

ARBOSO, Pedro M.

Re: Leave Credits of Elective Officials

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RESOLUTION NO: 991986

Pedro M. Arboso, former Mayor, Municipality of Capoocan, Leyte, seeks the clarification of the Civil Service Commission Memorandum Circular No. 41 series of 1998, (CSC MC #41 s. 1998), particularly Section 5, Rule XVI thereof.

Pertinent portions of his letter dated April 8, 1999, read, as follows:

"This has reference to Memorandum Circular No. 41, Series of 1998, issued on December 24, 1998 particularly on Rule XVI Section 5 of the said memorandum which states that, Local Elective Officials started to be entitled to leave privileges effective May 12, 1983 only pursuant to Batasan Pambansa 337. However said leave was only commutative but not cumulative. This means that local effective officials who did not commute said leave during the year earned are deemed to have a forfeited the same.

"I am an elective official of Capoocan, Leyte, since 1964 as Municipal Councilor up to the end of my term as Municipal Mayor last June 30, 1998, with a continuous public service even during the time of EDSA revolution (Service record is hereto attached). I did not claim my terminal leave from 1964 to 1991 because of my interrupted term of office as Councilor, Vice-Mayor and Mayor respectively. But when I am about to claimed [sic] my terminal leave sometime on (sic) January 1999, I was informed by our Municipal Budget officer that a memorandum circular from the Civil Service Commission regarding leave privileges has arrive in her office thereby affected me so much and denied my claim for the said terminal Leave from 1983 to 1991 pursuant to memorandum Circular No. 41 series of 1998.

"I have been contemplating that upon my retirement from public service after 34 long years of serving my constituents of Caoocan, Leyte. I will be enjoying the benefits [sic] due to me and possibly put-up a business but only to find out that said benefits dies out.

"In this regard, I am appealing to you Chairman de Leon to reconsider the decision for humanitarian and financial reasons and besides the Local Government Unit of Capoocan had already allocated an amount for my Terminal Leave from the General Fund Annual Budget of 1999."

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Records show that Arboso rendered service in the Municipality of Capoocan, Leyte, as follows:

Service	Position	Salary
11/3/64 to 01/02/80	Municipal Councilor	P 50.00/session P 150.00/session
02/02/80 to 01/02/88	Vice Mayor	P 150.00/session P 200.00/session
03/03/88 to 12/30/89	Mayor	P 37,292.00/annum
01/01/90 to 12/30/90	Mayor	P 41,328.00/annum
01/01/91 to 12/30/91	Mayor	P 74,932.00/annum
01/01/92 to 12/30/93	Mayor	P 106,523.52/annum
01/01/94 to 12/30/94	Mayor	P 116,892.00/annum
01/01/95 to 12/30/95	Mayor	P 125,292.00/annum
01/01/96 to 12/30/96	Mayor	P 137,292.00/annum
01/01/97 to 12/30/97	Mayor	P 182,508.00/annum
01/01/98 to 06/30/98	Mayor	P182,508.00/annum

Relevant to the issue in the instant case is Section 5, Rule XVI of the Revised Rules on Leaves (CSC MC No. 41 series of 1998, dated December 24, 1998), pertinent portions of which read as follows:

"Sec. 5. Leave credits of local elective officials. - Local elective officials started to be entitled to leave privileges effective May 12 1983 only pursuant to Batas Pambansa 337 (Local Government Code of 1983). However, such leave was commutative but not cumulative. This means that local elective officials who did not commute said leave during the year earned are deemed to have forfeited the same.

"However, starting January 1, 1992, local elective officials shall be entitled to leave privileges as those enjoyed by appointive local officials, including accumulation and commutation thereof." (Emphasis supplied)

At the outset, it should be stressed that the issue of whether or not local elective officials are entitled to the accumulation and commutation of their leave privileges prior to BP 337 [1983] has already been settled by the court in the negative. The law previous to BP 337 did not provide for the same (**De Villa vs. Mathay [1988], 161 SCRA 290**).

It can also be recalled that the Commission, in the case of **Elpidio Fermin Sr. (CSC Resolution No. 96-3989 dated June 26, 1996)**, ruled that, starting May 12, 1983, the date of effectivity of BP 337, local elective officials are entitled to leave credits including their commutation and accumulation, like appointive officials and employees in the government service. This finds support in **Section 47 of Batas Pambansa 337 (Local Government Code of 1983)**, which provides as follows:

"Sec. 47. All elective local government officials shall be entitled to whatever leave credits are granted to appointive officials under existing laws, and the commutation of the money value thereof." (Underscoring supplied)

However, not all elective officials were entitled to said privileges. Only those elective local government officials receiving compensation may enjoy commutation and accumulation of their leave privileges. This was elucidated by the Commission in **Rufino J. Mamonong (CSC Resolution No. 93-2189 dated June 21, 1983)**, where it held as follows:

"The above provision implies that all local elective officials including Punong Barangay/Barangay Captain are entitled to leave privileges such as sick leave, vacation leave, maternity leave and other leaves which are granted to appointive officials.

"However, Section 3 of Rule XV of the Implementing Rules and Regulations of Batas Pambansa 337 (BP # 337: The Local Government Code of 1983) further provides:

'Sec. 3. Leave Privileges of Elective Local Officials. - All elective local government officials are entitled to leave privileges, including commutation of their leave under the following conditions:

'(a) Those paid on salary basis shall be entitled to leave with pay in accordance with Section 4 of this Rule;

'(b) Those paid on per diem basis shall be entitled to the money value corresponding to the number of session held during their leave of absence ; and,

'(c) Those serving without compensation are also entitled to leave privileges but without pay. '(Emphasis supplied)

*"Furthermore, **Memorandum Circular No. 83-21 dated June 6, 1983** of the then Ministry of the Local Government provides:*

'1. Pursuant to Section 47 and 53 of BP 337, all elective officials are entitled to leave privileges including commutations of these leaves under the following conditions:

`(a) Those with regular salaries will enjoy their leave with pay;

`(b) Those whose salaries and/or compensations are computed on per diem basis shall enjoy the money value of their leaves based on whatever are legally due them during the period of leave applied or enjoyed; and,

`(c) Those without pay are entitled to leave privileges but however, there shall be no commutation of the money value of their leaves.'

"From that aforequoted provisions, it is clear that while a Punong Barangay/Barangay Captain is entitled to vacation and sick leave, it does not allow commutation thereof. Such leave privileges cannot be monetized considering the fact that a Barangay Captain does not receive compensation. The rules and regulations recognized the leave privileges of those local elective officials serving without compensation but does not however allow the commutation of the money value thereof. Hence, leave credits earned by Mamonong during his tenure as Barangay Captain which were not utilized in the years earned are already deemed forfeited and considered lost." (Underscoring ours)

Notwithstanding the foregoing, the Commission is of the view that local elective officials who are entitled to receive compensation shall leave privileges with pay or the commutation thereof. And the moment they earned leave credits, their right to commute is monetary value accrues and becomes not merely an inchoate but substantive one. To disregard their claim to the money value of their earned leaves, to which they are entitled, or to declare the same forfeited shall amount to the outright denial of their vested right to receive the same. This cannot be done without seriously violating the constitutionally guaranteed right of a person to his property without due process of law.

The fact that Arboso was merely paid on a per session basis from May 12, 1983 to January 2, 1988 does not deprive him of the monetary value of his

accumulated leave for the said period. Records show that he rendered service continuously which necessarily entails attending to the call his constituents even beyond the prescribed working hours, without any remuneration.

*Although the payment for the services he has rendered from May 12, 1983 to January 2, 1988 was labeled as on a per session basis, considering the above premises, the same should be construed as his compensation. What ought to be controlling should be the nature of the remuneration rather than the label attached to it. This principle was explained by the Supreme Court in the case of **Government Service Insurance System vs. Civil Service Commission (245 SCRA 179 [1995])**, where it ruled as follows:*

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"While what respondents Belo and Baradero received were denominated as 'per diem', the amounts received were actually in the nature of compensation or pay. What should therefore be considered as controlling in both cases would be the nature of remuneration, not the label attached to it.

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"On the other hand, a per diem could rightfully be considered a compensation or remuneration attached to an office. Under the circumstances obtaining in the case of respondent Belo the per diems were in the nature of compensation or enumeration for her services as Vice Governor of the Province of Capiz, rather than as reimbursement for incidental expenses incurred while away from her home base. In connection with this, it is important to lay stress to the following facts:

'1. Petitioner rendered service to the government continuously from January 25, 1972 to February 1, 1988 as Vice Governor of the Province of Capiz. During the portion of a holdover-period, i.e. from December 31, 1976 to January 11, 1979, payment of her services to the government was through per diems for every regular or special session of the Sangguniang Panlalawigan attended.

'2 The CSC noted that: [F]ormer Vice Governor Belo was on full time basis when she served ²⁴/₂₄ on a hold-over capacity ²⁴/₂₄. As such provincial official she is (sic) legally and factually on call by the provincial people and the province more than eight hours a day, or at any time of the day beyond the prescribed working hours.

'3 She received no other forms of remuneration during the disputed period." (Emphasis supplied)

Considering that Arboso served as Councilor, Vice Mayor and Mayor when BP 337 took effect and that he received compensation for services rendered as elective official, he is, therefore, entitled to receive the monetary value of his accumulated leave corresponding to the period from the effectivity of BP 337 (May 12, 1983) to June 30, 1998 his last day of service.

WHEREFORE, the Commission holds and so rules that Pedro M. Arboso is entitled to the monetary value of his terminal leave.

Quezon City, SEPT. 03, 1999

(Sgd.) CORAZON ALMA G. DE LEON
Chairman

(Sgd.) THELMA P. GAMINDE
Commissioner

(Sgd.) JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(Sgd.) ARIEL G. RONQUILLO
Director III

CADL-RES/arboso/FPG/RVV/NDC-490-99