

CONRADO V. MACATANGAY, PETITIONER, VS. THE CHAIRMAN OF COMMISSION ON AUDIT, RESPONDENT.*G.R. No. L-38728. September 30, 1982*

Ponente: DE CASTRO, J.

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This is a petition for review on certiorari of the decision of the Chairman of Commission on Audit dated September 3, 1973 refusing to allow in audit the claim of petitioner Conrado V. Macatangay for the commutation of his leave earned as Mayor of Calaca, Batangas.

The records disclose that on February 15, 1973, petitioner filed with the Department (Ministry) of Local Government and Community Development an application for commutation of his alleged ten (10) months terminal leave as former Municipal Mayor of Calaca, Batangas, from August 7, 1946 to December 31, 1953 and from January 1, 1964 to December 31, 1967. Said application was approved on February 21, 1973. On May 8, 1973, the Municipal Treasurer of Calaca sent a letter to the Provincial Auditor of Batangas requesting that the voucher of petitioner be pre-audited before payment is made. On the same date, the Provincial Auditor returned the voucher to the Municipal Treasurer suggesting that petitioner's claim be held in abeyance pending receipt of the resolution of Auditor General in a similar case.

On September 3, 1973, the Auditor General sent a letter to herein petitioner stating that his claim for commutation of his terminal leave cannot be taken. On December 13, 1973, petitioner sent a letter to the Commission on Audit requesting approval of his claim for commutation of his vacation and sick leave and likewise filed his application for retirement under Section 12(c) of Commonwealth Act No. 186, as amended by Republic Act No. 1616. On December 26, 1973, the Acting Chairman of the Commission on Audit made a 2nd Indorsement of said letter dated December 13, 1973, reiterating disallowance of petitioner's claim for commutation of his terminal leave, invoking the opinion of the Secretary of Justice in his 5th Indorsement dated March 19, 1973 to the effect that if a local elective official is not entitled to leave privileges under existing laws, there would be no earned or accrued leave to his credit which he could commute. A motion for reconsideration of the Commission on Audit's 2nd Indorsement was likewise denied. Hence, this appeal to this Court, petitioner raising the following issues:

1. Whether or not petitioner as a former municipal mayor is entitled to leave privileges under existing laws; and
2. Whether or not the decision of this Court in the case of Manuel vs. General Auditing Office (G. R. No. L-28952, December 29, 1971, 42 SCRA 660) will apply to petitioner.

Petitioner contends that he, as a former municipal mayor of Calaca, Batangas, is entitled to leave privileges pursuant to Section 286[1] and Section 2187[2] of the Revised Administrative Code, and Section 12(c)[3] of Commonwealth Act No. 186, as amended by Republic Act No. 1616; that the Commission on Audit should have allowed the claim of petitioner on the basis of this Court's decision in the case of Manuel vs. GAO, *supra*, whose facts are at all fours with the case at bar.

Respondent Commission on Audit, in denying petitioner's claim for commutation of his alleged terminal leave, contends that there is no law expressly and categorically granting them leave privileges or a commutation thereof, that the aforequoted laws invoked by petitioner are unavailing; and that the case of *Manuel vs. GAO*, *supra*, may not be cited as binding and applicable precedent in the adjudication of claims of any local elective official for commutation of vacation and sick leave.

The petition must be dismissed.

1. Chapter 13 of the Revised Administrative Code, entitled the Leave Law, governs the granting and enjoyment of leave of absence of government officers and employees. Specifically mentioned therein as entitled to leave privileges are the Justices of the Supreme Court and the Court of Appeals,[4] Judges of the Courts of First Instance,[5] teachers,[6] and in general, officers and employees of the national, provincial, city and municipal governments.[7] The Justices, Judges and teachers are appointive government officers and employees. A fortiori, it is safe to say that the other employees referred to in the Leave Law are likewise appointive employees of the national and local governments. Firstly, a perusal of Section 286 of the Revised Administrative Code (which actually refers to the leave privileges granted under Sections 284 and 285-A of the same Code) will readily show that its provisions are intended only for appointed officers, employees, teachers or laborers of the Government. This intent is clearly manifest from a reading of Sections 284 and 285-A of the Revised Administrative Code which, together with Section 286, are found in Chapter 13 of the said Code, under the title "Leave Law." Secondly, Section 284 explicitly allows leave privileges to employees only "after at least six months' continuous, faithful and satisfactory service," a Civil Service requirement to the effect that an appointive employee must serve a probationary period of six months following his original appointment, in order to acquire permanent status. This requirement does not apply to elective officials who serve for a fixed term commencing upon their assumption of office without regard to their status.

2. What was said in the Memorandum for Respondent[8] is likewise relevant: "As a general proposition, elective officials' entitlement to salary is not dependent upon actual attendance in office. In fact, they are not even required to keep a record of their daily attendance such as by accomplishing Civil Service Form No. 48 (Daily Time Record) or punching the bundy clock. Thus, a provincial governor is entitled to collect salary even when absent on a personal business, it being well-settled that an elected officer is entitled to emoluments so long as he is permitted to retain the office, the right thereto being independent of services performed. (Op., Insular Auditor, Dec. 23, 1919, cited in Araneta, the Adm. Code, Vol. IV, pp. 2720, 2721). Elective officials, indeed, are deemed in the service of their constituents regardless of time and place. There can be no occasion to consider them absent from work since their presence at such specified time and place is not a pre-requisite to their collection of salary for services rendered. So, too, they need not seek leave to be absent for there is no absence to speak of."

3. Indeed, there is no specific provision of law authorizing leave privileges, nor commutation thereof, for elective officials, in general, and municipal mayors in particular, as in the instant case. Section 2187 of the Revised Administrative Code and Section 12(c) of Commonwealth Act No. 186, as amended by Republic Act No. 4968, cited by petitioner to support his contention that a municipal mayor is entitled to leave privileges, are likewise, unavailing. A perusal of Section 2187 of the Revised Administrative Code reveals that what is granted therein is the right of municipal mayors to receive full salary only during their absence due to illness contracted through no fault of his own, for a period of not more than thirty (30) days during the year. No mention is made therein about the mayor having to apply for leave of absence to enjoy his right to receive full salary. Neither does this provision of law authorize accumulation of such leave. Hence, no commutation of leave is possible. Indeed, if it were the intention of Section 2187 to allow accumulation and commutation of unused leave for mayors, it could have easily so provided as in the case of appointive government officers and employees under Section 286 of the Revised Administrative Code.

Section 12(c) of Commonwealth Act 186 is likewise inapplicable. This provision of law does not also grant a

leave privilege. Although it included elective officials as among those allowed to retire thereunder, nevertheless, the extension of retirement benefits to elective officials did not automatically entitle the latter to the commutation of "unused vacation and sick leave." Such pecuniary privilege would depend on the existence of a law expressly and categorically granting them leave privileges as what was envisioned in the Leave Law. In fact, this must have been the conclusion implicit in the last sentence of the first paragraph of Section 12(c), *supra*, which provides as follows:

"Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of their retirement." (Underscoring supplied)

Thus, the unused vacation and sick leave which a retiring official or employee may commute is that which he may have to his credit at the time of retirement. If he has no such leave credit then he enjoys no such right of commutation for there is nothing to commute. Certainly, in order to earn leave credits, he must, first of all, be entitled to leave privileges as granted by law. Simply taken, Section 12(c) presupposes the existence of a law or an explicit statutory provision granting and authorizing leave privileges.

4. The case of *Manuel vs. General Auditing Office*, *supra*, also invoked by petitioner to support his claim for commutation of his alleged terminal leave, may not, for audit purposes, be used as the sole basis of claims for commutation of leave by any elective official. Any claimant thereto must first show undoubtedly under what provision of law he has earned and accumulated leave before he can be entitled to the commutation thereof. In fine, no claim for commutation of leave filed by any elective official shall be allowed in audit in the absence of a showing that the claimant has previously earned and accumulated leave to his credit pursuant to a law granting him leave privileges.

IN VIEW OF THE FOREGOING, the decision of respondent Chairman of Commission on Audit dated September 3, 1973 refusing to allow in audit the claim of petitioner Conrado V. Macatangay for the commutation of his leave earned as Municipal Mayor of Calaca, Batangas, is **AFFIRMED**. Without pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur. Aquino, J., no part.

[1] Section 286. - "When vacation leave and sick leave may be taken. - Vacation leave and sick leave shall be cumulative and any part thereof which may not be taken within the calendar year in which earned and may be carried over to the succeeding years, but whenever any officer, employee, or laborer of the Government of the Philippines shall voluntarily resign or be separated from the service through no fault of his own, he shall be entitled to the commutation of all accumulated vacation and/or sick leave to his credit: Provided, that the total vacation leave and sick leave that can accumulate to the credit of any officer or employee shall, in no case, exceed ten months. x x x."

[2] Section 2187. - "The mayor shall receive full salary when absent upon occasion of any meeting of mayors convoked by the provincial board or when absent therefrom upon any other business the performance of which is required of him by express provision of law or competent administrative authority or, if the general funds of the municipality permit, when he is absent from his office because of his illness contracted through no fault of his own, provided the absence in the latter case does not exceed thirty days during the year. x x x."

[3] Section 12(c). - "Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least twenty years of service, the last three years of

which are continuous. x x x Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement. x x x."

[4] Section 268, Revised Administrative Code.

[5] Section 271, Ibid., as amended by R.A. Nos. 1399 and 1802.

[6] Section 274, Ibid.

[7] Section 284, Ibid.

[8] pp. 98-99, Rollo.

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