

PHILIPPINE PORTS AUTHORITY (PPA) EMPLOYEES HIRED AFTER JULY 1, 1989, PETITIONERS, VS. COMMISSION ON AUDIT (COA); ARTHUR H. HINAL, IN HIS CAPACITY AS THE PHILIPPINE PORTS AUTHORI...

G.R. NO. 160396. September 06, 2005

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PANGANIBAN, ACTING CJ:

"Those that have less in life should have more in law to give them a better chance at competing with those that have more in life." [1] Accordingly, in case of doubt, laws should be interpreted to favor the working class -- whether in the government or in the private sector -- in order to give flesh and vigor to the pro-poor and pro-labor provisions of our Constitution.

The Case

Before us is a Petition for Certiorari [2] under Rule 65 of the Rules of Court, assailing the May 27, 2003 Decision [3] and the October 16, 2003 Resolution [4] of the Commission on Audit (COA). The dispositive part of the Decision reads as follows:

"Wherefore, premises considered the instant petitions are hereby denied for lack of merit." [5]

The assailed COA Resolution denied reconsideration.

The Facts

The COA narrates the factual antecedents in this wise:

"Records will bear that the PPA has been paying its officials and employees COLA and amelioration allowance equivalent to 40% and 10%, respectively, of their basic salary pursuant to various legislative and administrative issuances. During the last quarter of 1989, the PPA discontinued the payment thereof in view of Corporate Compensation Circular (CCC) No. 10 prescribing the implementing rules and regulations of R.A. No. 6758 otherwise known as the Salary Standardization Law which integrated said allowances into the basic salary effective July 1, 1989. However, the Supreme Court in the case of Rodolfo de Jesus, et al. vs. COA, G.R. No. 109023 dated August 12, 1998, declared CCC No. 10 as ineffective and unenforceable due to non-publication. Consequently, the PPA Board of Directors passed Resolution No. 1856 directing the payment of COLA and amelioration backpay to PPA personnel in the service during the period July 1, 1989 to March 16, 1999, the date of publication of CCC No. 10.

"Doubting the validity of said Resolution, the PPA Auditor requested the opinion of the General Counsel on the propriety of the payment of the backpay. In fully concurring with the recommendation of the then Director, CAO II, the General Counsel ruled that 'in order for a PPA employee to be entitled to backpay representing COLA and amelioration pay equivalent to 40% and 10% respectively, of their basic salary, the following conditions must concur:

1)

he has to be an incumbent as of July 1, 1989; and

2)

has been receiving the COLA and amelioration pay as of July 1, 1989.'

Aggrieved, PPA sought reconsideration of the said advisory opinion which was denied by the General Counsel in a 1[st] Indorsement dated September 13, 2001, since she found no cogent reason to set aside the earlier opinion. The PPA Auditor accordingly ruled against the grant of the subject backpay. Hence, the instant petitions for review anchored on the following arguments:

1)

The unenforceability of CCC No. 10 did not alter the nature of COLA and amelioration allowance into a 'not integrated' benefit within the purview of the second sentence of Section 12, R.A. No. 6758 but merely rendered them unidentified as integrated allowances;

2)

The jurisprudence laid in PPA vs. COA, 214 SCRA 653 is not applicable in the determination of who are entitled to the payment of backpay for COLA and amelioration allowance;

3)

There is no valid reason not to treat 'non-incumbents' at par with 'incumbents' during the period of ineffectivity of CCC No. 10; and

4)

PPA employees hired after July 1, 1989 are entitled to the payment of backpay representing COLA and amelioration allowance."^[6]

Ruling of the Commission on Audit

The COA ruled that "in the absence of effective integration of the COLA and amelioration allowance into the basic salary in 1989, the inevitable conclusion is that they are deemed not integrated from the time RA 6758 was promulgated until DBM-CCC No. 10 was published in March 1999." During that period, it thus disallowed the disputed allowances on the ground that these fell under the second sentence of Section 12 of RA 6758. It held that only officials hired on or before July 1, 1989 were entitled to receive back pay equivalent to the additional compensation (COLA and amelioration allowance) mentioned.

Hence, this Petition.^[7]

The Issue

Petitioner raised this sole issue for our consideration:

"Whether or not herein petitioners -- who were hired by the Philippine Ports Authority on various dates after

July 1, 1989 -- are entitled to the payment of back pay for cost of living allowance (COLA) and amelioration allowance." [8]

The Court's Ruling

The Petition is meritorious.

Sole Issue:

Entitlement to COLA

and Amelioration Allowance

In its "Manifestation and Motion in Lieu of Comment," the Office of the Solicitor General (OSG) disagreed with the COA and argued that "petitioners [were] legally entitled to their accrued COLA and amelioration allowance as a matter of right." Thus, this Court required respondents to defend themselves. Accordingly, the Office of the COA General Counsel prepared and filed the Comment and Memorandum on behalf of respondents.

Petitioners assail the COA for allowing only incumbents as of July 1, 1989 to receive COLA and amelioration allowance during the "ineffectivity" of DBM-CCC No. 10; that is, from July 1, 1989 to March 16, 1999. They contend that the COLA and the amelioration allowance did not automatically become "not integrated" benefits, within the purview of the second sentence of Section 12 of RA No. 6758, which reads as follows:

"SEC. 12. Consolidation of Allowances and Compensation. -- All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowances of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service 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 only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized."

A reading of the first sentence of this provision readily reveals that all allowances are "deemed included" or integrated into the prescribed standardized salary rates, except the following: (a) representation and transportation allowances, (b) clothing and laundry allowances, (c) subsistence allowances of marine officers and crew on board government vessels, (d) subsistence allowances of hospital personnel, (e) hazard pay, (f) allowances of foreign service personnel stationed abroad, and (g) such other additional compensation not otherwise specified in Section 12. These additional "non-integrated benefits" (item g) were to be determined by the Department of Budget and Management (DBM) in an appropriate issuance.

Clearly, the last clause of the first sentence of Section 12, which is a "catch-all" proviso, necessarily entails the DBM's promulgation of pertinent implementing rules and regulations. These will identify the "additional compensation" that may be given over and above the standardized salary rates.

Pursuant to its authority under Section 23 of RA 6758, the DBM thus issued on October 2, 1989, DBM-CCC No. 10, Section 4.0 of which enumerated the various allowances that were deemed "integrated" into the standardized basic salary. Admittedly, among these allowances were the COLA and the amelioration allowance.

However, because of its lack of publication in either the Official Gazette or in a newspaper of general circulation, DBM-CCC No. 10 was declared ineffective on August 12, 1998, in *De Jesus v. COA*, [9] which we quote:

"In the present case under scrutiny, it is decisively clear that DDM-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 solely

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 the 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 subject matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency." [10]

In other words, during the period that DBM-CCC No. 10 was in legal limbo, [11] the COLA and the amelioration allowance were not effectively integrated into the standardized salaries.

Hence, it would be incorrect to contend that because those allowances were not effectively integrated under the first sentence, then they were "non-integrated benefits" falling under the second sentence of Section 12 of RA 6758. Their characterization must be deemed to have also been in legal limbo, pending the effectivity of DBM-CCC No. 10. Consequently, contrary to the ruling of the COA, the second sentence does not apply to the present case. By the same token, the policy embodied in the provision -- the non-diminution of benefits in favor of incumbents as of July 1, 1989 -- is also inapplicable.

The parties fail to cite any law barring the continuation of the grant of the COLA and the amelioration allowance during the period when DBM-CCC No. 10 was in legal limbo.

The present case should be distinguished from *PNB v. Palma*, [12] in which the respondents sought by mandamus to compel the petitioner therein to grant them certain fringe benefits and allowances that continued to be given to Philippine National Bank (PNB) employees hired prior to July 1, 1989. This Court held that PNB could not be compelled to do so, because the respondents had been hired after that date. Under Section 12 of RA 6758, only "incumbent" government employees (as of July 1, 1989) already receiving those benefits may continue to receive them, apart from their standardized pay.

In the present case, the PPA already granted herein petitioners the COLA and the amelioration allowances, even if they were hired after July 1, 1989. The only issue is whether they should have continued to receive the benefits during the period of the "ineffectivity" of DBC-CCC No. 10; that is, from July 1, 1989 to March 16, 1999, the period during which those allowances were not deemed integrated into their standard salary rates. Furthermore, in the PNB Decision, the employees claimed a right to receive the allowances from July 1, 1989 to January 1, 1997. PNB was able to grant the benefits post facto, because on that date (January 1, 1997) it had already been privatized and was thus no longer subject to the restrictions imposed by RA 6758 (the Salary Standardization Law).

Tellingly, the subject matter of the PNB case involved benefits that had not been deemed integrated into, but in fact exempted from, the standardized salary rates. In the present case, the subject matter refers to those deemed included, but were placed "in limbo" as a result of this Court's ruling in *De Jesus v. COA*.

To stress, the failure to publish DBM-CCC No. 10 meant that the COLA and the amelioration allowance were not effectively integrated into the standardized salaries of the PPA employees as of July 1, 1989. The integration became effective only on March 16, 1999. Thus, in between those two dates, they were still entitled to receive the two allowances.

Be it remembered that the "other additional compensations" not expressly specified in Section 12 of RA 6758 had to be determined by the DBM before they could be deemed included or not included in the standardized salary rates. True, Section 12 could be considered self-executing in regard to items (a) to (f) above, but it was not so in regard to item (g). It was only upon the issuance and effectivity of the corresponding DBM Implementing Rules and Regulations that the enumeration found in item (g) could be deemed legally completed.

As pointed out by the OSG, until and unless the DBM issued those Implementing Rules categorically excluding the COLA and the amelioration allowance, there could not have been any valid notice to the government employees concerned that indeed those allowances were deemed included in the standardized salary rates.[13] Consequently, there was no reason or basis to distinguish or classify PPA employees into two categories for purposes of determining their entitlement to the back payment of those unpaid allowances during the period in dispute.

Hence, in consonance with the equal-protection clause of the Constitution, and considering that the employees were all similarly situated as to the matter of the COLA and the amelioration allowance, they should all be treated similarly. All -- not only incumbents as of July 1, 1989 -- should be allowed to receive back pay corresponding to the said benefits, from July 1, 1989 to the new effectivity date of DBM-CCC No. 10 -- March 16, 1999.

The principle of equal protection is not a barren concept that may be casually swept aside. While it does not demand absolute equality, it requires that all persons similarly situated be treated alike, both as to privileges conferred and liabilities enforced. Verily, equal protection and security shall be accorded every person under identical or analogous circumstances.[14]

WHEREFORE, the Petition is GRANTED and the assailed Decision and Resolution of the Commission on Audit ANNULLED and SET ASIDE. No costs.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo Sr., Tinga, Nazario, and Garcia, JJ., concur.

Davide Jr., C.J., Puno, Quisumbing, Ynares-Santiago, Carpio Morales, and Azcuna, JJ., on official business.

[1] "Laws to Favor the Poor," Asian Development Bank Review, May 2005, pp. 18-19.

[2] Rollo, pp. 11-46.

[3] Id., pp. 48-53. Signed by Chairman Guillermo N. Carague and Commissioners Raul C. Flores and Emmanuel M. Dalman.

[4] Id., pp. 54-56.

[5] COA Decision, p. 6; rollo, p. 53.

[6] Id., pp. 1-2 & 48-49.

[7] This case was deemed submitted for decision on March 21, 2005, upon this Court's receipt of petitioners' Memorandum, signed by Atty. Francisquiel O. Mancile of the PPA Legal Services Department. Respondents' Memorandum -- signed by Assistant Commissioner/General Counsel Raquel R. Ramirez-Habitan, Director IV Salvador P. Isiderio, Director III Leonor D. Boado and Atty. Joel S. Estolatan -- was filed on February 9, 2005.

[8] Petitioner's Memorandum, p. 13. Original in uppercase.

[9] 294 SCRA 152, August 12, 1998.

[10] P. 158, per Purisima, J. Boldface supplied.

[11] It was declared ineffective due to its lack of publication in either the Official Gazette or in a newspaper of general circulation. It was re-issued in its entirety on February 15, 1999, and was published in the Official Gazette

on March 1, 1999. Philippine Retirement Authority v. Buñag, 397 SCRA 27, February 5, 2003.

[12] GR No. 157279, August 9, 2005.

[13] OSG's Manifestation and Motion in Lieu of Comment, dated May 14, 2004, p. 10.

[14] Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas, GR No. 148208, December 15, 2004.

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