



MR - reland 10/12/12

PANGA-VEGA, Daisy B.
Re: Special Leave Benefit for Women
(Appeal)

Number: 120676
Promulgated: 09 OCT 2012

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DECISION

Daisy B. Panga-Vega, former Secretary of the Tribunal, House of Representatives Electoral Tribunal (HRET), Quezon City, appeals the HRET's Resolutions dated March 10, 2011 and March 24, 2011, directing her to consume her special leave benefit of two (2) months from February 7, 2011 to April 7, 2011 under the provision of the Magna Carta of Women and denying her request for reconsideration thereof, respectively.

The dispositive portion of the Resolution states, as follows:

"WHEREFORE, in light of the foregoing, the Tribunal DIRECTS Atty. Daisy B. Panga-Vega, Secretary of the Tribunal to CONSUME her approved two-month leave of absence.

"Officer Order No. 2011-02 dated February 7, 2011 designating Atty. Marie Grace Javier-Ibay as Acting Secretary remains."

The antecedent facts are, as follows:

On February 2, 2011, Panga-Vega requested authority to avail of fifteen (15) days Special Leave granted under R.A. No. 9710 otherwise known as the Magna Carta of Women particularly on the dates of February 7-11, 14-18, and 21-25, 2011, but not to exceed two (2) months, to undergo hysterectomy.

In a meeting held on February 3, 2011, HRET approved the request of Panga-Vega and she was granted special leave benefit from February 7, 2011 to April 7, 2011 but not exceeding two (2) months. Thereafter, the HRET, through Office Order No. 2011-02 dated February 7, 2011, designated Atty. Marie Grace T. Javier-Ibay to act as the Secretary of the Tribunal while Panga-Vega was on leave.

After one (1) month leave, Panga-Vega decided to return to work. Thus, in a letter dated March 7, 2011, she informed the Chairperson of HRET that she is re-assuming her duties and functions as the Secretary of the Tribunal. In the said letter, she attached her

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Medical Certificate dated March 5, 2011 issued by Dr. Lylah D. Reyes, her attending OB-Gynecologist. In the said letter, Panga-Vega claimed that she is physically fit to re-assume her work.

Acting on the letter of Panga-Vega, the Chairperson of HRET issued an Office Order No. 2011-04 dated March 8, 2011. The material portions of the Order stated, as follows:

"The March 5, 2011 Medical Certificate issued by Atty. Panga-Vega's attending ob-gynecologist states that there is 'no contraindication to resume light to moderate activities.' There is no categorical statement that she is 'physically fit to re-assume [her] work,' as Atty. Panga-Vega claims in her letter.

"Memorandum Circular No. 25, series of 2010 requires that 'upon the employee's return to work, she shall also present a medical certificate signed by her attending surgeon that she is physically fit to assume the duties of her position.'


"That there is 'no contraindication to resume light to moderate activities,' as stated in the Medical Certificate, does not necessarily mean that she is fit to discharge her functions as Secretary of the Tribunal, which is not merely clerical in nature, she having to 'oversee the performance of the line and support (adjudicatory and administrative) functions of the various divisions of the administrative staff.'

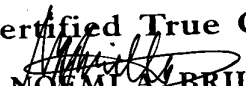
"At any rate, since Atty. Panga-Vega's request for special leave was granted by the Tribunal, her declaration that she is re-assuming her duties and functions should also be addressed by the Tribunal.

"In other words, since Office Order No. 2011-02 of the Chairperson designating the Deputy Secretary as the Acting Secretary from February 7, 2011 until April 7, 2011 was issued on the strength of the approval by the Tribunal, the revocation of the Order must thus be passed upon by the Tribunal.

"WHEREFORE, Office Order No. 2011-02 designating Atty. Marie Grace Javier-Ibay as Acting Secretary remains until the Tribunal acts on Atty. Panga-Vega's March 7, 2011 letter.

The Acting Secretary is accordingly directed to include in the Agenda March 10, 2011 the March 7, 2011 letter of Atty. Daisy B. Panga-Vega for appropriate action of the Tribunal."

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On March 9, 2011, upon receipt of the facsimile of the above stated Office Order, Panga-Vega sent a letter informing the Chairperson of HRET that her Ob-Gynecologist issued another Medical Certificate clarifying that as of her last check-up on March 6, 2011, she was already fit to report for work.

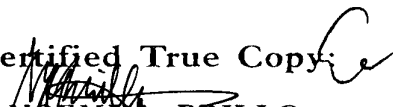
On March 10, 2011, the letter of Panga-Vega was further deliberated upon by the HRET. The excerpts of the minutes of the HRET meeting stated, as follows:

“Earlier today, March 10, 2011, the Chairperson of the Tribunal received a March 9, 2011 letter from Atty. Panga-Vega to which she attached a March 9, 2011 letter Medical Certificate signed by the same doctor that she was seen, examined and diagnosed on March 6, 2011 and that she was ‘fit to work.’

“The Tribunal is wondering why, when on March 7, 2011, a Monday, Atty. Panga-Vega submitted her above-said letter of even date, she attached a March 5, 2011 Medical Certificate stating that there is ‘no contraindication to resume light to moderate activities’; whereas today, March 10, 2011, she submitted a March 9, 2011 Medical Certificate stating that on March 6, 2011, Sunday, she was seen, examined and diagnosed as ‘fit to work.’ Why she did not state in her letter of March 7, 2011, a Monday, that she was examined the day before or on March 6, 2011 and that she was found to be already ‘fit to work’ draws the Tribunal to thinking that her March 9, 2011 Medical Certificate which, it bears reiteration, Atty. Panga-Vega submitted today, March 10, 2011, was secured after the release by the Chairperson’s Office Order No. 2011-04 dated March 8, 2011 on March 9, 2011.

“The members of the Tribunal recalled that Atty. Panga-Vega’s application for a leave of two months, effective February 7 until April 7, 2011, was approved by the Tribunal. Congresswoman Trisha Bonoan David in fact reiterated her thoughts, voiced during the meeting of February 3, 2011 when Atty. Panga-Vega’s application for leave was approved, about the need for a prolonged rest period following her ‘total hysterectomy.’

“Today the Tribunal created a panel of investigators, composed of representatives of each Member, preferably lawyers, to be chaired by the Director IV of the Chairperson to conduct an investigation on Atty. Panga-Vega’s alleged alteration or ‘tampering’ of the Minutes of the Meeting of the Tribunal No. 20 dated March 3, 2011 during which she

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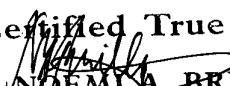
was not present. To Congresswoman David, the investigation, among other things, could subject Atty. Panga-Vega to more stress."

On March 14, 2011, Panga-Vega wrote another letter to the HRET explaining, as follows:

"The undersigned admits that in the afternoon of March 9, 2011, she requested from her Ob-Gynecologist, Dra. Lylah D. Reyes, another Medical Certificate of the same date, in order to effectively respond to the Office Order No. 2004-04 issued by the Honorable Chairperson, requiring the undersigned to show proof that the statement of Dra. Reyes in her March 5, 2011: 'no contraindication to resume light to moderate activities,' meant in layman's terms that the undersigned is already physically fit to re-assume her work as Secretary of the Tribunal. It was unfortunate, however, that Dra. Reyes placed on her March 9, 2011 Medical Certificate, a wrong date of follow-up check-up, March 6, 2011, a Sunday, which was supposed to be March 5, 2011, a Saturday. Thus, when the undersigned had her latest follow-up check-up on March 12, 2011, a Saturday, Dra. Reyes issued a Letter of the same date x x x wherein she clarified:

"In lieu of the medical certificate issued to the above-patient dated March 5, 2011, the recommendation 'no contraindication to resume light to moderate activities' is equivalent to the patient being fit to resume light work. Only strenuous activities such as exercise, weightlifting, (sic) running would not be allowed up to 6 weeks post-operation. The date of March 6, 2011 is only unintentional error as the patient's chart was not within my hands during the writing of second certificate. But since I have attended to the patient since March 2010, I am very certain of her case. Since I am a specialist in the field of OB-GYN, I can assure you that complete healing of the operation site would take six weeks. But after 1 month from operation the patient can already assume office activities which is (sic) synonymous to moderate activities.

"It is worthy to stress that before the undersigned re-assume her duties and functions as Secretary of the Tribunal on March 7, 2011, she made a verbal query with the CSC as to whether she is required to complete the maximum period of two months of recuperation provided under Section 22 of CSC Memorandum Circular No. 25, Series of 2010 x x x. The verbal response of said office was that the provisions of the said law should be

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interpreted by analogy with the Rules on Maternity Leave. Section 14 of the CSC Omnibus Rules on Leave states that when a female employee wants to report back to duty before the expiration of her maternity leave, she may be allowed to do so provided she presents a medical certificate that she is physically fit to assume the duties of her position.

"In view of the above discussions; the provisions of the Magna Carta for Women, which is analogous to Maternity Leave; and the March 12, 2011 letter of her attending ObGynecologist, who is an expert in her field, stating that the undersigned is already fit to return to work, the undersigned respectfully prays for the reconsideration of the directive of the Tribunal, as reflected in Excerpt of the Minutes of the March 10, 2011 Tribunal Meeting."

On April 13, 2011, Panga-Vega filed an Appeal to the Commission assailing the Resolutions of the HRET dated March 10, 2011 and March 24, 2011. In her appeal, she avers, the following:

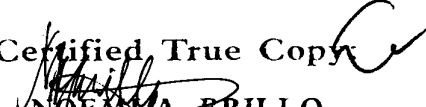
"ISSUE

"The issue is whether the directive of the Tribunal for the appellant to consume her special leave benefit under the Magna Carta for Women for a period of two months until its expiry on April 7, 2011 is valid despite the notice and desire of appellant to re-assume her duties and functions as Secretary of the Tribunal; the medical certification of her attending physician that she is already fit to work; and the full compliance of the appellant of the minimum period of recuperation under Section 2.2.1 of the CSC MC No. 25, Series of 2010.

"ARGUMENTS ON THE APPEAL

"The special leave benefit under Section 18 of Republic Act No. 9710 x x x is a matter of right as long as the medical conditions are existing. In case of doubt in the interpretation of its provisions, the same should be interpreted in favor of the woman.

"Between the medical certification of appellant's attending physician and the doubt/confusion/disbelief of the Tribunal thereon, the former should prevail. To dispel such doubt/confusion/disbelief of the Tribunal, it should have been proper recourse for the Tribunal, as what has been done in the past, to direct the Chief of the Human Resources Management Service (HRMS) of the HRET to directly verify the matter from Dr. Reyes (who is not a personal physician of the appellant but rather an accredited

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OBGynecologist of Medocare, the HMO of the Tribunal) and to report the result thereof to them, which task is part of the work of the HRMS. This practice has been done in the past.

"To compel the appellant to consume the full two month period is not valid as it runs counter to the provision of Section 2.1.1 of this Honorable Commission's Memorandum Circular No. 25 s. 2010 x x x.

"Thus, forcing an individual to consume the whole two (2) month period is tantamount to depriving the appellant of leave of absences that she can use in the future, within the same one (1) year period, for future operations that is needed in relation the her surgery since she was fit and able to work, and consume only one (1) month for the whole surgery.

"Assuming arguendo that the provisions of this Honorable Commission's Memorandum Circular No. 25, Series of 2010 are not analogous with the Rules on Maternity Leave, the appellant had by March 7, 2011, fully complied with the minimum three-week recuperation period for major operation under Section 2.2.1 of said memorandum circular. x x x

"It will be recalled that at the time that the appellant re-assumed her duties and functions as Secretary of the Tribunal on March 7, 2011, more than three weeks had elapsed from the time of the conduct of her major operation on February 7, 2011. The said period is clearly beyond the minimum period prescribed for a patient who has undergone major operation. Thus, the appellant finds no legal impediment for her to re-assume her duties and functions as Secretary of the Tribunal, considering further that her OBGynecologist has certified her to be physically fit to re-assume the duties of her position.

"WHEREFORE, it is respectfully prayed before this Honorable Commission that the Resolutions of the House of Representatives Electoral Tribunal dated March 10, 2011 and March 24, 2011 be DECLARED null and void for being contrary to the provisions of the Magna Carta for Women; and that the Tribunal be DIRECTED to re-credit to the appellant, as her remaining special leave for 2011, one (1) month from March 7, 2011 – April 7, 2011, as during the said period she was already deemed to have re-assumed her work, she having already notified the Chairperson of the Tribunal her re-assumption to work and together with the accomplished medical certificate(s) having been duly submitted"

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On May 27, 2011, the Commission issued an Order requiring the HRET to submit its comment on the appeal of Panga-Vega as well as the complete records of the case within fifteen (15) days from receipt thereof. The comment was received by the Commission on July 27, 2011.

The material portions of the comment stated, as follows:

"The issue now being raised in what appellant regards as appeal has absolutely nothing to do with an administrative case nor with a removal, separation and suspension of officers and employees and much less with a personnel action as defined in Executive Order No. 292.

"Moreover, any decision appealed under the URACCS would pertain to the legality of the termination, separation, suspension, or a disciplinary ruling, which appellant's case has nothing to do with. x x x

"At bottom, appellant questions the validity of the directive of the Tribunal for her to consume her special leave benefit under the Magna Carta for Women. To note, the discretion to approve appellant's special leave, under the Civil Service rules properly belongs to the Head of the Agency.

"In the Medical Certificate dated March 5, 2011, Dr. Lylah D. Reyes, her attending physician, has this entry: 'No contraindication to resume light to moderate activities.'

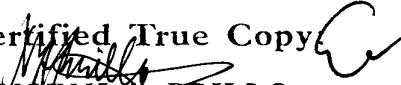
"Obviously misinterpreting the stated entry to mean that she was already physically fit to resume her work x x x.

"Acting on that said letter of appellant, Officer Order No. 2011-04 dated March 8, 2011 was issued x x x.

"x x x the Chairperson noted that in as much as the request for special leave was granted already by the Tribunal, her declaration that she is re-suming (sic) her duties and functions should be addressed by the Tribunal x x x.

"The above Order is valid and justified because, even on the assumption that appellant was indeed physically fit to work, as she claimed, she could not, on her say so re-assume the functions of her office without the approval of the Tribunal x x x.

"Appellant has not assailed the bona fides of the Tribunal. Be that as it may and the absent compelling proof of the Tribunal was actuated by

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consideration less than proper, the Tribunal cannot be questioned for directing appellant in the March 10, 2011 Resolution in question, to CONSUME her approved two-month leave of absence. Again, as earlier stated, taking into consideration the surgical operation the appellant underwent which needed prolonged rest period and considering that the three (3) medical certifications issued by her doctor already created confusion and spawned doubts as to her true medical condition, the Tribunal was correct and justified in denying appellant's request for reconsideration of the Resolution dated March 10, 2011 in its Resolution dated March 24, 2011."


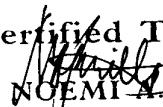
The issues to be resolved are the following:

- a) Whether the HRET Resolution dated March 10, 2011 directing Panga-Vega to consume her approved two month leave of absence, is in accordance with Civil Service Commission Memorandum Circular (CSC MC) No.25, s. 2010 otherwise known as the Guidelines on the Availment of the Special Leave Benefits for Women Under R.A. No. 9710 (An Act Providing for the Magna Carta of Women); and
- b) Whether Panga-Vega is entitled to back salaries from March 7, 2011 to April 7, 2011.

After a careful evaluation of the records of the case, the Commission finds the appeal meritorious.

First, it must be emphasized that similar to maternity leave, the special leave under R.A. No. 9710 partakes the nature of social legislation which must be liberally construed so as to give essence to equity, spirit of the law and substantial justice. Hence, if there is doubt as to the employees entitlement to said benefit, the doubt should be resolved in favor of the employee.¹ Being a social legislation, it is the welfare or well-being of the intended recipients or beneficiaries – the working mothers in the employ of the government – that is of primordial concern. Thus, whenever so dictated by the attendant facts and circumstances, the rule on maternity leave or the special leave benefits provided under R.A. No. 9710 may be adjusted depending on the peculiarities of each case. Ultimately, a law or rule should not be so rigid and inflexible as to be immune and resistant to any adaptation or change. For when such law or rule loses its ability to cope with actual exigencies or realities, it loses its force and relevance, and becomes useless as an instrument of public order and stability.

¹ CSC Resolution No. 001298 (Berroya, Re: Maternity Leave, Contractual/Casual Employee)

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The Commission is convinced that the Resolution dated March 10, 2011 issued by HRET directing Panga-Vega to consume her two (2) months approved leave is not in accordance with CSC MC No. 25, s. 2010.

Section 18 Chapter IV of R.A. No. 9710 and paragraph 3.5 of CSC MC No. 25, s. 2010 provide, as follows:

“Sec. 18. Special Leave Benefits for Women – A woman employee having rendered continuous aggregated employment service of at least six (6) months for the last twelve (12) months shall be entitled to a special leave benefit of two (2) months with full pay based on her gross monthly compensation following surgery caused by gynecological disorders.”

“3.5 Upon the employee’s return to work, she shall also present a medical certificate signed by her attending surgeon that she is physically fit to assume the duties of her position.

Based on the foregoing, it is very clear that upon the employee’s return to work, she needs only to present a medical certificate signed by her attending surgeon that she is physically fit to assume the duties of her position. The law does not require the employee to fully exhaust the full leave she applied for.

Records reveal that Panga-Vega substantially complied with CSC MC. No. 25, s. 2010 by presenting a Medical Certificate when she reported for work on March 7, 2011 before the expiration of her special leave. The subsequent Medical Certificate and letter issued by Dr. Reyes explaining the term “no contraindication to resume light to moderate activities” should have been considered enough for HRET to allow Panga-Vega to assume her work. While there may be discrepancies on the dates of the Medical Certificate, HRET could have easily verified and clarified the matter with Dr. Reyes. Nothing also could have prevented HRET from inviting Dr. Reyes to explain the Certificate or letter she issued.

Second, like maternity leave, if an employee reports back to work before the expiration of her special leave, the commuted money value of the unexpired portion of the leave need not be refunded. Thus, the employee may receive both the benefits granted under R.A. No. 9710 and the salary for actual services rendered effective the day she reports for work. Had Panga-Vega been allowed by the HRET to report back for work, she could have lawfully earned her salary for the period that she reported for work apart from the benefits and salaries she received under R.A. No. 9710.

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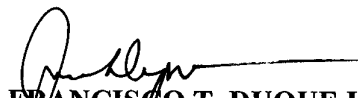

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Moreover, the Resolution dated March 10, 2011 issued by HRET unlawfully deprived Panga-Vega of her work from March 7, 2011 to April 7, 2011. While it may be true that Panga-Vega received from HRET salaries from February 7, 2011 to April 7, 2011 including Additional allowances, Extraordinary and Miscellaneous expenses and Gasoline expenses (pro-rated) for February 2011, the same can not prevent her from receiving her salary if she reported back for work before the expiration of two (2) months special leave. As explained above, the commuted money value of the unexpired portion of the leave need not be refunded by Panga-Vega and when she decided to return to work before the expiration of her special leave under R.A. No. 9710, she should be entitled to receive the salary from her actual services rendered effective the day she reports for work.

WHEREFORE, the appeal of Daisy B. Panga-Vega, is hereby **GRANTED**. Accordingly, the Resolution dated March 10, 2011 of House of Representatives Electoral Tribunal (HRET), Quezon City, directing her to consume her approved two (2) months leave of absence, is **SET ASIDE**. Panga-Vega should be paid back salaries and other benefits from March 7, 2011 to April 7, 2011.

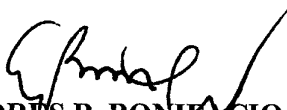
Quezon City.


MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner

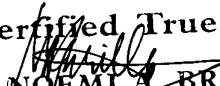

FRANCISCO T. DUQUE III
Chairman


ROBERT S. MARTINEZ
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Attested by:


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