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## NYS judges lose bid to recoup \$325 mln in retroactive pay

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By Dan Wiessner

COMMENTS (0)

Sept 14 (Reuters) - A Manhattan judge has denied New York's 1,300 trial judges \$325 million in retroactive salary increases, which a group of judges had requested after more than a decade without a raise.

In a decision released late Thursday, Manhattan Supreme Court Justice Richard Braun said he was bound by a 2010 Court of Appeals decision that required the legislature to end the practice of linking judges' pay to salary hikes for legislators and other legislative issues, but did not require retroactive pay to make up for losses due to inflation since the last judicial pay raise in 1999.

The four plaintiffs, led by Manhattan Family Court Judge Susan Larabee, moved last year to renew their lawsuit, saying the judges should receive damages for wrongful pay practices in the past. To recoup losses from inflation, the plaintiffs said, each judge in the state would need a retroactive payment of nearly \$255,000, on top of the 27-percent raise.

Braun on Thursday granted the renewal motion, but denied the bid for damages.

"The Court of Appeals declined to require retroactive salary adjustments, apparently in its attempt to strike the appropriate balance between preserving the independence of the judiciary and avoiding encroachment on the budget-making authority of the legislature," Braun wrote.

The plaintiff's attorney, Thomas Bezanson, said his clients had not yet decided whether to appeal.

"Back pay damages are long overdue for the judges and justices of this state, and it is a shame that the injustice continues to this day," Bezanson said.

The attorney general's office declined to comment.

Braun said that the plaintiffs recently presented "detailed statewide judicial compensation data" upon which the alleged damages were based. He granted their motion to renew based on the new information, but agreed with the state that the responsibility of addressing salary adjustments must be left to the legislature.

The judge said that while he had no choice but to rule in favor of the state, he agreed that judicial pay levels were inadequate.

"Something certainly is wrong in judges receiving less in salary than first-year associates at many of the larger law firms and less than some other New York State government employees," Braun wrote.

Thursday's ruling comes roughly one year after a special commission created by the legislature in the wake of the Court of Appeals' ruling voted to give judges a 27-percent pay hike over three years. The first phase of the raise, which will boost trial level judges pay from \$136,700 to \$174,000, took effect in April, citing inadequate pay.

Despite the increase, Braun said, "anger and bitterness still lingers in some" and a number of experienced judges have left the bench for the private sector, citing inadequate pay.

'A SHAME'

The underlying litigation began in 2007 when Larabee and three other judges sued the state. Manhattan Supreme Court Justice Edward Lehner found in their favor, ordering both proactive and retroactive salary increases, and the Appellate Division, First Department, in 2009 affirmed. But the Court of Appeals in 2010 modified, holding that it did not have the power to order retroactive raises.

Three judicial associations, including the Association of Justices of the Supreme Court of the State of New York, the Supreme Court Justices Association of the City of New York and the New York State Association of City Court Judges, filed an amicus brief on behalf of Larabee and her fellow plaintiffs.

Albany County Family Court Judge Dennis Duggan, who helped organize a coalition of judicial associations to lobby for raises, on Friday declined to comment on Braun's decision, but said judges "remain deeply disappointed" by the lack of retroactive pay.

"That money will never be recouped either in our paychecks or reflected in our retirement," Duggan said.

Last month, Justice Ariel Belen of the Appellate Division, Second Department, announced that he would step down in October, saying the recent pay hike was "too little, too late." Belen was the latest in a string of judges to leave the

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bench for a higher-paying career in private practice.

In 2009, Robert Spolzino stepped down from the Second Department to become senior appellate counsel at Wilson Elser Moskowitz Edelman & Dicker. In 2011, James McGuire left the First Department to become a partner at Dechert. Justice Joseph Covello of the Second Department also left the bench last year, to become a name partner at the Long Island litigation boutique of Lynn, Gartner & Dunne.

The case is Susan Larabee, et al v. Governor of New York State, New York State Supreme Court, New York County No. 112301-2007.

For the plaintiffs: Thomas Bezanson of Cohen & Gresser and George Bundy Smith.

For the state: Assistant Attorney General Joel Graber.

(Additional reporting by Noeleen Walder)

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