

IGNACIO E. RECIO, PETITIONER, VS. THE AUDITOR GENERAL, RESPONDENT.

G.R. No. 11557. April 17, 1959

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Appeal from the ruling of the Auditor-General refusing to credit Ignacio E. Recio, as employee of the Fiber Inspection Service, with the vacation leave he had earned while on the staff of the University of the Philippines.

It appears that Recio served in such University from August 1932 to February 28, 1946 (excluding the war years); that on the last mentioned date he resigned, without actually enjoying five (5) months of accrued vacation leave; that the next day, March 1, 1946, he entered the service of the United States Veterans Administration, Manila Office, from which he was laid off on April 25, 1950; that in January 1953, he was appointed to the Import Control Commission; that thereafter, the Fiber Inspection Service took him in; and that later, while working in this Service, he requested in April 1957, from the Civil Service Commissioner the transfer to his credit in the Fiber Inspection of the 5-month vacation leave he had accumulated in the University.

At first, the Civil Service found against the transfer, holding that upon resignation from the University of the Philippines, Recio had forfeited all his vacation leave, pursuant to sec. 286 of the Revised Administrative Code as amended.^[1] Afterwards, upon being informed that Recio had resigned for the purpose of joining the Veterans Administration, the Civil Service revised its stand, reflecting that as service in the Veterans Administration at that time (February 1946) could be considered as service in the Philippine Government Recio had not yet forfeited his vacation leave, because when he resigned from the University of the Philippines, he did not leave the service of the Philippine Government, and sec. 286 did not apply.

The University of the Philippines objected, citing its rules in force in March 1946, to the effect that "upon separation from the University of any officer or employee, any accumulated vacation and sick leave to his credit shall be forfeited."

And the Auditor-General decided that the vacation and sick leave earned by Recio while serving in the U. P. were deemed forfeited upon his separation therefrom on February 28, 1946. He quoted sec. 286, Administrative Code as amended, before its amendment by Republic Act 611 in May, 1951.

Both the Civil Service and the Auditor-General consider sec. 286 as amended (before Republic Act 611) to be the governing statute. Their views differ, however: whereas the former holds that Recio did not leave the service on February 28, 1946, because the next day March 1, 1946, he joined another office of the Philippine Government, the Auditor-General says that Recio was on February 28, 1946, "separated" from the service within the meaning of section 286.

It may be conceded, for the moment, that Recio was not separated from the service on February 28, 1946, because the next day he went to work in the U.S. Veterans Administration (U.S.), regarded during the Commonwealth as a

local office. But it cannot be denied that on July 4, 1946, (Independence Day) service in the Veterans Administration ceased to be service to the Philippine Government; neither can it be denied that on April 25, 1950, he was dropped from the payroll of the said U.S. Veterans Administration.

So, it must be held that Recio quit public employment either on July 4, 1946,[2] or on April 25, 1950. On either of these two dates, his separation from the service occurred, and his vacation leave was deemed forfeited under the law (section 286) at that time. It must be remembered that after April 25, 1950, he did no Government work for two years. The Civil Service refused to consider Recio's separation on July 4, 1946, as separation "from the service" because such separation "was through no fault of his own." Herein lies the error. Under section 286 as it stood then, whenever an employee leaves or is dropped from the service of the Philippine Government, there is separation from the service and forfeiture irrespective of the cause. The Solicitor-General himself who sides with the Civil Service says this:

"Separation from the service may be, and is generally, due to resignation of the public official or employee concerned (Cf. Sections 21, 26 and 27, Republic Act No. 180); or to abolition of the office. (Cf. *Zanduetta vs. de la Costa*, 66 Phil. 615; *Erana vs. Vergel vs. Baluyot*, G. R. No. L-3318, prom. May 5, 1952; *Manalang vs. Quitoriano*, G. R. No. L-6898, prom. April 30, 1954); or to retirement (Cf. *Nacionalista Party vs. Bautista*, G. R. No. L-3452, prom. December 7, 1949)."

The above separations involve no fault of the employee; and yet they cause forfeiture of the vacation leave, as said official impliedly admits.

In this connection, we observe that the office of the Solicitor-General agrees with the Civil Service for the reason that (a) on February 28, 1946, Recio did not leave the service; and (b) he never in fact left the service. The second proposition is evidently untenable for as we say, Recio must be deemed to have left the Philippine Government's service either on July 4, 1946 (upon independence, service in the U.S. Veterans Administration could no longer be considered service in the Philippine Government) or on April 1950 when he returned to private life, having been dropped from the Veterans Administration. True, two years later he joined the Government anew; but the interval broke the continuity of his service even as it operated to forfeit his leave.

Officers who have been long enough in the Government know the reasons[3] behind this forfeiture, which has been applied up to 1951. Events apparently showed its inequity in some cases; so Republic Act 611 decreed that it will not be forfeited if the employee voluntarily resigns or is separated from the service through no fault of his own. This liberal provision we cannot apply to Recio, because his separation occurred before Republic Act 611, which has no retroactive operation.

This makes it unnecessary to discuss whether the rules of the University, and not section 286 as amended, control the issue. We have not gone into the matter, but it might be that leaves of absence of University employees depend exclusively upon its rules adopted pursuant to its charter. Needless to say, if the University rule hereinabove quoted applies, Recio has no right, because he lost his leave upon leaving the University.

Wherefore, the appealed decision of the Auditor-General is affirmed. No costs.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

[1] Section 286 as amended: "Sec. 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 may be carried over to the succeeding years, but upon separation from the service of any officer or employee, any accumulated vacation or sick leave to his credit shall be forfeited. * * *."

[2] The Civil Service believes he was thus separated.

[3] One was to force the employee actually to take his leave, to improve his health during his employment and perform better work. Not to reserve it as a sort of savings to be enjoyed after he leaves Government service. In fact, it had to be taken every year; otherwise, it was lost. See section 286 Administrative Code.

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