

RE: REQUEST OF FORMER PRESIDING JUDGE ALEX Z. REYES OF THE COURT OF TAX APPEALS FOR THE INCLUSION OF HIS LEAVE CREDITS FROM THE OFFICE OF THE ARMED FORCES AND THE EXCLUSION OF ...

Adm. Case No. 92-5-009-CTA. December 21, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In his letter-request dated December 19, 1991, former Presiding Court of Tax Appeals Judge Alex Z. Reyes asks for a reconsideration and recomputation of his accumulated vacation and sick leave credits. In particular, Judge Reyes requests the following:

1. The inclusion of 57.625 days vacation leave and 57.625 days sick leave which he earned for services with the Armed Forces of the Philippines from 1941 to 1946, and
2. The exclusion of Saturdays, Sundays, and holidays from his total accredited vacation and sick leaves of 322 days for the period beginning February 17, 1954 to July 19, 1980, during which he was with the Department of Finance.

Judge Reyes was compulsorily retired on November 24, 1991, with 37 years, 9 months and 7 days in the government service, the last 11 years, 3 months and 23 days of which were continuously rendered in the judiciary. His record shows a gap in his government service of seven years, from December 1946 to February 16, 1954.

In processing the terminal leave application of Judge Reyes, the Supreme Court Administrative Office did not include Judge Reyes' accumulated leave credits earned for services with the AFP, by virtue of the application of a 1st Indorsement dated May 2, 1957 of the then Bureau of Civil Service, which provides:

"When transfer of leave credit not allowed – The transfer of leave credit is allowed only when there is no gap in the service of the officer or employee concerned."

In his request for reconsideration, Judge Reyes cites Memorandum Circular No. 54 of the Office of the President dated March 24, 1988, as restated in Civil Service Commission Circular No. 10, Series of 1988 which provides:

"PRESCRIBING GUIDELINES ON THE COMPUTATION
OF CREDITABLE VACATION AND SICK LEAVES

WHEREAS, Executive Order (EO) No. 1077, dated January 9, 1986, provides under Section 1 thereof that any officer or employee of the government who retires or voluntarily resigns or is separated from the service through no fault of his own and whose leave benefits are not covered by any special law, shall be entitled to the commutation of all the accumulated vacation and/or sick leave to his credit, exclusive of Saturdays, Sundays and holidays without limitation as to the number of days of vacation and sick leave that he may have accumulated.

WHEREAS, Civil Service Commission (CSC) Memorandum Circular (MC) No. 4, series of 1986, prescribing guidelines on the implementation of EO No. 1077, provides that the 'reckoning date for crediting accumulated leave in excess of 300 days shall start on October 12, 1981 [and that] leave credits in excess of 300 days before this date shall be deemed forfeited;' and

WHEREAS, On February 28, 1988, the CSC recommended the issuance by this Office of a memorandum circular specifying the coverage and applicability of EO No. 1077, particularly the reckoning date for crediting accumulated leave in excess of three hundred (300) days, and interposed no objection if the reckoning date of October 12, 1981, as stated in CSC MO No. 4, is modified or deleted.

Accordingly, and for the guidance of all concerned, the computation of leave credits shall be as follows:

Any officer/employee of the government who retires/voluntarily resigns/is separated from the service through no fault of his/her own, and who is not otherwise covered by special law, shall be entitled to the commutation of all his/her leave credits exclusive of Saturdays/Sundays/holidays without limitation and regardless of the period when the credits were earned; provided that the leave privileges under EO No. 1077 as herein outlined may be availed of only by concerned officers/employees in the service as of the effectivity thereof on January 9, 1986.

Strict compliance hereto is enjoined.

By authority of the President:

(SGD.) CATALINO MACARAIG, JR.

Executive Secretary

Manila, March 24, 1988" (Emphasis supplied)

From a consideration of the foregoing, it is evident that said Memorandum Circular No. 54 supersedes the 1957 indorsement of the Bureau of Civil Service. Under said Circular, government officers and employees are now entitled to the commutation of all leave credits exclusive of Saturdays, Sundays, and holidays without limitation and regardless of the period when the credits were earned, provided the claimant was in the service as of January 9, 1986.

The issue which then arises is whether or not the phrase "without limitation and regardless of the period when the credits were earned" is applicable to the judiciary. Such phrase may be so applicable on the condition provided in the circular itself, that the judiciary is "not otherwise covered by special law."

The law governing leave credits of municipal judges began with RA No. 843 dated May 5, 1953 which provided for vacation and sick leave, thereby adding a new section to the Judiciary Act of 1948. RA No. 843 was subsequently amended by R.A. No. 3086 dated June 17, 1961, Section 3 of which provides as follows:

"SEC. 3. Section ninety-eight-A of the same Act, as amended, is further amended to read as follows:

'SEC. 98-A. Vacation and sick leaves of judges of municipal courts and justices of the peace. Judges of municipal courts and justices of the peace shall be entitled annually to fifteen days vacation and fifteen days sick leaves with pay and in the computation thereof Sundays and holidays shall be excluded and such leave privileges shall be cumulated but not to exceed three hundred days.'"

The above-quoted provision of R.A. No. 3086 was not reproduced in B.P. No. 129, otherwise known as the Judiciary Reorganization Act of 1980, which expressly repealed the Judiciary Act of 1948.

As to judges of courts of first instance, the law governing their leave credits was initially section 271 of the Administrative Code relative to vacation leave. This law was amended by R.A. No. 1399 dated September 9,

1955, which in turn was amended by R.A. No. 1802 dated June 22, 1957. R.A. No. 1802 was subsequently amended by R.A. No. 4307 dated June 19, 1965. R.A. No. 4307 was superseded by the Revised Administrative Code (P.D. No. 1587) which, however, was never published, and was subsequently expressly repealed by the 1987 Administrative Code. The 1987 Administrative Code does not provide for leaves of judges nor does it expressly repeal section 271 of the old Administrative Code. R.A. No. 4307, then is still valid law. It provides as follows:

"AN ACT TO AMEND SECTION TWO HUNDRED SEVENTY ONE OF THE REVISED ADMINISTRATIVE CODE, AS LAST AMENDED BY REPUBLIC ACT NUMBERED ONE THOUSAND EIGHT HUNDRED TWO, RELATIVE TO VACATION LEAVE OF JUDGES OF FIRST INSTANCE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section two hundred seventy one of Act Numbered Two thousand seven hundred eleven, as last amended by Republic Act Numbered One thousand eight hundred two, is hereby further amended to read as follows:

'SECTION 271. Leave of absence of Judges, First Instance. – During the yearly court vacation, the judges of first instance not specially assigned to vacation duty shall be upon vacation leave. In case of those who are assigned to vacation duty, they shall be entitled to vacation leave at any subsequent time for the same number of days that they spend on vacation duty but not exceeding two months per year, one month of said leave being cumulative.'

SECTION 2. This Act shall take effect upon its approval.

Approved, June 19, 1965."

Said law, therefore, provides that judges of first instance not specially assigned to vacation duty shall be on vacation leave while those on vacation duty shall be entitled to vacation leave at any subsequent time for the same number of days that they spend on vacation duty. The only limitation is that the judge's entitlement to vacation leave shall not exceed two months per year, one month of which is cumulative.

There is nothing in the above law which governs the specific issue before this Court. R.A. No. 4307 pertains to vacation leaves earned due to vacation duty and it does not govern the commutation of leave credits earned. Said R.A. cannot be considered the special law contemplated by Memorandum Circular No. 54, which would effectively exclude the judiciary from the operation of Memorandum Circular No. 54.

It must be noted that said Memorandum Circular was reproduced in section 26 of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws published in the Philippine Star on January 15, 1992, and which took effect 30 days after the completion of its publication. Section 26 provides:

"SEC. 26. Any officer/employee of the government who retires, voluntarily resigns or is separated from the service through no fault of his own, and who is not otherwise covered by special law, shall be entitled to the commutation of all his leave credits exclusive of Saturdays, Sundays and holidays without limitation and regardless of the period when the credits were earned; Provided, That the unlimited leave privileges may be availed of only by concerned officers/employees who are in the service as of January 9, 1986, the date of effectivity of E.O. No. 1077 or thereafter."

In Section 11 of the Omnibus Rules it is categorically stated that leave credits of the judiciary are covered by special laws. Section 11 of said Omnibus Rules provides as follows:

"SEC. 11. Leave credits of Justices of the Supreme Court, Court of Appeals and Sandiganbayan, Judges of Regional Trial Courts, Municipal Trial Courts, Metropolitan Trial Courts, Court of Tax Appeals and Shari'a

Circuit Courts, Heads of Executive Departments, Heads of Departments, Undersecretaries, Chairman and Commissioners of Constitutional Commissions, Filipino Officers and Employees in the Foreign Service and other officials and employees are covered by special laws. Hence, justices and other government officials covered by special laws should promulgate their own implementing rules relative thereto: Provided; That said rules should not go beyond what the special law provides. Finally, said implementing rules should be submitted to the Civil Service Commission for record purposes." (Emphasis supplied)

The special laws provide the boundaries by which the implementing rules and regulations to be promulgated by "justices and other government officials covered by special law" are to be limited. Again, there is no special law governing the specific issue addressed by Memorandum Circular No. 54 and Section 26 of the Omnibus Rules. And absent any implementing rules and regulations yet promulgated, the general provision must be applied there being no reason to discriminate against the judiciary and deprive judges of the benefits of commutation without limitation and regardless of the period when the credits were earned. In other words, there is no special law governing the commutation of leave credits of Judges and, therefore, they are entitled to benefits under Memorandum Circular No. 54.

The second issue on the non-exclusion of Saturdays, Sundays, and holidays is governed by the same principle. As there is likewise no special law on the specific issue, Memorandum Circular No. 54 must be applied. And even assuming that there is such a special law, it cannot provide for lesser privileges or non-application of general laws to work a disadvantage against Judges. In fact, R.A. 3086 quoted above, now no longer in force, had excluded Sundays and holidays from the therein computation of vacation and sick leaves of municipal court judges and the then justices of the peace.

Statutes and administrative rules governing the commutation of leave benefits of judges must be interpreted in the light of the special protections given by the Constitution to the judiciary. In *Bengzon v. Drilon*, (G.R. No. 103524) and *In Re Request of Retired Justices* (A.M. No. 91-8-225-CA) jointly decided on April 15, 1992, this Court emphasized:

"The provisions regarding retirement pensions of Justices arise from the package of protections given by the Constitution to guarantee and preserve the independence of the Judiciary.

The Constitution expressly vests the power of judicial review in this Court. Any institution given the power to declare, in proper cases, that acts of both the President and Congress are unconstitutional needs a high degree of independence in the exercise of its functions. Our jurisdiction may not be reduced by Congress. Neither may it be increased without our advice and concurrence. Justices may not be removed until they reach the reason age 70 except through impeachment. All courts and court personnel are under the administrative supervision of the Supreme Court. The President may not appoint any Judge or Justices unless he or she has been nominated by the Judicial and Bar Council which, in turn, is under the Supreme Court's supervision. Our salaries may not be decreased during our continuance in office. We cannot be designated to any agency performing administrative or quasi-judicial functions. We are specifically given fiscal autonomy. The Judiciary is not only independent of, but also co-equal and coordinate with the Executive and Legislative Departments. (Article VIII and Section 30, Article VI, Constitution)."

In the interpretation of statutes or rules governing the benefits of those who retire from the government service, a construction is to be sought which, in proscribing discrimination against Judges, maintains the independence of the Judiciary.

In *Borromeo v. Civil Service Commission* (199 SCRA 911, [1991]), this Court deemed it necessary to impose a cut-off date for claims for terminal leave differentials which would have arisen from the ruling, upon practical considerations and budgetary constraints.

In Re: Request of Atty. Bernardo Zialcita (190 SCRA 851 [1990]), this Court likewise set a cut-off date for invoking the benefits of that ruling, noting the mischief that an open-ended rule would bring. Upon the same considerations, this Court now holds that Memorandum Circular No. 54 of the Office of the President shall apply in computing the creditable vacation and sick leave benefits of the members of the Judiciary who retired or shall retire on or after March 24, 1988, the date of said Memorandum Circular.

IN VIEW OF THE FOREGOING, the COURT RESOLVED to:

(1) GRANT the request of Judge Alex Z. Reyes for:

(a) The inclusion of 57.625 days vacation leave and 57.625 days sick leave earned for services with the Armed Forces of the Philippines from 1941 to 1946 in his accumulated leave credits.

(b) The exclusion of Saturdays, Sundays and holidays from the total of his accredited vacation and sick leaves of 322 days for the period beginning February 17, 1954 to July 19, 1980 during which period Judge Reyes was with the Department of Finance; and

(2) DECLARE that Memorandum Circular No. 54 of the Office of the President dated March 24, 1988 shall apply in the computation of the creditable vacation and leave credits of members the judiciary who retired or shall retire on or after March 24, 1988, the date of said Memorandum Circular.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

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