

**LETRAN CALAMBA FACULTY and EMPLOYEES ASSOCIATION,
Petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION and
COLEGIO DE SAN JUAN DE LETRAN CALAMBA, INC., Respondents.**

G.R. No. 156225. January 29, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed in the present Petition for Review on Certiorari under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) promulgated on May 14, 2002 in CA-G.R. SP No. 61552 dismissing the special civil action for certiorari filed before it; and the Resolution[2] dated November 28, 2002, denying petitioner's Motion for Reconsideration.

The facts of the case are as follows:

On October 8, 1992, the Letran Calamba Faculty and Employees Association (petitioner) filed with Regional Arbitration Branch No. IV of the National Labor Relations Commission (NLRC) a Complaint[3] against Colegio de San Juan de Letran, Calamba, Inc. (respondent) for collection of various monetary claims due its members. Petitioner alleged in its Position Paper that:

x x x x

2) [It] has filed this complaint in behalf of its members whose names and positions appear in the list hereto attached as Annex "A".

3) In the computation of the thirteenth month pay of its academic personnel, respondent does not include as basis therefor their compensation for overloads. It only takes into account the pay the faculty members receive for their teaching loads not exceeding eighteen (18) units. The teaching overloads are rendered within eight (8) hours a day.

4) Respondent has not paid the wage increases required by Wage Order No. 5 to its employees who qualify thereunder.

5) Respondent has not followed the formula prescribed by DECS Memorandum Circular No. 2 dated March 10, 1989 in the computation of the compensation per unit of excess load or overload of faculty members. This has resulted in the diminution of the compensation of faculty members.

6) The salary increases due the non-academic personnel as a result of job grading has not been given. Job grading has been an annual practice of the school since 1980; the same is done for the purpose of increasing the salaries of non-academic personnel and as the counterpart of the ranking systems of faculty members.

7) Respondent has not paid to its employees the balances of seventy (70%) percent of the tuition fee increases for the years 1990, 1991 and 1992.

8) Respondent has not also paid its employees the holiday pay for the ten (10) regular holidays as provided for

in Article 94 of the Labor Code.

9) Respondent has refused without justifiable reasons and despite repeated demands to pay its obligations mentioned in paragraphs 3 to 7 hereof.

x x x x[4]

The complaint was docketed as NLRC Case No. RAB-IV-10-4560-92-L.

On January 29, 1993, respondent filed its Position Paper denying all the allegations of petitioner.

On March 10, 1993, petitioner filed its Reply.

Prior to the filing of the above-mentioned complaint, petitioner filed a separate complaint against the respondent for money claims with Regional Office No. IV of the Department of Labor and Employment (DOLE).

On the other hand, pending resolution of NLRC Case No. RAB-IV-10-4560-92-L, respondent filed with Regional Arbitration Branch No. IV of the NLRC a petition to declare as illegal a strike staged by petitioner in January 1994.

Subsequently, these three cases were consolidated. The case for money claims originally filed by petitioner with the DOLE was later docketed as NLRC Case No. RAB-IV-11-4624-92-L, while the petition to declare the subject strike illegal filed by respondent was docketed as NLRC Case No. RAB-IV-3-6555-94-L.

On September 28, 1998, the Labor Arbiter (LA) handling the consolidated cases rendered a Decision with the following dispositive portion:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

- The money claims cases (RAB-IV-10-4560-92-L and RAB-IV-11-4624-92-L) are hereby dismissed for lack of merit;
- The petition to declare strike illegal (NLRC Case No. RAB-IV-3-6555-94-L) is hereby dismissed, but the officers of the Union, particularly its President, Mr. Edmundo F. Marifosque, Sr., are hereby reprimanded and sternly warned that future conduct similar to what was displayed in this case will warrant a more severe sanction from this Office.

SO ORDERED.[5]

Both parties appealed to the NLRC.

On July 28, 1999, the NLRC promulgated its Decision[6] dismissing both appeals. Petitioner filed a Motion for Reconsideration[7] but the same was denied by the NLRC in its Resolution[8] dated June 21, 2000.

Petitioner then filed a special civil action for certiorari with the CA assailing the above-mentioned NLRC Decision and Resolution.

On May 14, 2002, the CA rendered the presently assailed judgment dismissing the petition.

Petitioner filed a Motion for Reconsideration but the CA denied it in its Resolution promulgated on November 28, 2002.

Hence, herein petition for review based on the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE FACTUAL FINDINGS OF

THE NATIONAL LABOR RELATIONS COMMISSION CANNOT BE REVIEWED IN CERTIORARI PROCEEDINGS.

II

THE COURT OF APPEALS GRAVELY ERRED IN REFUSING TO RULE SQUARELY ON THE ISSUE OF WHETHER OR NOT THE PAY OF FACULTY MEMBERS FOR TEACHING OVERLOADS SHOULD BE INCLUDED AS BASIS IN THE COMPUTATION OF THEIR THIRTEENTH MONTH PAY.

III

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IN NOT GRANTING PETITIONER'S MONETARY CLAIMS.[9]

Citing *Agustilo v. Court of Appeals*,[10] petitioner contends that in a special civil action for certiorari brought before the CA, the appellate court can review the factual findings and the legal conclusions of the NLRC.

As to the inclusion of the overloads of respondent's faculty members in the computation of their 13[th]-month pay, petitioner argues that under the Revised Guidelines on the Implementation of the 13[th]-Month Pay Law, promulgated by the Secretary of Labor on November 16, 1987, the basic pay of an employee includes remunerations or earnings paid by his employer for services rendered, and that excluded therefrom are the cash equivalents of unused vacation and sick leave credits, overtime, premium, night differential, holiday pay and cost-of-living allowances. Petitioner claims that since the pay for excess loads or overloads does not fall under any of the enumerated exclusions and considering that the said overloads are being performed within the normal working period of eight hours a day, it only follows that the overloads should be included in the computation of the faculty members' 13[th]-month pay.

To support its argument, petitioner cites the opinion of the Bureau of Working Conditions of the DOLE that payment of teaching overload performed within eight hours of work a day shall be considered in the computation of the 13[th]-month pay.[11]

Petitioner further contends that DOLE-DECS-CHED-TESDA Order No. 02, Series of 1996 (DOLE Order) which was relied upon by the LA and the NLRC in their respective Decisions cannot be applied to the instant case because the DOLE Order was issued long after the commencement of petitioner's complaints for monetary claims; that the prevailing rule at the time of the commencement of petitioner's complaints was to include compensations for overloads in determining a faculty member's 13[th]-month pay; that to give retroactive application to the DOLE Order issued in 1996 is to deprive workers of benefits which have become vested and is a clear violation of the constitutional mandate on protection of labor; and that, in any case, all doubts in the implementation and interpretation of labor laws, including implementing rules and regulations, should be resolved in favor of labor.

Lastly, petitioner avers that the CA, in concluding that the NLRC Decision was supported by substantial evidence, failed to specify what constituted said evidence. Thus, petitioner asserts that the CA acted arbitrarily in affirming the Decision of the NLRC.

In its Comment, respondent contends that the ruling in *Agustilo* is an exception rather than the general rule; that the general rule is that in a petition for certiorari, judicial review by this Court or by the CA in labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the proper labor officer or office based his or its determination but is limited only to issues of jurisdiction or grave abuse of discretion amounting to lack of jurisdiction; that before a party may ask that the CA or this Court review the factual findings of the NLRC, there must first be a convincing argument that the NLRC acted in a capricious, whimsical, arbitrary or despotic manner;

and that in its petition for certiorari filed with the CA, herein petitioner failed to prove that the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion.

Respondent argues that *Agustilo* is not applicable to the present case because in the former case, the findings of fact of the LA and the NLRC are at variance with each other; while in the present case, the findings of fact and conclusions of law of the LA and the NLRC are the same.

Respondent also avers that in a special civil action for certiorari, the discretionary power to review factual findings of the NLRC rests upon the CA; and that absent any findings by the CA of the need to resolve any unclear or ambiguous factual findings of the NLRC, the grant of the writ of certiorari is not warranted.

Further, respondent contends that even granting that the factual findings of the CA, NLRC and the LA may be reviewed in the present case, petitioner failed to present valid arguments to warrant the reversal of the assailed decision.

Respondent avers that the DOLE Order is an administrative regulation which interprets the 13[th]-Month Pay Law (P.D. No. 851) and, as such, it is mandatory for the LA to apply the same to the present case.

Moreover, respondent contends that the Legal Services Office of the DOLE issued an opinion dated March 4, 1992,[12] that remunerations for teaching in excess of the regular load, which includes overload pay for work performed within an eight-hour work day, may not be included as part of the basic salary in the computation of the 13[th]-month pay unless this has been included by company practice or policy; that petitioner intentionally omitted any reference to the above-mentioned opinion of the Legal Services Office of the DOLE because it is fatal to its cause; and that the DOLE Order is an affirmation of the opinion rendered by the said Office of the DOLE.

Furthermore, respondent claims that, contrary to the asseveration of petitioner, prior to the issuance of the DOLE Order, the prevailing rule is to exclude excess teaching load, which is akin to overtime, in the computation of a teacher's basic salary and, ultimately, in the computation of his 13th-month pay.

As to respondent's alleged non-payment of petitioner's consolidated money claims, respondent contends that the findings of the LA regarding these matters, which were affirmed by the NLRC and the CA, have clear and convincing factual and legal bases to stand on.

The Court's Ruling

The Court finds the petition bereft of merit.

As to the first and third assigned errors, petitioner would have this Court review the factual findings of the LA as affirmed by the NLRC and the CA, to wit.

With respect to the alleged non-payment of benefits under Wage Order No. 5, this Office is convinced that after the lapse of the one-year period of exemption from compliance with Wage Order No. 5 (Exhibit "1-B), which exemption was granted by then Labor Minister Blas Ople, the School settled its obligations to its employees, conformably with the agreement reached during the management-employees meeting of June 26, 1985 (Exhibits "4-B" up to "4-D", also Exhibit "6-x-1"). The Union has presented no evidence that the settlement reached during the June 26, 1985 meeting was the result of coercion. Indeed, what is significant is that the agreement of June 26, 1985 was signed by Mr. Porferio Ferrer, then Faculty President and an officer of the complaining Union. Moreover, the samples from the payroll journal of the School, identified and offered in evidence in these cases (Exhibits "1-C" and 1-D"), shows that the School paid its employees the benefits under Wage Order No. 5 (and even Wage Order No. 6) beginning June 16, 1985.

Under the circumstances, therefore, the claim of the Union on this point must likewise fail.

The claim of the Union for salary differentials due to the improper computation of compensation per unit of excess load cannot hold water for the simple reason that during the Schoolyears in point there were no classes from June 1-14 and October 17-31. This fact was not refuted by the Union. Since extra load should be paid only when actually performed by the employees, no salary differentials are due the Union members.

The non-academic members of the Union cannot legally insist on wage increases due to "Job Grading". From the records it appears that "Job Grading" is a system adopted by the School by which positions are classified and evaluated according to the prescribed qualifications therefor. It is akin to a merit system whereby salary increases are made dependent upon the classification, evaluation and grading of the position held by an employee.

The system of Job Grading was initiated by the School in Schoolyear 1989-1990. In 1992, just before the first of the two money claims was filed, a new Job Grading process was initiated by the School.

Under the circumstances obtaining, it cannot be argued that there were repeated grants of salary increases due to Job Grading to warrant the conclusion that some benefit was granted in favor of the non-academic personnel that could no longer be eliminated or banished under Article 100 of the Labor Code. Since the Job Grading exercises of the School were neither consistent nor for a considerable period of time, the monetary claims attendant to an increase in job grade are non-existent.

The claim of the Union that its members were not given their full share in the tuition fee increases for the Schoolyears 1989-1990, 1990-1991 and 1991-1992 is belied by the evidence presented by the School which consists of the unrefuted testimony of its Accounting Coordinator, Ms. Rosario Manlapaz, and the reports extrapolated from the journals and general ledgers of the School (Exhibits "2", "2-A" up to "2-G"). The evidence indubitably shows that in Schoolyear 1989-1990, the School incurred a deficit of P445,942.25, while in Schoolyears 1990-1991 and 1991-1992, the School paid out, 91% and 77%, respectively, of the increments in the tuition fees collected.

As regards the issue of non-payment of holiday pay, the individual pay records of the School's employees, a sample of which was identified and explained by Ms. Rosario Manlapaz (Exhibit "3"), shows that said School employees are paid for all days worked in the year. Stated differently, the factor used in computing the salaries of the employees is 365, which indicates that their regular monthly salary includes payment of wages during all legal holidays.[13]

This Court held in *Odango v. National Labor Relations Commission*[14] that:

The appellate court's jurisdiction to review a decision of the NLRC in a petition for certiorari is confined to issues of jurisdiction or grave abuse of discretion. An extraordinary remedy, a petition for certiorari is available only and restrictively in truly exceptional cases. The sole office of the writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of the NLRC's evaluation of the evidence or of its factual findings. Such findings are generally accorded not only respect but also finality. A party assailing such findings bears the burden of showing that the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy, in order that the extraordinary writ of certiorari will lie.[15]

In the instant case, the Court finds no error in the ruling of the CA that since nowhere in the petition is there any acceptable demonstration that the LA or the NLRC acted either with grave abuse of discretion or without or in excess of its jurisdiction, the appellate court has no reason to look into the correctness of the evaluation of evidence which supports the labor tribunals' findings of fact.

Settled is the rule that the findings of the LA, when affirmed by the NLRC and the CA, are binding on the

Supreme Court, unless patently erroneous.[16] It is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below.[17] In a petition for review on certiorari, this Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous.[18] Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor cases.[19] Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality.[20] They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.[21] We find none of these exceptions in the present case.

In petitions for review on certiorari like the instant case, the Court invariably sustains the unanimous factual findings of the LA, the NLRC and the CA, specially when such findings are supported by substantial evidence and there is no cogent basis to reverse the same, as in this case.[22]

The second assigned error properly raises a question of law as it involves the determination of whether or not a teacher's overload pay should be considered in the computation of his or her 13[th]-month pay. In resolving this issue, the Court is confronted with conflicting interpretations by different government agencies.

On one hand is the opinion of the Bureau of Working Conditions of the DOLE dated December 9, 1991, February 28, 1992 and November 19, 1992 to the effect that if overload is performed within a teacher's normal eight-hour work per day, the remuneration that the teacher will get from the additional teaching load will form part of the basic wage.[23]

This opinion is affirmed by the Explanatory Bulletin on the Inclusion of Teachers' Overload Pay in the 13[th]-Month Pay Determination issued by the DOLE on December 3, 1993 under then Acting DOLE Secretary Cresenciano B. Trajano. Pertinent portions of the said Bulletin read as follows:

- Basis of the 13[th]-month pay computation

The Revised Implementing Guidelines of the 13[th]-Month Pay Law (P.D. 851, as amended) provides that an employee shall be entitled to not less than 1/12 of the total basic salary earned within a calendar year for the purpose of computing such entitlement. The basic wage of an employee shall include:

"x x x all remunerations or earnings paid by his employer for services rendered but do not include allowances or monetary benefits which are not considered or integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night differential and holiday pay, and cost-of-living allowances. However, these salary-related benefits should be included as part of the basic salary in the computation of the 13[th] month pay if by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees."

Basic wage is defined by the Implementing Rules of RA 6727 as follows:

"Basic Wage" means all remuneration or earnings paid by an employer to a worker for services rendered on normal working days and hours but does not include cost of living allowances, 13[th]-month pay or other monetary benefits which are not considered as part of or integrated into the regular salary of the workers xxx.

The foregoing definition was based on Article 83 of the Labor Code which provides that "the normal hours of work of any employee shall not exceed eight (8) hours a day." This means that the basic salary of an employee for the purpose of computing the 13[th]-month pay shall include all remunerations or earnings paid by an employer for services rendered during normal working hours.

- Overload work/pay

Overload on the other hand means “the load in excess of the normal load of private school teachers as prescribed by the Department of Education, Culture and Sports (DECS) or the policies, rules and standards of particular private schools.” In recognition of the peculiarities of the teaching profession, existing DECS and School Policies and Regulations for different levels of instructions prescribe a regular teaching load, the total actual teaching or classroom hours of which a teacher can generally perform in less than eight (8) hours per working day. This is because teaching may also require the teacher to do additional work such as handling an advisory class, preparation of lesson plans and teaching aids, evaluation of students and other related activities. Where, however a teacher is engaged to undertake actual additional teaching work after completing his/her regular teaching load, such additional work is generally referred to as overload. In short, additional work in excess of the regular teaching load is overload work. Regular teaching load and overload work, if any, may constitute a teacher's working day.

Where a teacher is required to perform such overload within the eight (8) hours normal working day, such overload compensation shall be considered part of the basic pay for the purpose of computing the teacher's 13[th]-month pay. “Overload work” is sometimes misunderstood as synonymous to “overtime work” as this term is used and understood in the Labor Code. These two terms are not the same because overtime work is work rendered in excess of normal working hours of eight in a day (Art. 87, Labor Code). Considering that overload work may be performed either within or outside eight hours in a day, overload work may or may not be overtime work.

- Concluding Statement

In the light of the foregoing discussions, it is the position of this Department that all basic salary/wage representing payments earned for actual work performed during or within the eight hours in a day, including payments for overload work within eight hours, form part of basic wage and therefore are to be included in the computation of 13[th]-month pay mandated by PD 851, as amended.[24] (Underscoring supplied)

On the other hand, the Legal Services Department of the DOLE holds in its opinion of March 4, 1992 that remunerations for teaching in excess of the regular load shall be excluded in the computation of the 13[th]-month pay unless, by school policy, the same are considered as part of the basic salary of the qualified teachers.[25]

This opinion is later affirmed by the DOLE Order, pertinent portions of which are quoted below:

x x x x

- In accordance with Article 83 of the Labor Code of the Philippines, as amended, the normal hours of work of school academic personnel shall not exceed eight (8) hours a day. Any work done in addition to the eight (8) hours daily work shall constitute overtime work.

- The normal hours of work of teaching or academic personnel shall be based on their normal or regular teaching loads. Such normal or regular teaching loads shall be in accordance with the policies, rules and standards prescribed by the Department of Education, Culture and Sports, the Commission on Higher Education and the Technical Education and Skills Development Authority. Any teaching load in excess of the normal or regular teaching load shall be considered as overload. Overload partakes of the nature of temporary extra assignment and compensation therefore shall be considered as an overload honorarium if performed within the 8-hour work period and does not form part of the regular or basic pay. Overload performed beyond the eight-hour daily work is overtime work.[26] (Emphasis supplied)

It was the above-quoted DOLE Order which was used by the LA as basis for ruling against herein petitioner.

The petitioner's claim that the DOLE Order should not be made to apply to the present case because said Order was issued only in 1996, approximately four years after the present case was initiated before the Regional

Arbitration Branch of the NLRC, is not without basis. The general rule is that administrative rulings and circulars shall not be given retroactive effect.[27]

Nevertheless, it is a settled rule that when an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law and the administrative interpretation is at best advisory for it is the courts that finally determine what the law means.[28]

In the present case, while the DOLE Order may not be applicable, the Court finds that overload pay should be excluded from the computation of the 13[th]-month pay of petitioner's members.

In resolving the issue of the inclusion or exclusion of overload pay in the computation of a teacher's 13[th]-month pay, it is decisive to determine what "basic salary" includes and excludes.

In this respect, the Court's disquisition in *San Miguel Corporation v. Inciong*[29] is instructive, to wit:

Under Presidential Decree 851 and its implementing rules, the basic salary of an employee is used as the basis in the determination of his 13[th] month pay. Any compensations or remunerations which are deemed not part of the basic pay is excluded as basis in the computation of the mandatory bonus.

Under the Rules and Regulations Implementing Presidential Decree 851, the following compensations are deemed not part of the basic salary:

- a) Cost-of-living allowances granted pursuant to Presidential Decree 525 and Letter of Instruction No. 174;
- b) Profit sharing payments;
- c) All allowances and monetary benefits which are not considered or integrated as part of the regular basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

Under a later set of Supplementary Rules and Regulations Implementing Presidential Decree 851 issued by the then Labor Secretary Blas Ople, overtime pay, earnings and other remunerations are excluded as part of the basic salary and in the computation of the 13[th]-month pay.

The exclusion of cost-of-living allowances under Presidential Decree 525 and Letter of Instruction No. 174 and profit sharing payments indicate the intention to strip basic salary of other payments which are properly considered as "fringe" benefits. Likewise, the catch-all exclusionary phrase "all allowances and monetary benefits which are not considered or integrated as part of the basic salary" shows also the intention to strip basic salary of any and all additions which may be in the form of allowances or "fringe" benefits.

Moreover, the Supplementary Rules and Regulations Implementing Presidential Decree 851 is even more emphatic in declaring that earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13[th]-month pay.

While doubt may have been created by the prior Rules and Regulations Implementing Presidential Decree 851 which defines basic salary to include all remunerations or earnings paid by an employer to an employee, this cloud is dissipated in the later and more controlling Supplementary Rules and Regulations which categorically, exclude from the definition of basic salary earnings and other remunerations paid by employer to an employee. A cursory perusal of the two sets of Rules indicates that what has hitherto been the subject of a broad inclusion is now a subject of broad exclusion. The Supplementary Rules and Regulations cure the seeming tendency of the former rules to include all remunerations and earnings within the definition of basic salary.

The all-embracing phrase "earnings and other remunerations" which are deemed not part of the basic salary includes within its meaning payments for sick, vacation, or maternity leaves, premium for works performed on rest days and special holidays, pay for regular holidays and night differentials. As such they are deemed not part of the basic salary and shall not be considered in the computation of the 13[th]-month pay. If they were

not so excluded, it is hard to find any “earnings and other remunerations” expressly excluded in the computation of the 13[th]-month pay. Then the exclusionary provision would prove to be idle and with no purpose.

This conclusion finds strong support under the Labor Code of the Philippines. To cite a few provisions:

“Art. 87 – Overtime work. Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, additional compensation equivalent to his regular wage plus at least twenty-five (25%) percent thereof.”

It is clear that overtime pay is an additional compensation other than and added to the regular wage or basic salary, for reason of which such is categorically excluded from the definition of basic salary under the Supplementary Rules and Regulations Implementing Presidential Decree 851.

In Article 93 of the same Code, paragraph

“c.) work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee.”

It is likewise clear that premium for special holiday which is at least 30% of the regular wage is an additional compensation other than and added to the regular wage or basic salary. For similar reason it shall not be considered in the computation of the 13[th] -month pay.[30]

In the same manner that payment for overtime work and work performed during special holidays is considered as additional compensation apart and distinct from an employee's regular wage or basic salary, an overload pay, owing to its very nature and definition, may not be considered as part of a teacher's regular or basic salary, because it is being paid for additional work performed in excess of the regular teaching load.

The peculiarity of an overload lies in the fact that it may be performed within the normal eight-hour working day. This is the only reason why the DOLE, in its explanatory bulletin, finds it proper to include a teacher's overload pay in the determination of his or her 13[th]-month pay. However, the DOLE loses sight of the fact that even if it is performed within the normal eight-hour working day, an overload is still an additional or extra teaching work which is performed after the regular teaching load has been completed. Hence, any pay given as compensation for such additional work should be considered as extra and not deemed as part of the regular or basic salary.

Moreover, petitioner failed to refute private respondent's contention that excess teaching load is paid by the hour, while the regular teaching load is being paid on a monthly basis; and that the assignment of overload is subject to the availability of teaching loads. This only goes to show that overload pay is not integrated with a teacher's basic salary for his or her regular teaching load. In addition, overload varies from one semester to another, as it is dependent upon the availability of extra teaching loads. As such, it is not legally feasible to consider payments for such overload as part of a teacher's regular or basic salary. Verily, overload pay may not be included as basis for determining a teacher's 13[th]-month pay.

WHEREFORE, the instant petition is DENIED. The assailed Decision and Resolution of the Court of Appeals are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Corona, Nachura, and Reyes, JJ., concur.

* In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 484 dated January 11, 2008.

- [1] Penned by Justice Romeo A. Brawner (now COMELEC Commissioner) with the concurrence of Justices Mario L. Guariña III and Danilo B. Pine; rollo, pp. 849-854.
- [2] Id. at 860-863.
- [3] Rollo, p. 41.
- [4] Id. at 42-43.
- [5] Rollo, p. 803.
- [6] Id. at 817.
- [7] Id. at 831.
- [8] Id. at 834.
- [9] Rollo, pp. 15-19.
- [10] 417 Phil. 218 (2001).
- [11] See Annexes “III,” “JJJ” and “KKK,” rollo, pp. 168-174.
- [12] See Annex “4” to Comment on Petition, rollo, p. 919.
- [13] Decision of the Labor Arbiter, rollo, pp. 896-898.
- [14] G.R. No.147420, June 10, 2004, 431 SCRA 633.
- [15] Id. at 639-640.
- [16] German Machineries Corporation v. Endaya, G.R. No. 156810, November 25, 2004, 444 SCRA 329, 340.
- [17] Id.
- [18] Retuya v. Dumarpa, G.R. No. 148848, August 5, 2003, 408 SCRA 315, 326.
- [19] Gerlach v. Reuters Limited, Phils., G.R. No. 148542, January 17, 2005, 448 SCRA 535, 545.
- [20] Colegio de San Juan de Letran-Calamba v. Villas, 447 Phil. 692, 700 (2003).
- [21] Id.
- [22] Pandiman Philippines, Inc. v. Marine Manning Management Corporation, G.R. No. 143313, June 21, 2005, 460 SCRA 418, 424.
- [23] See note 11.
- [24] THE LABOR CODE OF THE PHILIPPINES, 1998 edition, Vicente Foz, pp. 490-491.
- [25] See note 12.
- [26] CA rollo, p. 782.
- [27] Co v. Court of Appeals, G.R. No. 100776, October 28, 1993, 227 SCRA 444, 449, citing ABS-CBN Broadcasting Corporation v. Court of Tax Appeals, 195 Phil. 34, 41 (1981); Sanchez v. Commission on Elections, G.R. Nos. 94459-60, January 24, 1991, 193 SCRA 317; and Romualdez III v. Civil Service Commission, 274 Phil. 445 (1991).

[28] Energy Regulatory Board v. Court of Appeals, 409 Phil. 36, 48 (2001); La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos, 465 Phil. 860, 950 (2004).

[29] G.R. No. L-49774, February 24, 1981, 103 SCRA 139.

[30] Id. at 143-145.

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