

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. RUSTICO PADILLA, DEFENDANT AND APPELLEE.*G.R. No. 21922. September 27, 1924*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Cebu by the Government of the Philippine Islands for the purpose of recovering from the defendant, Rustico Padilla, the sum of P119.99, alleged to have been paid to him by mistake upon account of accrued leave. Upon hearing the cause his Honor, Judge Adolph Wisjizenus, absolved the defendant from the complaint, and the Government appealed.

It appears that on July 1, 1919, the defendant, Rustico Padilla, entered the Government service as an employee in the Bureau of Public Works, and in the month of June, 1921, was serving as a chief clerk in the office of the district engineer at Malaybalay, Bukidnon. On June 2 of the same year he obtained permission to absent himself from his post in order to go upon private matters to the City of Cebu. No definite period of leave was fixed at the time this permission was granted, but the defendant left Malaybalay on June 3. On June 23, being then in Cebu, the defendant telegraphed his resignation to the Director of Public Works in Manila, effective July 1, 1921. On July 2 the Director of Public Works accepted said resignation, effective from June 30, 1921. In due course of time the Secretary of Commerce and Communications, as Department Head, approved the resignation, upon the recommendation of the Director of Public Works and the Director of Civil Service, and from the date last mentioned the defendant ceased to be a Government employee. After the severance of his relations with the Bureau of Public Works the defendant was paid, with the approval of the Department Head, the sum of P119.99 for leave accrued during his two years of service; and this is the money which the Government now seeks to recover, it being claimed that the payment was made by mistake and contrary to the provisions of law and the Civil Service Rules.

The law applicable to the case is found in section 276 of the Administrative Code, which defines the conditions under which employees may be credited with accrued leave and the amount of leave earned by the different classes of employees. The words of the statute, so far as pertinent to the discussion, are as follows:

"After at least two years' continuous, faithful, and satisfactory service the proper Head of Department shall, subject to the requirements of the public service, grant each regularly and permanently appointed officer or employee in the Philippine Civil Service, except as hereinafter provided, accrued leave of absence with full pay, inclusive of Sundays and of holidays, for each year of satisfactory service in the Islands * * *."

Under this statute it will be seen that two years of continuous, faithful, and satisfactory service are required as a condition precedent to the right of the employee to accrued leave. In the case before us the defendant had not been in the service for two years at the time he obtained permission to absent himself from Malaybalay on June 2, 1921, and the period of two years was only completed on June 30 thereafter. We note in this connection that the permission given to the defendant to absent himself from his post of duty did not state whether his absence should

be without pay; but it is admitted that he has in fact been paid no salary since he left Malaybalay, and we consider the situation to be the same as if his absence had been expressly declared to be without pay.

Upon referring to the provision quoted above it will be seen that accrued leave is granted by the Department Head; and in this functionary is lodged the administrative discretion to determine what constitutes "two years' continuous, faithful, and satisfactory service." In the case before us the proper Department Head, upon recommendation of the Director of Public Works, passed upon the right of the defendant to the salary which was paid to him as accrued leave; and we are of the opinion that the action thus taken, having been within the legitimate power of said official, cannot be annulled in this action.

That the defendant enjoyed the status of an employee in the public service for two years is undeniable, and it cannot be said as a matter of law that his service must be pronounced unsatisfactory merely because he had been absent from duty without pay for four weeks. The statute does not require two years of continuous service on active duty, but two years of continuous, faithful, and satisfactory service. The defendant's absence from duty had the approval of his superior officer and until his resignation became effective he was without doubt subject to all the provisions of the Civil Service Law. Of course absence from duty might be so prolonged, or so frequently repeated, that service would be rendered unsatisfactory on that account but whether it is satisfactory or unsatisfactory, is a question for the Department Head and not for the courts. It does not appear that there was any mistake of fact in the action of the Department Head; and if any error was committed, it was error of administrative discretion. Furthermore, it does not appear that the Department Head has at any time attempted to revoke the order allowing this payment, and the present judicial action was instituted upon the suggestion of the Auditor. When the Department Head, with all the facts before him, decided that the defendant was entitled to this accrued leave, the money was properly paid, and it cannot be said that the payment was vitiated by any error of law or fact which would justify a recovery of the money.

In what has been said we do not mean to pass any opinion upon the point whether this accrued leave was properly allowed, considering the matter as one of administrative practice. We only mean to say that the Department Head acted within the scope of his authority, and the action taken cannot be reversed in a judicial proceeding merely because somebody else now thinks that the departmental discretion was not well used.

In section 278 of the Administrative Code it is declared that leave shall accrue during authorized absence on leave with pay; and this provision should no doubt be interpreted as depriving an employee of his right to accrued leave for the period during which he is absent from duty without pay. As applied to the case before us, this means that the defendant was entitled to no accrued leave for the period between June 2 and June 28, 1921; but this would not affect his right to accrued leave for that part of the two years during which he was on duty. Upon the record before us we are unable to say whether this consideration was kept in mind in the computation of accrued leave in this case; but no question is made on this point, and it is to be assumed that the process of computation was correct.

The judgment will be affirmed, and it is so ordered, without costs.

Johnson, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

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