

RODOLFO S. DE JESUS, EDELWINA DE PARUNGAO, VENUS M. POZON AND OTHER SIMILARLY SITUATED PERSONNEL OF THE LOCAL WATER UTILITIES ADMINISTRATION (LWUA), PETITIONERS, VS. COMMISSION ...

G.R. No. 109023. August 12, 1998

Ponente: PURISIMA, J.

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PURISIMA, J.:

The pivotal issue raised in this petition is whether or not the petitioners are entitled to the payment of honoraria which they were receiving prior to the effectivity of Rep. Act 6758.

Petitioners are employees of the Local Water Utilities Administration (LWUA). Prior to July 1, 1989, they were receiving honoraria as designated members of the LWUA Board Secretariat and the Pre-Qualification, Bids and Awards Committee.

On July 1, 1989, Republic Act No. 6758 (Rep. Act 6758), entitled "An Act Prescribing A Revised Compensation and Position Classification System in the Government and For Other Purposes", took effect. Section 12 of said law provides for the consolidation of allowances and additional compensation into standardized salary rates. Certain additional compensations, however, were exempted from consolidation.

Section 12, Rep. Act 6758, reads -

"Sec. 12. - Consolidation of Allowances and Compensation.- 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 as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized."[1] (Underscoring supplied)

To implement Rep. Act 6758, the Department of Budget and Management (DBM) issued Corporate Compensation Circular No. 10 (DBM-CCC No. 10), discontinuing without qualification effective November 1, 1989, all allowances and fringe benefits granted on top of basic salary.

Paragraph 5.6 of DBM-CCC No. 10 provides :

"Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, xxx shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds."[2]

Pursuant to the aforesaid Law and Circular, respondent Leonardo Jamoralin, as corporate auditor, disallowed on post audit, the payment of honoraria to the herein petitioners.

Aggrieved, petitioners appealed to the COA, questioning the validity and enforceability of DBM-CCC No. 10. More specifically, petitioners contend that DBM-CCC No. 10 is inconsistent with the provisions of Rep. Act 6758 (the law it is supposed to implement) and, therefore, void. And it is without force and effect because it was not published in the Official Gazette; petitioners stressed.

In its decision dated January 29, 1993, the COA upheld the validity and effectivity of DBM-CCC No. 10 and sanctioned the disallowance of petitioners' honoraria.[3]

Undaunted, petitioners found their way to this court via the present petition, posing the questions:

(1) Whether or not par. 5.6 of DBM-CCC No. 10 can supplant or negate the express provisions of Sec. 12 of Rep. Act 6758 which it seeks to implement; and

(2) Whether or not DBM-CCC No. 10 is legally effective despite its lack of publication in the Official Gazette. Petitioners are of the view that par. 5.6 of DBM-CCC No. 10 prohibiting fringe benefits and allowances effective November 1, 1989, is violative of Sec. 12 of Rep. Act 6758 which authorizes payment of additional compensation not integrated into the standardized salary which incumbents were enjoying prior to July 1, 1989.

To buttress petitioners' stance, the Solicitor General presented a Manifestation and Motion in Lieu of Comment, opining that Sec. 5.6 of DBM-CCC No. 10 is a nullity for being inconsistent with and repugnant to the very law it is intended to implement. The Solicitor General theorized, that:

"xxx following the settled principle that implementing rules must necessarily adhere to and not depart from the provisions of the statute it seeks to implement, it is crystal clear that Section 5.6 of DBM-CCC No. 10 is a patent nullity. An implementing rule can only be declared valid if it is in harmony with the provisions of the legislative act and for the sole purpose of carrying into effect its general provisions. When an implementing rule is inconsistent or repugnant to the provisions of the statute it seeks to interpret, the mandate of the statute must prevail and must be followed."[4]

Respondent COA, on the other hand, pointed out that to allow honoraria without statutory, presidential or DBM authority, as in this case, would run counter to Sec. 8, Article IX-B of the Constitution which proscribes payment of "additional or double compensation, unless specifically authorized by law." Therefore, the grant of honoraria or like allowances requires a specific legal or statutory authority. And DBM-CCC No. 10 need not be published for it is merely an interpretative regulation of a law already published[5]; COA concluded.

In his Motion for Leave to intervene, the DBM Secretary asserted that the honoraria in question are considered included in the basic salary, for the reason that they are not listed as exceptions under Sec. 12 of Rep. Act 6758.

Before resolving the other issue - whether or not Paragraph 5.6 of DBM-CCC No. 10 can supplant or negate the pertinent provisions of Rep. Act 6758 which it seeks to implement, we have to tackle first the other question whether or not DBM-CCC No. 10 has legal force and effect notwithstanding the absence of publication thereof in the Official Gazette. This should take precedence because should we rule that publication in the Official Gazette or in a newspaper of general circulation in the Philippines[6] is sine qua non to the effectiveness or enforceability of DBM-CCC No. 10, resolution of the first issue posited by petitioner would not be necessary.

The applicable provision of law requiring publication in the Official Gazette is found in Article 2 of the New Civil Code of the Philippines, which reads:

"Art. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This Code shall take effect one year after such publication."

In *Tanada v. Tuvera*, 146 SCRA 453, 454, this Court succinctly construed the aforecited provision of law in point,

thus:

"We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, deirectly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation.

Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.

Accordingly, even the charter of a city must be published notwithstanding that it applies to only a portion of the national territory and directly affects only the inhabitants of that place. All presidential decrees must be published, including even, say, those naming a public place after a favored individual or exempting him from certain prohibitions or requirements. The circulars issued by the Monetary Board must be published if they are meant not merely to interpret but to 'fill in the details' of the Central Bank Act which that body is supposed to enforce." (Italics ours)

The same ruling was reiterated in the case of Philippine Association of Service Exporters, Inc. vs. Torres, 212 SCRA 299 [1992].

On the need for publication of subject DBM-CCC No. 10, we rule in the affirmative. Following the doctrine enunciated in Tanada, publication in the Official Gazette or in a newspaper of general circulation in the Philippines is required since DBM-CCC No. 10 is in the nature of an administrative circular the purpose of which is to enforce or implement an existing law. Stated differently, to be effective and enforceable, DBM-CCC No. 10 must go through the requisite publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

In the present case under scrutiny, it is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees, starting November 1, 1989, is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in a newspaper of general circulation in the Philippines - to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency.

In light of the foregoing disquisition on the ineffectiveness of DBM-CCC No. 10 due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country, as required by law, resolution of the other issue at bar is unnecessary.

WHEREFORE, the Petition is hereby GRANTED, the assailed Decision of respondent Commission on Audit is SET ASIDE, and respondents are ordered to pass on audit the honoraria of petitioners. No pronouncement as to costs.

SO ORDERED.

Narvasa CJ., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez and Quisumbing, JJ., concur.

[1] Rollo, p. 14.

[2] Id., p. 47.

[3] Id., p. 22.

[4] Id. p. 29.

[5] Id. p. 61.

[6] Under Executive Order No. 200 issued on June 18, 1987, such publication may be in a newspaper of general circulation in the Philippines.

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