

MAGDALENO RIEL, PETITIONER, VS. BEN F. WRIGHT, INSULAR AUDITOR OF THE PHILIPPINE ISLANDS, RESPONDENT.*G. R. No. 25679. August 05, 1926*

Ponente: JOHNS, J.

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After the formal pleas, the petitioner alleges that on September 1, 1925, he was duly appointed a "temporary clerk" in the office of the Secretary, Philippine Senate, with an agreed compensation of P40 per month, as shown by the letter of appointment from the Secretary of the Senate, a copy of which is attached to the petition marked Exhibit A; that he took his oath of office and entered on the discharge of his duties as "temporary clerk," and has performed them from that date to the present time; that from February 1 to 14, 1926, there is due and owing him P20 for and on account of his services as such clerk, for which amount a warrant was issued to and in his favor by the chairman of the committee on accounts of the Philippine Senate, which is attached to the petition marked Exhibit B; that it is the duty of the respondent to approve such warrant; but the said respondent, in violation of the clear legal rights of the petitioner, and of his, the said respondent's plain duty in the premises, unjustly refused and still refuses to approve said warrant; that at the time said warrant was presented to the respondent for approval, there was a large amount of money in the Insular Treasury not otherwise appropriated by law and subject to be applied to the payment of said warrant; that petitioner does not have any plain, speedy or adequate remedy, and prays for a writ of mandamus against the Insular Auditor commanding him to sign the warrant.

For answer, the respondent admits the allegations in paragraphs 1, 2, and 3 of the petition, and specifically denies all other allegations, and, as a first special defense, alleges that this court has no jurisdiction over the subject matter, and that the petitioner has another plain, speedy, and adequate remedy. As a second special defense, the respondent then alleges that the appropriation for the petitioner is governed by the provisions of paragraph 2 under section 18 of Act No. 2935, in connection with item No. 120 of the Appropriation Act for 1925, and item No. 134 of the Appropriation Act for 1926, he being included among "employees rendering service before, during and several days after a session;" that the Legislature closed its last session on November 9, 1925; and that the petitioner was paid his salary up to and including January 31, 1926, which latter date was many more than "several days after the close of a session;" that for such reason, the respondent refused to sign the warrant, and for the further reason that the services of the petitioner and like employees have been unnecessary since February 1, 1926, for the reason that there have been one hundred and sixty-one more or less permanent employees on the payroll of the Senate; that on January 29, 1926, the Chairman of the Senate Committee on Accounts was advised that the respondent would refuse the payment of such warrant; that on December 7th, such employees were duly notified that their services would be dispensed with on or after January 1, 1926; that the present case is a test case, the decision of which will effect the status of forty-seven other like employees.

It appears of record that on December 31, 1925, the Secretary of the Senate revoked his letter of December 7,

1925, and that the petitioner "was required to continue rendering services until further order."

JOHNS, J.:

The respondent appeared in person and read an exhaustive brief in which he forcibly contended that this court did not have any jurisdiction over his official acts or any authority to compel him to sign the warrant, and claimed and asserted that his powers and duties as Insular Auditor were in legal effect identical with those of the U. S. Comptroller, and he then cited decisions of the Supreme Court of the United States to the effect that the courts do not have any control over, and do not review, the decisions of the Comptroller.

For a number of years, it has been and is now the policy of this court to follow and respect the decisions of the Supreme Court of the United States in so far as those decisions construe or apply to the law of the Philippine Islands, and if it be a fact that the Insular Auditor has the same powers and duties as the U. S. Comptroller, we would follow and approve those decisions.

The vice of the argument made by the Insular Auditor in person lies in his assumption that, under the law of the Philippine Islands, he has like powers, and duties as the U. S. Comptroller under the laws of the United States.

As was pointed out in the Ynchausti case,[1] the law here expressly says that the decisions of the Insular Auditor are binding upon the "executive branch" of the government.

The fact that the law specifically says that his decisions are binding upon the "executive branch" of the government, under all rules of statutory construction, clearly implies and carries with it that his decisions are binding upon the executive branch only, and that they are not binding upon any other branch of the government.

Under the law of Congress, there is no such limitation upon the powers and duties of the U. S. Comptroller. The finality of his decisions is not confined or limited to the executive branch, of the government but they apply with equal force and effect upon all branches. If and when the law is amended to confer upon the Insular Auditor of the Philippine Islands like powers and duties as those of the U. S. Comptroller, the authorities cited by the Insular Auditor would then be in point, and will be followed and approved by this court. Until such time as that is done or our decision is overruled by the United States Supreme Court, upon that question, we will follow and approve the law as laid down by this court in its former decisions.

Neither is there any legal merit in the allegation made in the answer, "that the services of the petitioner and the other employees of the same status are and have been unnecessary since February 1, 1926." It is not for the Insular Auditor to say how many employees the Legislature should have or the compensation which they would receive. That is a matter within the peculiar province of the Legislature and for which its members are responsible to their constituents.

Be that as it may, this is a petition for a mandamus in which the petitioner prays for a writ to compel the Insular Auditor to sign the warrant in question. To obtain the writ, the petitioner must both allege and prove a clear legal right to a valid warrant.

He alleges that on September 1, 1925, he was "duly appointed a 'temporary clerk' in the office, of the Secretary, Philippine Senate," and the appointment itself shows that he is "a temporary clerk." He also alleges that he accepted and continued in the performance of his duties from the date of his appointment "to the present time," "That for his salary as such clerk for the period from February 1 to 14, 1926, there is now due the petitioner the sum of P20," for which a warrant was duly drawn and which the respondent refused to sign "in violation of the clear legal rights of the petitioner," and that he "unjustly refused and still refuses to approve said warrant."

The answer alleges "that the Philippine Legislature closed its last session on November 9, 1925," and that the

petitioner was paid his corresponding salary to January 31, 1926. "That the respondent refused to approve the payment of the alleged salary of the petitioner from February 1, 1926, up to the present time for the reason that prior to February 1, 1926, very many more than 'several days' had elapsed since the closing of the last session of the Philippine Legislature * * -."

Section 18 of Act No. 2935 says:

"The following rules are hereby established regarding the appropriations for the Legislature and the Departments, Bureaus, offices or dependencies of the Insular Government, and shall not be understood to be repealed by any other law unless expressly repealed:"

And subdivision 2 of that section provides:

"The appropriation for 'supplementary force' shall be understood to be available for the payment of officers appointed in accordance with section one hundred of the Administrative Code; of employees rendering service before, during, and several days after a session, and employees within and outside of the Philippine Islands * *

It must be conceded that the services of the petitioner come under the provision for "the appropriation for supplementary force." That is to say, that he was employed as a "temporary clerk," and as such he is distinguished from a "permanent employee" of the Legislature, and that the services in question were rendered eighty-two days after the final adjournment of the Legislature. Hence, if the words "several days after a session" cannot legally be construed to cover and apply to the period in question, the petitioner was not legally employed, and is not entitled to the compensation in question.

No authority has been cited, and none will ever be found, construing the words "several days" to cover and include a period of eighty-two days. A day has twenty-four hours, and there are seven days in a week, and thirty days in a month, and twelve months in a year. In using the words "several days after a session," the Legislature must have known the meaning of the words and their legal force and effect, and it is the duty of the court to so construe them.

It is unnecessary in this opinion to define or specify the exact period of time meant by "several days after a session" as used in the Act. But we do hold that, as to the "supplementary force," the words cannot be construed to mean or apply to a period of eighty-two days "after a session." Giving them this construction, it follows that the petitioner has no legal right to compensation for the services in question.

Apparently recognizing the legal force and effect of the words used, the petitioner contends that section 18 of Act No. 2935 is unconstitutional, because (a) it embraces two subjects, and "(b) that one of the subjects is not expressed in the title of the bill." It is entitled "An Act appropriating funds for the necessary expenses of the Government of the Philippine Islands during the fiscal year ending December thirty-first, nineteen hundred and twenty-one, and for other purposes." And section 18 provides that the following rules are established regarding appropriations for the Legislature, and, "shall not be understood to be repealed by any other law unless expressly repealed," which has not been done. The Act in question must be construed as a whole, and, as so construed, section 18 is germane to the Act. That is to say, that the only appropriation which the Legislature has ever made for "supplementary force" is for "employees rendering service before, during, and several days after a session," and that upon no legal principle can the words "several days after a session" be construed to cover and include services rendered on and after a period of eighty-two days after the Legislature has adjourned. In legal effect any other construction would nullify the language used as to time, and destroy the meaning of the words supplementary force," and make a "temporary clerk" a permanent employee" of the Legislature.

For such reasons, the writ is denied and the petition dismissed, with costs in favor of the respondent.

So ordered.

Avanceña, C. J., Street, Villamor, Romualdez, and Villa-Real, JJ., concur.

Ostrand, J., concurs in the result.

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