

**MOISES G. MOLEN, JR., REGINA H. APELIT, ERNESTO CABEROY,
FLORECITA B. GELVESON, ENRIQUE G. ARGUELLES, NICOLAS P.
SONALAN, JOHNNY V. DE LA FUENTE, NORBERTO J. POSECION,
LORENZO H...**

G.R. NO. 150222. March 18, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari seeking the review of the decision[1] dated December 6, 2000 of the Commission on Audit (COA) and its resolution[2] dated October 2, 2001 denying petitioners' motion for reconsideration. The Commission on Audit affirmed the decision of respondent Director, COA Regional Office No. VI, Iloilo City, disallowing the subject monetary benefits granted to petitioners-members of the Board of Directors of the Metro Iloilo Water District (MIWD).

The antecedent facts[3] are as follows:

An auditing team from COA Regional Office No. VI, Iloilo City, conducted a special audit of the accounts of the MIWD for calendar year 1995. In the course of the audit, benefits/allowances granted to the officers and members of the MIWD Board of Directors in the total amount of P730,910.43 were disallowed under Notices of Disallowance (ND) Nos. 97-04-101 (95) to 97-024-101 (95) and ND No. 97-035-101 (95), all dated July 15, 1997.

The disallowed benefits and persons held liable for reimbursement are as follows:

- Cash Gift in the amount of P346, 716

Persons liable: Payees Celerino Grecia II, Enrique Arguelles, Florencita Gelvezon, Jacinta Occena, Johnny de la Fuente, Jorge Tamayo, Lorenzo Jamora, Nicolas Sonalan and Norberto Posecion.

- Representation Allowance (70% of per diem) in the amount of P217, 910

Persons liable: Payees Enrique Arguelles, Florencita Gelvezon, Johnny de la Fuente, Lorenzo Jamora and Nicolas Sonalan.

- Rice Subsidy in the amount of P63,125.65

Persons liable: Members of the Board of Directors as recipients of the benefit.

- Traveling Expenses in the amount of P48,188.50

Persons liable: Payees Enrique Arguelles, Johnny de la Fuente and Nicolas Sonalan;

- Medical/Uniform Allowance in the amount of P45,500

Persons liable: Payees Celerino Grecia II, Enrique Arguelles, Florencita Gelvezon, Johnny de la Fuente, Lorenzo Jamora, Nicolas Sonalan and Norberto Posecion;

- Wreath and Mass Cards in the amount of P4,810

- Family and Group Hospitalization Insurance Premium in the amount of P4,660.28

Persons liable: Members of the Board of Directors as recipients of the benefit.

In all the enumerated disallowed benefits, the following were also held liable: MIWD General Manager Moises Molen, Jr., who approved the payments; Administrative Officer Ernesto Caberoy, who certified that the expenses were necessary and lawful; and Accounting Division Chief Regina H. Apelit, who certified the availability of adequate funds/budgetary allotment and that the expenditures were properly certified and duly supported by documents.

The representation allowance, traveling expenses (representing excess per diem), rice subsidy, medical/uniform allowance, cash gift, and family and group insurance premiums were disallowed for want of legal basis, while the wreath and mass cards were disallowed for being unnecessary and personal in nature.

The legal basis cited for the disallowance is Section 13 of Presidential Decree (P.D.) No. 198, as amended by P.D. No. 768, thus:

Sec. 13. Compensation. – Each director shall receive a per diem, to be determined by the board, for each meeting of the board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month. No director shall receive other compensation for services to the district.

Any per diem in excess of P50 shall be subject to approval of the administration.

Petitioners appealed the disallowance to the Commission on Audit, and the same was referred to respondent Director, COA-Regional Office VI, Iloilo City, for adjudication. Respondent Director denied the appeal and sustained the disallowance on the ground that the appeal was filed out of time and was unmeritorious.

Petitioners then appealed the decision of respondent Director to the Commission on Audit.

Although the Commission on Audit noted that the appeal was not filed on time, it resolved the case on the merits. It sustained the disallowance as shown in the dispositive portion of its decision, thus:

WHEREFORE, premises considered, it is regretted that the instant appeal cannot be given due course. Accordingly, the subject disallowances under ND Nos. 97-04-101 (95) to 97-024-101 (95) and ND No. 97-035-101 (95), all dated July 15, 1997[,] are hereby affirmed, and the officials determined to be liable thereon should immediately refund/settle the same. The Director, COA Regional Office No. VI, Iloilo City, shall supervise and report to this Commission the proper implementation of this decision.[4]

Petitioners' motion for reconsideration was denied by the Commission on Audit.

Hence, this petition for certiorari raising the following issues:

- WHETHER OR NOT SECTION 13 OF P.D. 198 WAS IMPLIEDLY REPEALED BY R.A. 6758 OTHERWISE KNOWN AS COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 THAT GRANTS AUTHORITY TO THE BOARD OF DIRECTORS OF WATER DISTRICTS AS GOVERNMENT-OWNED AND CONTROLLED CORPORATION[S] TO DETERMINE THE COMPENSATION OR PER DIEMS OF ITS MEMBERS;

- WHETHER OR NOT THE LOCAL WATER UTILITIES ADMINISTRATION (LWUA) IS VESTED

WITH AUTHORITY TO AUTHORIZE WATER DISTRICTS TO GRANT ECONOMIC BENEFITS TO ITS EMPLOYEES PURSUANT TO SECTIONS 50, 54 AND 62 OF P.D. 198;

- WHETHER OR NOT THE DISALLOWANCE OF ECONOMIC BENEFITS GRANTED TO THE PETITIONERS CONSTITUTES A DIMINUTION IN PAY CONTRARY TO THE AUTHORITY GRANTED BY THE DEPARTMENT OF BUDGET AND MANAGEMENT ALLOWING THE WATER DISTRICTS TO CONTINUE GRANTING THE ALLOWANCESFRINGE BENEFITS ENJOYED PRIOR TO DAVAO CITY WATER DISTRICT, ET AL. VS. CIVIL SERVICE COMMISSION AND COMMISSION ON AUDIT, 201 SCRA 593 DATED SEPTEMBER 13, 1991;

- WHETHER OR NOT P.D. 198 ITSELF EMPOWERS THE BOARD OF THE PETITIONER MIWD TO GRANT ECONOMIC BENEFITS TO ITS OFFICIALS AND EMPLOYEES;

- WHETHER OR NOT SECTION 13, P.D. 198, TRULY PROHIBITS THE GRANT OF ECONOMIC BENEFITS TO MEMBERS OF THE BOARD OF DIRECTORS OF WATER DISTRICTS.[5]

The relevant issues in this case are as follows: (1) Whether or not the members of the board of directors of MIWD are entitled to receive the disallowed benefits in addition to the per diem allowed under Presidential Decree No. 198, as amended by Presidential Decree Nos. 768 and 1479, the applicable amendments at that time; and (2) whether or not the refund of the disallowed benefits is in order.

Petitioners contend that Section 13 of Presidential Decree No. 198[6] has been impliedly repealed by Republic Act (R.A.) No. 6758[7], under which law they would be entitled to a maximum salary equivalent to salary grade 30 that allegedly exceeds the amount of the disallowed benefits granted to them. They assert that they are covered by R.A. No. 6758 since Section 4 and the last paragraph of Section 9 thereof provide:

SEC. 4. Coverage.—The Compensation and Position Classification System herein provided shall apply to all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial institutions.

The term “government” refers to the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions and shall include all, but shall not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government units, and the armed forces. The term “government-owned or controlled corporations and financial institutions” shall include all corporations and financial institutions owned or controlled by the National Government, whether such corporations and financial institutions perform governmental or proprietary functions.

SEC. 9. Salary Grade Assignments for Other Positions. --

...

In no case shall the salary of the chairman, president, general manager or administrator, and the board of directors of government-owned or controlled corporations and financial institutions exceed Salary Grade 30: Provided, That the President may, in truly exceptional cases, approve higher compensation for the aforesaid officials. (Underscoring supplied.)

In *Baybay Water District v. Commission on Audit*,[8] it was held that the prohibition in Section 13 of P.D. No. 198, as amended by P.D. No. 768, against the grant of additional compensation to board members has not been repealed by R.A. No. 6758. *Baybay Water District* stated, thus:

... R.A. No. 6758, [Sec.] 4 specifically provides that the Salary Standardization Law applies to “positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial institutions.” These positions, with

their corresponding functions, are described as follows:

Sec. 5. Position Classification System.—The Position Classification System shall consist of classes of positions grouped into four main categories, namely: professional supervisory, professional non-supervisory, sub-professional supervisory, and sub-professional non-supervisory, and the rules and regulations for its implementation.

Categorization of these classes of positions shall be guided by the following considerations:

(a) Professional Supervisory Category.—This category includes responsible positions of a managerial character involving the exercise of management functions such as planning, organizing, directing, coordinating, controlling and overseeing within delegated authority the activities of an organization, a unit thereof or of a group, requiring some degree of professional, technical or scientific knowledge and experience, application of managerial or supervisory skills required to carry out their basic duties and responsibilities involving functional guidance and control, leadership, as well as line supervision. These positions require intensive and thorough knowledge of a specialized field usually acquired from completion of a bachelor's degree or higher degree courses.

The positions in this category are assigned Salary Grade 9 to Salary Grade 33.

(b) Professional Non-Supervisory Category.—This category includes positions performing tasks which usually require the exercise of a particular profession or application of knowledge acquired through formal training in a particular field or just the exercise of a natural, creative and artistic ability or talent in literature, drama, music and other branches of arts and letters. Also included are positions involved in research and application of professional knowledge and methods to a variety of technological, economic, social, industrial and governmental functions; the performance of technical tasks auxiliary to scientific research and development; and in the performance of religious, educational, legal, artistic or literary functions. These positions require thorough knowledge in the field of arts and sciences or learning acquired through completion of at least four (4) years of college studies.

The positions in this category are assigned Salary Grade 8 to Salary Grade 30.

(c) Sub-Professional Supervisory Category.—This category includes positions performing supervisory functions over a group of employees engaged in responsible work along technical, manual or clerical lines of work which are short of professional work, requiring training and moderate experience or lower training but considerable experience and knowledge of a limited subject matter or skills in arts, crafts or trades.

These positions require knowledge acquired from secondary or vocational education or completion of up to two (2) years of college education.

The positions in this category are assigned Salary Grade 4 to Salary Grade 18.

(d) Sub-Professional Non-Supervisory Category.—This category includes positions involved in structured work in support of office or fiscal operations or those engaged in crafts, trades or manual work. These positions usually require skills acquired through training and experience or completion of elementary education, secondary or vocational education or completion of up to two (2) years of college education.

The positions in this category are assigned Salary Grade 1 to Salary Grade 10.

It is obvious that the Salary Standardization Law does not apply to petitioners because directors of water districts are in fact limited to policy-making and are prohibited from the management of the districts. P.D. No. 198, [Sec.] 18 described the functions of members of boards of directors of water districts as follows:

Sec. 18. Functions Limited to Policy-Making.— The function of the board shall be to establish policy. The Board shall not engage in the detailed management of the district.

Furthermore, the fact that [Secs.] 12 and 17 of the Salary Standardization Law speak of allowances as “benefits” paid in addition to the salaries incumbents are presently receiving makes it clear that the law does not refer to the compensation of board of directors of water districts as these directors do not receive salaries but per diems for their compensation.

It is noteworthy that even the Local Water Utilities Administration (LWUA), in Resolution No. 313, s. 1995, entitled “Policy Guidelines on Compensation and Other Benefits to WD Board of Directors,” on which petitioners rely for authority to grant themselves additional benefits, acknowledges that directors of water districts are not organic personnel and, as such, are deemed excluded from the coverage of the Salary Standardization Law. Memorandum Circular No. 94-002 of the DBM-CSC-LWUA-PAWD Oversight Committee states in pertinent part:

As the WD Board of Directors’ function is limited to policy-making under Sec. 18 of Presidential Decree 198, as amended, it is the position of the Oversight Committee that said WD Directors are not to be treated as organic personnel, and as such are deemed excluded from the coverage of RA 6758, and that their powers, rights and privileges are governed by the pertinent provisions of PD 198, as amended, not by R.A. 6758. . . .

There is, therefore, no basis for petitioners’ contention that the provisions of P.D. No. 198 on the compensation of members of the board of directors of water districts are inconsistent with the provisions of the Salary Standardization Law.[9]

It is, therefore, clear that P.D. No. 198 is the legal basis for determining whether or not the members of the board of directors of MIWD are entitled to the subject benefits. Nowhere in the said law are board of directors granted any other benefits except per diem compensation, found in Section 13 thereof, as amended by P.D. No. 768. By specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month, and, in the same paragraph, providing “No director shall receive other compensation” than the amount provided for per diems, the law quite clearly indicates that directors of water districts are authorized to receive only the per diem authorized by law and no other compensation or allowance in whatever form.[10]

Consequently, there is no legal basis for petitioners’ assertion that the Local Water Utilities Administration (LWUA) is vested with authority under P.D. No 198, as amended by P.D. Nos. 768 and 1479, to allow local water districts to grant the disallowed benefits to the members of their board of directors by virtue of LWUA Resolution No. 313, series of 1995.

Petitioners cited the grant of similar benefits to the members of the board of directors of the National Power Corporation (NAPOCOR) to support their stance. However, the charter of NAPOCOR expressly granted members of its board of directors the right to receive allowances in addition to their per diems, subject only to the approval of the Secretary of Energy.[11] Therefore, petitioners cannot claim a similar treatment as the board of directors of NAPOCOR, since petitioners’ right to compensation is limited to per diems under Section 13 of P.D. No. 198, as amended by P. D. No. 768.[12]

Petitioners also contend that as members of the board of directors of the MIWD, they have been enjoying the disallowed benefits since the approved Position Paper on Some Benefits of WD Director[13] was adopted by the Board of Directors of MIWD on March 25, 1991. Hence, they allege that the disallowance thereof constitutes diminution in pay.

In the aforecited Baybay Water District, a similar contention was resolved, thus:

. . . The erroneous application and enforcement of the law by public officers does not estop the Government from making a subsequent correction of such errors. More specifically, where there is an express provision of law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties due to an error committed by public officials in granting the benefit. As already stated, P.D. No. 198 expressly

prohibits the grant of compensation other than the payment of per diems, as determined by the LWUA pursuant to P.D. No. 198, to directors of water districts. Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law.[14]

This Court is aware, however, that on April 2, 2004, R.A. No. 9286[15] amended Section 13 of P.D. No. 198, as amended, thus:

Sec. 13. Compensation. – Each director shall receive per diem to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month.

Any per diem in excess of One hundred fifty pesos (P150.00) shall be subject to the approval of the Administration. In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration. (Emphasis supplied.)

However, the amendatory Act is prospective in nature as indicated in its effectivity clause which states, “This Act shall take effect upon its approval.”[16] The Act was approved by President Gloria Macapagal-Arroyo on April 2, 2004. Since this case happened before the passage of R.A. No. 6758, petitioners cannot benefit from it, but are still covered by the amendment under P.D. No. 768.

Nevertheless, in *De Jesus v. Commission on Audit*,[17] it was held that the benefits granted under LWUA Resolution No. 313, series of 1995, to the petitioners therein, who were members of the interim board of directors of the Catbalogan Water District, need not be refunded because at the time they received the benefits, the Court had not yet decided *Baybay Water District*. Petitioners therein had no knowledge that such payment was without legal basis.[18] Good faith was thus considered by the Court in holding that the recipients of the allowances and bonuses disallowed by the COA need not refund the same.[19]

Petitioners herein also received the benefits granted under LWUA Resolution No. 313, series of 1995, in 1995, before the decision in *Baybay Water District*, which was promulgated in 2002; hence, the aforesaid ruling in *De Jesus v. Commission on Audit* applies to the instant case.

The benefits granted by LWUA Resolution No. 313, series of 1995,[20] to the board of directors of water districts are the following: rata, travel allowance, extraordinary and miscellaneous expense, Christmas bonus, cash gift, uniform allowance, rice allowance, medical/dental benefits and productivity incentive bonus. Absent therein is the family and group hospitalization insurance benefit granted to petitioners. Moreover, it has not been sufficiently shown that petitioners MIWD General Manager Moises Molen, Jr., Administrative Officer Ernesto Caberoy and Accounting Division Chief Regina H. Apelit had the authority to allow the wreath and mass cards to be given to friends of MIWD.

WHEREFORE, the decision of the Commission on Audit dated December 6, 2000 and its resolution dated October 2, 2001 are AFFIRMED with MODIFICATION. Petitioners concerned need not refund the cash gift, representation allowance, traveling expenses, rice subsidy, and medical/uniform allowance. But petitioners affected have to refund the amount of P4,660.28 for the family and group hospitalization insurance, and P4,810 for the wreath and mass cards.

No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Decision No. 2000-362.

[2] Resolution No. 2001-201.

[3] See, COA Decision No. 2000-362, Rollo, pp. 41- 45.

[4] Rollo, p. 48.

[5] Rollo, pp. 11-12.

[6] “Provincial Water Utilities Act of 1973.”

[7] “Compensation and Position Classification Act of 1989.”

[8] 374 SCRA 482 (2002).

[9] Id. at 491-493 (Emphasis supplied).

[10] Id. at 490.

[11] Id. at 497.

[12] Ibid.

[13] Annex “G,” Rollo, p. 93.

[14] Supra, note 8, at 493-494.

[15] AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 198, OTHERWISE KNOWN AS “THE PROVINCIAL WATER UTILITIES ACT OF 1973,” AS AMENDED.

[16] See Commissioner of Internal Revenue v. Filipinas Compañia de Seguros, 107 Phil. 1055 (1960).

[17] 403 SCRA 666 (2003).

[18] Ibid.

[19] De Jesus v. Commission on Audit, 422 SCRA 287 (2004).

[20] Annex “I,” Rollo, p. 98.

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