PHILIPPINE PORTS AUTHORITY AND JUAN O. PEÑA, ARTURO S. BERNARDINO, AND VICENTE D. RAMOS, FOR THEIR OWN AND IN BEHALF OF THE PPA OFFICIALS AND EMPLOYEES, PETITIONERS, VS. COMMISS...

G.R. NO. 159200. February 16, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari seeking to annul the Decision of the Commission on Audit (COA) No. 2002-010 dated January 8, 2002 and COA Decision No. 2003-106 dated July 17, 2003. COA Decision No. 2002-010 affirmed the decision dated January 21, 2000 of the COA's Corporate Audit Office II, disallowing the grant of hazard duty pay[1] and birthday cash gift to officials and employees of petitioner Philippine Ports Authority (PPA). COA Decision No. 2003-106 denied petitioners' motion for reconsideration.

The antecedents are as follows:

PPA is a government-owned and controlled corporation. By virtue of PPA Special Order No. 407-97, it granted hazard duty pay, in amounts not less than P300 and not more than P500, to PPA officials and employees for the first semester of 1997, covering the period from January 1 to June 30, 1997. The Special Order was issued pursuant to PPA Memorandum Circular No. 34-95 dated June 26, 1995 implementing the Department of Budget and Management (DBM) National Compensation Circular No. 76, series of 1995, which provided the guidelines on the grant of hazard duty pay under the annual General Appropriations Act.

In addition, PPA also granted birthday cash gift of P3,000 to its officials and employees on the basis of PPA Memorandum Circular No. 22-97 dated May 28, 1997, which adopted the recommendation of the PPA's Employees Suggestion and Incentive Awards Committee.

On February 24, 1998, Corporate Auditor Arthur H. Hinal issued a notice requiring the concerned PPA officials and employees to refund the amount received by them as hazard duty pay for Fiscal Year 1997 amounting to P2,350,875.03, on the ground that this was paid in violation of Section 44 of Republic Act (RA) No. 8250 or the General Appropriations Act for Fiscal Year 1997, and DBM Circular Letter No. 13-97 dated December 15, 1997.

Corporate Auditor Hinal also issued Notices of Disallowance[2] from July 1998 to November 18, 1998 disallowing for lack of legal basis the payment of birthday cash gift covering the period from January 1 to 31, 1998 to the concerned PPA officials and employees.

In a letter dated September 15, 1998, Vicente D. Ramos, representing the PPA rank-and–file, sought reconsideration from the COA of the disallowance of both the hazard duty pay and the birthday cash gift paid to PPA officials and employees. The letter was referred to the Office of the Corporate Auditor as the office having original jurisdiction to rule on the request for reconsideration. In a letter dated March 8, 1999, Corporate Auditor Hinal denied due course to the request for reconsideration.

On May 5, 1999, petitioners filed a petition for review of the decision of the Corporate Auditor before the COA. The petition was denied by the Director, Corporate Audit Office II, COA, in Decision No. 2000-002 dated January 21, 2000.

Thereafter, petitioners filed a petition for review of Decision No. 2000-002 with the COA, which petition was denied in COA Decision No. 2002-010 dated January 8, 2002.

The COA held that the 1997 payment of the hazard duty pay to PPA officials and employees was without legal basis because of the presidential veto of the provision authorizing the grant contained in Section 44 of RA No. 8250 or the General Appropriations Act for Fiscal Year 1997. The presidential veto resulted in the permanent suspension of the proposed grant of hazard duty pay since the veto was not overridden by Congress.

COA also found unmeritorious the argument of petitioners that the PPA's corporate autonomy, embodied in Executive Order (EO) No. 159 and its Revised Charter, Presidential Decree (PD) No. 857, allowed PPA to grant hazard duty pay and birthday cash gift to its employees. COA ruled that the corporate autonomy adverted to in EO No. 159 was only to ensure the rapid development of ports and port systems under it and to execute port projects under its program. Nothing therein, COA ruled, gives PPA any discretion to determine compensation for its employees.

Petitioners filed a motion for reconsideration of COA Decision No. 2002-010, which motion was denied for lack of merit in COA Decision No. 2003-106 dated July 17, 2003.

Hence, this petition.

Petitioners raise this issue:

> WHETHER OR NOT THE COMMISSION ON AUDIT IN ISSUING DECISION NOS. 2002-010 AND 2003-106 DATED 08 JANUARY 2002 AND 17 JULY 2003, RESPECTIVELY, ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

Petitioners aver that the grant of hazard duty pay to PPA employees is authorized by PPA Special Order No. 407-97, which was issued pursuant to PPA Memorandum Circular No. 34-95 dated June 26, 1995 implementing DBM National Compensation Circular No. 76, series of 1995. Hence, they assert that there is legal basis for the grant of the disallowed benefit since the presidential veto covers only the proposal to pay hazard duty pay under the 1997 budget. They contend that the presidential veto cannot be made to operate retrospectively since the PPA employees have acquired a vested right to the hazard duty pay covering the first semester of 1997.

The contention is untenable.

Indeed, DBM National Compensation Circular No. 76 dated March 31, 1995 provided the guidelines on the grant of hazard duty pay under the annual General Appropriations Act. However, on February 12, 1997, President Fidel V. Ramos vetoed the provision granting hazard duty pay in RA No. 8250 or the General Appropriations Act for Fiscal Year 1997. DBM Circular Letter No. 13-97 dated December 15, 1997 informed government entities of the presidential veto, thus:

> 1. Section 44 of the General Provisions of [Republic Act No.] 8250 or the FY 1997 General Appropriations Act which authorizes the grant of hazard duty pay to government personnel assigned in certain posts or work areas has been vetoed by the President. Government entities have no authority therefore to grant in 1997 hazard duty pay to their personnel except those agencies specifically authorized to pay such benefit under special laws like [Republic Act No.] 4670 or "The Magna Carta for Public School Teachers" and Republic Act No. 7305 or "The Magna Carta of Public Health Workers."

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The presidential veto and the subsequent issuance of DBM Circular Letter No. 13-97 clearly show that the grant of hazard duty pay in 1997 to the personnel of government entities, including PPA, was disallowed. Hence, the continued payment of the benefit had no more legal basis.

As regards petitioners' contention that they have acquired a vested right on the grant of hazard duty pay, it has been ruled that the erroneous application and enforcement of the law by public officers do not estop the Government from making a subsequent correction of such errors.[3] Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law.[4]

Next, petitioners contend that the grant of the birthday cash gift was pursuant to the recommendation of the PPA's Employees Suggestion and Incentive Awards Committee and was duly approved by the General Manager per PPA Memorandum Circular No. 22-97 dated May 28, 1997 and confirmed by the PPA Board of Directors through Resolution No. 1161. Petitioners allege that the grant did not require the approval of the Civil Service Commission because it is a welfare benefit and is not based on the employees' performance.

Further, petitioners assert that PPA can grant its employees birthday cash gift and hazard duty pay, despite the presidential veto of the latter benefit, on the basis of its corporate autonomy under EO No. 159, thus:

> SECTION 1. Any provision of law to the contrary notwithstanding, all revenues of the Philippine Ports Authority generated from the administration of its port or port-oriented services and from whatever sources shall be utilized exclusively for the operations of the Philippine Ports Authority as well as for the maintenance, improvement and development of its port facilities, upon the approval of the Philippine Ports Authority Board of Directors of its budgetary requirements, as exemptions to Presidential Decree No. 1234 and the budgetary processes provided in Presidential Decree No. 1177, as amended.

Petitioners argue that the operation and development of ports require the expertise of its manpower so that expenses thereon such as salaries and other fringe benefits, which necessarily include hazard duty pay and birthday cash gift, have to be included in the budget. Accordingly, the hazard duty pay and birthday cash gift granted to PPA employees in the first semester of 1997 and in 1998, respectively, were integrated in the budget of PPA and approved by the Board of Directors in accordance with EO No. 159. Hence, the grant of said benefits is legal and the disallowance by COA is in violation of PPA's exercise of its corporate prerogatives.

Petitioners' arguments lack merit.

The pertinent provisions of EO No. 159[5] are as follows:

> x x x
>
> WHEREAS, there is a need to ensure and hasten the continuing growth and development of the government ports directly administered and maintained by the Philippine Ports Authority in order to cater to the over-increasing needs of water-borne commerce, and to effectively serve as vital links in the overall transport system in the country;
>
> WHEREAS, certain laws issued by the past administration adver[sely] affected the coordinated programming, operations, financing and budgetary requirements of ports or the port system under the Philippine Ports Authority, and unduly jeopardized its corporate autonomy, all to the detriment of public service
>
> NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:
>
> SECTION 1. Any provision of law to the contrary notwithstanding, all revenues of the Philippine Ports Authority generated from the administration of its port or port-oriented services and from whatever sources shall be utilized exclusively for the operations of the Philippine Ports Authority as well as for the maintenance,

> improvement and development of its port facilities, upon the approval of the Philippine Ports Authority Board of Directors of its budgetary requirements, as exemptions to Presidential Decree No. 1234 and the budgetary processes provided in Presidential Decree No. 1177, as amended.
>
> SEC. 2. Letter of Instructions No. 734 dated September 1, 1978 is hereby repealed. Henceforth, the Philippine Ports Authority Board of Directors is hereby authorized to program and approve all capital investments and expenditures on all projects of the Philippine Ports Authority before the same are implemented.
>
> SEC. 3. Any provision of law to the contrary notwithstanding, the Philippine Ports Authority shall be responsible for the planning, detailed engineering, construction, expansion, rehabilitation and capital dredging of all ports under its port system.
>
> SEC. 4. All laws, orders, issuances, rules and regulations, or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly.

What is clear from Section 1, which is cited by petitioners as legal basis of their claim, is that "all revenues of the Philippine Ports Authority generated from the administration of its port or port-oriented services and from whatever sources shall be utilized exclusively for the operations of the Philippine Ports Authority as well as for the maintenance, improvement and development of its port facilities."[6]

Nowhere in the above provisions can it be found that the PPA Board of Directors is authorized to grant additional compensation, allowances or benefits to the employees of PPA. Neither does PD No. 857, otherwise known as the "Revised Charter of the Philippine Ports Authority," authorize PPA or its Board of Directors to grant additional compensation, allowances or benefits to PPA employees. Hence, PPA's grant of birthday cash gift in 1998 per PPA Memorandum Circular No. 22-97 is without legal basis. Petitioners also cannot use PPA's corporate autonomy under EO No. 159 to justify PPA's grant of hazard duty pay in the first semester of 1997.

We note that President Fidel V. Ramos vetoed the provision granting hazard duty pay in the General Appropriations Act for Fiscal Year 1997 only on February 2, 1997. Moreover, it was at the end of 1997 or on December 15, 1997 that the DBM issued DBM Circular Letter No. 13-97 apprising government entities of the presidential veto and, therefore, of their lack of authority to grant in 1997 hazard duty pay to their personnel except for those agencies specifically authorized to pay that benefit. Apparently, when PPA granted hazard duty pay to its employees from January to June 1997, it had no knowledge that it was no longer authorized to grant the benefit.

In regard to the refund of the disallowed benefits, this Court holds that petitioners need not refund the benefits received by them based on our rulings in Blaquera v. Alcala,[7]De Jesus v. Commission on Audit[8]and Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit.[9]

In Blaquera, the petitioners, who were officials and employees of several government departments and agencies, were paid incentive benefits pursuant to EO No. 292 and the Omnibus Rules Implementing Book V of EO No. 292. On January 3, 1993, then President Fidel V. Ramos issued Administrative Order (AO) No. 29 authorizing the grant of productivity incentive benefits for the year 1992 in the maximum amount of P1,000. Section 4 of AO No. 29 directed all departments, offices and agencies which authorized payment of CY 1992 Productivity Incentive Bonus in excess of P1,000 to immediately cause the refund of the excess. Respondent heads of the departments or agencies of the government concerned caused the deduction from petitioners' salaries or allowances of the amounts needed to cover the overpayments. Petitioners therein filed a petition for certiorari and prohibition before this Court to prevent respondents therein from making further deductions from their salaries or allowances. The Court ruled against the refund, thus:

> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject

> incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.[10]

The said ruling in Blaquera was applied in De Jesus.

In De Jesus, COA disallowed the payment of allowances and bonuses consisting of representation and transportation allowance, rice allowance, productivity incentive bonus, anniversary bonus, year-end bonus and cash gifts to members of the interim Board of Directors of the Catbalogan Water District. This Court affirmed the disallowance because petitioners therein were not entitled to other compensation except for payment of per diem under PD No. 198. However, the Court ruled against the refund of the allowances and bonuses received by petitioners, thus:

> This ruling in Blaquera applies to the instant case. Petitioners here received the additional allowances and bonuses in good faith under the honest belief that LWUA Board Resolution No. 313 authorized such payment. At the time petitioners received the additional allowances and bonuses, the Court had not yet decided Baybay Water District. Petitioners had no knowledge that such payment was without legal basis. Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.[11]

Further, in KMG, this Court applied the ruling in Blaquera and De Jesus in holding that the Social Insurance Group (SIG) personnel of the Government Service Insurance System need not refund the hazard pay received by them although said benefit was correctly disallowed by COA. The Court ruled:

> The Court however finds that the DOH and GSIS officials concerned who granted hazard pay under R.A. No. 7305 to the SIG personnel acted in good faith, in the honest belief that there was legal basis for such grant. The SIG personnel in turn accepted the hazard pay benefits likewise believing that they were entitled to such benefit. At that time, neither the concerned DOH and GSIS officials nor the SIG personnel knew that the grant of hazard pay to the latter is not sanctioned by law. Thus, following the rulings of the Court in De Jesus v. Commission on Audit, and Blaquera v. Alcala, the SIG personnel who previously received hazard pay under R.A. No. 7305 need not refund such benefits.[12]

In the same vein, the rulings in Blaquera, De Jesus and KMG apply to this case. Petitioners received the hazard duty pay and birthday cash gift in good faith since the benefits were authorized by PPA Special Order No. 407-97 issued pursuant to PPA Memorandum Circular No. 34-95 implementing DBM National Compensation Circular No. 76, series of 1995, and PPA Memorandum Circular No. 22-97, respectively. Petitioners at that time had no knowledge that the payment of said benefits lacked legal basis. Being in good faith, petitioners need not refund the benefits they received.

WHEREFORE, the Commission on Audit Decision No. 2002-010 dated January 8, 2002 and COA Decision No. 2003-106 dated July 17, 2003 are AFFIRMED with MODIFICATION. Petitioners need not refund the hazard duty pay received per Philippine Ports Authority Memorandum Circular No. 34-95 dated June 26, 1995 covering the period from January 1 to June 30, 1997, and the birthday cash gift received per PPA Memorandum Circular No. 22-97 dated May 28, 1997.

No pronouncement as to costs.

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

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[1] Also referred to as “hazard pay.”

[2] ND No. 98-005-151 dated July 20, 1998; ND No. 98-006-151 dated July 1998 (exact date illegible from the Certified True/Photo Copy of the Original/Duplicate on record); ND No. 98-007-151 dated July 28, 1998; ND No. 98-014-151 dated September 25, 1998; ND No. 98-025-151 dated November 18, 1998.

[3] Baybay Water District v. Commission on Audit, G.R. Nos. 147248-49, January 23, 2002, 374 SCRA 482, 493-494.

[4] Id. at 494.

[5] EO No. 159 is entitled, “REVERTING TO THE PHILIPPINE PORTS AUTHORITY ITS CORPORATE AUTONOMY, ENSURING THE RAPID DEVELOPMENT OF PORTS OR THE PORT SYSTEM DIRECTLY UNDER IT, AND AUTHORIZING IT TO EXECUTE PORT PROJECTS UNDER ITS PORT PROGRAM.”

[6] Emphasis supplied.

[7]G.R. No. 109406, September 11, 1998, 295 SCRA 366.

[8] G.R. No. 149154, June 10, 2003, 403 SCRA 666.

[9] G.R. No. 150769, August 31, 2004, 437 SCRA 371.

[10] Supra, note 7, at 448.

[11] Supra, note 8, at 677.

[12] Supra, note 9, at 391.

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