MINERVA FRANCO, PETITIONER, VS. COMMISSION ON AUDIT AND SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, RESPONDENTS.

G.R. No. 128001. September 22, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to set aside the decision,[1] dated November 21, 1996, of respondent Commission on Audit (COA) disallowing the disbursement by the Product Development and Design Center of the Philippines (PDDCP) of the amount of P379,200.00 for the payment in 1990 of loyalty awards to its officers and employees. In the alternative, the petition seeks, by way of mandamus, to compel respondent Department of Budget and Management (DBM) to act on two letters of PDDCP requesting authority to use its savings for the payment of the loyalty awards in question.

The facts of the instant case are not in dispute.

Petitioner Minerva P. Franco is the Executive Director of PDDCP, an agency under the Office of the Undersecretary for International Trade. In December 1990, she granted incentive awards to the officers and employees of PDDCP itemized as follows:

> Performance Awards P140,900.00
>
> Loyalty Awards 379,200.00[2]
>
> Total P520,100.00

The disbursement was suspended by State Auditor Lourdes S. de la Cruz for lack of authority from the DBM to use savings of PDDCP for the payment of incentive awards and for lack of approval from the Civil Service Commission (CSC) of proposed guidelines for the grant of the awards. In her letter, dated September 2, 1991, State Auditor de la Cruz stated:

> This has reference to the justification submitted to this Office for payment made to officials and employees of the Center representing their incentive cash awards CY 1990 in the total amount of P509,950.00 which were suspended in post-audit.
>
> The said justification narrated Section 27 of Republic Act No. 2260; Section 33 of Presidential Decree No. 807; Section 35 of Executive Order No. 282; Sections 18 and 19 of the Rules, Regulations and Standards on Employee Suggestions and Incentive Award System by the Civil Service Commission and Sections 1, 2, 3, 6 and 7 of Rule V of Republic Act No. 6713.
>
> The above-mentioned provisions of laws which were made as the basis for giving incentive cash awards were already considered in post-audit since said laws were enumerated as part of the memorandum issued to officials and employees of PDDCP for their guidance in receiving their cash incentive award.

> It may be mentioned that the above laws authorized the head of agency to incur expenses necessary for the implementation of the said Program. However, approval from the Commissioner of Budget is required under Section 55 of PD 1177 quoted as follows:
> Sec. 55. Authority to use Savings for Certain Purposes. Savings in the appropriations provided in the General Appropriations Act may be used for the settlement of the following obligations incurred during a current fiscal year or previous fiscal years as may be approved by the Commissioner in accordance with rules and procedures as may be approved by the President;
>
> e. Cash awards to deserving officials and employees in accordance with civil service law;

In this connection, the requirements to be submitted to lift the suspensions for payment made to officials and employees of PDDCP representing their cash awards are reiterated.[3]

Accordingly, on September 20, 1991, petitioner wrote then DBM Secretary Guillermo N. Carague for authority to use savings of PDDCP for the payment of performance and loyalty awards. On September 23, 1991, she wrote then CSC Chairman Patricia A. Sto. Tomas seeking approval of the guidelines for the grant of the same.

It does not appear that Secretary Carague ever replied to the letter of petitioner. On the other hand, in a letter, dated November 25, 1992, Chairman Sto. Tomas, in response to petitioner's request, opined that the grant by PDDCP of the incentive awards was in order and that its guidelines did not need the approval of the CSC since they were made in 1990, prior to the effectivity of the Omnibus Rules Implementing Book V of Executive Order No. 292 requiring such approval. Chairman Sto. Tomas stated:

> It is represented that one reason cited by the COA Resident Auditor for the disallowance of expenses incurred by that Agency in granting the incentive award is the non-approval of the PDDCP-IAS by the Civil Service Commission.
> It may be mentioned that Section 35 of EO # 292 states that:
>
> "There shall be established a government-wide employee suggestions and incentive award system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.
>
> In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers . . ."

In this connection, the Civil Service Commission, in its Resolution No. 91-1631 dated December 27, 1991 issued the Omnibus Rules Implementing Book V of EO # 292 and Other Pertinent Civil Service Law, which provide among others, Rule X or the rules and regulations implementing the Employee Suggestions and Incentive Awards System (ESIAS). Section 1 thereof specifically provides that:

> "Section 1. Each department or agency of government, whether national, . . ., shall establish its Department or Agency Employee Suggestions and Incentives Award System in accordance with these Rules and shall submit the same to the Commission for approval. (underscoring supplied)

In view thereof, and as its appears that the adoption and implementation of the PDDCP-IAS was in 1990, the Commission opines that the action of that Office in implementing the PDDCP Award System and all the expenses incurred in connection therein is in order.

It is understood however that starting February 14, 1992, that Office cannot adopt and implement the same System unless revised in accordance with Rule X of the Omnibus Rules Implementing EO # 292.[4]

Petitioner then sent a letter, dated December 23, 1991, to Secretary Carague reiterating her earlier request for authority to pay the incentive awards in question. Again, it appears that the DBM did not respond.

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In view of the letter of Chairman Sto. Tomas, State Auditor de la Cruz allowed the disbursement of the amount of P140,900.00 for the payment of performance awards. However, she disallowed the disbursement of the amount of P379,200.00 for the payment of loyalty awards to the officers and employees of PDDCP.

Petitioner appealed the action of State Auditor de la Cruz to the COA, which, however, affirmed it in the assailed decision. The COA ruled:

> Under the principle of fiscal responsibility resting with the head of the agency, appellant Minerva P. Franco, being the Executive Director of PDDCP, is primarily responsible for all government funds and property pertaining to her agency. It follows, therefore, that it is one of her duties to ensure that the requirements of transactions suspended or disallowed in audit are complied with. In the instant case, however, there was failure on her part to comply with all the requirements needed in order to make the questioned disbursement proper and valid. It must be emphasized that the disallowance in the amount of P379,200.00 representing payment of loyalty award was based on the absence of two (2) requirements, to wit: (1) want of authority from the DBM to use the agency's savings from Personal Services to pay the loyalty award and (2) approval from the CSC to adopt the guidelines for granting the awards. Only the second requirement was complied with and records do not show that proper authorization from the DBM has been secured by the PDDCP.
>
> Accordingly, in the absence of the required authorization from DBM to use the savings of the Personal Services of the agency to pay its loyalty cash awards, this Commission finds no justification to lift the subject disallowance. In view thereof, it is regretted that the herein appeal has to be, as it is hereby, denied.[5]
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> Hence, this petition. Petitioner contends:
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> 1. The COA committed grave abuse of discretion in suspending the implementation of the loyalty award to the amount of P379,200.00 as provided in a post-audit.
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> 2. The COA committed grave abuse of discretion in suspending only the implementation of the loyalty award, without any comment or action on the implementation of Recognition/Performance Award.
>
> 3. The COA committed grave abuse of discretion in suspending to implementation of the loyalty awards due to the inaction of the DBM.[6]

We find the petition to be meritorious. There is no question that prior authority from the DBM is needed for the use of savings for the payment of incentive awards. Section 49 of Book VI of Executive Order No. 292, otherwise known as the Administrative Code of 1987, provides:

> Authority to Use Savings for Certain Purposes - Savings in the appropriations provided in the General Appropriations Act may be used for the settlement of the following obligations incurred during a current fiscal year or previous fiscal years as may be approved by the Secretary in accordance with rules and procedures as may be approved by the President:
>
> . . . .
>
> (5) Cash awards to deserving officials and employees in accordance with civil service law.

Thus, State Auditor de la Cruz properly disallowed the disbursement of the amount of P379,200.00 for the payment of loyalty awards because of the absence of authority from the DBM. Why she allowed payment of P140,900.00 for performance awards does not appear in the record.

Nonetheless, since the disallowance by State Auditor de la Cruz of the payment of loyalty awards is predicated mainly on the lack of authority from the DBM to use the savings of PDDCP for such purpose, it would have been prudent if the action by the DBM on the request for authority of PDDCP was awaited, since there are remedies within the bureaucracy for securing such action. For it may happen that the DBM may find the request in order

and accordingly grant authority to PDDCP to use its savings for payment of the awards. Of course, PDDCP was not at all justified in paying first and only afterwards asking for authority to pay. But the question here is the propriety of disallowing the disbursement on the ground of lack of authority from the DBM when the request for such authority was still pending in that office.

WHEREFORE, the petition for writ of mandamus is GRANTED and the Department of Budget and Management is ORDERED to act, within fifteen (15) days from notice, on the request for authority to disburse funds from the savings of the Product Development and Design Center of the Philippines for the payment of incentive awards to its officers and employees.

The decision of the Commission on Audit is SET ASIDE, without prejudice to its rendering a new decision based on the action of the Department of Budget and Management on the aforesaid request of the Product Development and Design Center of the Philippines.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

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[1] Per Chairman Celso D. Gangan and Commissioners Rogelio B. Espiritu and Sofronio B. Ursal.

[2] Petition, Rollo, p. 7.

[3] Id., Annex D, Rollo, p. 26-27.

[4] Id., Annex J, Rollo, pp. 35-36.

[5] Id., Annex A, Rollo, pp. 16-17

[6] Id.., Rollo, p. 11.

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