

PHILIPPINE PORTS AUTHORITY AND ROGELIO A. DAYAN, RUFILO L. TAN, NORA A. BUENVIAJE, FOR THEIR OWN AND IN BEHALF OF SOME 289 PPA OFFICIALS AND SUPERVISORS, PETITIONERS, VS. COMMIS...

G.R. No. 100773. October 16, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The issue to be resolved in this petition for certiorari is whether or not the petitioners-officials may still receive their representation and transportation allowance (RATA) at the rates provided for by Letter of Implementation (LOI) No. 97.

Petitioner Philippine Port Authority (PPA), created by virtue of Presidential Decree (PD) No. 857, as amended, is a government-owned and controlled corporation in charge of port administration and operation in the country.

On August 22, 1976, PD No. 985 was issued to standardize the compensation of government officials and employees, including those in government owned and controlled corporations (GOCCs). Pursuant to said decree, LOI No. 97 dated August 31, 1979 was issued authorizing the implementation of standard compensation position classification plans for the infrastructure/utilities group of GOCCs. Section 5 (g) of this LOI states that "representation and transportation allowances may be authorized by individual corporations for managerial and supervisory positions, subject to approval of the Ministry of the Budget, which shall not exceed 40% of basic pay." (Annex C, Rollo, p. 62)

Petitioner PPA thereafter issued Memorandum Circular No. 57-87 dated October 1, 1987, which provides:

"3.2 The following PPA officials/employees are entitled to RATA equivalent to 40% basic salary.

3.2.1 Managerial Positions

3.2.1.1 GM, AGMs

3.2.1.2 Department/Port/Project Managers

3.2.1.3 PPA Board Secretary/HO Staff Unit Heads/Head Executive Assistant

3.2.2 Supervisory Positions

3.2.2.1 Head office/POM Division Managers

3.2.2.2 Other PMUs - Section Chiefs

(Rollo, p. 107)

The officials entitled to RATA under this circular shall hereinafter be referred to as first category officials.

On August 9, 1989, Congress passed Republic Act (RA) No. 6758 entitled "An Act Prescribing a Revised Compensation and Position Classification in the Government and for other Purposes." Said act took effect on July 1, 1989. Section 4 thereof states that the compensation and position classification system provided therein shall apply to all positions in the government, including GOCCs.

On October 23, 1989, PPA issued Memorandum Circular No. 36-89 entitling all PPA personnel occupying the positions of Section Chief or who head equivalent units, Terminal Supervisors, and senior personnel occupying positions with salary grades of 17 and above, to a monthly RATA equivalent to 20% of their basic salary. (Rollo, p. 109) The officials entitled to RATA under this circular shall hereinafter be referred to as second category officials.

In Memorandum Circular No. 46-90 dated November 14, 1990, the RATA of these second category officials was increased to 40% of standardized salary, effective January 1, 1990. (Rollo, p. 111)

Pursuant to the three aforementioned circulars, PPA paid RATA differentials to its first category officials for the period July 1989 to August 1990 in the amount of P826,131.60. The increase in salary due to the standardization mandated by RA No. 6758 increased the basis of the RATA, hence, the payment of the differentials.

Payments of RATA to the second category officials, amounting to P246,456.14 for the period June 1 to October 30, 1989, were also made.

However, respondent Commission on Audit (COA) Corporate Auditor Judy M. Hugo disallowed upon post-audit the payment of the P826,131.60 RATA differentials.

In her letter dated November 14, 1990, respondent Hugo stated:

"The increase in representation and transportation allowance (RATA) of PPA officials after June 30, 1989, the effectivity of RA 6758, is no longer based on 40% of basic salary but on the highest amount of RATA received by the incumbent as of June 30, 1989. (Position of the Secretary of Department of Budget and Management per letter dated September 17, 1990 printed in full under COA Memorandum No. 90-679 dated October 30, 1990).

In view of this, you are hereby directed to settle immediately the above disallowance and furnish this Office of (sic) a true copy of Official Receipt in case of settlement/payment. Failure to do so may compel this Office to adopt the necessary measures to enforce settlement hereof." (Rollo, p. 57)

The P246,456.14 payment of RATA to the second category officials was likewise disallowed in audit. The respondent COA auditor relied on COA Memorandum No. 90-653 dated June 4, 1990 which provides that "any increase in allowances and fringe benefits after June 30, 1989 is considered irregular, if not illegal, and hence shall be disallowed in audit." (Rollo, p. 126) The respondent also directed PPA's attention to COA Memorandum No. 90-679 dated October 30, 1990 which states that "LOI No. 97 x x x is repealed by Section 16 of RA No. 6758." (Rollo, p. 127)

Petitioner PPA brought its case before respondent COA. On May 2, 1991, the COA denied PPA's motion for reconsideration and ruled:

"After a circumspect evaluation of the facts herein obtaining, this Commission finds no justifiable reason to grant your instant request. As declared by the Department of Budget and Management, LOI 97 is inconsistent with, and therefore has been repealed by, Section 16 of R.A. 6758. (Letter dated September 17, 1990, to LWUA) Such stand of the DBM has binding effect following the well-settled doctrine that construction of laws by executive officers charged with the duty of implementing or enforcing the same should be given controlling weight. (*Salara v. Buenviaje*, G.R. No. 45642, February 28, 1978) Moreover, to allow officials of the PPA to receive RATA at rates higher than those authorized for officials of other government agencies would violate

the spirit and intent of RA 6758." (Rollo, pp. 55-56)

Hence, this petition. Petitioner PPA is joined by all the affected PPA officials whose RATA and RATA differentials were disallowed.

The first issue that addresses itself to this Court is whether or not the petitioners-officials are still entitled to the RATA provided for under LOI No. 97.

The petitioners are of the view that LOI No. 97, particularly Section 5(g) thereof providing for RATA was not repealed by RA No. 6758. To support this position, the petitioners cite Opinion No. 68 dated March 23, 1990 issued by the Office of the Government Corporate Counsel (OGCC), Department of Justice. The opinion answered a query posed by the Metropolitan Waterworks and Sewerage System (MWSS), also a government-owned and controlled corporation, as to whether or not the RATA authorized under LOI No. 97 may be increased or adjusted to a maximum of 40% of basic pay despite the passage of RA No. 6758. The OGCC answered in the affirmative and opined that Section 5(g) of LOI No. 97 was not repealed by RA No. 6758. Thus:

"xxx except for Sections 2 and 16 of P.D. 985 which are expressly repealed, all other laws, decrees and issuances or parts thereof authorizing the fixing of positions, salaries and allowances of government officials and employees shall be deemed repealed only if these are inconsistent with the provisions of R.A. 6758. Section 5(g) of LOI 97 is not inconsistent with R.A. 6758 as precisely, this is the basis of the RATA which is continued to be authorized under Section 12 of said law. To construe otherwise would render ineffective said section, as before the RATA is allowed to continue, there must be a previous law, granting the same in the first place. Moreover, the statement in Section 5.4. of Corporate Compensation Circular No. 10 that incumbents are allowed to receive RATA 'at the highest amount legally authorized as of June 30, 1989' in effect results in the incorporation by reference of all laws, decrees and rules defining the maximum amount of RATA that employees and officials of government corporations may receive.

Premises considered, it is our opinion that there is no legal obstacle to an increase or adjustment of the RATA of officials to the maximum amount prescribed under Section 5(g) of LOI 97." (Rollo, pp. 121-122)

Respondent COA meanwhile posits that LOI No. 97 is inconsistent with RA No. 6758. It avers that while repeals by implication are not favored, a reading of LOI No. 97 and RA No. 6758 would readily show that the latter act covers practically the whole subject of the earlier one and is clearly intended as a substitute. Furthermore, respondent COA maintains, RA No. 6758 is a complete enactment on the subject of compensation and position classification system in the government and applies to GOCCs. RA No. 6758 has therefore repealed LOI No. 97 which covered the same subject matter on compensation and position classification in the infrastructure and utilities group of GOCCs.

Section 12, first paragraph, of RA 6758 reads:

"SEC. 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign services personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized." (Underlining ours)

Under the first sentence, RATA does not form part of the standardized salary. The rationale for this may be extracted from the sponsorship speech of Senator Romulo on Senate Bill No. 862, now, RA No. 6758:

"Under the standardization scheme, all allowances other than for transport and hazard are integrated into the

prescribed salary rates. Such integration is necessary, in view of the 17 or so salary pay plans now existing and operating in the government covering basic pay alone and the various allowances being given to different groups of government employees. Without their integration, compensation standardization in the real sense cannot be attained. However, transportation and representation allowances are not integrable because besides being flexible in nature, they are given only to special positions." (Underlining ours; Transcript of Senate deliberations, pages 51-52; June 7, 1989)

Moreover, as stressed by the OGCC in opinion No. 59 dated March 14, 1990 (Rollo, pp. 113-114), RATA serves to defray the expenses of a government official while in the pursuit of his official functions. If these allowances are consolidated with the standardized rate, then the government official or employee will be compelled to spend his personal funds in attending to his duties.

But while RATA does not form part of standardized salary, it does not signify that Congress did not intend to establish a uniform RATA for particular positions covered by the law. Even prior to RA 6758, the General Appropriations Acts provided for a standard RATA for a specified rank. Petitioner PPA and other GOCCs in the infrastructure and utilities sector however were exempted from limiting the RATA of their officials to those mandated by the General Appropriations Acts because LOI No. 97 provided for a higher RATA. Unfortunately for the petitioners, the exemptions have been converted by law into concepts and policies of standardization. The GOCCs have not raised any constitutional or specific statutory grant of fiscal autonomy or non-diminution of incomes during the tenures of their officials as would raise questions on the validity of the provision of law now being questioned.

Now, under the second sentence of Section 12, first paragraph, the RATA enjoyed by these PPA officials shall continue to be authorized only if they are "being received by incumbents only as of July 1, 1989." RA 6758 has therefore, to this extent, amended LOI No. 97. By limiting the benefit of the RATA granted by LOI No. 97 to incumbents, Congress has manifested its intent to gradually phase out this RATA privilege under LOI No. 97 without upsetting its policy of non-diminution of pay.

The legislature has similarly adhered to this policy of non-diminution of pay when it provided for the transition allowance under Section 17 of RA 6758 which reads:

"SEC. 17. Salaries of Incumbents. - Incumbents of positions presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred to as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future."

While Section 12 refers to allowances that are not integrated into the standardized salaries whereas Section 17 refers to salaries and additional compensation or fringe benefits that are integrated into the standardized salaries, both sections are intended to protect incumbents who are receiving said salaries and/or allowances at the time RA 6758 took effect.

An incumbent is a person who is in present possession of an office (Roseo U. Tejada and Radito C. Ching v. Hon. Eufemio C. Domingo, G.R. No. 91860, (205 SCRA 138 [1992]) quoting Black's Law Dictionary, Fifth ed., 691).

The consequential outcome, under sections 12 and 17, is that if the incumbent resigns or is promoted to a higher position, his successor is no longer entitled to his predecessor's RATA privilege under LOI No. 97 or to the transition allowance.

We have earlier classified the petitioners officials into two. The first category is composed of those who, pursuant to LOI No. 97 and Memorandum Circular No. 57-87 dated October 1, 1987, were granted and were receiving

RATA equivalent to 40% salary prior to July 1, 1989, the effectivity of RA 6758. The second category consists of those who, as of July 1, 1989 were not receiving the RATA privilege under LOI No. 97. These officials were given RATA after July 1, 1989, pursuant to Memorandum Circular No. 36-89 dated October 23, 1989. Said circular, however, provided for a retroactive grant of RATA from June 1, 1989. Under Memorandum Circular No. 46-90 dated November 14, 1990, the RATA of this second set of officials was increased from 20% to 40% of standardized salary.

Applying the provisions of Section 12 to the petitioners' case, we rule that only the first category officials are entitled to the continued RATA benefit under LOI No. 97. The first category officials were incumbents as of July 1, 1989 and more importantly, they were receiving the RATA provided by LOI No. 97 as of July 1, 1989.

While the second category officials were incumbents as of July 1, 1989, they were not receiving said RATA as of July 1, 1989.

True, LOI No. 97 provides that these second category officials may likewise be given RATA not exceeding 40% basic salary, but this provision did not create a vested right in their favor. A vested right is one which is absolute, complete and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. (*Development Bank of the Philippines v. Court of Appeals*, 96 SCRA 359 [1980]) The grant of RATA under LOI No. 97 to these officials was still discretionary on the part of the PPA management. It was not absolute nor was it unconditional. Unfortunately, when the PPA management finally authorized the giving of RATA to these second category officials, such was no longer allowed under RA 6758.

The retroactive grant of the RATA to June 1, 1989 does not have any material effect, since management could no longer confer the RATA privilege after July 1, 1989. Moreover, such retroactive grant could have no other purpose than to circumvent the provision of Section 12 of RA No. 6758.

Additionally, Section 16 of RA No. 6758 states:

"SEC. 16. Repeal of Special Salary Laws and Regulations. - All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed." (Underlining ours)

The repealed proviso Section 2 of PD No. 985 reads:

"xxx Provided, that notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporations and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as may be approved by the President in critical government agencies." (Underlining ours)

The second "Whereas" clause of LOI No. 97, which reads:

"Whereas, the said Decree authorizes the adoption of additional financial incentives for viable and profit-making corporations and those performing critical functions, to be supported from net earnings and profits of such corporations."

clearly, shows that the RATA grant under Section 5(g) thereof was anchored on the aforementioned repealed proviso of Section 2 of PD No. 985.

The effect of this repeal is that after July 1, 1989, additional financial incentives such as RATA may no longer be

given by GOCCs with the exception of those which were authorized to be continued under Section 12 of RA 6758. Hence, the giving of the disputed RATA to the second category PPA officials will be tantamount to the conferment of additional financial incentives which is no longer allowed under Section 16 of RA No. 6758.

The petitioners argue that the second sentence in Section 12 of RA 6758 which reads:

"xxx Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized."

refers to allowances not integrated into the standardized salary other than those enumerated in the preceding sentence. (Memorandum for the Petitioners, p. 23) This contention is untenable. If petitioners' position were to be followed to its logical course then there will be a gap in the law since questions will arise as to how all these allowances mentioned (RATA, clothing and laundry allowances, subsistence allowance for marine officers and crew on board government vessels and hospital personnel, etc.), which are not integrated into the standardized salary, will thereafter be treated.

We therefore adjudge that these second category official may not avail themselves of the RATA under LOI No. 97. Their RATA shall be paid in accordance with the provisions of the annual General Appropriations Acts, if their positions are among those mentioned therein. In yearly providing a uniform RATA for specified ranks, it is presumed that the legislature has properly taken into consideration the requirements of these positions.

The next question that arises is: What is the basis of the RATA to be given after July 1, 1989 to the first category officials?

The petitioners postulate that since under Memorandum Circular No. 57-87 they are entitled to RATA equivalent to 40% of basic salary, then their RATA should accordingly be adjusted to 40% of standardized salary.

The respondents meanwhile reiterate the position of the Department of Budget and Management (DBM) that starting July 1, 1989, the RATA is no longer based on 40% of basic salary but on the highest amount of RATA received by the incumbent as of June 30, 1989.

The resolution of this issue involves the proper interpretation of the second sentence of Section 12, first paragraph:

"Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized." (Underscoring ours)

The DBM and the respondents construed July 1, 1989 as a cut-off date. According to them the highest amount the officials are receiving as of July 1, 1989 shall be the amount that shall continue to be authorized.

We disagree with the foregoing interpretation and rule for the petitioners. The date July 1, 1989 does not serve as a cut-off date with respect to the amount of RATA. The date July 1, 1989 becomes crucial only to determine that as of said date, the officer was an incumbent and was receiving the RATA, for purposes of entitling him to its continued grant. This given date should not be interpreted as fixing the maximum amount of RATA to be received by the official.

WHEREFORE, the petition is partly GRANTED. The disallowance of P826,131.60 representing payment of RATA differentials to the officials enumerated under Memorandum Circular No. 57-87 is hereby SET ASIDE. The disallowance of P246,456.14 representing payment of RATA to the officials enumerated under Memorandum Circular No. 36-89 is AFFIRMED.

SO ORDERED.

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

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