

**DEPARTMENT OF BUDGET AND MANAGEMENT, REPRESENTED BY.
SEC. EMILIA T. BONCODIN, PETITIONER, VS. OLIVIA D. LEONES,
RESPONDENT.**

G.R. No. 169726. March 18, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case.

This resolves the petition for review[1] of the Decision[2] of the Court of Appeals finding respondent Olivia D. Leones entitled to representation and transportation allowance.

The Facts

Before 1996, respondent Olivia D. Leones (respondent) was the Municipal Treasurer of Bacnotan, La Union. In December 1996, respondent was reassigned to the Office of the Provincial Treasurer, La Union, pending resolution of administrative cases filed against her.[3] As Municipal Treasurer, respondent received, on top of her salary, representation and transportation allowance (RATA). The Municipality of Bacnotan stopped paying RATA to respondent upon her reassignment to the Provincial Government.

After unsuccessfully obtaining administrative relief,[4] respondent filed a mandamus suit with the Regional Trial Court of San Fernando City, La Union (trial court) against petitioner Department of Budget and Management (DBM) and then mayor of Bacnotan, Ma. Minda Fontanilla (Fontanilla), to compel payment of RATA. The trial court dismissed the petition for non-exhaustion of administrative remedies. On appeal by respondent,[5] the Court of Appeals affirmed the dismissal. As respondent no longer pursued the case, the trial court's ruling became final on 30 June 2003.

However, respondent again sought an opinion, this time from the DBM Secretary, on her entitlement to RATA. In its reply dated 3 September 2003 (Opinion), the DBM found respondent entitled to RATA only for 1999 under the General Appropriation Act (GAA) for that year which, unlike previous and succeeding years, did not require "actual performance of x x x functions" as condition for receipt of RATA.

Assailing the Opinion, respondent filed a petition for certiorari with the Court of Appeals. Respondent contended that her non-receipt of RATA violates the rule on non-dimution of salary in reassignments.

The Ruling of the Court of Appeals

In its Decision dated 24 May 2005, the Court of Appeals granted respondent's petition and ordered the DBM and Fontanilla to pay respondent RATA for the duration of her reassignment. Sustaining respondent's theory, the Court of Appeals characterized RATA as part of salary, thus subject to the rule on non-dimution of salary in reassignments.[6] The Court of Appeals found erroneous the DBM's reliance on the GAAs requiring actual performance of functions as precondition for payment of RATA because respondent's salary was charged against

the local budget of Bacnotan and not against the national budget.[7]

The DBM's motion for reconsideration equally proved unsuccessful.[8]

Hence, this petition.

The DBM argues that RATA is not part of salary and does not attach to the position but is paid based on the actual performance of functions. Hence, respondent, not having been in the actual performance of her functions as treasurer of Bacnotan during her reassignment to the La Union treasurer's office, is not entitled to receive RATA except for 1999 because the GAA for that year did not require actual performance of functions as condition for payment of RATA.

The Issue

The question is whether, after her reassignment to the La Union treasurer's office, respondent, the treasurer of Bacnotan, was entitled to receive RATA.

The Ruling of the Court.

We hold that respondent was entitled to receive RATA after her reassignment, not because the allowance forms part of her salary, but because the discontinuance of payment lacks legal basis.

RATA Distinct from Salary

The DBM correctly characterizes RATA as allowance distinct from salary. Statutory law,[9] as implemented by administrative issuances[10] and interpreted in decisions,[11] has consistently treated RATA as distinct from salary. Unlike salary which is paid for services rendered, RATA belongs to a basket of allowances[12] to defray expenses deemed unavoidable in the discharge of office.[13] Hence, RATA is paid only to certain officials who, by the nature of their offices, incur representation and transportation expenses.

However, the foregoing does not inexorably lead to the conclusion that under all circumstances and despite lack of legal basis, RATA is paid only if the RATA-entitled officer actually discharges his office. First, it became necessary to distinguish allowances (such as RATA) from salary mainly because under Section 12 of the Compensation and Position Classification Act of 1989 (RA 6758)[14] (applicable to all public sector employees), all forms of "financial assistance" and "allowances"[15] were integrated to the standardized salaries except for certain allowances specified by RA 6758 (such as RATA) and as determined by regulation.[16] Second, non-performance of duties may result from compliance with orders devoid of the employee's volition such as suspension, termination resulting in reinstatement, or, as here, reassignment. At any rate, the denial of RATA must be grounded on relevant and specific provision of law.

No Law Justifies Denial of RATA for
Reassigned Local Government Officials

The DBM concedes that as Municipal Treasurer, respondent was entitled to receive (and did receive) RATA because such position is equivalent to a head of a municipal government department.[17] However, the DBM contends that respondent's reassignment to La Union treasurer's office cut off this entitlement. As bases for this claim, the DBM invokes the GAAs from 1996 to 2005 (except in 1999[18]) uniformly providing (in different sections[19]) thus:

[T]he following officials and those of equivalent rank as may be determined by the Department of Budget and Management while in the actual performance of their respective functions are hereby granted monthly commutable representation and transportation allowances payable from the programmed appropriations provided for their respective offices not exceeding the rates indicated below x x x. (Emphasis supplied)

As secondary basis, the DBM calls the Court's attention to Section 3.3.1 of the National Compensation Circular No. 67 (Section 3.3.1), dated 1 January 1992, which provides:

3.3. The officials and employees referred to in Sections 2.1, 2.2 and 2.3 hereof shall no longer be authorized to continue to collect RATA in the following instances:

3.3.1 When on full-time detail with another organizational unit of the same agency, another agency, or special project for one (1) full calendar month or more, except when the duties and responsibilities they perform are comparable with those of their regular positions, in which case, they may be authorized to continue to collect RATA on a reimbursable basis, subject to the availability of funds[.] (Emphasis supplied)

and contends that respondent falls under the general rule thus justifying the cessation of her RATA payment.

None of these rules supports the DBM's case.

On the relevance of the GAAs, the Court of Appeals correctly pointed out that they find no application to a local government official like respondent whose compensation and allowances are funded by local appropriation laws passed by the Sangguniang Bayan of Bacnotan. It is the municipal ordinances of Bacnotan, providing for the annual budget for its operation, which govern respondent's receipt of RATA. Although the records do not contain copies of the relevant Bacnotan budget ordinances, we find significant Fontanilla's referral to the DBM of respondent's April 2002 letter requesting RATA payment.[20] Evidently, Bacnotan's annual budgetary appropriations for 1996 to 2005 contained no provision similar to the provisions in the GAAs the DBM now cites; otherwise, Fontanilla would have readily invoked them to deny respondent's request.

The DBM tries to go around this insuperable obstacle by distinguishing payment from the conditions for the payment and theorizes that although respondent's salary and allowances were charged against Bacnotan's annual budget, they were subject to the condition contained in the GAAs for 1996-2005 linking the payment of RATA to the actual performance of duties.[21] The Court cannot subscribe to this theory without ignoring the wall dividing the vertical structure of government in this country and a foundational doctrine animating local governance.

Although the Philippines is a unitary State, the present Constitution (as in the past) accommodates within the system the operation of local government units with enhanced administrative autonomy and autonomous regions with limited political autonomy.[22] Subject to the President's power of general supervision[23] and exercising delegated powers, these units and regions operate much like the national government, with their own executive and legislative branches, financed by locally generated and nationally allocated funds disbursed through budgetary ordinances passed by their local legislative councils. The DBM's submission tinkers with this design by making provisions in national budgetary laws automatically incorporated in local budgetary ordinances, thus reducing local legislative councils -- from the provinces down to the barangays

and the legislative assembly of the Autonomous Region in Muslim Mindanao, to mere extensions of Congress. Although novel, the theory is anathema to the present vertical structure of Philippine government and to any notion of local autonomy which the Constitution mandates.

Nor can the DBM anchor its case on Section 3.3.1. The National Compensation Circular No. 67, which the DBM issued, is entitled "Representation and Transportation Allowances of National Government Officials and Employees," thus excluding local government officials like respondent from its ambit. At any rate, respondent falls under the exception clause in Section 3.3.1, having been reassigned to another unit of the same agency with duties and responsibilities "comparable" to her previous position.

Respondent was reassigned to La Union treasurer's office within the same "agency,"[24] namely, the Department of Finance, because local treasuries remain under the control of the Secretary of Finance[25] (unlike some offices

which were devolved to the local governments[26]). Paragraphs (d) and (e) of Section 470 of Republic Act No. 7160 (RA 7160), the Local Government Code of 1991, provide the functions of "The treasurer":

(d) The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

(1) Advise the governor or mayor, as the case may be, the sanggunian, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;

(2) Take custody of and exercise proper management of the funds of the local government unit concerned;

(3) Take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;

(4) Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code;

(5) Maintain and update the tax information system of the local government unit;

(6) In the case of the provincial treasurer, exercise technical supervision over all treasury offices of component cities and municipalities; and

(e) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance. (Emphasis supplied)

Thus, irrespective of the level of the local government unit involved, no distinction exists in the functions of local treasurers except in the technical supervision by the provincial treasurer over subordinate treasury offices. Logically, the employees in all local treasuries perform comparable functions within the framework of Section 70 (d) and (e). Hence, the DBM's casual claim that "the facts at hand do not reflect that the functions performed by respondent during the period of her reassignment were comparable to those she performed prior to her reassignment"[27] finds no basis in fact or in law. In terms of performing comparative functions, the reassignment here is no different from that of a RATA-entitled officer of the Department of Science and Technology who, as Chief of the Finance and Management Division, was reassigned to the Directors' Office, Finance and Management Service Office. We considered the officer entitled to RATA despite the reassignment for lack of basis for the non-payment.[28] Indeed, for an employee not to fall under the exception in Section 3.3.1, the functions attached to the new office must be so alien to the functions pertaining to the former office as to make the two absolutely unrelated or non-comparable.

Before disposing of this matter, we highlight the element of inequity undergirding the DBM's case. By insisting that, as requisite for her receipt of RATA, respondent must discharge her office as Bacnotan's treasurer while on reassignment at the La Union treasurer's office, the DBM effectively punishes respondent for acceding to her reassignment. Surely, the law could not have intended to place local government officials like respondent in the difficult position of having to choose between disobeying a reassignment order or keeping an allowance. As we observed in a parallel case:

[O]n petitioner's contention that RATA should be allowed only if private respondent is performing the duties of her former office, the CSC correctly explained that private respondent was `reassigned to another office and thus her inability to perform the functions of her position as Division Chief is beyond her control and not of her own volition.['] x x x[29]

The DBM itself acknowledged the harshness of its position by carving in Section 3.3.1 an exception for national

government officials performing comparable duties while on reassignment, cushioning the deleterious financial effects reassignments bring to the employee with due regard to the state of the government's coffers.

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 24 May 2005 and the Resolution dated 15 September 2005 of the Court of Appeals.

SO ORDERED.

Carpio Morales[*], Brion, Abad, and Perez, JJ., concur.

[*] Designated additional member per Raffle dated 2 December 2009.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Per Associate Justice Mariano C. Del Castillo with Associate Justices Mario L. Guariña III and Magdangal M. De Leon, concurring.

[3] Respondent also alleged that she was reassigned "in line with the tax intensification program of the provincial government." (Rollo, p. 135)

[4] In April 2002, respondent wrote then Bacnotan mayor Ma. Minda Fontanilla (Fontanilla) to request continuation of her RATA payments. Fontanilla referred the matter to the DBM's Regional Office, Region I, which denied respondent's request on 25 June 2002.

[5] Docketed as CA-G.R. SP No. 76896.

[6] Section 26(7), Title I-A, Book V, Executive Order No. 292.

[7] The relevant portion of the Court of Appeals' ruling reads (Rollo, pp. 39-41):

It is undisputed that since March 2, 1994, petitioner is a holder of a permanent position as Municipal Treasurer of Bacnotan, La Union, a position equivalent to a Department Head of a Municipal Government entitled to a commutable RATA. While she may have been detailed or reassigned with the Office of the Provincial Treasurer of the Province of La Union, the same cannot result in the withholding/deprivation of the commutable RATA she is legally entitled to. It must be pointed out that a commutable RATA forms parts of the compensation and attaches to the position, or as in this case to the position of a Municipal Treasurer. Consequently, wherever the petitioner may be detailed/assigned in the meantime, she may not be deprived of her commutable RATA as she is still the de jure occupant of the position of Municipal Treasurer. This is consistent with Section 26(7), Title A, Book V of the Revised Administrative Code of 1987 which provides that "an employee may be reassigned from one organizational unit to another in the same agency; provided, that such reassignment shall not involve a reduction in rank, status or salary." The term salary, in its generic sense, covers all compensations for services rendered and allowances like Representation and Transportation Allowance (RATA). Petitioner's entitlement to RATA cannot be removed by the simple expedient of detailing/assigning her to an office other than that she had been permanently appointed to.

x x x x

The argument of the respondents that in order for petitioner to be entitled to RATA, it is a must that she should be in actual performance of the duties and responsibilities of her permanent position per the Annual General Appropriations Act, does not apply here. It must be pointed out that the salary and other benefits being paid the petitioner are chargeable against the local allotments under the Annual Appropriations Ordinance being passed and approved by the Sangguniang Bayan of Bacnotan, La Union and not chargeable under the General Appropriations Act. Hence, the restrictions as regards the grant of her salary and other benefits are controlled

and guided by the provisions of the Annual Appropriations Ordinance passed by the Sangguniang Bayan of Bacnotan, La Union and not by the General Appropriations Act of Congress. (Emphasis supplied)

[8] Denied in the Resolution of September 2005.

[9] E.g. Section 12, Republic Act No. 6758 (RA 6758) or the Compensation and Position Classification Act of 1989.

[10] E.g. Corporate Compensation Circular No. 10 implementing RA 6758.

[11] E.g. *National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 (1999) and *Philippine International Trading Corporation v. Commission on Audit*, 461 Phil. 737 (2003).

[12] Including allowances for uniform/clothing, living quarters of overseas employees, and night differential for personnel on night duty.

[13] *National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 (1999). However, some laws do not observe this distinction in computing post-employment benefits (e.g. Section 3 of Republic Act No. 910, as amended by Presidential Decree No. 1438, combining RATA and salary for computing gratuity benefits for retired judges).

[14] This provides: "Consolidation of Allowances and Compensation. -- All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance 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." x x x

[15] The terms "financial assistance" and "allowance" have been distinguished as follows: "For [financial assistance], reimbursement is not necessary while [allowance] for the latter, reimbursement is required. Not only that, [financial assistance] is basically an incentive wage which is defined as 'a bonus or other payment made to employees in addition to guaranteed hourly wages' while [allowance] cannot be reckoned with as a bonus or additional income, strictly speaking." (*National Tobacco Administration v. Commission on Audit*, 370 Phil. 793, 807 [1999] [internal citation omitted]).

[16] Thus, we affirmed on appeal the disallowance upon audit of financial assistance for education (*National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 [1999]) and food (*Philippine International Trading Corporation v. Commission on Audit*, 461 Phil. 737 [2003]) following Section 12 of RA 6758.

[17] Rollo, p. 14 citing Local Budget Circular No. 68, 4 June 1998.

[18] The GAA for this year, Republic Act No. 8745, did not impose actual service as condition for receipt of RATA.

[19] Section 35, Republic Act No. 8174 (1996 national budget); Section 39, Republic Act No. 8250 (1997 national budget); Section 41, Republic Act No. 8522 (1998 national budget); Section 41, Republic Act No. 8760 (2000 national budget), reenacted for 2001; Section 39, Republic Act No. 9162 (2002 national budget); Section 40, Republic Act No. 9206 (2003 national budget), reenacted for 2004; and Section 45, Republic Act No. 9336 (2005 national budget), reenacted for 2006.

[20] See note 4.

[21] Rollo, p. 28.

[22] Cordillera Board Coalition v. Commission on Audit, G.R. No. 79956, 29 January 1990, 181 SCRA 495, Sections 2, 5 and 20, Article X, Constitution.

[23] Section 4 and Section 16, Article X, Constitution.

[24] Defined in Section 2(4), Introductory Provisions, Administrative Code of 1987, as "any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein." (Emphasis supplied)

[25] Section 470(a) and (b) of Republic Act No. 7160 (RA 7160) respectively provide that (1) the Secretary of Finance appoints the local treasurer as recommended by the governor or mayor and (2) the latter exercises only administrative supervision over the local treasurer.

[26] Under Section 17, RA 7160.

[27] Rollo, p. 167; Reply, p. 14.

[28] Padolina v. Fernandez, 396 Phil. 615, 622 (2000) (The officer refused the reassignment - which we held invalid for lack of fixed duration - and we noted that the "[the officer] was supposed to receive her RATA had she not refused to accept the order of her reassignment." Significantly, the Civil Service Commission ordered the payment of the officer's RATA during reassignment.)

[29] Commissioner of Internal Revenue v. Civil Service Commission, G.R. No. 94205, 12 February 1992 (Min. res.), pp. 3-4. Until the appropriate case presents itself, we refrain from passing upon the question whether this holds true for employees preventively suspended or terminated but subsequently reinstated.

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