



**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**

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**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, *CJ.*,
- CARPIO,
- VELASCO, JR.,
- LEONARDO-DE CASTRO,
- BRION,
- PERALTA,
- BERSAMIN,
- DEL CASTILLO,
- PEREZ,
- MENDOZA,
- REYES,
- PERLAS-BERNABE,
- LEONEN,
- JARDELEZA,\* and
- CAGUIOA, *JJ.*

Promulgated:

July 26, 2016

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*[Handwritten signature]*

\* No part.

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**RESOLUTION****LEONARDO-DE CASTRO, J.:**

The Resolution dated June 16, 2015, penned by Honorable Justice Arturo D. Brion (Brion), in A.M. Nos. 12-8-07-CA, 12-9-5-SC, and 13-02-07-SC, resolved, among other matters, to deny the request of Court of Appeals (CA) Justice Angelita A. Gacutan (Gacutan) to include her services as Commissioner of the National Labor Relations Commission (NLRC) in the computation of her longevity pay.

CA Justice Gacutan filed a Motion for Reconsideration of said ruling, praying that herein *ponente*'s dissent to the Resolution dated June 16, 2015, joined by five other Justices, prevails. In addition, CA Justice Gacutan submitted that the grant by the Court of her request that her services in the NLRC (as of 2006) be included in computing her longevity pay would be a reward for her past continuous services as a lifelong public servant who eventually retired from the judiciary, and that "by granting her request, there is no judicial legislation – there is only the recognition of justice and equity to which we in the judiciary stand for."

After conscientious review, the Court resolves to grant CA Justice Gacutan's Motion for Reconsideration. CA Justice Gacutan's services as NLRC Commissioner should be included in the computation of her longevity pay, but only from August 26, 2006, when Republic Act No. 9347, which amended Section 216 of the Labor Code, took effect.

Herein *ponente* had already thoroughly and extensively discussed in her Concurring and Dissenting Opinion to the Resolution dated June 16, 2015 the bases for her position – now adopted by the Court – that longevity pay under Section 42 of Batas Pambansa Blg. 129 is treated as part of salary and extended to certain officials in the Executive Department who are, by law, granted the same salary as their counterparts in the Judiciary. Pertinent parts of said Concurring and Dissenting Opinion are worth reproducing below:

***The Literal Language of the Law***

Section 42 of Batas Pambansa Blg. 129, otherwise known as "The Judiciary Reorganization Act of 1980," as amended, provides:

SEC. 42. *Longevity pay.* – A monthly longevity pay equivalent to [five percent] 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. (Emphasis supplied.)

As a rule, therefore, the grant of longevity pay under Section 42 of Batas Pambansa Blg. 129 is premised on the rendition of continuous, efficient, and meritorious service in the Judiciary. That is the express language of the law.

Nonetheless, there are existing laws which expressly require the qualifications for appointment, confer the rank, and grant the salaries, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department, such as the following:

- (a) the Solicitor General and Assistant Solicitor Generals of the Office of the Solicitor General (OSG); and
- (b) the Chief Legal Counsel and the Assistant Chief Legal Counsel, the Chief State Prosecutor, and the members of the National Prosecution Service (NPS) in the Department of Justice.

The intention of the above laws is to establish a parity in qualifications required, the rank conferred, and the salaries and benefits given to members of the Judiciary and the public officers covered by the said laws. The said laws seek to give equal treatment to the specific public officers in the executive department and the Judges and Justices who are covered by Batas Pambansa Blg. 129, as amended, and other relevant laws. In effect, these laws recognize that public officers who are expressly identified in the laws by the special nature of their official functions render services which are as important as the services rendered by the Judges and Justices. They acknowledge the respective roles of those public officers and of the members of the Judiciary in the promotion of justice and the proper functioning of our legal and judicial systems.

Thus, the laws operate under the principle of "equal in qualifications and equal in rank, equal in salaries and benefits received." The reasonable and logical implication of this principle is that, in the context of the dispute resolution mechanism in particular and of the justice system in general, the services rendered by the public officers concerned and the members of the Judiciary are equal in importance.

I respectfully submit the following arguments:

- (1) **The law is clear: the term "salary" covers basic monthly pay plus longevity pay.**
- (2) **The concept of longevity pay as "salary" should not be confused with "rank."**
- (3) **The legislative intent of salary increases for certain Executive officials accords with "salary" as inclusive of longevity pay.**
- (4) **The Court's long-standing interpretation of the term**

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**“longevity pay” as part of “salary” is correct.**

- (5) **The executive contemporaneous construction of longevity pay is consistent with the law, as interpreted by the Supreme Court.**
- (6) **Longevity pay is not a mere “benefit.”**

Each of these arguments is discussed in detail below.

***The law is clear: the term “salary” covers basic monthly pay plus longevity pay.***

That the language of the law itself, in this case, Section 42 of Batas Pambansa Blg. 129, is the starting and referential point of discussion of longevity pay under that law is not in dispute. It provides:

SEC. 42. *Longevity pay.* – A monthly longevity pay equivalent to [five percent] 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. (Emphases supplied.)

There is disagreement, however, on the construction of the above-quoted provision with other relevant laws, such as Section 3 of Republic Act No. 9417, Article 216 of the Labor Code, as amended by Republic Act No. 9347, and Section 16 of Republic Act No. 10071, which require the qualifications for appointment, confer the rank, and grant the same salaries, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department.

For Justice Brion, “salary” used in the aforesaid other laws should not include longevity pay. He insists that Section 42 of Batas Pambansa Blg. 129 is clear and unequivocal, that longevity pay is granted to a Judge or Justice who has rendered five years of continuous, efficient, and meritorious service in the Judiciary. Service in the Judiciary within the required period is the only condition for entitlement to longevity pay under Section 42 of Batas Pambansa Blg. 129.

The approach of Justice Brion on the matter is novel. It is, however, negated by the language and intent of relevant laws, as well as by the long-standing interpretation of the Court and the Executive Branch on the matter.

***The concept of longevity pay as “salary” should not be confused with “rank.”***

Under Section 42 of Batas Pambansa Blg. 129, longevity pay is an amount equivalent to 5% of the monthly basic pay given to Judges and

Justices for each five years of continuous, efficient, and meritorious service rendered in the Judiciary. It is not only an amount given as an addition to the basic monthly pay but, more importantly, **it forms part of the salary of the recipient thereof.**

In other words, **longevity pay is “salary”** and it should not be confused with **“rank.”**

That is how this Court has treated the longevity pay under Section 42 of Batas Pambansa Blg. 129 since 1986, particularly in *Re: Longevity Pay of the Associate Justices of the Sandiganbayan*. It is a treatment which reflects the Court’s reading of the text of the law and its understanding of the law’s legislative intent.

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x x x [T]he settled meaning of “rank,” particularly that it does not include the privilege to use the title of Judge or Justice should not be used to determine the import of the term “salary” as used in the different laws. Otherwise, there would be no point in mentioning in the laws “rank” separately from “salary.” “Rank” unquestionably has nothing to do with the amount of compensation or pay an official is entitled to under the law. The said term pertains only to the “class” or “standing” in an organization or societal structure.

***The legislative intent of salary increases for certain Executive officials accords with “salary” as inclusive of longevity pay.***

In conferring upon certain officials in the Executive the same salaries, aside from their rank, as those of their respective judicial counterparts, Congress intended to make the salaries of the former at par with the latter. The legislative records support this.

In particular, the following portion of the interpellations in connection with Senate Bill No. 2035, which became Republic Act No. 9347, is enlightening:

Asked by the Chair whether the proposed amendment (Section 4) to Article 216 of the Labor Code means an increase in **salaries**, Senator Ejercito Estrada (J) clarified that the section proposes that **the arbiters be at par with the judges of the regional trial courts, and the commissioners at par with the justices of the Court of Appeals.** (Emphases supplied.)

In his sponsorship speech of Senate Bill No. 2659, which became Republic Act No. 10071, Senator Francis Joseph Escudero adopted as part of his sponsorship speech several explanatory notes of related bills, including the explanatory note of Senator Edgardo Angara for Senate Bill No. 213. The relevant portion of the explanatory note reads:

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At the heart of a strong justice system is the indispensable and complementary role of the State's prosecutorial and counselling arm. The National Prosecution Service [NPS] and the Office of the Chief State Counsel [OCSC] are mandated to uphold the rule of law as a component of the justice system.

It is sad to note, however, that our prosecutors and state counselors earn less than those in the Judiciary. Such situation has produced a migratory effect. After spending a few years in the NPS or the OCSC, they resign and join the ranks of the judiciary. x x x.

This bill seeks to correct the aforementioned inequities. The increase in **salaries** and the granting of additional services and privileges to the members of the National Prosecution Service and the Office of the Chief State Counsel, will place them **at par with those in the Judiciary** [and] would deter the current practice of migration. x x x. (Emphases supplied.)

This legislative intent to grant certain officials of the Executive Department the same salaries as that of their respective judicial counterparts should be read in conjunction with how salary is defined in the law and treated vis-a-vis longevity pay in prevailing case law. In enacting a statute, the legislature is presumed to have been aware of, and have taken into account, prior laws and jurisprudence on the subject of legislation. *Manila Lodge No. 761 v. Court of Appeals* instructs:

[I]t is presumed that when the lawmaking body enacted the statute, it had full knowledge of prior and existing laws and legislation on the subject of the statute and acted in accordance or with respect thereto. (Citation omitted.)

Thus, Congress knew, or is presumed to have known, the concept of longevity pay under Section 42 of Batas Pambansa Blg. 129 **as part of the total salary** of members of the Judiciary when it enacted Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the OSG, the NLRC, and the NPS, respectively, the same salary as their respective counterparts in the Judiciary. Moreover, armed with that knowledge, Congress is presumed to have intended to adopt the definition of "salary" (as constituting basic monthly salary plus longevity pay) when it enacted Republic Act Nos. 9417, 9347, and 10071, which will be in keeping with the legislative intent to equalize the salary of certain executive officials with members of the Judiciary. To do otherwise will negate the express legislative intent.

As it is part of the salary of a member of the Judiciary, it should perforce be part of the salary of the public officers granted by law with the same rank and salary as their counterparts in the Judiciary. Accordingly, the increase in the salary of Judges and Justices by virtue of the longevity pay should also result in the corresponding increase in the salary of the public officers who, under relevant laws, enjoy the same rank and salary

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as their judicial counterparts. Otherwise, the law's express language and its intention to grant the same rank and salary of a member of the Judiciary to the said public officers will be defeated.

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In other words, by enacting Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the Executive Department the same salary as their respective counterparts in the Judiciary, Congress manifested its intent to treat "salary" the way it has been treated in Batas Pambansa Blg. 129 as interpreted by this Court, that is, basic monthly pay plus longevity pay.

Since the above-mentioned laws do not make any distinction with respect to the term "salary" as it is expressly provided for in Section 42 of Batas Pambansa Blg. 129, we should not make any distinction. *Ubi lex non distinguit nec nos distinguere debemus.*

It is in light of the legislative intent that the insistence of Justice Brion to strictly adhere to the sentence structure of Section 42 of Batas Pambansa Blg. 129, without regard to other laws on the matter, contradicts such legislative intent and constitutes judicial legislation, which will in effect treat "salary" in a way that is not borne out by the language of the law and the established Court rulings on the matter.

The longevity pay forms part of the salary of a Judge or Justice, since Section 42 of Batas Pambansa Blg. 129 says it is "added" to the said salary. Thus, the salary of the members of the Judiciary refers to their respective basic pay plus the longevity pay to which they may be entitled by virtue of their continuous, efficient, and meritorious service in the Judiciary. That should also be the definition of the "salary" of the concerned public officers who enjoy the same rank and salary as Judges or Justices, if the word "same" employed in the laws pertaining to executive officials is to be understood in its plain and ordinary meaning.

A narrow and restrictive approach which limits the longevity pay under Section 42 of Batas Pambansa Blg. 129, as amended, to service rendered in the Judiciary only is to unduly restrict the definition of salary, fixing it to the basic pay. To depart from the meaning expressed by the words, is to alter the statute, to legislate and not to interpret. It is to amend the laws by judicial fiat, x x x.

***The Court's long-standing interpretation of the term "longevity pay" as part of "salary" is correct.***

This Court has long recognized that the longevity pay under Section 42 of Batas Pambansa Blg. 129 is among the salaries and benefits enjoyed by members of the Judiciary that are extended to the public officers conferred by law with the rank of Judges of the lower courts or Justices of the Court of Appeals.

The Court's Resolution dated September 12, 1985 in *Request of Judge Fernando Santiago for the Inclusion of His Services as Agrarian*

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*Counsel in the Computation of His Longevity Pay* granted Judge Santiago's request and his longevity pay was computed "from the date of his assumption of office as Agrarian Counsel on August 9, 1963 and not from the date he assumed office as Judge of the Court of First Instance on June 1, 1970." The basis of this is Section 160 of Republic Act No. 3844 which provides:

Section 160. *Creation of Office of Agrarian Counsel.* – To strengthen the legal assistance to agricultural lessees and agricultural owner-cultivators referred to in this Code, the Tenancy Mediation Commission is hereby expanded and shall hereafter be known as the Office of the Agrarian Counsel. **The head of the Office shall hereafter be known as Agrarian Counsel and shall have the rank, qualifications and salary of First Assistant Solicitor General.** He shall be assisted by a Deputy Agrarian Counsel, who shall have the rank, qualifications and salary of Assistant Solicitor General. The Agrarian Counsel and Deputy Agrarian Counsel shall be appointed by the President with the consent of the Commission on Appointments of Congress and shall be under the direct supervision of the Secretary of Justice. (Emphasis supplied.)

Under Republic Act No. 335, as amended by Presidential Decree No. 478, the Assistant Solicitor General has the "same rank, qualifications for appointment, and salary as a Judge of the Court of First Instance," now Regional Trial Court.

In the Resolution dated July 25, 1991 in *In Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco*, this Court said:

The Court approved the request of Justice Emilio A. Gancayco for the adjustment of his longevity pay not only for purposes of his retirement but also for his entire judicial service by including as part thereof his period of service from August 9, 1963 to September 1, 1972 as Chief Prosecuting Attorney (Chief State Prosecutor) considering that under Republic Act No. 4140, the Chief State Prosecutor is given the **same rank, qualification and salary** of a Judge of the Court of First Instance. (Emphasis supplied.)

In the Resolution dated November 19, 1992 in *Re: Adjustment of Longevity Pay of former Associate Justice Buenaventura S. dela Fuente*, this Court adverted to the *Santiago* and *Gancayco* Resolutions and said:

This refers to the letter of former Associate Justice Buenaventura S. dela Fuente, dated September 27, 1992, requesting a recomputation of his longevity pay. It appears that former Justice dela Fuente had been the Chief Legal Counsel, Department of Justice, since June 22, 1963 until his promotion to the Court of Appeals in 1974, the **qualifications** for the appointment to which position as

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well as its **rank** and **salary**, pursuant to R.A. 2705, as amended by R.A. 4152, shall be the **same** as those prescribed for the first and next ranking assistant solicitors general. Accordingly, in line with the rulings of this Court in *Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco*, dated July 25, 1991 and Administrative Matter No. 85-8-8334-RTC. – *Re: Request of Judge Fernando Santiago for the inclusion of his services as Agrarian Counsel in the computation of his longevity pay, dated September 12, 1985*, the Court Resolved to (a) APPROVE the aforesaid request of former Associate Justice Buenaventura S. dela Fuente[,] and (b) AUTHORIZE the recomputation of his longevity pay from June 22, 1963, when he assumed office and began discharging the functions of Chief Legal Counsel.

*In Re: Request of Justice Josefina Guevara-Salonga, Court of Appeals, that Her Services as Assistant Provincial Fiscal of Laguna be Credited as Part of Her Services in the Judiciary for Purposes of Her Retirement*, this Court stated:

[Republic Act No. 10071] validates the recognition of the services of *Justice Emilio A. Gancayco*, whom we credited for his service as Chief Prosecuting Attorney (Chief State Prosecutor), based on *Republic Act No. 4140* which likewise grants his office (as Chief Prosecuting Attorney) the rank, qualification and salary of a Judge of the Court of First Instance. In the same manner, the current law also validates the crediting of past service to *Justice Buenaventura dela Fuente* who was the Chief Legal Counsel of the Department of Justice. (Citations omitted.)

Also, in *Guevara-Salonga*, this Court granted the request of Court of Appeals Justice Guevara-Salonga for the crediting of her services as Assistant Provincial Fiscal of Laguna as part of her services in the Judiciary for purposes of her retirement pursuant to Sections 16 and 24 of Republic Act No. 10071 which respectively provide:

*Sec. 16. Qualifications, Ranks and Appointments of Prosecutors and Other Prosecution Officers. – x x x.*

Prosecutors with the rank of Prosecutor IV shall have the **same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits** as those of a judge of the Regional Trial Court.

Prosecutors with the rank of Prosecutor III shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and

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shall enjoy the same retirement and other benefits as those of a Judge of the Metropolitan Trial Court.

Prosecutors with the rank of Prosecutor II shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in cities.

Prosecutors with the rank of Prosecutor I shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in Municipalities.

Sec. 24. *Retroactivity.* – The benefits mentioned in Sections 14 and 16 hereof shall be granted to all those who retired prior to the effectivity of this Act. (Emphasis supplied.)

The Resolutions in *Santiago, Gancayco, Dela Fuente*, and *Guevara-Salonga* reveal that this Court has consistently approached and applied the longevity pay provision under Section 42 of Batas Pambansa Blg. 129 liberally, that is, as applicable by statutory extension to those covered by the same qualifications and given the same rank and salary as the members of the Judiciary. They evince the view that the services rendered in their respective offices by the public officers required by law to have the same qualifications, rank, and salary of their counterparts in the Judiciary are considered to be **substantially the same as service in the Judiciary** for purposes of the said public officers' enjoyment of the longevity pay under Section 42 of Batas Pambansa Blg. 129.

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That the said laws manifest a liberal attitude towards the public officers they respectively cover is reinforced by this Court's treatment in *Re: Longevity Pay of the Associate Justices of the Sandiganbayan* of the longevity pay under Section 42 of Batas Pambansa Blg. 129 as something that "forms part of the salary of the recipient thereof." In particular, the Court adopted a liberal stance and ruled:

[L]ongevity 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 may

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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 appointee to the position next higher in rank. x x x. (Emphasis supplied.)

Justice Brion, however, claims that the said cases are not controlling herein, as they are allegedly a strained and erroneous application of Section 42 of Batas Pambansa Blg. 129 that should be abandoned.

Such claim of grave mistake should be premised on a clear finding that prior rulings were wrong. In this case, I do not find Justice Brion's characterization of *Santiago, Gancayco, Dela Fuente, and Guevara-Salonga* as "erroneous" and mere "aberrations" as proper.

x x x While certain members of the Judiciary may feel an exclusive franchise to the rank, salary, and benefits accorded to them by law, we cannot impose our own views on Congress which has ample power to enact laws as it sees fit, absent any grave abuse of discretion or constitutional infraction on its part.

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***The executive contemporaneous construction of longevity pay is consistent with the law, as interpreted by the Supreme Court.***

Contemporaneous construction is the interpretation or construction placed upon the statute by an executive or administrative officer called upon to execute or administer the statute. It includes the construction by the Secretary of Justice in his capacity as the chief legal adviser of the government.

In this connection, the contemporaneous construction by the Department of Justice and other offices in the executive branch disclose a similar treatment of the longevity pay provision of Batas Pambansa Blg. 129 as shown by the following pertinent portions of the 2nd Indorsement dated November 21, 1988 by the then Secretary of Justice, Sedfrey A. Ordoñez:

1. Longevity pay forms part of the salary of the recipient (Resolution of the Supreme Court in Adm. Matter



No. 86-9-2394-0, Re: Longevity Pay of the Associate Justices of the Sandiganbayan). Thus, **when the law grants to certain officials of the executive department the “rank and salary” of a member of the Judiciary, it should be deemed to include longevity pay, which is part of salary; otherwise, the law’s intention to grant the same rank and salary of a justice/judge to executive officials would be defeated or nullified.**

2. The statement x x x that those executive officials who were granted longevity pay “were either justice or judge of the court at the time of the grant” is not entirely correct. Former Chief State Counsel, now Court of Appeals Justice Minerva P.G. Reyes, was granted longevity pay in 1985 when she was the incumbent Chief State Counsel. Assistant Solicitors General Ramon Barcelona, Romeo dela Cruz, Zoilo Andin and Amado Aquino are presently receiving longevity pay for their length of service as Assistant Solicitors General.

3. The Supreme Court computed the longevity pay of Judge Fernando Santiago “from the date of his assumption of office as Agrarian Counsel [which was an executive office] on August 9, 1963 and not from the date he assumed office as Judge of the Court of First Instance on June 1, 1970” (Adm. Matter No. 85-8-8384-RTC). The same thing was done in the case of Justices Vicente Mendoza, Santiago Kapunan, Jose Racela, Lorna L. de la Fuente and Minerva P.G. Reyes, whose respective services in the Executive Department were credited in their favor for purposes of the longevity pay.

It bears reiterating that in the case of Justice Reyes, she has been receiving longevity pay since before her appointment in the Judiciary, that is, while she was, and on the basis of her being, Chief State Counsel x x x. The inclusion by the Supreme Court of her services as Assistant Chief State Counsel and[,] later, as Chief State Counsel in the computation of her longevity pay as a member of the Judiciary constitutes a judicial affirmance by the highest court of the land of the validity of the grant of longevity pay to her way back in 1985 while she was still an official of the Executive Department. (Emphasis supplied.)

To reiterate, the above opinion of then Justice Secretary Ordoñez constitutes contemporaneous construction of the issue at hand.

Justice Brion asserts that administrative construction is merely advisory and is not binding upon the courts. He is absolutely correct. That is the rule. In the same vein, that rule also means that courts should respect the contemporaneous construction placed upon a statute by the executive officers whose duty is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby.

As I have shown above, the contemporaneous construction of the then Justice Secretary is in accordance with both statutory law and case law.

*Longevity pay is not a mere "benefit."*

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x x x [L]ongevity pay is not a mere benefit, but is salary, as it is a component of the "total salary." That is how this Court treated longevity pay as a contemporaneous interpretation of Section 42 of Batas Pambansa Blg. 129. That is also how Congress presumably intended to treat longevity pay when it granted a salary which is the same as that of members of the Judiciary to certain officials in the Executive Department under relevant laws, including Republic Act Nos. 9417, 9347, and 10071, as Congress did not qualify or limit the term "salary" in these laws.

Section 42 of Batas Pambansa Blg. 129 clearly states that the longevity pay is "added" to the basic monthly salary and forms part of the "total salary" of a Judge or Justice. Thus, the salary of the members of the Judiciary refers to their respective basic pay plus the longevity pay to which they may be entitled by virtue of their continuous, efficient, and meritorious service in the Judiciary. That should also be the definition of the "salary" of the concerned public officers who enjoy the same salary as Judges or Justices, if the word "same" employed in the laws pertaining to executive officials is to be understood in its plain and ordinary meaning.

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Therefore, longevity pay under Section 42 of Batas Pambansa Blg. 129 must be treated as salary and to extend it to certain officials in the Executive Department who are, by law, granted the same salary as their counterparts in the Judiciary. That is, after all, how Congress intended it to be. That is how it was interpreted in *Santiago, Gancayco, Dela Fuente, and Guevara-Salonga*. (Citations omitted.)

## CONCLUSION

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### *The Instant Requests Considered*

Justices Veloso and Gacutan anchor their claim on Article 216 of the Labor Code, as amended by Republic Act No. 9347, which 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 Justice and Associate Justices of the Court of Appeals, respectively.** Labor Arbiters shall have the same rank, receive an annual salary equivalent to and be entitled to the same allowances,

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retirement and other benefits and privileges as those of the Judges of the Regional Trial Courts. In no case, however, shall the provision of this Article result in the diminution of the existing salaries, allowances and benefits of the aforementioned officials. (Emphases supplied.)

Republic Act No. 9347 took effect on August 26, 2006. Prior to its amendment by Republic Act No. 9347, Article 216 of the Labor Code, as amended by Republic Act No. 6715, provides:

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 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. (Emphases supplied.)

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II. A.M. No. 12-9-5-SC

Justice Gacutan was still a Commissioner of the NLRC when Republic Act No. 9347 took effect. From the date of effectivity of the law onwards, her services as NLRC Commissioner are therefore covered by the beneficial effect of the amendment of Article 216 of the Labor Code by Republic Act No. 9347, which gave the NLRC Commissioners the same rank and salary as Associate Justices of the Court of Appeals. As Republic Act No. 9347 expresses the intent to place the NLRC Commissioners in exactly the same footing as their counterparts in the Court of Appeals, and "salary" includes longevity pay, then Justice Gacutan's longevity pay should be reckoned from August 26, 2006, the date Republic Act No. 9347 took effect, at which time she was still NLRC Commissioner. Thus, five years after that date, or on August 26, 2011, she became entitled to receive longevity pay equivalent to 5% of her monthly basic pay at that time; and, she is now entitled to adjustment of salary, allowances, and benefits only as of that date.

As regards her request that her entire services as NLRC Commissioner be credited as part of her government service for the purpose of retirement under Republic Act No. 910, as amended by Republic Act No. 9946, the same may be allowed as it is in accordance with Section 1 of Republic Act No. 910, as amended by Republic Act No.

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9946, which requires fifteen (15) years service in the Judiciary or in any other branch of the Government as a condition for coverage of the said law.

Clearly, the foregoing ratiocination does not constitute judicial legislation. It is firmly grounded on existing laws, jurisprudence, and executive contemporaneous construction. It was Congress which enacted Republic Act Nos. 9417, 9347, and 10071, granting certain officials of the Executive Department the same salary as their respective counterparts in the Judiciary, and "salary" refers to basic monthly pay plus longevity pay per the plain language of Section 42 of Batas Pambansa Blg. 129. Justice Brion opines that the grant of longevity pay to executive officials would effectively be a misplaced exercise of liberality at the expense of public funds and to the prejudice of sectors who are more in need of these funds. It bears to stress though that it is irrefragably within the legislative power of Congress to enact Republic Act Nos. 9417, 9347, and 10071, and it is beyond the judicial power of the Court to question the wisdom behind said legislations.

**WHEREFORE**, premises considered, the Court resolves to **GRANT** the Motion for Reconsideration of CA Justice Gacutan and **MODIFY** the Resolution dated June 16, 2015 in A.M. Nos. 12-8-07-CA, 12-9-5-SC, and 13-02-07-SC, insofar as to **GRANT** CA Justice Gacutan's request that her services as NLRC Commissioner be included in the computation of her longevity pay, but reckoned only from August 26, 2006, when Republic Act No. 9347 took effect.

**SO ORDERED.**

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

WE CONCUR:

*I join the dissent of J. Brion.*

*Maria Lourdes P. A. Sereno*  
**MARIA LOURDES P. A. SERENO**  
Chief Justice



**ANTONIO T. CARPIO**  
Associate Justice



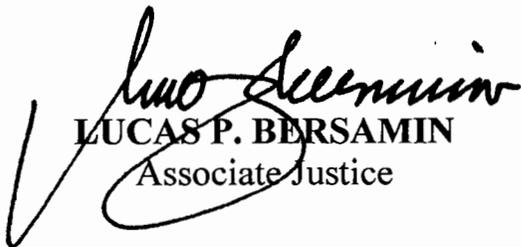
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

*Please see my  
Dissenting Opinion  
Arturo D. Brion*

**ARTURO D. BRION**  
Associate Justice



**DIOSDADO M. PERALTA**  
Associate Justice



**LUCAS P. BERSAMIN**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

*I join the dissenting opinion of  
J. Brion*



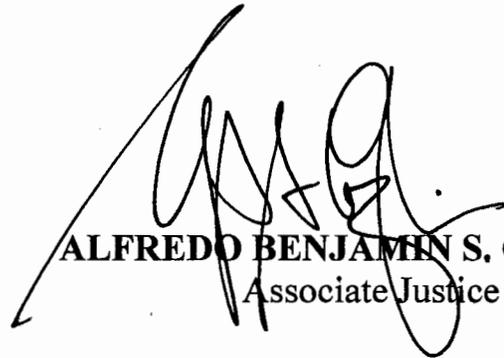
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

*I join the dissent of J.  
Buen*

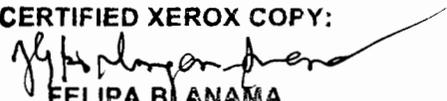
  
**MARVIC M.V.F. LEONEN**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

*No part  
Prior OSG  
action*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

CERTIFIED XEROX COPY:

  
**FELIPA B. ANAMA**  
CLERK OF COURT, EN BANC  
SUPREME COURT