

APOLONIO G. MALENIZA, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 39632. November 15, 1989

Ponente: PARAS, J.

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PARAS, J.:

The only issue in this case is whether or not an elective official may be entitled, in the event that he be separated from the service, to the commutation of his vacation and sick leave.

The petitioner, Apolonio G. Maleniza, was twice elected Provincial Governor of Camarines Sur, and he served his term of office from 1960-1967. He, however, lost in his reelection bid in the 1967 elections.

In 1972, he filed an application for the commutation of his alleged accumulated vacation and sick leave effective January 1, 1968 to December 11, 1968, or for a total of 160 days.

The respondent Commission on Audit denied the application ruling in part, as follows:

As maybe seen in the aforementioned GAO Provincial Circular No. 24, the Secretary of Justice has already opined that only appointive officials and employees of the government fall within the intendment of the provisions of Section 286 of the Revised Administrative Code; that it was not the legislative intent, in enacting Sections 284 and 285 of the same Code, to extend leave privilege to non-appointive employees; and that the Manuel case, *supra*, may not be cited as binding and applicable precedent in the adjudication of claims of any and all elective officials for the commutation of vacation and sick leave. It may be mentioned, in this connection, that the aforecited opinion of the Secretary of Justice has invariably been adopted by this Commission and cited as basis for its decisions on similar claims filed by elective officials. It bears noting that subsequent actions taken by the Civil Service Commission and the Supreme Court in similar cases tend to sustain and uphold such decisions. Thus, in the case of former Congressman Lucas Paredes, the Acting Commissioner of Civil Service signified his acquiescence to the stand taken by this Commission that in the absence of a provision of law explicitly granting leave privileges to the members of Congress, Mr. Paredes' claim for commutation of his alleged vacation and sick leave credits may not be favorably acted upon. And in the cases of former Councilor Esteban Rosales of Naga City and former Vice Mayor Mateo V. Tupaz of Butuan City, their respective petitions for review of the decision of this Commission disallowing their similar claims were denied by the Supreme Court for lack of merit in its Resolutions dated March 15, 1974 and February 5, 1974, respectively. (*Esteban Rosales vs. Commission on Audit*, G.R. No. L-37777 *Mateo v. Tupaz vs. Commission on Audit* G.R. No. 37959). In effect, therefore, the Supreme Court struck down as worthless the proposition that elective officials are embraced within the coverage of the Leave Law (Sec. 284, et seq., Revised Adm. Code) and that the Manuel decision favorably applies to their claim for commutation of their alleged leave.

Upon all the foregoing premises, it is regretted that your aforesaid claim has to be, as it is hereby, denied.

(Rollo, pp. 40-41)

From the aforesaid ruling, petitioner filed a motion for reconsideration. The same was denied by respondent

Commission ruling that -

With respect to the Manuel case, supra, it is, as it has been, the considered view of this Commission that the said case may not, for audit purposes, be used as the sole basis of claims for commutation of leave by elective officials. By itself alone, the case is inadequate to support claims of this nature. For, apart and aside from it, there are other audit requirements that must needs be met by the claimant. Such a stand finds support in the aforecited opinion of the Secretary of Justice to the effect that the Manuel case may not be cited as binding and applicable precedent in the adjudication of claims of any and all elective officials for the commutation of vacation and sick leave. In other words, an elective official claiming leave commutation cannot rely solely on the Manuel case; he must first show indubitably under what provision of law he has earned and accumulated leave before he can be entitled to the commutation thereof, whereupon he need not even invoke the Manuel decision for his right to such commutation would become a matter of law.

(p. 44, Rollo)

Hence, this petition.

Petitioner contends that the decision of the Commission on Audit is not in accord with the decision of this Court in the case of Benito C. Manuel vs. Gen. Auditing Office (L-28952, Dec. 29, 1971, 42 SCRA 660).

The petition is without merit. Consequently, the same must be dismissed.

In this jurisdiction, the granting and enjoyment of leave of absence of government officers and employees are governed by Chapter 13, entitled Leave Law, of the Revised Administrative Code. Specifically mentioned therein as entitled to leave privileges are justices of the Supreme Court and the Court of Appeals, judges, teachers and, in general, employees of the national, provincial, city and municipal governments. Leave is based on attendance in accordance with the forty hours-a-week law to give respite when needed and without loss of pay to officers and employees whose hours of work are fixed. Thus, part-time officers and employees are not entitled to leave. (Sec. 15, Rule XVI, Revised Civil Service Rules)

There is no question that justices, judges and teachers are appointive officers and employees. There are reasons to believe, however, that the other employees referred to in the Leave Law are likewise appointive employees of the national and local governments. Firstly, Section 286 of the Revised Administrative Code, as amended, which provides when vacation and sick leave may be taken, speaks, in its second proviso, of the commutation of the salary during the vacation and sick leave of any appointed officer or employee, etc. Mention may be made, in this connection, of the fact that prior to the amendment of this section by Republic Act No. 611, the underlined phrase was worded as follows: "any permanently appointed officer or employee," thus strongly indicating the legislative intent that whether before or after such amendment, only appointive officers or employees are covered by the provisions of said section. Secondly, under Section 284 of the same Code, employees may be granted leave privileges only after six months' continuous, faithful and satisfactory service. This six-month period obviously pertains to the probationary period of six months referred to in the Civil Service Law which appointive employees must serve following their appointment in order that they may acquire permanent status [Sec. 24(b) RA 2260, as amended], a requirement which does not apply to elective officials who serve for a fixed term commencing upon their assumption of office without regard to their status.

The Manuel case resolved affirmatively the issue of whether or not an elective official, in this case, a Municipal Mayor, may be entitled, in the event of voluntary retirement or separation from the service thru no fault of his own, to the commutation of vacation and sick leave. This ruling was anchored on the following statutory provisions:

(a) Section 286 of the Revised Administrative Code, as amended by Republic Act 1081, which provides that

"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 the succeeding year 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 sick leave to his credit; Provided that the total vacation leave and sick leave that can accumulate to the credit of any officer or employee shall, in no case, exceed 10 months x x x"; and

(b) Section 12(c) of Commonwealth Act 186 as inserted by Republic Act 1616 and amended by Republic Act 4968, which allows the retirement of any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least twenty (20) years, and the cumulation of his unused vacation and sick leave based on the highest rate received which he may have to his credit at the time of his retirement under the cited act.

But a reading of Section 286 will reveal that the provision is intended only to cover appointive officers, employees, teachers or laborers of the government. Section 12(c) of Commonwealth Act 186, as inserted by Republic Act 1616 was amended by Republic Act 4968 on June 17, 1967. It was only on this date that retirement benefits were extended to elective officials. However, the extension of retirement benefits in favor of elective officials does not automatically entitle the latter to the commutation of "unused vacation and sick leave" since such privilege would depend on the existence of a law expressly granting elective officials leave privileges. This is evident from the last sentence of Section 12 (c) of Commonwealth Act 186, as amended, which reads as follows:

"Officials and employees under this Act shall be entitled to the Commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of their retirement."

In other words, before a retiring official or employee may be entitled to commutation of his vacation and sick leave which he may have to his credit at the time of his retirement, he must first show entitlement to such leave credit because in the absence of such entitlement, he enjoys no such right of commutation for there is nothing to commute. There must be a law authorizing such privilege. But there is no such statutory authority insofar as elective officials are concerned except Sec. 2187 which authorizes sick leave of mayors only. The petitioner in the case at bar, who was a provincial governor is not covered. The reason is obvious. If it were the intention of the law to authorize accumulation of leave to provincial governors, it could have so easily provided under the chapter governing provincial governors. The absence of any such authority gives rise to only one conclusion and that is, that all elective officials, with the exception of municipal mayors, are not entitled to commutation of leave privileges since there is no law authorizing said elective officials to earn and accumulate leave credits. The Manuel case, therefore, does not apply in this case, because Manuel was a Municipal Mayor.

Another consideration which argues against the inclusion of elective officers among those entitled to leave benefit is that they belong to the so-called "exempt service". Consequently, they are not required or bound to observe the prescribed government office hours as in the case of appointive officers who are so required under the Civil Service Rules which were promulgated by the Commissioner of Civil Service to implement the Civil Service Law in the exercise of his rule-making power. (Sec. 16, *ibid*; Rule XV, Civil Service Rules). Thus, as a general proposition, their entitlement 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 Form No. 48 (Daily Time Record) or punching the Bundy clock. So, whether or not absent from office, their right to receive salary is not adversely affected.

WHEREFORE, the petition is DISMISSED and the decision/ruling of respondent Commission on Audit is AFFIRMED.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

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