Does Our Government Insurance Insure?

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THE student of our administrative law, when he comes to study the rights of our public officers, will always be met by the question: Does the Government Service Insurance System really insure? While naturally, only a judicial controversy and sentence will determine the question, we shall endeavor in this brief paper, to present the difficulty and after that, pave the way for analysis and solution.

The previous pension laws.—We shall first review the previous retirement laws in force before the passage of C. A. 186. Those laws were:

1.—Act No. 619 as ratified by Act No. 1638 provided for a compulsory deduction ranging from twenty centavos (₱.20) to two pesos (₱2.00) from the salary of each member of the *Philippine Constabulary;* these to go to a special fund to be used for the benefit of widows and children of those who have lost their lives in line of duty and of members who have been incapacitated from service by reason of wounds due to service. In case the officer or enlisted man reached the limit of twenty or more years of service, he was entitled to retirement on pension.

2.—Act 2589, otherwise known as the Osmeña Act.—Under this law, a regularly and permanently appointed officer or employee who has rendered satisfactory and continuous service for at least six years may apply to the Governor General for retirement and the Governor General may approve the application upon recommendation of the Director of the Civil Service; and in such case, he would be granted an annual gratuity for three consecutive years at the rate specified in the law, e.g. 33-1/3% of the salary if the service was ten years. But any officer entitled to the benefit of this Act who is also entitled to the benefits of any other pension fund created by authority of the Legislature must designate which benefit he desires to take advantage of and in such case he shall be entitled only to the benefit so chosen, and if he chooses the benefits of this Act, he shall have refunded to him the amounts deducted from his salary for the benefit of any other retirement fund. This Act was to apply only to those who should have applied for retirement under it before June 30, 1928 (Act 3360).

3.—Act 3050, otherwise known as the Teachers' Pension Law. Under this Act, the teacher who continued to serve the government for twenty or more years without having been removed for cause (Sec. 1) and contributed from the date mentioned in that Act at the rate of 3% of his monthly basic salary (Sec. 10) was "automatically insured" and made eligible for retirement on an annuity as provided in Sec. 2 thereof. The same law established a special fund known as the Teachers' Retirement and Disability Fund (Sec. 8) composed of the 3% contribution of the teachers (Sec. 10), an equivalent contribution of 3% by the Government (Sec. 8) the moneys resulting from the amounts appropriated for Teachers' salaries, and also donations (Sec. 9) and such amounts as the Government, in addition, appropriated to cover any deficiency in the fund. Said fund was administered by the Pension and Investment Board (Sec. 12).

4.—Act 3173, otherwise known as the Pension and Retirement system for the Philippine Health Service. Under this law, a deduction of 3% of the basic monthly salary of the officer or employee was imposed and same made to constitute a special fund and the officer or employee who completed at least ten years deduction as stated, was entitled to retirement.

5.—Act 4151.—This was a retirement law only applicable to American officers and employees employed by our Government, and need not concern us

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very much, except its provision that an officer or employee who was entitled to the benefits of this Act and also to the benefits of any other gratuity Act could choose to fall under either but not under both. The applications for retirement under this Act were submitted to the Governor General. Under this Act, there were no compulsory deductions in salaries.

Such a resumé of our previous pension laws reveals the common characteristic that invariably (except in the Osmeña Act), the employee's salary is reduced by a certain per cent every month, and that reduction is placed in a special fund; and if the employee is able to render satisfactory service for a specified length of time then, he will be able to retire on pension, and the pension fund created out of his contribution and the contributions of the Government, will answer for the payment of his gratuity.

Was that arrangement a contract that the Government was bound to obey? When the Teachers' Pension Law was repealed by C. A. 187 and the Teachers' Pension Fund was liquidated, a test case was filed by a retired teacher, because her pension was reduced by the operation of the new law. In that case (G. R. No. 45461, Baltazar v. Government Service Insurance Board, et. al.) the Government insisted that there was no contract, as against the argument of the plaintiff that there was a valid contract between plaintiff and the Government which could not be impaired under the Constitution and of which she could not be deprived without due process of law. Unfortunately for the parties, the National Assembly during the pendency of the litigation, restored the retired teacher's pension, (C. A. 237); and with interest at that, and therefore, the case had to be dismissed, since it presented a purely academic question.

The rule quoted by the Government.—In that case, however, the Government invoked the Pennie case, which in brief was as follows: On April 1, 1878, the California Legislature passed an Act which reorganized and increased the police force of San Francisco, fixed the compensation of each officer at not to exceed $102.00 a month, of which $2.00 was to be retained from the pay and placed in a fund created by the law; and provided that upon the death of the officer, the treasurer was to pay $1,000.00 to his legal representative. Edward Ward, a police officer under said Act died on March 13, 1889; and his administrator asked for payment of the sum of $1,000.00 provided for in the law. It however appeared that on March 4, 1889, another law had been passed by the State Legislature under which all the funds provided in the former laws were merged with the fund created in it; and under the new law, payment of the sum was conditioned upon death in line of duty. Therefore, the treasurer refused to pay; and mandamus having been instituted, the Supreme Court of California refused to grant the writ; and the decision was affirmed on appeal by the Supreme Court of the United States (Pennie v. Reis, 132 U.S. 646), the Court reasoning out as follows:

"Until the particular event should happen upon which the money or part of it was to be paid, there was no vested right in the officer to such payment. His interest in the fund was until then, a mere expectancy created by law, and liable to be revoked or destroyed by the same authority. The law of April 1, 1878 having been repealed before the death of the intestate, his expectancy became impossible of realization. (Pennie v. Reis, supra).

However, by way of obiter, the Court also said:

"Notwithstanding therefore, in this case, the petitioner avers that the deceased police officer contributed out of his salary two dollars a month pursuant to the law in question, and, in substance that the fund which was created out of contributions to the members of the police, the court, looking to the Statute sees that, in point of fact no money was contributed by the police officer out of his salary, but that the money which went into that fund under the Act of April 1, 1878, was money from the State retained in its possession for the creation of this very fund, the balance, one hundred dollars,—being the only compensation paid to the police officer. Though called part of the officer's compensation, he never received it or controlled it, nor could he prevent its appropriation to the fund in question. He had no such power of disposition over it as always accompanies ownership of property. The statute, in legal effect says that the police officer shall receive as compensation each month, not exceeding $100.00 or such sum as may be fixed after June 1, 1879 by a board of commissioners created under the Act, and that in addition thereto, the State will create a fund by appropriating two dollars each month for that purpose, from which, upon his resignation for bad health or bodily infirmity, or dismissal for mere incompetency not coupled with any offense against the laws of the State, a certain sum shall go to his legal representative (Pennie v. Reis, supra).

That dictum has had so telling an effect upon the interpretation of pension and gratuity laws that Corpus Juris, citing that case only, gives the rule as follows:

"In some instances, pension funds are maintained in part by compulsory contributions of the beneficiaries thereof. This is generally true where the beneficiaries are policemen or firemen; and in such a case, the statute creating the fund ordinarily authorizes the proper official to retain weekly or monthly a certain per cent of the prospective pensionee's pay. By the great weight of authority, the fact that a pensioner has made such compulsory contribution does not give him a vested right in the pension. (12 C. J.—);

and Professor Goodnow himself considers the rule to be as follows:

"Whatever may be the rule as to the constitutionality of pensions which are paid out of public moneys, or out of deductions of salary, it is unquestionably the rule that the claim to a pension, like the claim to an official compensation, is not of a contractual character. Therefore, a pension may be changed at any time, even after the right to it has vested, where authority to make the change has been granted by the legislature. (Goodnow, Principles of American Administrative Law, pp. 288-289).

But as against this line of authority, we have the following:

"A pension as this law contemplates is not a gratuity or a gift. If it were, all the provisions pertaining to it would be void under the constitution of the state.' (Art. IV, Sec. 31; Taylor v. Mott, 123 Cal. 497, 56 Pac. 256). A pension is a gratuity only where it is granted for services previously rendered, which at the time they were rendered gave rise to no legal obligation. (U. S. v. Teller, 107 U. S. 64). But where as here, services are rendered under a pension statute, the pension provisions become part of the contemplated compensation for those services, and so in a sense, part of the contract of employment itself. (Hammitt v. Gaynor, 144 N. Y. Supp. 123; People v. Abbott, 274, Ill. 380, 113 N. E. 696; O'Dea v. Cook 176 Cal. 659, 169 Pac. 366, 367).

"Pensions should not be confused with retired pay. A pension is a bounty or gratuity given for services that were rendered in the past. Retirement pay is defined as *adjusted compensation* presently earned, which, with contributions from employees is payable in the future, to an employee, provided he possesses the qualifications required by the Act, and complies with the terms, conditions, and regulations imposed on the receipt of the retirement pay. (Retirement Bd. v. McGovern, 174 Atl. 400, 404).

"The distinction between pensions and retirement pay is not artificial. The government and municipalities are interested in the faithful and effective discharge of duty by public servants, and a fund judiciously administered is an effective way to secure service of the highest type. Where an allowance is made out of hand, gratuitously, and for past services, by the

government, it is a pension, but where the employee contributes a part of his salary or wages with a sum from the state or county under a quasi contractual relationship with the municipality or state, creating a contributed reserve retirement system, the results are different, retirement pay made therefrom is not a pension; the contributions by the government from their very nature must be viewed in a different light. (Retirement Bd. v. McGovern, supra).

"The contention of petitioner that this annuity is not a mere gratuity is correct.' (People v. Abbott 274 Ill. 380, 113 N. E. 696 and cases there cited). When the conditions of the law are fulfilled the employee becomes entitled to the annuity as a matter of right. Had the Legislature, instead of increasing the annuity, reduced it, petitioner would have the right to resist its application to its case, having been retired prior to the change. (Derkum v. Pension and Investment Board, 34 Gac. Of. 269).

Commonwealth Act No. 186.— Now then, going to the Government Service Insurance System created on November 14, 1836, pursuant to C.A. 186, we find that under said law, all the previous pension systems except that provided in Act 4151, were superseded by the said law (Sec. 3); and instead of those previous systems, a system of government insurance was adopted and made compulsory upon all regular and permanent employees of the Insular Government, the National Assembly, the Judiciary, the Metropolitan Water District, and the Army, and it was made optional upon the provincial, city, and municipal governments and the University of the Philippines to join or not to join the system (Sec. 4). From the salary of an employee made subject to the system there was to be deducted 3% (if of the Army, the deduction was 5%); and in return, the specific branch of the Government where he is employed contributed another 3%, but in case of the Army, the only contribution of the Government was the amount equivalent to the extra premium due to the risk of his occupation (Sec. 6). In return for said contributions, the employee became automatically insured and granted the corresponding policy of insurance, for an amount the annual premium of which is equivalent to 5% of his basic salary if he belongs to the Army, or 6% if he belongs to the civilian offices (Sec. 8). The administration of the insurance system is placed under the Government Service Insurance Board which is under the administrative supervision of the Secretary of Finance. (Sec. 13).

Is that policy of insurance issued by the Government under C.A. No. 186 a contract? Apparently deciding the point under the rule of the Pennie case, the Secretary of Justice in an opinion rendered on March 17, 1939, has ruled that it is not a contract at all but a matter of pure liberality on the part of the State, which it can withdraw and revoke at will:

"As may be seen from the foregoing, the Supreme Court of the United States says that 'in point of fact, no money was contributed by the police officer out of his salary, but that money which went into that fund under the act of April 1, 1878, was money from the State retained in its possession for the creation of this very fund, this balance—one hundred dollars—being the only compensation paid to the police officer.'

"The insurance fund created by Commonwealth Act No. 186 of the National Assembly is very similar to the 'Police Life and Health Insurance Fund' created by the Legislature of California on April 1, 1878. Both are in the nature of insurance. Both required that the employees affected should contribute to such fund by the deduction of certain amounts from their salaries each month. If, therefore, we are to follow, in this case, the doctrine laid down by the United States Supreme Court in Pennie v. Reis, supra, the conclusion is inevitable that in point of fact, government employees are not actually contributing anything to the Gov-

ernment Service Insurance Fund, created by Commonwealth Act No. 186; that the actual effect of the forced deduction of 3% from the monthly salaries of the government employees under Commonwealth Act No. 186 is to reduce the salaries of the government employees by 3%, the 3% deduction being 'money from the State, retained in its possession for the creation of the Government Service Insurance Fund.' (See also Op. Atty. Gen. No. 33, S. 1938).

"The contention that the benefit granted by Commonwealth Act No. 186 is not a *gratuity* because it arises out of a bilateral contract of insurance, does not merit serious consideration. It is manifest that the insurance given under Commonwealth Act No. 186, at least with respect to 'membership insurance' is not a contract. Being compulsory in nature (sec. 4, C. A. 186) it lacks the most important element of a contract, *consent* of the contracting parties, without which there can be no contract. (Art. 1261, Civ. Code. See also Tomlott v. West Bangor and Herman Fire Insurance Co., 136 A. 451)." Opinion of the Secretary of Justice, No. 40, S. of 1939, March 17, 1939.

What is meant by this opinion of the Secretary of Justice is that this is a case where a policy of insurance is not a policy of insurance. And the logic seems to be correct, because tested under the Pennie case, it seems clear that since the basis of C.A. 186 is the same as that in the Pennie case, the decision of the United States Supreme Court may also be made to apply to the present Government Service Insurance System.

We however, submit the following points to show the reverse of the medal:

1.—In the case of Lynch v. U. S., 292 U. S., 571, 78 L. ed. 1434, the war risk insurance policies issued by the Government and similar in nature to retirement pay, were held to be contracts, and a law repealing the said war risk insurance policies for soldiers was held invalid as impairing the obligation of contract, the United States Supreme Court saying:

"Congress was free to reduce gratuities deemed excessive. But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditures, would be not the practice of economy, but an act of repudiation. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. (Lynch v. U. S., supra).

2.—In the case of Retirement Board v. McGovern, 174 Atl. 400, the Pennsylvania Supreme Court explaining that the system of compulsory contributions produces true and valid contracts, said:

"The Legislature, in effect, makes this offer to the employee: The state or municipality will contribute so much money to a fund and you will contribute to the same fund for a given time on the basis of service performed. Conditions or qualifications are added for the benefit of the fund and the employee. The right is given to the employee to cease payment and withdraw from the fund, recovering back his contribution, when his services end, under sec. 324, Act of 1929 (16 PS sec. 324). It is difficult to understand where this relation lacks the elements of an executory contract if the employee and the state have directly or indirectly made any payments on account of it. See Lynch v. U. S. supra. The state and its agencies are as certainly bound by their contracts as are individ-

"The employee's contributions are as much wages or salary when deducted at the source as though they had been paid directly. . . The Legislature so recognizes this principle, . . . when it permits the employee to withdraw under given circumstances from the association and take back his contribution as salary. But the funds the country or state contributes are absolutely vested in the system that has been created by it, except the right of withdrawal just discussed. To hold otherwise for the reason that the employee's contributions are not wages when compulsorily deducted would not only be unfair and unjust but would circumvent all known equities. Especially is this true when the interest of a retired employee in the reserves is denied after his

salary has been made to contribute thereto for years, and he is beyond an age when his usefulness as a provider is intact. To take an amount or to require an amount to be paid from a salary is a *deduction* of part of the salary and not a *reduction* of salary. To take this earned salary and deny any vested right in it is against fair dealing. (Retirement Board v. Mc-Govern, supra).

3.—In the case of Dodge v. Board of Education, Ad. Op. 82 L. ed. pp. 77-81, (1938), the United States Supreme Court declared that the test to determine whether the State has entered into a contract or not under a law, is to determine the terms of the law:

"In determining whether a law tenders a contract to a citizen, it is of first importance to examine the language of the statute. If it provides for the execution of a written contract on behalf of the State, the case for an obligation binding upon the State is clear. Equally clear is the case where a statute confirms a settlement of disputed rights and defines its terms. On the other hand, an act merely fixing salaries of officers creates no contract in their favor and the compensation named may be altered at the will of the legislature. This is true also of an act fixing the term or tenure of a public officer or an employee of a state agency. The presumption is that such a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise. He who asserts the creation of a contract with the state in such a case has the burden of overcoming the presumption. If, upon a construction of the statute, it is found that the payments are gratuities, involving no agreement of the parties, the grant of them creates no vested right. (Dodge v. Board, supra);

and considering such test, we herewith quote the following provision of Com. Act No. 186:

"The Government of the Commonwealth of the Philippines hereby guarantees the fulfillment of the obligations of the Government Service Insurance System to the members thereof when and as they shall become due. (Sec. 21, par. e, C. A. 186).

No assumption of contractual obligation can be stronger than these terms of the statute. It is the sincere opinion of the writer that by such language, the State has not merely declared a policy; more than that; it has bound itself in contract with the holders of the insurance policies issued by the System, which it does not have the liberty to impair.

If the National Assembly were again to change its mind and repeal the law once more, what would the Supreme Court say if an employee who had complied with all the conditions of C. A. 186 were to be deprived of the insurance by the repeal? We can not venture to hazard a prophecy as to the probable decision. But what we surely know is that the simple government servant believes that when the Government says thru his insurance policy that he is insured, then he *is* insured, and no amount of reasoning would make him believe otherwise. Induced as he had been by the Government to believe in future security by complying with the conditions of the law, and having suffered all manner of impositions pressed upon him so that he might have:

"el pan seguro cuando los años y los achaques le imposibiliten para el trabajo,"

the government employee will never be able to understand why he had no right at all to believe in the promised future security. He will merely conclude that it is a case where the Government had decided to repudiate its obligations. And the writer believes, with apologies, that he does not deserve to be blamed for that.