

PEDRO DE VILLA, PETITIONER, VS. ISMAEL MATHAY, SR., RESPONDENT.

G.R. No. L-38426. May 11, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioner applied for the commutation of his alleged accumulated leave credits pursuant to the provisions of Section 286 of the Revised Administrative Code, as amended by Republic Act No. 1081, and Section 2187 (paragraph 2) of the Revised Administrative Code which respectively provide:

"Section 286. - When vacation and sick leave may be taken: Vacation and sick leave shall be cumulative and any part thereof which may not be taken within the calendar year in which earned 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 thru 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 and sick leave that can accumulate to the credit of any official or employee shall in no case exceed ten months."

"Section 2187. - Compensation of vice-mayor and councilors. - Full pay for sick mayor -

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"The municipal mayor shall receive full salary when absent from the municipality 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, which fact must be attested by an affidavit of the interested party and by a medical certificate or, if there be no physician in the locality, by a health officer's certificate; and if during such authorized or justified absence the vice-mayor or a councilor temporarily discharges the local duties of the mayor the officer rendering such service may receive compensation in an amount to be fixed by the council, with the approval of the provincial governor, which amount shall not be in excess of the salary of mayor for the same period: Provided, That per diem for attendance of the sessions of the council shall not be paid to an officer rendering such service."

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The respondent Commission on Audit (COA) denied the petitioner's application, hence, the filing of the present petition.

The petitioner served as municipal mayor of Alaminos, Laguna for the following periods:

"January 1, 1956 - December 31, 1959

January 1, 1960 - December 31, 1963

January 1, 1968 - December 31, 1971 (Rollo, p. 3)

The petitioner claims that during the above terms, he earned accumulated vacation and/or sick leaves to his credit corresponding to 300 working days. Thus, on October 18, 1973, he applied for the commutation of the same with the Office of the Governor, citing the afore-quoted sections and the case of Benito Manuel C. v. General Auditing Office (G.R. No. L-28952, December 29, 1971) as bases for his claim.

The Department of Local Government and Community Development approved the petitioner's application. However, when the claim was brought to the office of the respondent, the latter denied it, relying on the opinion of the Secretary of Justice which was embodied in Provincial Circular No. 24 to the effect that the case of Manuel v. GAO "may not be cited as binding and applicable precedent in the adjudication of claims of any and all elective officials (e.g., members of local legislative bodies) for the commutation of vacation and sick leave." Thus, the petitioner brought his case before this Court.

The only issue in this petition is whether or not the petitioner, a municipal mayor, is entitled to leave privileges and the commutation of accumulated leave credits upon his retirement.

This question was squarely passed upon by this Court in the case of Macatangay v. Chairman of the Commission on Audit (117 SCRA 231, 234-237). In the said case, we ruled:

"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, (Section 268, Revised Administrative Code), Judges of the Courts of First Instance, (Section 271, Ibid., as amended by R.A. Nos. 1399 and 1802), teachers, (Section 274, Ibid), and in general, officers and employees of the national, provincial, city and municipal governments. (Section 284, Ibid). The Justices, Judges and teachers are appointive government officers and employees. A fortiori, it is safe to say that the other employees referred for 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 (pp. 98-99, Rollo), is likewise relevant: 'As a general proposition, elective officials' entitled 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 prerequisite 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.

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"4. The case of Manuel v. 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 an 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 and privileges."

We also reiterated this ruling in the case of Tenorio v. Commissioner, Commission on Audit (122 SCRA 77).

There is, therefore, no question that the petitioner is not entitled to accumulated leave credits. It follows that there is also nothing to commute since he has failed to cite any applicable law which would entitle him to the same. The remedy for local elective officials who may wish to have vacation and sick leave privileges similar to those enjoyed by appointive officers is to have the existing law amended.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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