

MAYNARD R. PERALTA, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

G.R. No. 95832. August 10, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

Petitioner was appointed Trade-Specialist II on 25 September 1989 in the Department of Trade and Industry (DTI). His appointment was classified as "Reinstatement/ Permanent". Before said appointment, he was working at the Philippine Cotton Corporation, a government-owned and controlled corporation under the Department of Agriculture.

On 8 December 1989, petitioner received his initial salary, covering the period from 25 September to 31 October 1989. Since he had no accumulated leave credits, DTI deducted from his salary the amount corresponding to his absences during the covered period, namely, 29 September 1989 and 20 October 1989, inclusive of Saturdays and Sundays. More specifically, the dates of said absences for which salary deductions were made, are as follows:

1. 29 September 1989 – Friday
2. 30 September 1989 – Saturday
3. 01 October 1989 – Sunday
4. 20 October 1989 – Friday
5. 21 October 1989 – Saturday
6. 22 October 1989 - Sunday

Petitioner sent a memorandum to Amando T. Alvis (Chief, General Administrative Service) on 15 December 1989 inquiring as to the law on salary deductions, if the employee has no leave credits.

Amando T. Alvis answered petitioner's query in a memo-randum dated 30 January 1990 citing Chapter 5.49 of the Handbook of Information on the Philippine Civil Service which states that "when an employee is on leave without pay on a day before or on a day immediately preceding a Saturday, Sunday or Holiday, such Saturday, Sunday, or Holiday shall also be without pay (CSC, 2nd Ind., February 12, 1965)."

Petitioner then sent a letter dated 20 February 1990 addressed to Civil Service Commission (CSC) Chairman Patricia A. Sto. Tomas raising the following question:

"Is an employee who was on leave of absence without pay on a day before or on a day immediately preceding a Saturday, Sunday or Holiday, also considered on leave of absence without pay on such Saturday, Sunday or Holiday?"[1]

Petitioner in his said letter to the CSC Chairman argued that a reading of the General Leave Law as contained in the Revised Administrative Code, as well as the old Civil Service Law (Republic Act No. 2260), the Civil Service

Decree (Presidential Decree No. 807), and the Civil Service Rules and Regulations fails to disclose a specific provision which supports the CSC rule at issue. That being the case, the petitioner contended that he cannot be deprived of his pay or salary corresponding to the intervening Saturdays, Sundays or Holidays (in the factual situation posed), and that the withholding (or deduction) of the same is tantamount to a deprivation of property without due process of law.

On 25 May 1990, respondent Commission promulgated Resolution No. 90-497, ruling that the action of the DTI in deducting from the salary of petitioner, a part thereof corresponding to six (6) days (September 29, 30, October 1, 20, 21, 22, 1989) is in order.[2] The CSC stated that:

"In a 2nd Indorsement dated February 12, 1965 of this Commission, which embodies the policy on leave of absence without pay incurred on a Friday and a Monday, reads:

'Mrs. Rosalinda Gonzales is not entitled to payment of salary corresponding to January 23 and 24, 1965, Saturday and Sunday, respectively, it appearing that she was present on Friday, January 22, 1965 but was on leave without pay beginning January 25, the succeeding Monday. It is the view of this Office that an employee who has no more leave credit in his favor is not entitled to the payment of salary on Saturdays, Sundays or holidays unless such non-working days occur within the period of service actually rendered.' (Emphasis supplied)

The rationale for the above ruling which applies only to those employees who are being paid on monthly basis, rests on the assumption that having been absent on either Monday or Friday, one who has no leave credits, could not be favorably credited with intervening days had the same been working days. Hence, the above policy that for an employee on leave without pay to be entitled to salary on Saturdays, Sundays or holidays, the same must occur between the dates where the said employee actually renders service. To rule otherwise would allow an employee who is on leave of absence (sic) without pay for a long period of time to be entitled to payment of his salary corresponding to Saturdays, Sundays or holidays. It also discourages the employees who have exhausted their leave credits from absenting themselves on a Friday or Monday in order to have a prolonged weekend, resulting in the prejudice of the government and the public in general."[3]

Petitioner filed a motion for reconsideration and in Resolution No. 90-797, the respondent Commission denied said motion for lack of merit. The respondent Commission in explaining its action held:

"The Primer on the Civil Service dated February 21, 1978, embodies the Civil Service Commission rulings to be observed whenever an employee of the government who has no more leave credits, is absent on a Friday and/or a Monday is enough basis for the deduction of his salaries corresponding to the intervening Saturdays and Sundays. What the Commission perceived to be without basis is the demand of Peralta for the payment of his salaries corresponding to Saturdays and Sundays when he was in fact on leave of absence without pay on a Friday prior to the said days. A reading of Republic Act No. 2260 (sic) does not show that a government employee who is on leave of absence without pay on a day before or immediately preceding Saturday, Sunday or legal holiday is entitled to payment of his salary for said days. Further, a reading of Senate Journal No. 67 dated May 4, 1960 of House Bill No. 41 (Republic Act No. 2625) reveals that while the law-excludes Saturdays, Sundays and holidays in the computation of leave credits, it does not, however, include a case where the leave of absence is without pay. Hence, applying the principle of *inclusio unius est exclusio alterius*, the claim of Peralta has no merit. Moreover, to take a different posture would be in effect giving more premium to employees who are frequently on leave of absence without pay, instead of discouraging them from incurring further absence without pay."[4]

Petitioner's motion for reconsideration having been denied, petitioner filed the present petition.

What is primarily questioned by the petitioner is the validity of the respondent Commission's policy mandating salary deductions corresponding to the intervening Saturdays, Sundays or Holidays where an employee without

leave credits was absent on the immediately preceding working day.

During the pendency of this petition, the respondent Commission promulgated Resolution No. 91-540 dated 23 April 1991 amending the questioned policy, considering that employees paid on a monthly basis are not required to work on Saturdays, Sundays or Holidays. In said amendatory Resolution, the respondent Commission resolved "to adopt the Policy that when an employee, regardless of whether he has leave credits or not, is absent without pay on day immediately preceding or succeeding Saturday, Sunday or holiday, he shall not be considered absent on those days." Memorandum Circular No. 16 Series of 1991 dated 26 April 1991, was also issued by CSC Chairman Sto. Tomas adopting and promulgating the new policy and directing the Heads of Departments, Bureaus and Agencies in the national and local governments, including government-owned or controlled corporations with original charters, to oversee the strict implementation of the circular.

Because of these developments, it would seem at first blush that this petition has become moot and academic since the very CSC policy being questioned has already been amended and, in effect, Resolutions No. 90-497 and 90-797, subject of this petition for certiorari, have already been set aside and superseded. But the issue of whether or not the policy that had been adopted and in force since 1965 is valid or not, remains unresolved. Thus, for reasons of public interest and public policy, it is the duty of the Court to make a formal ruling on the validity or invalidity of such questioned policy.

The Civil Service Act of 1959 (R.A. No. 2260) conferred upon the Commissioner of Civil Service the following powers and duties:

"Sec. 16 (e) with the approval by the President to prescribe, amend and enforce suitable rules and regulations for carrying into effect the Provisions of this Civil Service Law, and the rules prescribed pursuant to the provisions of this law shall become effective thirty days after publication in the Official Gazette;

x x x x x

(k) To perform other functions that properly belong to a central personnel agency."[5]

Pursuant to the foregoing provisions, the Commission Promulgated the herein challenged policy. Said policy was embodied in a 2nd Indorsement dated 12 February 1965 of the respondent Commission involving the case of a Mrs. Rosalinda Gonzales. The respondent Commission ruled that an employee who has no leave credits in his favor is not entitled to the payment of salary on Saturdays, Sundays or Holidays unless such non-working days occur within the period of service actually rendered. The same policy is reiterated in the Handbook of Information on the Philippine Civil Service.[6] Chapter Five on leave of absence provides that:

"5.51 When intervening Saturday, Sunday or holiday considered as leave without pay - when an employee is on leave without pay on a day before or on a day immediately preceding a Saturday, Sunday or holiday, such Saturday, Sunday or holiday shall also be without pay. (CSC, 2nd Ind., Feb. 12, 1965)."

It is likewise illustrated in the Primer on the Civil Service[7] in the section referring to Questions and Answers on Leave of Absences, which states the following:

"27. How is leave of an employee who has no more leave credits computed if:

- (1) he is absent on a Friday and the following Monday?
- (2) if he is absent on Friday but reports to work the following Monday?
- (3) if he is absent on a Monday but present the preceding Friday?

-(1) He is considered on leave without pay for 4 days covering Friday to Monday;

-(2) He is considered on leave without pay for 3 days from Friday to Sunday;

-(3) He is considered on leave without pay for 3 days from Saturday to Monday."

When an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law; and the administrative interpretation of the law is at best advisory, for it is the courts that finally determine what the law means.[8] It has also been held that interpretative regulations need not be published.[9]

In promulgating as early as 12 February 1965 the questioned policy, the Civil Service Commission interpreted the provisions of Republic Act No. 265 (which took effect on 17 June 1960) amending the Revised Administrative Code, and which stated as follows:

"SECTION 1. Sections two hundred eighty-four and two hundred eighty-five-A of the Administrative Code, as amended, are further amended to read as follows:

'SEC. 284. After at least six months' continues (sic) faithful, and satisfactory service, the President or proper head of department, or the chief of office in the case of municipal employees may, in his discretion, grant to an employee or laborer, whether permanent or, temporary, of the national government, the provincial government, the government of a chartered city, of a municipality, of a municipal district or of government-owned or controlled corporations other than those mentioned in Section two hundred sixty-eight, two hundred seventy-one and two hundred seventy-four hereof, fifteen days vacation leave of absence with full pay, exclusive of Saturdays, Sundays and holidays, for each calendar year of service.

'SEC. 285-A. In addition to the vacation leave provided in the two preceding sections each employee or laborer, whether permanent or temporary, of the national government, the provincial government, the government of a chartered city, of a municipality or municipal district in any regularly and specially organized province, other than those mentioned in Section two hundred sixty-eight, two hundred seventy-one and two hundred seventy-four hereof, shall be entitled to fifteen days of sick leave for each year of service with full pay, exclusive of Saturdays, Sundays and holidays: Provided, That such sick leave will be granted by the President, Head of Department or independent office concerned, or the chief of office in case of municipal employees, only on account of sickness on the part of the employee or laborer concerned or of any member of his immediate family.'"

The Civil Service Commission in its here questioned Resolution No. 90-797 construed R.A. 2625 as referring only to government employees who have earned leave credits against which their absences may be charged with pay, as its letters speak only of leaves of absence with full pay. The respondent Commission ruled that a reading of R.A. 2625 does not show that a government employee who is on leave of absence without pay on a day before or immediately preceding a Saturday, Sunday or legal holiday is entitled to payment of his salary for said days.

Administrative construction, if we may repeat, is not necessarily binding upon the courts. Action of an administrative agency may be disturbed or set aside by the judicial department if there is an error of law, or, abuse of power or lack of jurisdiction or grave abuse of discretion clearly conflicting with either the letter or the spirit of a legislative enactment.[10]

We find this petition to be impressed with merit.

As held in *Hidalgo vs. Hidalgo*: [11]

"....where the true intent of the law is clear that calls for the application of the cardinal rule of statutory construction that such intent or spirit must prevail over the letter thereof, for whatever is within the spirit of a statute is within the statute, since adherence to the letter would result in absurdity, injustice and contradictions and would defeat the plain and vital purpose of the statute."

The intention of the legislature in the enactment of R.A. 2625 may be gleaned from, among others, the sponsorship speech of Senator Arturo M. Tolentino during the second reading of House Bill No. 41 (which became R.A. 2625). He said:

"The law actually provides for sick leave and vacation leave of 15 days each year of service to be with full pay. But under the present law, in computing these periods of leaves, Saturday, Sunday and holidays are included in the computation so that if an employee should become sick and absent himself on a Friday and then he reports for work on a Tuesday, in the computation of the leave the Saturday and Sunday will be included, so that he will be considered as having had a leave of Friday, Saturday, Sunday and Monday, or four days.

"The purpose of the present bill is to exclude from the computation of the leave those days, Saturdays and Sundays, as well as holidays, because actually the employee is entitled not to go to office during those days. And it is unfair and unjust to him that those days should be counted in the computation of leaves." [12]

With this in mind, the construction by the respondent Commission of R.A. 2625 is not in accordance with the legislative intent. R.A. 2625 specifically provides that government employees are entitled to fifteen (15) days vacation leave of absence with full pay and fifteen (15) days sick leave with full pay, exclusive of Saturdays, Sundays and Holidays in both cases. Thus, the law speaks of the granting of a right and the law does not provide for a distinction between those who have accumulated leave credits and those who have exhausted their leave credits in order to enjoy such right. *Ubi lex non distinguit nec nos distinguere debemus*. The fact remains that government employees, whether or not they have accumulated leave credits, are not required by law to work on Saturdays, Sundays and Holidays and thus they can not be declared absent on such non-working days. They cannot be or are not considered absent on non-working days; they cannot and should not be deprived of their salary corresponding to said non-working days just because they were absent without pay on the day immediately prior to, or after said non-working days. A different rule would constitute a deprivation of property without due process.

Furthermore, before their amendment by R.A. 2625, Sections 284 and 285-A of the Revised Administrative Code applied to all government employees without any distinction. It follows that the effect of the amendment similarly applies to all employees enumerated in Sections 284 and 285-A, whether or not they have accumulated leave credits.

As the questioned CSC policy is here declared invalid, we are next confronted with the question of what effect such invalidity will have. Will all government employees on a monthly salary basis, deprived of their salaries corresponding to Saturdays, Sundays or legal holidays (as herein petitioner was so deprived) since 12 February 1965, be entitled to recover the amounts corresponding to such non-working days?

The general rule vis-a-vis legislation is that an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed. [13]

But, as held in *Chicot County Drainage District vs. Baxter State Bank*: [14]

"x x x. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such, determination is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects - with respect to particular relations, individual and corporate; and particular conduct, private and official."

To allow all the affected government employees, similarly situated as petitioner herein, to claim their deducted

salaries resulting from the past enforcement of the herein invalidated CSC policy, would cause quite a heavy financial burden on the national and local governments considering the length of time that such policy has been effective. Also, administrative and practical considerations must be taken into account if this ruling will have a strict retrospective application. The Court, in this connection, calls upon the respondent Commission and the Congress of the Philippines, if necessary, to handle this problem with justice and equity to all affected government employees.

It must be pointed out, however, that after CSC Memorandum Circular No. 16 Series of 1991 - amending the herein invalidated policy - was promulgated on 26 April 1991, deductions from salaries made after said date in contravention of the new CSC policy must be restored to the government employees concerned.

WHEREFORE, the petition is GRANTED, CSC Resolutions No. 90-497 and 90-797 are declared NULL and VOID. The respondent Commission is directed to take the appropriate action so that petitioner shall be paid the amounts previously but unlawfully deducted from his monthly salary as above indicated. No costs.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

[1] Rollo, p. 32.

[2] Rollo, p. 37.

[3] Rollo, pp. 36-37.

[4] Rollo, pp. 46-47.

[5] P.D. No. 807, issued on 6 October 1975, in Article V, Section 9, specifically provides for the following powers and functions of the Civil Service Commission:

"Sec. 9(b) Prescribe, amend and enforce suitable rules and regulations for carrying into effect the provisions of this Decree. These rules and regulations shall become effective thirty days after publication in the Official Gazette or in any newspaper of general circulation;

(c) Promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government; and prescribe all forms for publications, examinations, appointments, reports, records and such other forms as may be required under this Decree."

[6] Published by the Personnel Officers Association of the Philippines, Inc. (POAP) and the Law Center of the University of the Philippines System, Revised Edition, 1978

[7] February 21, 1978

[8] Victorias Milling Co., Inc. vs. Social Security Commission, 114 Phil. 555 (1962)

[9] Tañada vs. Tuvera, No. L-63915, December 29, 1986, 146 SCRA 446

[10] Sagun vs. PHHC, G.R. NO. L-44738, June 22, 1988, 162 SCRA 411

[11] G.R. No. L-25326, May 29, 1970, 33 SCRA 105

[12] Senate Journal No. 67, Vol. III, May 4, 1960, H. No. 41

[13] Municipality of Malabang, etc., et al. vs. Benito, et al., G.R. No. L-28113, March 28, 1969, 27 SCRA 533 citing Norton vs. Shelby Count, 118 U.S. 425 (1886)

[14] 308 U.S. 371 (1940) cited in Mun. of Malabang vs. Benito, supra.

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