

FELIX V. TENORIO, PETITIONER-APPELLEE, VS. THE COMMISSIONER, COMMISSION ON AUDIT AND THE PROVINCIAL AUDITOR OF CAMARINES NORTE, RESPONDENTS-APPELLANTS.

G.R. No. 51282, May 10, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

The issue raised in this case involves the question of whether or not under existing laws the municipal mayor is entitled to earn accumulated leave credits and to a commutation thereof to which this Court has recently given a negative answer in a very identical case.

On August 27, 1976, petitioner-appellee Felix V. Tenorio filed a petition for mandamus before the Court of First Instance of Camarines Norte praying that a writ of Mandamus be issued to compel respondents, the Commissioner, Commission on Audit and the Provincial Auditor of Camarines Norte "to pre-audit and/or to audit" petitioner's municipal voucher covering the money value of his terminal and/or cumulative leave in the total amount of P7,500.00, representing his alleged ten (10) months accumulated terminal leave, as mayor of Labo, Camarines Norte for the period from January 1, 1952 to December 31, 1971, which claim was approved by Minister Jose A. Roño of the Ministry of Local Government and Community Development on September 1, 1976, subject to availability of funds and to the usual auditing requirements.

Respondents filed their answer claiming that under existing law petitioner as municipal mayor is not entitled to leave privileges and that no elective official (including municipal mayors) has any leave to commute, there being no law authorizing earning and accumulation of leave credits.

On April 25, 1978, after due hearing the lower court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, the respondent Commissioner, Commission on Audit and Provincial Auditor Antero Bolvar of the Province of Camarines Norte are hereby ordered and directed to audit and/or pre-audit the municipal voucher in the name of the petitioner and to authorize the payment therefor."

On January 19, 1978, respondents, through the Solicitor General, appealed aforesaid decision to the Court of Appeals, which, however, certified the appeal to this Court per its Resolution of July 31, 1979, the issue raised being purely question of law.

Petitioner-appellee argues that the lower court did not err in holding that Section 286 of the Revised Administrative Code in relation to Republic Act No. 4968, amending Commonwealth Act 186 (Retirement Law) are applicable in the case at bar relying as precedent the case of Benito C. Manuel vs. GAO, G.R. No. L-28952, December 29, 1971.

Respondents-appellants, on the other hand, maintains that there is no specific provision of law authorizing leave for elective officials in general, and municipal mayors in particular; that neither Section 286 of the Revised Administrative Code, nor Section 6 of Republic Act 4968 is applicable.

We find for respondents-appellants, reiterating our decision in *Conrado V. Macatangay vs. the Chairman of Commission on Audit*, 117 SCRA 231 (September 30, 1982), to which We have made reference at the threshold of this decision. In that case, We categorically ruled that:

"Indeed, there is no specific provision of law authorizing leave privileges, nor commutation thereof, for elective officials, in general, and municipal mayors in particular, as in the instant case. . . .

"Firstly, a perusal of Section 286 of the Revised Administrative Code (which actually refers to leave privileges granted under Sections 284 and 285-A of the same Code) will readily show that its provisions are intended only for appointed officers, employees, teachers or laborers of the Government. This intent is clearly manifest from a reading of Sections 284 and 285-A of the Revised Administrative Code which, together with Section 286, are found in Chapter 13 of the said Code, under the title "Leave Law". Secondly, Section 284 explicitly allows leave privileges to employees only "after at least six months" continuous, faithful and satisfactory service," a Civil Service requirement to the effect that an appointive employee must serve a probationary period of six months following his original appointment, in order to acquire permanent status. This requirement does not apply to elective officials who serve for a fixed term commencing upon their assumption of office without regard to their status. . . .

"Section 12(c) of Commonwealth Act No. 186 is likewise inapplicable. This provision of law does not also grant a leave privilege. Although it included elective officials as among those allowed to retire thereunder, nevertheless, the extension of retirement benefits to elective officials did not automatically entitle the latter to commutation of unused vacation and sick leave. Such pecuniary privilege would depend on the existence of a law expressly and categorically granting them leave privileges as what was envisioned in the Leave Law. . . .

"The case of *Manuel vs. General Auditing Office*, supra, also invoked by petitioner to support his claim for commutation of his alleged terminal leave, may not, for audit purposes, be used as the sole basis of claims for commutation of leave by any elective official. Any claimant thereto must first show undoubtedly under what provision of law he has earned and accumulated leave before he can be entitled to the commutation thereof. In fine, no claim for commutation of leave filed by any elective official shall be allowed in audit in the absence of a showing that the claimant has previously earned and accumulated leave to his credit pursuant to a law granting him leave privileges."

IN VIEW OF THE FOREGOING, the decision of the lower court dated April 25, 1978, is hereby SET ASIDE. No pronouncement as to costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

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