



Republic of the Philippines  
**SUPREME COURT**  
 Manila

**EN BANC**

**ASSOCIATION OF RETIRED  
 COURT OF APPEALS JUSTICES,  
 INC. (ARCAJI), represented by  
 TEODORO P. REGINO,**  
 Petitioner,

**G.R. No. 210204**

Present:

CARPIO, *Senior Associate Justice*,  
 VELASCO, JR.;  
 LEONARDO-DE CASTRO,  
 PERALTA,  
 BERSAMIN,  
 DEL CASTILLO,  
 PERLAS-BERNABE,  
 LEONEN,\*  
 JARDELEZA,\*\*  
 CAGUIOA,  
 MARTIRES,  
 TIJAM,  
 REYES, JR.,\*\* and  
 GESMUNDO, JJ.

- versus -

**HON. FLORENCIO ABAD, JR., as  
 SECRETARY OF THE  
 DEPARTMENT OF BUDGET  
 AND MANAGEMENT,**  
 Respondent.

Promulgated:

July 10, 2018,

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**DECISION**

**VELASCO, JR., J.:**

This is a Petition for *Mandamus* filed by the Association of Retired Court of Appeals Justices, Inc. (ARCAJI), represented by its President, Teodoro P. Regino, praying that respondent Florencio Abad Jr. (Sec. Abad), as the Secretary of the Department of Budget and Management, be ordered to immediately issue the necessary Special Allotment Release Order (SARO) and Notice of Cash Allocation (NCA) to cover the funding requirements for the retirement gratuity differentials of twenty-eight (28) retired Court of Appeals (CA) Justices, namely: Sixto C. Marella, Jr., Arturo G. Tayag, Arcangelita R. Lontok, Regalado E. Maambong, Edgardo F. Sundiam, Edgardo F. Cruz, Teresita Dy-Liacco Flores, Monina A. Zenarosa,

\* On official business.  
 \*\* No part.

Jose L. Sabio, Jr., Myrna Dimaranan-Vidal, Aurora Santiago-Lagman, Marina L. Buzon, Enrico A. Lanzanas, Lucenito N. Tagle, Agustin S. Dizon, Rodrigo V. Cosico, Roberto A. Barrios, Arsenio J. Magpale, Santiago J. Ranada, Eliezer R. Delos Santos, Vicente L. Yap, Delilah V. Magtolis, Eugenio S. Labitoria, Mercedes G. Dadole, Danilo P. Pine, Ruben C. Ayson, Conrado M. Vasquez, and Renato C. Dacudao.<sup>1</sup>

### The Facts

In the case now before the Court, all the twenty eight (28) CA associate justices retired from the judiciary on various dates from 2005 to 2010. During the five-year span after their retirement, a series of salary increases were granted to all employees in the public sector, thereby increasing the salaries being received by incumbent CA Justices at the time of said adjustments. These salary increases were brought about by the implementation of Salary Standardization Law 2 (SSL 2) and Salary Standardization Law 3 (SSL 3). The first round of salary increase was implemented under Executive Order No. 611, effective July 1, 2007, which upped the salary by ten percent (10%). The second round of salary increase was implemented under Executive Order No. 719, effective July 1, 2008, which further increased the salary by another 10%. These two salary increases were a result of the full implementation of SSL 2.

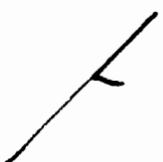
The next round of salary increases were brought about by the passing and implementation of SSL 3. The first *tranche* of increases under SSL 3 was implemented under Executive Order No. 811, effective July 1, 2009; the second *tranche* under Executive Order No. 900, effective June 24, 2010; and the third *tranche* under Executive Order No. 40, effective June 1, 2011.

The aforesaid increases in the salary of incumbent CA Justices prompted the petitioners, the twenty-eight retired Justices, to file a claim for their retirement gratuity differentials. Since the retirement gratuity that they received was computed solely on the basis of their salary at the time of their retirement, they asked for the payment of said differentials anchored on the salary increases given to incumbents of similar rank during the 5-year period after their retirement. They thus petitioned the DBM to allow the adjustment and release of their retirement gratuity differentials.

In total, the 28 petitioners are claiming differentials under RA Nos. 910 and 9946 amounting to Twenty Three Million Twenty-Five Thousand Ninety-Three and 75/100 Pesos (₱23,025,093.75), broken down as follows:

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<sup>1</sup> *Rollo*, p. 22.



	Retirement Date	Amount
1. Hon. Sixto C. Marella, Jr.	02/01/2010	₱2,372,165.95
2. Hon. Arturo G. Tayag	03/02/2010	1,283,498.05
3. Hon. Arcangelita R. Lontok	03/18/2010	830,422.23
4. Hon. Regalado E. Maambong	01/02/2009	624,708.78
5. Hon. Edgardo F. Sundiam	02/01/2009	2,276,270.38
6. Hon. Edgardo F. Cruz	05/12/2009	777,666.78
7. Hon. Teresita Dy-Liacco Flores	05/14/2009	762,640.89
8. Hon. Monina A. Zenarosa	08/22/2009	874,752.17
9. Hon. Jose L. Sabio Jr.	12/15/2009	2,188,495.53
10. Hon. Myrna Dimaranan-Vidal	12/20/2009	896,461.88
11. Hon. Aurora Santiago-Lagman	01/16/2008	353,410.48
12. Hon. Marina L. Buzon	03/19/2008	387,792.04
13. Hon. Enrico A. Lanzanas	04/19/2008	527,128.84
14. Hon. Lucenito N. Tagle	06/26/2008	524,049.00
15. Hon. Agustin S. Dizon	06/27/2008	564,269.34
16. Hon. Rodrigo V. Cosico	07/04/2008	494,329.53
17. Hon. Roberto A. Barrios	02/13/2007	1,829,270.33
18. Hon. Arsenio J. Magpale	07/03/2007	1,765,336.63
19. Hon. Santiago J. Ranada	11/10/2006	121,311.84
20. Hon. Eliezer R. Delos Santos	12/20/2006	1,776,510.22
21. Hon. Vicente L. Yap	08/22/2006	96,080.63
22. Hon. Delilah V. Magtolis	11/29/2005	17,027.26
23. Hon. Eugenio S. Labitoria	12/13/2005	17,068.68
24. Hon. Mercedes G. Dadole	12/20/2005	23,560.33
25. Hon. Danilo P. Pine	12/27/2005	29,224.74
26. Hon. Ruben C. Ayson	03/02/2011	1,195,018.13
27. Hon. Conrado M. Vasquez	01/06/2010	181,066.63
28. Hon. Renato C. Dacudao	06/19/2007	235,556.46
<b>GRAND TOTAL</b>		<b>₱23,025,093.75</b>

In fine, the petitioners are arguing that due to the increase in the salaries received by the incumbent Justices of the CA, they are also entitled to receive as part of their retirement gratuity all the increases in salaries that have been implemented within five years after their retirement from service.

For example, in the case of petitioner Justice Delilah V. Magtolis, who retired on November 29, 2005, she is claiming a differential of ₱17,027.26. The following illustrates the difference between the salary she was receiving at the time of her retirement, as opposed to the increased salary received by an incumbent:

	Received as of 11/29/2005	2 <sup>nd</sup> tranche, SSL 3 2010
Basic Salary and Allowances	P50,314.00	P90,923.60
Special Allowance under R.A. 9227	P31,095.00	
Longevity Pay (20%)	6,219	
<b>TOTAL BASIC SALARY AND ALLOWANCE</b>	<b>₱87,628.00</b>	<b>90,923.60</b>
<b><u>Differential</u></b>		<b><u>₱3,295.60</u></b>

Thus, the differentials being claimed by retired Justice Magtolis can be computed as follows:

June 24, 2010 to June 30, 2010 (7 days)	P3,295.60/30 x 7 days	P 768.97
July 1, 2010 to October 31, 2010 (4 months)	P3,295.60 x 4 months	13,182.40
November 1-28, 2010 (28 days)	P3,295.60/30 x 28 days	3,075.89
<b><u>TOTAL DIFFERENTIALS</u></b>		<b><u>P17,027.26</u></b>

The ₱17,027.26 differential claimed by Justice Magtolis can be attributed to the implementation of the second *tranche* of SSL 3 starting June 24, 2010. Prior increases in the salary of incumbent CA Justices implemented after Justice Magtolis's retirement are already deemed part of the retirement gratuity that she received when retired in 2005, due to the provision in Republic Act (R.A.) No. 9227 providing that the SAJ component are deemed advanced implementation of future salary increases. Hence, the Special Allowance for the Judiciary (SAJ) component of the retirement gratuity she received in 2005 would have already covered for such salary increases. With the implementation of the second *tranche* of SSL 3, however, the SAJ has been fully integrated in the basic salary, i.e. there is no more SAJ component to the basic salary given to incumbent Justices. Consequently, the SAJ component that Justice Magtolis received in 2005 would no longer suffice to cover the differential brought about by the implementation of the second *tranche* of SSL 3. This situation, which occurs in the case of all 28 petitioners, necessitates the recomputation of their respective retirement gratuities, and the granting of differentials in their favor. Thus, their request for the DBM to recomputed their retirement gratuities.

Rejecting the claim of petitioners for retirement gratuity differentials, the DBM, in its letter dated October 8, 2012, stated that the claimed differentials must be sourced from the SAJ, and not from the Pension and Gratuity Fund. More particularly, the DBM said:

The request stemmed on Administrative Matter (AM) No. 91-8-225-CA dated October 24, 1995 which decreed the right of certain retired Justices to receive their RG [retirement gratuity] based on the increased rates of salary and representation, living and transportation allowances given to incumbents after their retirement from government service.

Section 3 of RA No. 910 explicitly provides that a retired [J]justice shall receive a five (5) year lump-sum gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, living, and representation allowances at the time of retirement. The requested RG differentials are due to subsequent salary increases authorized after the dates of their retirement.

Section 4 of RA No. 9946, which is the latest amendatory law of RA 910, however, authorized the automatic pension increase whenever there is an increase in the salary of incumbents. Said adjustment shall be applied prospectively to the monthly pensions to be received by the retired justice subsequent to the date the salary increase was granted.

The reliance by the Justices on A.M. No. 91-8-225-CA may not be proper because RA No. 910, as amended[,] is clear, and grants automatic adjustment of the retirees' monthly pension only excluding RG.

Our [lawmakers] therefore enacted laws which clearly differentiated the bases/treatment between the five (5) year lump RG and the monthly pension after the expiry of the five years. Otherwise, they could easily have included in any of the amendatory laws to RA No. 910 that both RG and pension shall be automatically adjusted in case of increase in the salary of the incumbents.

In view of the foregoing, the request for the release of funds for RG differentials [cannot] be acted upon favorably.<sup>2</sup>

### ***Comment of the Solicitor General***

In its Comment, the Office of the Solicitor General (OSG), for respondent DBM, argued that *mandamus* does not lie to compel the DBM to issue the SAROs and NCAs for the SAJ component of the retirement gratuities of the concerned retired CA Justices, because to do so would violate Article VI, Section 29 (1) of the 1987 Philippine Constitution, which mandates that “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.” Further, the OSG argued that from the 2007 General Appropriations Act (GAA) to the 2014 GAA, the law has specifically, clearly, and consistently provided that the SAJ component of the retirement benefits should be sourced from the SAJ Fund, and not elsewhere. Hence, the OSG argued, there is no ministerial duty on the part of the respondent DBM to issue the requested SAROs and NCAs.<sup>3</sup>

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<sup>2</sup> Id. at 25.

<sup>3</sup> Id. at 64.



The OSG further argued in its Comment:

During the incumbency of Justices and judges, they receive personnel benefits which consist of their basic salary, the SAJ, and other allowances. The basic salary is sourced from the General Fund while the SAJ is sourced from the SAJ Fund, pursuant to Section 3 of the SAJ Law. Section 38 of the General Provisions of the 2007 GAA (and its counterpart provisions in subsequent GAAs) provides that in the payment of retirement gratuity and terminal leave benefits, “only the portion attributed to personnel benefits cost charged against the General Fund shall be sourced from such. In no case shall personnel benefits costs charged against another source be charged against the General Fund.”

Thus, the DBM cannot charge money from the General Fund to pay for the SAJ component of the retirement benefits. Under this provision, the SAJ Fund should pay for the SAJ component of the retirement benefits. The point here is that the General Fund is not a “funding source” that can be used by the Executive Department, through the DBM, to pay for whatever expenditure it wants to fund. Under our Constitution, the General Fund, or the National Treasury, can only be unlocked by two keys – (a) an appropriation by Congress, and (b) executive action (whether by SARO or some other administrative device) pursuant to that appropriation. Following this metaphor, what petitioner actually wants is to open the Treasury with one key, in the face of the refusal of the Congress to provide the other key. This simply cannot be done.<sup>4</sup>

The then Presiding Justice of the CA, Justice Andres B. Reyes, Jr. (Justice Reyes), addressed a letter<sup>5</sup> to respondent Sec. Abad, requesting reconsideration of the DBM’s virtual denial action. Citing *Santiago v. Commission on Audit*,<sup>6</sup> Justice Reyes argued that retirement laws should be interpreted liberally in favor of the retiree because their intention is to provide for his sustenance and comfort when he no longer has the stamina to continue earning his livelihood. In its response letter dated August 1, 2013, however, the DBM reiterated its position that the automatic adjustment in benefits shall be applied prospectively to the monthly pension of the retired justices but not to the retirement gratuity,<sup>7</sup> and hence, denied reconsideration.

Thus, this recourse.<sup>8</sup>

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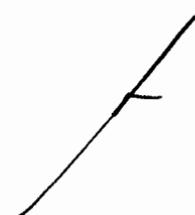
<sup>4</sup> Id. at 66-67.

<sup>5</sup> Id. at 23-26.

<sup>6</sup> G.R. No. 92284, July 12, 1991.

<sup>7</sup> *Rollo*, p. 24.

<sup>8</sup> Id. at 5.



### The Issues

First, the Court is confronted with the procedural matter of whether *mandamus* would, under the premises, lie against the DBM.

Next, the Court is called upon to resolve the core issue of whether or not the CA Justices are entitled to receive retirement gratuity differentials amounting to ₱23,025,093.75, equivalent to the amount of salary increases granted to incumbent CA Justices during the five-year period following their retirement.

Corollarily, the Court is asked to determine the funding source for such retirement gratuities, whether it should be funded by the SAJ Fund or the Pension and Gratuity Fund managed by the DBM.

### The Court's Ruling

We find merit in the petition.

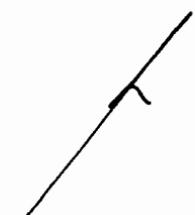
On the procedural issue, the OSG claims that *mandamus* will not lie to compel DBM to pay the gratuity differentials.

The Court does not agree.

*Mandamus* is a command issuing from a court of law of competent jurisdiction directed to some inferior court, tribunal, or board or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law. The writ will lie if the tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station. The writ of *mandamus*, however, will not issue to compel an official to do anything which is not his duty to do, or to give to the applicant anything to which he is not entitled by law.<sup>9</sup> The guidepost therefore is whether or not there is a law that imposes a duty upon the defending person or office to perform a certain act. The answer lies in the resolution of the core issue whether or not DBM has the duty under the law to pay the retirement gratuities.

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<sup>9</sup> *Uy Kiao Eng v. Nixon Lee*, G. R. No. 176831, January 15, 2010.



To rule on the central issue whether there is a duty on the part of the DBM to pay the differentials during the 5 year period after date of retirement under existing laws, We turn to R.A. No. 910, as amended by R.A. No. 1797 and R.A. No. 9946, which captures the rules on retirement of justices of the Supreme Court and of the Court of Appeals. Sections 3, 3-A and 3-B of R.A. No. 910 respectively read as follows:

Sec. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, Municipal Circuit Trial Court, Shari'a District Court, Shari'a Circuit Court, or any other court hereafter established **shall be automatically entitled to a lump sum of five (5) years gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement and thereafter upon survival after the expiration of five (5) years x x x**

x x x x

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.**

Sec. 3-B. The benefits under this Act shall be granted to all those who have retired prior to the effectivity of this Act: Provided, that the benefits shall be applicable only to members of the Judiciary: Provided, further, That the benefits to be granted shall be prospective. (Emphasis added)

Section 3 is unequivocal and is straightforward enough. Upon retirement, the justice shall be "automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation etc. up to further annuity payable monthly during the residue of his/her natural life pursuant to section 1 hereof x x x."

In A.M. No. 91-8-225-CA (Re: Request of the retired justices of the Court of Appeals for re-adjustment of their monthly pension) issued on October 24, 1995, the Court elucidated that the lump sum of five (5) years' gratuity granted to the retiring justice consist of the 60 monthly entitlements "GIVEN FIVE YEARS IN ADVANCE" and are guaranteed for five years. Thus, the usual 60 monthly pensions to which the justice is entitled to receive is converted by law into a lump sum payment to accord him/her more flexibility or maximization in the use of the funds.



To shed light on the issue whether herein claimants are entitled to increases in the salaries of the incumbent justices occupying the same position from which they retired during the 5 year period after the date of retirement, Section 3-A clearly states that **“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.”** Thus, any increase in the salary of the incumbent justice shall redound to the benefit of the retiree if given during the five (5) year period reckoned from date of retirement. The law cannot be any clearer. The rationale behind the law is that the lump sum of 5 years gratuity is actually the equivalent of the 60 monthly pensions which the retiree is allowed to receive under R.A. No. 910 as amended. If the retiree is to be paid the monthly pension for 60 months or within the 5 year period, then he/she will definitely be entitled to the increases in salary granted during the said period.

The discussion of the Court in A.M. No. 91-8-225- CA is instructive:

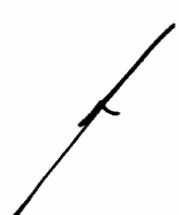
The issue in the present request of retired Justices and widows of Justices is whether or not a retiree who received a 5-year lump sum payment is entitled to automatic adjustments during the five years after retirement, corresponding to increase in the salaries and RATA given to incumbent Justices during those same five years.

Section 10, Article VIII of the 1987 Constitution, provides that during the continuance in office of Justices, their salary shall not be reduced. Any adjustments in retirement benefits under R.A. 1797 will, therefore, be based solely on increases in salaries and RATA of incumbents since there never are any decreases.

**Sec. 3-a of the retirement law is sufficiently clear that whenever the salary of an incumbent Justice is increased, such increased salary shall be deemed to be the salary or the retirement pension which a Justice who retired was receiving at the time of his cessation in office. In other words, the increased salary of the incumbent becomes the basis of the salary of the retiree at the time of his cessation in office.**

The office of the Court Administrator was ordered on June 13, 1995 to evaluate and report on the request of the retired Justices. On August 28, 1995, the OCA submitted a report which, in part, states:

‘It is worthy to note that RA 1797 previously discussed speaks of pension received by retired Justices of the Court, payable monthly during the residue of his natural life. This is the reason why pursuant to the Resolution of the court dated November 28, 1991, qualified justices were paid their pension differential which commences on the sixth year after retirement of these justices. The five-year lump sum payment granted to retiring justices is what RA 910, as amended, provides, and based on their highest monthly salary and aggregate amount of allowances. Contrary to what abovenamed Justices claim, this office respectfully



beg to disagree that the benefits of RA 910 are all pensions including those paid in advance in lump sum to the retiree. Pensions are those given to retired justices and judges after the expiration of the fifth year from their retirement. Nowhere in the retirement law can we find a provision signifying that the lump sum payment of five years is tantamount to an advance payment of pension requirement to sixty (60) months.'

We do not agree with the OCA report as it is based on a misperception of the nature of "pension" and applicable laws.

First, the OCA omitted or overlooked the key word "salary" found in the retirement law. RA 1797 provides that the increased salary shall be deemed to be the salary or the retirement pension which a Justice who retired was receiving at the time of his cessation in office. A member of this Court has a "salary", not a pension on the date of his retirement. In fact, this last highest salary becomes the basis of his future pensions, five years of which pensions are given in advance when he retires.

And since this last salary is adjusted every time there is an increase in the salaries of incumbents, the adjusted salary retroacting to "the time of his cessation in office" becomes the basis of retirement pensions. The base date is "the time of his cessation in office," not the start of the sixth year period after retirement.

Second, it is error to state that the amounts given as five-year lump sum are not "pensions." They cannot be anything else. If they are not "pensions," what are they? And what do they represent? What is their basis? Simply because the monthly entitlements are given five years in advance and, thus, guaranteed for five years, they do not lose their character as "pensions." They cannot be "salaries" nor can the five-year lump sum be gratuity given out of pure generosity.

A pension is given to retired Justice as compensation for services rendered in the past. In a loose sense, the words "retirement gratuities" are sometimes used interchangeably for pensions. But retirement payments under RA 910 as amended are not gratuities in the strict sense of the word. They are not given out of pure generosity of the Government. As declared in *Bengzon vs. Drilon*, supra, the right to pensions is a vested right. Pensions are part of the payment for past services. The retiree has also contributed premiums towards his retirement benefits while working. Deductions are made from his salary every month. The retiree cannot be deprived of his vested right accorded by law.

*Bengzon vs. Drilon*, 208 SCRA 133, 156 (1992) reiterates the ruling in *Santiago vs. Commission on Audit*, G.R. No. 92284, July 12, 1991, thus:

"Retirement laws should be interpreted liberally in favor of the retiree because their intention is to provide for his sustenance, and hopefully even comfort, when he no longer has the stamina to continue earning his livelihood. After devoting the best years of his life to the public service, he deserves the appreciation of grateful government as best concretely expressed in a generous



retirement gratuity commensurate with the value and length of his services. That generosity is the least he should expect now that his work is done and his youth is gone. Even as he feels the weariness in his bones and glimpses the approach of the lengthening shadows, he should be able to luxuriate in the thought that he did his task well, and was rewarded for it.

For as long as these retired Justices are entitled under laws which continue to be effective, the government cannot deprive them of their vested right to the payment of their pensions.”

**Under the law, therefore, from the moment a member of this Court or the Court of Appeals retires and for the entire five-year period following said retirement and continuing on during the residue of his or her natural life, he or she should not receive an amount less than what an incumbent receives as salary and RATA. It, of course, follows that he or she cannot receive more. (Emphasis added)**

The *fallo* of the resolution in A.M. No. 91-8-225-CA is beyond equivocation:

**2. In case the salary or representation, living and transportation allowances or both, or an incumbent Justice are increased, such increased salary and representation, living and transportation allowances shall be deemed to be the retirement benefit of the retired Justice, effective upon the date of said increase. (Emphasis added)**

The DBM contends that R.A. No. 910 differentiated the bases/treatment between the five (5) year lump retirement gratuity and the monthly pension after the expiry of the five years. It concludes that the “amendatory laws to RA No. 910 issued have provided that “both retirement gratuity and pension shall be automatically adjusted in case of increase in salary of incumbents.”

This view is incorrect. Precisely, R.A. No. 9946 clarified that Section 3 of R.A. No. 910 applies to retirement gratuity at the time of retirement and the monthly pensions after 5 years from date of retirement. Section 3-A covers the payment of differentials in the event salary adjustments to the incumbent justices are granted by law DURING THE 5 YEAR PERIOD from date of retirement.

In light of the foregoing, the Court finds that Section 3-A of R.A. No. 910, as amended, buttressed by the Resolution in A.M. No. 91-8-225-CA, prescribes a duty under the law upon the DBM to pay to the petitioners the increases in salary granted by law during the 5 year period after date of retirement. Mandamus will lie to compel respondent DBM to fulfil its duty under the law.

***The Pension and Gratuity Fund is the proper funding source for the retirement differentials***

The DBM, in defense of its position not to pay the retirement gratuity differentials, asserts that the claimed increases partake of SAJ allowances and if ever that is a basis for the claim, that the claim should be sourced from the SAJ Fund, pursuant to Section 3 of the SAJ law. It explains that only the gratuities based on personnel benefit costs can be charged against the General Fund. In no case, it added, can such costs charged against another source be charged against the General Fund.

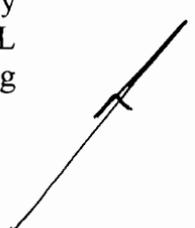
This proposition is incorrect.

DBM's position is confined solely to SAJ allowances, but the claim of the petitioners is mainly based on the adjustments to the salaries of justices by reason of SSL 2 and SSL 3 and not from the said SAJ allowances.

Presumably, the SAJ allowances were sourced from the SAJ Fund pursuant to RA No. 9227. However, said SAJ allowances were fully converted to basic monthly salary of the justices as of June 1, 2011. Any increases that have been implemented after that date already forms part of basic salary as there is no more SAJ component to speak of. The claims of petitioners are grounded on the salary increases brought about by the two salary increases under SSL 2 implemented by E.O. No. 611 effective July 1, 2007 and E.O. No. 719 effective July 1, 2008 and three salary tranches under SSL 3 implemented by E.O. Nos. 811, 900 and 40, respectively.

The entire amount that the petitioners are receiving as retirement gratuity corresponds only to the basic monthly salary (BMS) and other additional allowances, due to the full conversion after the implementation of EO No. 40. We reiterate and affirm the ensuing submission of the Fiscal Management and Budget Office (FMBO) of the Court:

The arguments raised by the DBM fall flat as the claims of the members of petitioner for retirement gratuity differentials do not refer to the SAJ component of their retirement gratuity, which, as already mentioned, have long been paid, but to the salary increases under the SSL 3 which are in excess of the SAJ. As determined from the supporting



computations for each claimant prepared by the CA, the claims were reckoned only from June 24, 2010, upon the implementation of the second *tranche* of SSL 3 where there still remained a portion of the SAJ still not converted to BMS. Even assuming that the argument of the DBM that the [R]esolutions of the Court in A.M. No. 07-5-10-SC and A.M. No. 07-8-03-SC do not enjoin it from implementing the special provisions of subsequent GAAs prohibiting the funding of the SAJ component of the retirement gratuity from the Pension and Gratuity Fund, the same would still not apply since the differentials being requested for payment only accrued in 2011 when there is no longer a SAJ component to speak of. The DBM, therefore, has the duty to fund these salary increases under the third and fourth *tranches* of the SSL 3, which no longer have a corresponding SAJ component, as the members of petitioner ARCAJI have the clear legal right to such claims.

As to the payment of the differentials for the RATA and PERA/ADCOM, the petitioners also have a clear legal right as earlier established. Thus, the DBM has the ministerial duty to likewise release the funding for the RATA and PERA differentials and mandamus lies as a remedy to compel the DBM to perform its duty and enforce the rightful claims of the members of petitioner.<sup>10</sup>

Even assuming that there is a portion in the retirement gratuity that had not been fully converted to BMS, such component can still not be sourced from the SAJ Fund, owing to the nature of the SAJ Fund as a special fund. In A.M. No. 04-7-05-SC, We said:

**However, as a special fund, the SAJ can only be used for the purposes for which it was created, namely, the grant of special allowances to incumbent or serving Justices, judges and all other positions in the Judiciary with the equivalent rank of Justices of the Court of Appeals and of the Regional Trial Court. It cannot therefore be availed of to grant the retirement gratuity, terminal leave or other benefits to a retired Justice, judge or employee of the Judiciary with a rank equivalent to that of a Court of Appeals Justice or a Regional Trial Court judge.**

Section 5 of R.A. No. 9227 only mandates that the actual amount of special allowances received by a Justice during his incumbency under that law be included in the computation of his retirement benefits. It does not ordain the source from which where the portion of the retirement benefit corresponding to the special allowances will be taken. There being no exception under R.A. No. 9227 to the general rule under Section 34 of the 2003 GAA, the general rule that the personnel benefits of a government employee whose salary is taken from the General Fund must also be taken from the General Fund applies. (Emphasis added)

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<sup>10</sup> *Rollo*, p. 123.



Moreover, this Court had already ruled that the SAJ Component of the retirement gratuity and other terminal leave benefits should not be sourced from the SAJ Fund, but from the Pension and Gratuity Fund. We issued a Resolution in A.M. No. 07-5-10-SC and A.M. No. 07-8-03-SC, dated June 7, 2011, where We said:

x x x x

2. In A.M. No. 07-5-10-SC:

- a. To **ORDER** that the SAJ component of the retirement gratuity and terminal leave benefits and pensions of retired Justices, Judges, and Judiciary officials with the equivalent rank of a CA Justice or RTC Judge shall continue to be sourced from the Pension and Gratuity Fund; and
- b. To **DIRECT** the DBM to issue the necessary SARO and the corresponding NCA to cover the funding requirements for the SAK component of the retirement benefits and pensions of retired Justices, Judges, and Judiciary officials with the equivalent rank of a CA Justice or RTC judge. (Underscoring supplied)

In the same Resolution, the Court made it clear that the same ruling shall apply to future issuances:

The DBM is duty-bound to comply with the said Order and should release the necessary funding corresponding to the salary increases authorized under E.O. Nos. 611, 719, and 811 of Justices, judges, and judiciary officials with the equivalent rank of a Court of Appeals Justice of a Regional Trial Court Judge, beginning April 2020 and every month thereafter. It would be tedious to require the Court to issue a new resolution or order every year, just to give effect to the salary increases authorized under future executive issuances.

The inevitable conclusion, therefore, is that the retirement gratuity of the petitioners is properly sourced from the Pension and Gratuity Fund, and not from the SAJ Fund. Hence, the act of the respondent DBM in refusing to issue the corresponding SARO and NCA, is tantamount to grave abuse of discretion. *Mandamus* then lies as a remedy to the petitioners, as the issuance of SARO and NCA partakes of a ministerial duty of the DBM based on the application of Section 3-A of RA No. 910, as amended.

To sum up, We restate the rules on payment of retirement gratuities of Supreme Court and appellate court justices as follows:

1. Under Section 3 of RA No. 910, as amended by RA No. 1797 and RA No. 9946, “a justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a



Judge of the Regional Trial Court x x x or any other court hereafter established shall be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement x x x."

The lump sum of five (5) years' gratuity are actually payment of the sixty (60) monthly pensions for the period of five (5) years from date of retirement but are given in ADVANCE in the form of a lump sum payment equal to said 60 monthly pensions.

2. After receipt of said lump sum payment of five years gratuity and during the five year period from date of retirement, the justice or judge who retired is entitled to any increase in the salary of the incumbent justice or judge granted by law based on Section 3-A of RA No. 910, as amended, that "[a]ll 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."
3. After surviving the 5 year period from date of retirement, the retiree shall be entitled to a monthly pension for the rest of his/her natural life. Any increase in the salary of the incumbent justice of judge shall automatically redound to the benefit of the retiree and his/her monthly pension shall be automatically adjusted.

**WHEREFORE**, in view of the foregoing, a writ of *mandamus* is hereby **ISSUED** against respondent Department of Budget and Management, directing it to immediately issue the necessary Special Allotment Release Order, with the corresponding Notice of Cash Allocation payable from the Pension and Gratuity Fund, to cover the funding requirements for the retirement gratuity differentials of the twenty-eight retired Court of Appeals Justices, enumerated in Annex "D" of the petition, with a total amount of **Twenty-Three Million, Twenty-Five Thousand, Ninety-Three and 75/100 Pesos (₱23,025,093.75)**.

**SO ORDERED.**

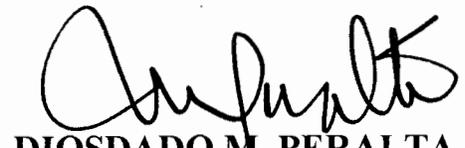


**PRESBITERO J. VELASCO, JR.**  
Associate Justice

WE CONCUR:

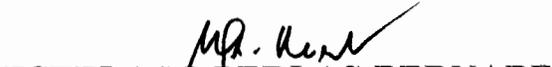
  
**ANTONIO T. CARPIO**  
 Senior Associate Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

  
**DIOSDADO M. PERALTA**  
 Associate Justice

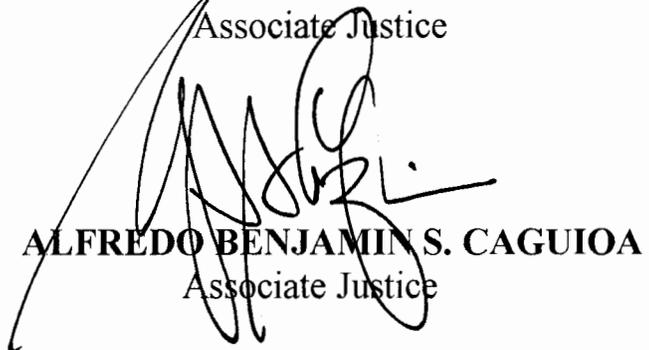
  
**LUCAS P. BERSAMIN**  
 Associate Justice

  
**MARIANO C. DEL CASTILLO**  
 Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

(On Official Business)  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

(No Part)  
**FRANCIS H. JARDELEZA**  
 Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

  
**SAMUEL R. MARTIRES**  
 Associate Justice

  
**NOEL GIMENEZ TIJAM**  
 Associate Justice

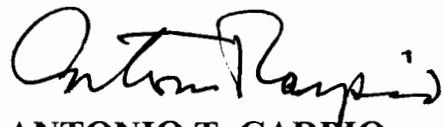
(No Part)  
**ANDRES B. REYES, JR.**  
 Associate Justice

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice



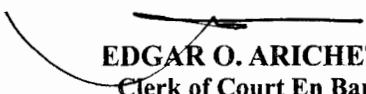
**CERTIFICATION**

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



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)

**CERTIFIED TRUE COPY**



**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court

