respectively.

In appreciating RA 9347, note that as early as Presidential Decree No. (*PD*) 442, the commissioners of the NLRC were already given the ***same salary and benefits as justices of the CA***. As the old Article 216 of the Labor Code provided, before the amendment:

> 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

---

[43] See *An Overview of Pay Equity In Various Canadian Jurisdictions,* available online at http://www.payequity.gov.on.ca/en/about/pubs/genderwage/pe_survey.php (last visited January 12, 2014).

[44] An Act Rationalizing the Composition and Functions of the National Labor Relations Commission, Amending for this Purpose Article 213, 214, 215 and 216 of P.D. No. 442, as Amended, otherwise known as the Labor Code of the Philippines.

[45] *See* http://www.senate.gov.ph/lisdata/38556011!.pdf. (last visited January 8, 2014); Senate Journal No. 96, June 8, 2005, Thirteenth Congress (First Regular Session), p. 372.

> 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. (As amended by Section 8, Republic Act No. 6715, March 21, 1989)[46]

This old provision did not include ***retirement benefits*** in its wording. Thus, as enumerated, entitlement to equivalence was limited to salaries, allowances and benefits. To address the perceived legislative gap, the amendatory **RA 9347** expressly included the word *retirement* in the enumeration. This grant applied to both commissioners and labor arbiters of the NLRC.

Aside from this observation, note too that the old Article 216 of the Labor Code did not give labor arbiters the salary, allowances and benefits equivalent to those of the Regional Trial Court (*RTC*) judges. Apart from addressing the issue on retirement benefits, RA 9347 also sought to deal with the then situation of labor arbiters in terms of their salaries and emoluments.

Thus, the congressional intent in RA 9347 was to deal with two gaps in PD 442 with respect to the salaries, benefits, and emoluments of the members of the NLRC.

The first was the grant of salaries and benefits to labor arbiters equivalent to those of RTC judges, and the second was the express inclusion of the retirement benefits of the labor arbiters and NLRC commissioners at the levels equivalent to those of RTC judges and CA justices, respectively.

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[47] and the sponsorship speech of Senator Jinggoy Ejercito

---

46 Emphasis and italics ours.

47 In the explanatory note of Senator Revilla in Senate Bill No. 1204, he said:

> Labor arbiters are judges in the Philippine labor setting. They arbitrate the very sensitive issues between labor and management. They perform their very delicate role in the maintenance of industrial peace which is vital to every nation's economic stability. As a vital cog in our administration of labor justice, the plight of labor arbiters has long been neglected and their role in economic development has gone unrecognized.
>
> xxxx
>
> **Since they perform an important part in the maintenance of industrial peace and in the adjudication of justice in the workplace, it is fitting that Labor Arbiters enjoy equality in rank with the judges of the Regional Trial Courts. Appropriate retirement benefits must likewise be accorded them to enable them to enjoy the fruits of government services long after they have been (*sic)* served it with their best years. (**http://www.senate.gov.ph/lisdata/49594343!.pdf)

Estrada of Senate Bill No. 2035 (the senate bill that led to RA 9347)[48] – 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.

In this light, we believe that to make the hasty generalization that the word *benefit* as enumerated in Article 216 of the Labor Code should include longevity pay would run counter to the intention of the law. Note that had it been the intent of Congress to give the labor arbiters and commissioners of the NLRC all the benefits enjoyed by the members of the Judiciary as provided in BP 129 and in other laws specifically applicable to members of the Judiciary, then it should not have amended Article 216 of the Labor Code by including "retirement benefits" in the enumeration. Congress should have left the provision as it is since it already provides for the general term *benefit.*

Parenthetically, retirement pay is a specific form of allowance under the general term *benefits.* Congress had to include this item as an express benefit precisely because the use of 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 providing for retirement benefits, Congress significantly did not simply state that the NLRC shall enjoy the terms and benefits of judges and justices under their retirement law, RA 910, where longevity pay is a special and specific provision. Congress contented itself with the plain insertion of "retirement pay" and stopped there.

Thus, as matters now stand, **NLRC officials retire under the retirement law applicable to executive officials, with parity of the terms of this retirement law with those of their counterparts in the Judiciary.** Retirement benefits specific to the Judiciary, however, were not and should not be interpreted to be wholly included.

---

[48] As explained by Senator Estrada in his sponsorship speech which tackled the retirement benefits of members of the NLRC:

> **Committee Report No. 27 finally proposes to amend Article 216 of the Labor Code, providing for the same retirement benefits to the NLRC commissioners and labor arbiters equivalent to that of the Court of Appeals and the Regional Trial Court judges**, respectively.
>
> xxxx
>
> However, while the commissioners and the labor arbiters are holding the same salary grade level as that of the justices of the Court of Appeals and the Regional Trial Court judges, respectively, **they do not enjoy the same retirement benefits.**
>
> xxxx
>
> No less than Sen. Aquilino Q. Pimentel Jr., in his Senate Bill No. 1543, which was incorporated in the instant Committee Report No. 27, proposed the increase in the allowances and retirement benefits of the commissioners and the labor arbiters. *Supra* note 20.

b. RA 9417[49] affecting the OSG.

RA 9417 passed into law on March 30, 2007. As in the case of RA 9347, this law was passed to address the plight of the members of the Office of the Solicitor General (*OSG*) by upgrading their salaries and benefits to improve their efficiency as the Republic's counsel.

In the sponsorship speech of Senator Juan Ponce Enrile regarding Senate Bill No. 2249, the predecessor Senate Bill of RA 9417, Senator Enrile pointed out that the Senate's Committee on Justice and Human Rights, in crafting Senate Bill 2249, aimed to address the following issues regarding the OSG:

1. Increase the number of staff of the OSG and upgrade their positions;
2. Increase the existing 15 legal divisions of the OSG to 30;
3. Provide health care services, insurance coverage and scholarship and other benefits to all OSG employees subject to the availability of funds;
4. Grant franking privileges to the OSG;
5. Establish a provident fund within the OSG; and
6. Grant retirement benefits to qualified employees.[50]

As in the case of the NLRC, it must again be noted that this enumeration is specific with respect to the benefits granted to members of the OSG: ***it particularly referred to the benefits to be granted***.

Although Section 3 of RA 9417[51] provides that the Solicitor General shall have the same qualifications for appointment, rank, prerogatives, salaries, allowances, benefits and privileges as the Presiding Justice of the CA (and an Assistant Solicitor General as that of a CA Associate Justice), RA 9417 still allocated express provisions for the other benefits to be enjoyed by the members of the OSG. These provisions are the following:

---

[49] An Act to Strengthen the Office of the Solicitor General by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and for Other Purposes.

[50] Senate Journal No. 56, January 22, 2007, Thirteenth Congress (First Regular Session), p. 1177.

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

The qualifications for appointment, rank, prerogatives, salaries, and privileges of Solicitors shall be the same as judges, specified as follows:

Senior State Solicitor	-	Regional Trial Court Judge
State Solicitor II	-	Metropolitan Trial Court Judge
State Solicitor I	-	Municipal Trial Court in Cities Judge

The Solicitor General shall determine the qualifications, prerogatives and responsibilities of the Associate Solicitors.

Section 4- Compensation[52]
Section 5- Benefits and Privileges[53]
Section 6- Seminar and Other Professional Fees[54]
Section 7- Transportation Benefits[55]
Section 8- Other Benefits[56]
Section 10- Grant of Special Allowances[57]

---

[52] SEC. 4. Compensation. - The basic monthly compensation of the Solicitor General, Assistant Solicitors General, State Solicitors and Associate Solicitors shall be as follows:

POSITION	SALARY GRADE	
	FROM	TO
Solicitor General	30	31
Assistant Solicitor General	29	30
Senior State Solicitor	28	29
State Solicitor II	27	28
State Solicitor I	26	27
Associate Solicitor III	25	26
Associate Solicitor II	22	25
Associate Solicitor I	18	24

The positions and salaries of non-legal personnel in the Office of the Solicitor General shall be raised to the level of their counterparts in the Court of Appeals.

Subject to the availability of funds, the salaries and privileges of personnel of the Office of the Solicitor General granted under this Act may be further increased to match any corresponding increase in salaries, and privileges later granted to their respective counterparts in the Court of Appeals.

[53] SEC 5. Benefits and Privileges. - Subject to the availability of funds, the Office of the Solicitor General may provide its employees with the following benefits:

(1) Health care services through a health maintenance organization (HMO). Expenses for the mandatory annual executive check-up of the Solicitor General, the Assistant Solicitors General, and the Service Heads, shall be for the account of the office;

(2) All employees shall be covered by accident insurance policies procured by the office at its own expense during travels while in the performance of their official duties and functions;

(3) Without prejudice to efficiency in the service, Scholarship to deserving employees on official time and at the expense of the Office of the Solicitor General to enhance their academic growth and upgrade their knowledge and skills. Scholars under this provision shall be selected on the basis of competitive examination; and

(4) A provident fund which shall consist of contributions made both by the Office of the Solicitor General and by its lawyers and employees to a common fund for the payment of benefits to such lawyers or employees or their heirs.

[54] SEC. 6. Seminar and Other Professional Fees. - Subject to the availability of funds, fees for relevant seminars, as well as professional membership fees for lawyers, registration fees, and related miscellaneous expenses incurred in completing the mandatory continuing legal education (MCLE) course shall be borne by the office. Professional membership, registration fees, including those for mandatory continuing professional education (CPE), and related miscellaneous expenses of other employees holding positions for which a professional license is required by the office shall also be borne by the Office of the Solicitor General.

[55] SEC. 7. Transportation Benefits. - Subject to the availability of funds, employees shall be provided with contracted transportation services until such time that the office can procure additional motor vehicles for this purpose.

[56] SEC. 8. Other benefits. - Consistent with the provisions of Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987, the legal staff of the Office of the Solicitor General are allowed to receive honoraria and allowances from client departments, agencies, and instrumentalities of the Government.

[57] SEC. 10. Grant of Special Allowances. - The Solicitor General, Assistant Solicitor General, Senior State Solicitor, State Solicitors I and II and Associate Solicitors I to III shall be granted special allowances in amounts to be determined by the Secretary of the Department of Budget and Management and the Solicitor General.

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. This provision is glaringly missing and thus cannot be included *via* this Court's decision without running afoul of the rule that prohibits judicial legislation. Nor can this Court recognize the past service rendered by a current judge or justice in the OSG for purposes of longevity pay.

A closer examination of this law shows that what Congress did was to grant benefits that were applicable to the type of service that the OSG provides.

For example, OSG lawyers are entitled to honoraria and allowances from client departments, agencies and instrumentalities of the Government.[58] This benefit is only proper as the main function of the OSG is to act as the counsel of the Government and its officers acting in their official capacity. On the other hand, this benefit is not applicable to members of the Judiciary as they do not act as advocates but rather as impartial judges of the cases before them, for which they are not entitled to honoraria and allowances on a per case basis.

Another indicator that should be considered from the congressional handling of RA 9417 is that Congress did not intend to introduce a strict one-to-one correspondence between the grant of the same salaries and benefits to members of the executive department and of the Judiciary. ***The congressional approach apparently was for laws granting benefits to be of specific application that pertains to the different departments according to their personnel's needs and activities. No equalization or standardization of benefits was ever intended on a generalized or across-the-board basis.***

F. The structure of the laws providing for the salaries and benefits of members of the Judiciary, prosecutors, and public officers in the OSG and the NLRC further negate the Dissent's view that these laws intended equal treatment among them.

We cannot also agree with the Dissent's position that the laws providing for the salaries and benefits of members of the Judiciary, the prosecution service, the OSG solicitors, and the members of the NLRC aim to provide equality among these public officers in their salaries and benefits.

---

[58] RA 9417, Section 8.

In terms of salaries, their rationalization has been addressed through Position Classification and Compensation System of the government under PD 985, PD 1597 and LOI 93, heretofore discussed. It is through the amendments of these legislative enactments that parity and equity can both be achieved in government.

On the other hand, a look at the structure of the laws affecting the Judiciary, the prosecutors, the OSG, and the NLRC shows that there could be no equal treatment among them. Notably, under Section 16, par. 6 of RA 10071,[59] only the prosecutors would have an automatic increase in salaries and benefits in case the salaries and benefits in the Judiciary increase. This provision, by itself, shows that Congress **did not intend full parity, because increases in the salaries and benefits of prosecutors would not lead to an automatic increase in the salaries and benefits of members of the Judiciary**.

Extending our judicial lens even further, the laws increasing the salaries and benefits of executive officers in the OSG and the NLRC do not also provide for an automatic increase should there be increases in the salaries and benefits of the Judiciary; neither do these laws increase the salaries and benefits of the members of the Judiciary should the salaries and benefits of these public officers increase.

Had Congress really intended full parity between the Judiciary and other public officers in the executive department, it would have provided for **reciprocity** in the automatic increase of salaries, benefits and allowances, and the upgrading of the grades or levels of the emoluments of these public officers.

Instead, the laws, as currently worded, allow for a situation where an increase in the salaries and benefits of prosecutors would not result in the increase in the salaries of members of the Judiciary, the OSG and NLRC. Thus, instead of equalization, the prosecutors (who were merely granted a rank at par with their named counterparts in the Judiciary) would be in a better position than the actual judges and justices themselves, in the absence of a similar provision of law giving the same benefits to justices and judges in the event additional emoluments would be given to these prosecutors.

The inevitable conclusion from all these is that Congress, in increasing the salaries and benefits of these officers, merely used the salary levels and benefits in the Judiciary as a **yardstick** to make their salaries and

---

[59] It states: "any increase after the approval of this Act in the salaries, allowances or retirement benefits or any upgrading of the grades or levels thereof of any or all of the Justices or Judges referred to herein to whom said emoluments are assimilated shall apply to the corresponding prosecutors."

benefits comparable to fellow government employees engaged in the administration of justice.

At the risk of endlessly belaboring a point, we cannot, without engaging in the prohibited act of **judicial legislation**, construe that the Dissent's cited laws fully intend and recognize full parity in rank, salaries, benefits, and other emoluments among the public officers mentioned.

G. The Dissent's cited cases of Santiago, Gancayco, Dela Fuente and Guevara-Salonga are not controlling in the present case, as they are a strained and erroneous application of Section 42 of BP 129 that should be abandoned.

The dissent's invocation of the cases of *Judge Santiago* and *Justices Gancayco, Dela Fuente, and Guevara-Salonga* cannot be applied to the present case as they are erroneous applications of Section 42 of BP 129 in relation with RA 910 or the Judiciary's retirement law.

Nor can these cases be cited to support the position that these past rulings already established that the past services in the Executive Department of incumbent and retired justices and judges, should be given credit for purposes of longevity pay under Section 42 of BP 129.

a. The Guevarra-Salonga & Dela Fuente Cases

The grants of longevity pay to Justice Guevara-Salonga and Justice Dela Fuente, in particular, were based on a **misinterpretation and misunderstanding** of the Judiciary's retirement law — RA 910, read in relation to Section 42 of BP 129 — and its interaction with RA 10071, which granted prosecutors the same rank and benefits (including retirement benefits) of their counterparts in the Judiciary.

Although RA 910 recognized, *for purposes of* ***retirement pay***, past services **in the Judiciary or in any other branch of the Government**, the ***longevity pay*** provision under Section 42 of BP 129 recognizes only services ***in the Judiciary*** in determining the longevity pay of 5% of the basic salary (given for each five years of service) that is carried over into retirement from the service.

In considering the longevity pay in the cases of Justices Guevarra-Salonga and Dela Fuente, ***the Court mistakenly recognized their services as***

prosecutors to be services in the Judiciary, because RA 10071[60] granted prosecutors the same rank and benefits (including retirement benefits) as their counterparts in the Judiciary.

The Court failed to fully appreciate that the longevity pay provision under RA 910, in relation with Section 42 of BP 129, is **unique to the Judiciary and can be enjoyed only for services actually rendered, and by those who retired, in this branch of government.** Thus, services at the Department of Justice, *i.e., outside of the Judiciary*, should not have been recognized as additional judicial service for purposes of longevity pay on retirement.

Notably, the Court did not comprehensively discuss in these cited rulings the nature of service required for the longevity provision to apply, nor the purpose, reason and history of the longevity pay provision under BP 129, for the Dissents to conclude that the Court already treated the past service in the Executive Department to be equivalent to service in the Judiciary.

As we earlier discussed, under our system of Government, the Judiciary is separate from, serves a purpose and functions, and has powers, duties and prerogatives distinct from those of the Executive Department. Hence, the Court, in these Resolutions, could not have regarded service in the Executive as unqualifiedly equivalent to service in the Judiciary.

It should be considered, too, that an acceptance of past service in the Executive as service in the Judiciary may have no basis. The qualification for the grant by the Judiciary should be its determination that there had been continuous, efficient, and meritorious service. No such determination can be done by the Judiciary if it will simply recognize longevity pay based solely on service in a position under the Executive Department with rank, salaries, and benefits equivalent to specified positions in the Judiciary.

To reiterate, for clarity and emphasis, if the Judiciary would recognize past service in the Executive simply because of the equivalency of rank, salaries and benefits, the situation would be legally problematic as it would have no way of knowing for itself if the grantee would qualify (based on efficient and meritorious service) since the past service would be with the Executive, not with the Judiciary. Of course, for this Court to simply recognize that past executive service will be credited under Section 42 of BP 129 constitutes ***prohibited judicial legislation*** for going beyond the requirement that service should be ***in the Judiciary***.

---

[60] An Act Strengthening and Rationalizing the National Prosecution Service, read in relation to A.M. No. 11-10-7-SC, February 14, 2012.

b. *The cited Sandiganbayan case*.

Re: Longevity Pay of the Associate Justices of the Sandiganbayan (*Sandiganbayan case*)[61] is a very interesting case that Justice De Castro uses as part of her argument on the liberal stance the Court has taken on longevity pay.

Significantly, this case did not treat the longevity pay under Section 42 as an integral component of the salary of the recipient, to be given to and applied in equal degree and force, and under absolute circumstances to public officials in the Executive Department granted the "same salary" as their counterpart in the Judiciary.

The *Sandiganbayan* ruling, in fact, does not apply to the factual situation of the present case; it solely involves Justices of the Sandiganbayan ―members of the Judiciary. Note the following pronouncement in that case:

> x x x longevity 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 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 appointed to the position next higher in rank.

These pronouncements reveal the Court's recognition of a situation where a Justice or Judge who has rendered service in the Judiciary for a considerable length of time and who will receive a total compensation that far exceeds the "salary" that a newly appointed Justice or Judge, who has not rendered any prior service in the Judiciary, will earn or receive based simply on his "salary grade." The former, the "long-serving" Justice or Judge, will earn far more than the latter, the "newly-serving" Justice or Judge, because of the "add-on" longevity pay that he (the long-serving Justice or Judge) will receive for his continued long service in the Judiciary, aside from the

---

61 *Supra* note 29.

"salary" to which the latter (the newly-serving Justice or Judge) shall only be entitled.

The Court realized this scenario as problematic and the obvious inequity it may bring if it were to construe strictly the words of Section 42. It is iniquitous for the "long-serving" Justice or Judge if the "add-on" pay (longevity pay) that he earned under the law for his long and dedicated service in the Judiciary would be reduced or eliminated altogether simply because of a new Justice or Judge who will not be entitled to any "add-on" pay for lack of the required long and dedicated service in the Judiciary, and who will thus receive lesser total compensation.

The Court met the case head on and declared that the limitation 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 appointed to the position next higher in rank."*

This case assumes importance in the present consolidated cases as it stresses the purpose of longevity pay as discussed and interpreted in these pronouncements: "**to reward justices and judges for their long and dedicated service as such,**" *i.e.*, as justices or judges.

It **highlights**, too, that "**salary" and the "longevity pay" are separate components of a judge's or justice's total compensation**, and that such total compensation can be variable because seniority or years in the service is a factor taken into account.

Most importantly, this case is an example of the Court's prompt decisive action to act with liberality when such action is called for.

c. Moving On

Construing Section 42 as we do in this Resolution does not and will not negate the applicable laws, contrary to Justice De Castro's Dissent. Rather, the interpretation that the term "salary" does not include longevity pay will rectify the error that the Court's past rulings have created on this subject.

To recapitulate, the Court's prior rulings treated longevity pay as part of the "salary" – a ruling that, as explained, runs counter to the express and implied intent of BP 129. They are erroneous because they introduced and included in the definition and composition of "salary" under Section 41

an element that the law did not intend to include, either expressly or impliedly.

Hence, the most compelling reason now exists to abandon the above-cited cases: they were clear and grossly erroneous application of the law. In jurisdictional terms, they involved an interpretation not within the contemplation of words expressed by the statute; hence, they were gravely abusive interpretation[62] that did not and cannot confer any vested right protected by the due process clause. The worst approach the Court can take now is to compound the problem by perpetuating our past mistakes and simply burying our heads in the sand of past-established rulings.

The first decisive move for the Court is to declare, as it hereby declares, the abandonment of our rulings on longevity pay in the cases *of Santiago, Gancayco, Dela Fuente, and Guevara-Salonga* and to strike them out of our ruling case law, ***without, however, withdrawing the grants*** to those who have benefitted from the Court's misplaced final rulings.

Along these lines, the Court also hereby expressly declares that it does not disavow the longevity pay previously ***granted to the retired justices and judicial officials*** for services rendered outside the Judiciary. They may continue enjoying their granted benefits as their withdrawal now will be inequitable.

With the same objective, ***those still in the service*** who are now enjoying past longevity pay grants *due to past services outside the Judiciary*, shall likewise continue with the grants already made, but their grants will have to be frozen at their current levels until their services outside the Judiciary are *compensated for* by their present and future judicial service.

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;

---

62 *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections, supra* note 34.

(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.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

I join the concurring and dissenting opinion J. de Castro

ANTONIO T. CARPIO
Associate Justice

I join the concurring and dissenting opinion. (Please see Separate opinion)

PRESBITERO J. VELASCO, JR.
Associate Justice

Please see my concurring and dissenting opinion:
Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On official leave)
DIOSDADO M. PERALTA
Associate Justice

I join the concurring and dissenting opinion of J. de Castro:

LUCAS P. BERSAMIN
Associate Justice

I join the dissenting and concurring opinion of J. de Castro

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

Please see my concurring and dissenting opinion

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

(On official leave)
MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

No part
prior
OSG action