

**METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, Petitioner,
vs. GENARO C. BAUTISTA, MAMERTO G. ACLASA, ANGEL P. ADONIS,
CARLOS G. AGUSTIN, BERNARDITA A. ALANO, GERMAN A. ALCARAZ,
C...**

G.R. No. 171351. March 14, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

THIS is a sequel to the cases of *De Jesus v. Commission on Audit*[1] and *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit (COA)*[2] involving, yet again, the obstinate refusal of another government-owned and controlled corporation to pay its employees their Cost of Living Allowance (COLA) from 1989 to 1999.

Before Us is a petition for review on certiorari of the Amended Decision[3] of the Court of Appeals (CA), which affirmed with modification the Decision[4] of the Regional Trial Court (RTC) in Quezon City ordering petitioner Metropolitan Waterworks and Sewerage System (MWSS) to pay private respondents the 95% balance of their COLA from November 16, 1989 up to March 16, 1999.

Facts

Petitioner MWSS is a government-owned and controlled corporation organized under Republic Act (R.A.) No. 6234. Private respondents are incumbent and former employees of MWSS.[5]

Prior to November 1, 1989, private respondents have been receiving allowances, fringe benefits and COLA. They were receiving COLA equivalent to forty percent of their basic monthly salary or P300.00 a month, whichever is higher. These benefits were discontinued under R.A. No. 6758 entitled "An Act Prescribing a Revised Compensation and Position Classification System in Government and for other Purposes," otherwise known as the Salary Standardization Law.[6]

Implementing R.A. No. 6758, the Department of Budget and Management (DBM) issued Corporate Circular No. 10 (DBM Circular No. 10) which provided, among others, the discontinuance without qualification of all allowances and fringe benefits, including COLA, of government employees over and above their basic salaries starting November 1, 1989.[7]

In *De Jesus v. Commission on Audit*,[8] this Court declared DBM Circular No. 10 ineffective for lack of publication. The DBM later remedied the fatal defect when it published the Circular in the March 1999 issue of the Official Gazette.[9]

After vigorous complaints and requests from government employees, the Office of the Government Corporate Counsel (OGCC) issued a Memorandum opining that employees of government-owned and controlled corporations, whether incumbent or non-incumbents, are entitled to the payment of COLA during the period that

it was suspended under DBM Circular No. 10. The OGCC summarized its opinion, thus:

In recapitulation, we are of the opinion; relative to the questions/issues raised herein, that:

- Employees in government-owned and controlled corporations are entitled to the payment of Cost of Living Allowance and Amelioration Allowance without need of any prior determination by the DBM of whether or not these allowances have, indeed, been integrated into the standardized salaries.
- The incumbents, as well as non-incumbents, including those hired in corporations established after the passage of RA 6758, are entitled to avail of these benefits from the time said benefits were disallowed, discontinued or withdrawn up to fifteen (15) days from publication in the Official Gazette of DBM CCC No. 1.[10]

MWSS, however, granted only 5% COLA to its employees in a Board Resolution[11] issued on May 23, 2003, which reads:

RESOLVED, further, to APPROVE and CONFIRM the initial payment of COLA to former employees for the period 1989 to July 1997, equivalent to FIVE PERCENT (5%), amounting to ONE HUNDRED FIVE MILLION PESOS (P105,000,000.00), chargeable against free cash of the System (Annex "A" hereof), which will be available upon recovery of the P2.372 Billion advances made to Maynilad Water Services, Inc. (MWSI), to be derived from the US\$100 Million loan releases from the Deutsche Bank expected to be released by June 2002.

It is understood that payment hereof shall be subject to the guidelines to be issued by Management and the usual accounting and auditing rules and regulations.[12]

Shortchanged, private respondents demanded the 95% balance of their COLA. MWSS denied their request. MWSS Administrator Orlando Hondrade informed private respondents in a letter dated September 24, 2003 that MWSS was willing to pay the 95% balance, but it opted to defer payment because of the dismissal of a similar claim by the RTC, Branch 96, Quezon City in "Erich Barraquias, et al. v. Metropolitan Waterworks and Sewerage System." MWSS further averred that it had no available funds to pay the balance.[13]

Aggrieved, private respondents filed a petition for mandamus[14] with the RTC in Quezon City to compel MWSS to pay the balance of their COLA. During the proceedings, other aggrieved MWSS employees represented by Joaquin Pacis, et al. moved to intervene but their motion was denied.[15]

RTC Disposition

On August 17, 2004, the RTC rendered a Decision[16] granting the petition, with a fallo reading:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioners ordering respondent Metropolitan Waterworks and Sewerage System (MWSS), its Administrator and Board of Trustees:

- To pay petitioners and other employees who are similarly situated, whether incumbents or non-incumbents, the balance in the amount equivalent to ninety-five (95%) of their Cost of Living Allowance (COLA) from the date it was discontinued up to the present if employment with the MWSS has continued, or up to the time of their separation from MWSS, and to restore the same to the salary of the incumbent employees.
- To segregate the amount equivalent to ten percent (10%) of the amount payable to each petitioner, and others who are similarly benefited, as and by way of litigation expenses. Said amount shall be paid directly to their attorney-in-fact, Genaro C. Bautista, pursuant to the Special Power of Attorney executed by petitioners in favor of the latter.

SO ORDERED.[17]

In granting the petition, the RTC ratiocinated:

This case revolves around the following legal issues, viz.:

- Whether or not petitioners are entitled to the payment of the COLA from the time it was discontinued up to the present or from the time they were separated/retired from service; and
- Whether or not mandamus lies under the facts set forth in the petition.

The Court answers both issues in the affirmative and will be discussed in seriatem (sic).

First. Republic Act No.6758 entitled "An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes," otherwise known as "Salary Standardization Law," was passed into law on July 1, 1989. Section 12 of said law provides for the consolidation of allowances and additional compensation into the standardized salary rates.

x x x x

No court has, as yet, declared the payment of COLA to government employees/offices as violative of R.A. 6758. In fact, several government-owned and controlled corporations have restored the grant of said allowance to its employees, the payment of the same having been clarified in an Inter-Office Memorandum dated March 20, 2002 issued by the Office of the Government Corporate Council.

In addition, respondent is estopped from claiming the illegality of the grant of COLA. In a letter dated September 24, 2003, addressed to Mr. Genaro C. Bautista (Annex "D," petition), respondent admitted that petitioners are entitled to the payment of said benefit.

x x x x

Second. It is the Court's opinion that mandamus is proper in the case at bench.

x x x Petitioners have shown that they are entitled to avail of this remedy. Records will bear that on two occasions, petitioner Genaro Bautista requested respondent MWSS, through its Administrator and Board of Trustees, for the release of their COST OF LIVING ALLOWANCE (COLA) but the same proved futile. Thus, petitioners have no resource but to seek the intervention of the Court, there being no plain, speedy and adequate remedy in the ordinary course of law.

x x x x

Considering that respondent MWSS has recognized petitioners' entitlement to the subject COLA and inasmuch as the payment of the same is supported by law and jurisprudence, respondent has the legal duty and obligation to grant the same. Otherwise, petitioners and others similarly situated, would be unjustifiably denied of their right to the allowance to which they are entitled by reason of their employment.[18]

The RTC later amended its decision to include interest and 5% attorney's fees. The fallo of the amended decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioners ordering respondent Metropolitan Waterworks and Sewerage System (MWSS), its Administrator and Board of Trustees:

- To pay petitioners and other employees who are similarly situated, whether incumbents or non-incumbents, the balance in the amount equivalent to ninety-five (95%) of their Cost of Living Allowance (COLA) beginning November 1989 when it was discontinued up to the present, if employment with the MWSS continues or up to the time of their separation from MWSS, with legal rate of interest at six (6%) percent per annum beginning August 1998 when DBM CCC No. 10 was declared as without force and effect. The monetary judgment shall earn interest at twelve (12%) percent per annum from the date of finality of the

decision until satisfaction;

- To pay attorney's fees equivalent to five (5%) percent of the total claims of petitioners;
- To segregate the amount equivalent to ten percent (10%) of the amount payable to each petitioner, and others who are similarly benefited, as and by way of litigation expenses. Said amount shall be paid directly to their attorney-in-fact, Genaro C. Bautista, pursuant to the Special Power of Attorney executed by petitioners in favor of the latter.

SO ORDERED.[19]

MWSS appealed to the CA.

On October 13, 2004 and May 26, 2005, MWSS issued two Board Resolutions[20] granting additional 20% COLA to incumbent and non-incumbent employees of MWSS. The 20% was in addition to the 5% earlier paid to private respondents.

CA Disposition

On August 17, 2004, the CA rendered a decision affirming with modification the RTC amended decision, disposing as follows:

WHEREFORE, in the light of the foregoing disquisitions, the appealed decision is hereby MODIFIED. The grant of litigation expenses, equivalent to ten percent (10%) of the amount payable to each petitioner, and others who are similarly benefited payable to Genaro Bautista as appellees' attorney-in-fact, is hereby DELETED. A fixed amount of Five Hundred Thousand Pesos (PhP500,000.00) is, instead, granted to the appellees's attorney-in-fact. We AFFIRM in all other respects.

SO ORDERED.[21]

In affirming the RTC decision, the CA stated:

In the case at bench, appellees have convincingly shown that they satisfied the requisites of a mandamus proceeding. First, only specific legal rights may be enforced by mandamus if they are clear and certain. If the legal rights of the appellees are not well-defined, clear, and certain, the petition must be dismissed, however, the contrary is obtaining. Appellees have shown that they are legally entitled to their accrued COLA as a matter of right. The Supreme Court, in the case of *De Jesus v. COA*, made the pronouncement that DBM CCC No. 10 was ineffective because of its lack of publication. In the said decision, the Court ordered the Commission to pass on audit the honoraria of therein petitioners. Precipitated by the above-mentioned ruling, the herein appellees filed a petition before the court a quo claiming for the return of COLA and back payment of the said allowance from the time it was discontinued.

A review of the records of this case would reveal that the Office of the Government Corporate Counsel (OGCC), Department of Justice issued Opinion No. 086 dated May 21, 2001. In the said opinion, the OGCC opined that employees in all government-owned and controlled corporations are entitled to the payment of Cost of Living Allowance and Amelioration Allowance without a need of any prior determination by the DBM of whether or not these allowances have, indeed, been integrated into the standardized salaries. Furthermore, in the same opinion, the OGCC explained that both the incumbent and non-incumbent employees are entitled to these benefits.

More importantly, in the recent case of *Philippine Ports Authority Employees v. Commission on Audit*, the High Court made an imprimatur regarding the employees' entitlement to COLA and amelioration allowances. The Court said that during the period that DBM CCC No. 10 was in legal limbo, the COLA and the amelioration allowance were not effectively integrated into the standardized salaries. x x x

Consequently, no less than the High Court made this declaration as to the employees' entitlement to COLA and other allowances. We find no cogent reason to rule otherwise. It bears stressing too, that appellant MWSS recognizes the right of herein appellees to the said allowances evidenced by the letter sent by appellant's Administrator, Orlando C. Hondrade. However, appellant made it clear that it could not effect the immediate payment because of the dismissal of an earlier case filed by Barraquias and the unavailability of funds. In other words, while appellant acknowledges appellees' legal right to COLA, it is prevented from making the payments because of those two (2) predicaments.

Second, the writ will not issue to compel an official to do anything, which is not his duty to do, or which is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.

x x x x

In the case at bar, the payment of the appellees' allowances does not require appellant to fulfill contractual obligations or to compel a course of conduct, nor to control or review the exercise of discretion. If judgment is, at all, necessary in this case, it would only be the determination as to whether the appellees are employees of MWSS or not, nothing more, nothing less. A purely ministerial act on the part of the appellant is, therefore, availing in the instant case.[22]

In modifying the RTC decision and fixing the grant of litigation expenses at P500,000.00, the CA ratiocinated:

As regards the last issue, we, however, are inclined to overturn the ruling of the lower court with respect to the segregation of the amount equivalent to 10% of the amount payable to each petitioner as payment to the appellees' attorney-in-fact. The general rule is that attorney's fees and litigation expenses cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. In short, the grant of attorney's fees as part of damages is the exception rather than the rule; counsel's fees are not awarded every time a party prevails in a suit. It can be awarded only in the cases enumerated in Article 2208 of the Civil Code, and in all cases, it must be reasonable.

We cannot give our affirmance to the segregation of an amount equivalent to ten percent (10%) of the amount payable to each petitioner, and others who are similarly benefited by way of litigation expenses, in favor of Genaro Bautista, as appellees' attorney-in-fact. Under Article 2208, while it may allow the courts to grant litigants an award of attorney's fees and litigation expenses, the same must be reasonable. It is true that appellee Genaro Bautista was authorized to deduct, collect, and receive the sum equivalent to ten percent (10%) of the total amount of differential that each appellee may receive. Sadly, we are of the considered view, however, that the amount is unconscionable considering the number of employees involved in the instant case, and considering the amount that each employee may receive by way of back payment. We, therefore, deem it appropriate to grant a fixed amount of Five Hundred Thousand Pesos (PhP500,000.00) to the appellees' attorney-in-fact, Genaro Bautista, by way of attorney's fees and litigation expenses. The reduction of unreasonable attorney's fees is within the regulatory powers of the courts (*Taganas v. NLRC*, 248 SCRA 133).[23]

On January 31, 2006, the CA issued an Amended Decision on motion for reconsideration of both parties, with the following fallo:

WHEREFORE, the instant Motion for Reconsideration is PARTIALLY GRANTED. Our decision promulgated on October 5, 2005, which is the subject of the instant motion, is hereby AMENDED, such that the judgment shall now read as follows:

"WHEREFORE, in the light of the foregoing disquisitions, the appealed decision is hereby MODIFIED. Appellant MWSS is ordered to pay appellees and other employees who are similarly situated, whether incumbents or non-incumbents, the balance in the amount equivalent to ninety-five percent (95%) percent of

their Cost of Living Allowance (COLA) beginning November 1989, when it was discontinued up to March 16, 1999, the date of the effectivity of DBM CCC No. 10. The award of attorney's fees equivalent to five (5%) percent of the total claims of appellees is DELETED. The award of interests, over and above the COLA is, likewise, DELETED for lack of basis. We AFFIRM in all other respects.

SO ORDERED."[24]

In granting reconsideration, the appellate court held as valid the agreement between private respondent Bautista and the other respondents segregating 10% of their monetary claims as payment for litigation expenses and attorney's fees, viz.:

The 10% litigation expenses in favor of Bautista has (sic) for its basis the Special Power of Attorney executed by the appellees. As borne by the records, the contract was freely and voluntarily executed by the appellees in favor of Bautista. Thus, the segregation of an amount equivalent to 10% of the amount due each appellee, and others who are similarly benefited, payable to Genaro C. Bautista is well-founded.

Anent the award of attorney's fees, in the absence of any stipulation, it can be awarded only in the cases enumerated in Article 2208 of the Civil Code, none of which is present in the case at bar. It bears stressing that the SPA provided that Genaro C. Bautista is authorized and empowered to deduct, collect, and receive the sum equivalent to 10% of the total amount of differential that each appellee may receive, to be paid to the lawyer/legal counsel, as and by way of attorney's fees and litigation expenses. Thus, the segregated amount taken from each employee necessarily includes both the attorney's fees and litigation expenses. Undeniably, the award of attorney's fees equivalent to 5% of the total claims of the appellees must, therefore, be deleted.[25]

MWSS then filed the present petition with this Court.

On December 15, 2005, MWSS issued another board resolution granting an additional 5% COLA to private respondents. To date and on record, MWSS had paid 30% of the COLA of private respondents from 1989-1999.

Issues

Petitioner MWSS, through the OGCC, assigns twin errors to the CA in the following tenor:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING HEREIN PETITIONER'S ARGUMENT THAT THE FILING OF A MANDAMUS CASE TO ENFORCE IMMEDIATE AND FULL PAYMENT OF COLA IS IMPROPER.

II.

THE APPELLATE COURT ERRED IN AWARDING ATTORNEY'S FEES AND LITIGATION EXPENSES TO RESPONDENTS.[26] (Underscoring supplied)

Our Ruling

The petition is partly meritorious.

MWSS raises two issues for Our consideration. The first is the substantive issue of private respondents' entitlement to the balance of their COLA from 1989-1999, when DBM Circular No. 10 was ineffective. The second involves attorney's fees and litigation expenses.

We shall deal with the issues in seriatim.

Private respondents are entitled to

COLA from 1989 to 1999 in line with this Court's decision in *De Jesus and PPA*.

MWSS insists that private respondents are not entitled to the 95% balance of their COLA from 1989 to 1999. It argues that they have not proven any clear right to the allowance because it was already deemed integrated into their salaries.[27] MWSS avers that it issued four (4) board resolutions, granting a total of 30% COLA to private respondents, as a mere act of generosity to them,[28] not in payment of a legally enforceable right. MWSS also argues that it needs to obtain prior DBM approval before it can pay the balance.[29]

We do not agree. This Court had long settled the issues hoisted by MWSS. We find no cogent reason to deviate, much less modify, settled jurisprudence.

In the *En banc* case of *De Jesus v. Court of Appeals*,[30] DBM Circular No. 10 was declared ineffective for lack of publication, thus:

On the need for publication of subject DBM CCC No. 10, we rule in the affirmative. Following the doctrine enunciated in *Tanada*, publication in the Official Gazette or in a newspaper of general circulation in the Philippines is required since DBM CCC No. 10 is in the nature of an administrative circular the purpose of which is to enforce or implement an existing law. Stated differently, to be effective and enforceable, DBM CCC No. 10 must go through the requisite publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

In the present case under scrutiny, it is decisively clear that DBM 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 sorely 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 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 matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency.

Being ineffective, DBM Circular No. 10 cannot affect government employees' entitlement to fringe benefits, allowances and COLA from 1989 to 1999. Thus, in *De Jesus*, the Local Water Utilities Administration was ordered to pay the honoraria of petitioners which were disallowed by the Circular.

Contrary to its present posturing, the OGCC itself issued a Memorandum, entitled "Opinion and Guidelines on the Payment of Cost of Living Allowance (COLA), Amelioration Allowance and other Forms of Allowance," opining that employees of government-owned and controlled corporations are entitled to COLA from 1989 to 1999 even without prior determination from DBM on whether or not the COLA was deemed integrated into their salaries. We are surprised that the OGCC now argues for a position totally inconsistent with its earlier opinion. Worse, MWSS unnecessarily passes the buck to the DBM when it had earlier opined that no prior DBM approval is required.

De Jesus was affirmed in the recent case of *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit (COA)*[31] where this Court held that the COLA of government employees from 1989 to 1999 was not "deemed integrated into their salaries." This means that the COLA during that period is a legally demandable and enforceable right. This Court stated:

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.

x x x x

In other words, during the period that DBM CCC No. 10 was in legal limbo, 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.

x x x x

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.

x x x x

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. 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.[32]

The ruling in *De Jesus and PPA* is clear. Employees of government-owned and controlled corporations, whether incumbent or not, are entitled to the COLA from 1989 to 1999 as a matter of right. The argument of MWSS that private respondents have not proven any clear legal right to the allowance and that they need prior DBM approval is without merit.

MWSS has a ministerial duty to pay
the COLA; mandamus is a proper
remedy to compel MWSS to perform

its ministerial duty.

We also agree with the CA that mandamus is a proper remedy to compel MWSS to pay the COLA balance. Payment of the allowance is a mere ministerial duty. In *De Jesus and PPA*, the Local Water Utilities Administration and the Philippine Ports Authority, respectively, were ordered to pay the honoraria and COLA of employees of government-owned and controlled corporations which were discontinued by DBM Circular No. 10. Private respondents are similarly situated. We find no compelling reason to deny them their legal entitlement to the allowance.

We quote with approval the CA decision on this point, thus:

Second, the writ will not issue to compel an official to do anything, which is not his duty to do, or which is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.

A purely ministerial act, as distinguished from a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or exercise of his own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment.

In the case at bar, the payment of the appellees' allowances does not require appellant to fulfill contractual obligations or to compel a course of conduct, nor to control or review the exercise of discretion. If judgment is, at all, necessary in this case, it would only be the determination as to whether the appellees are employees of MWSS or not, nothing more, nothing less. A purely ministerial act on the part of the appellant is, therefore, availing in the instant case.[33]

The 10% agreement between
Bautista and other respondents is
valid. But the agreement is binding
only on private respondents, not all
MWSS employees.

MWSS also questions the agreement between private respondent Bautista and other respondents which provided for the segregation of 10% of their COLA claims in payment of litigation expenses and attorney's fees. MWSS claims that such agreement is unconscionable and scandalous.[34] It avers that the agreement is similar to the "get-rich-quick schemes" wherein private respondents' lawyers receive a windfall from "a simple case entailing no substantial expense or extraordinary legal service." [35]

Private respondents counter that the 10% agreement is fair and reasonable. They contend that the agreement is binding only on private respondents, not MWSS. As such, MWSS will not suffer any loss because it is private respondents who will shoulder the litigation expenses and attorney's fees. In short, MWSS will pay no more than the COLA due them.[36]

Jurisprudence on the court's power to award and reduce attorney's fees and litigation expenses is well settled. Tersely put, irrespective of the contractual agreement between the lawyer and the client, the lawyer is entitled only to a reasonable compensation for services rendered. The courts have plenary power to reduce the compensation due a lawyer if it is unreasonable and unconscionable. Section 24, Rule 138 of the Rules of Court provides:

SEC. 24. Compensation of attorneys, agreement as to fees. - An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the

subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. x x x A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

The power of the courts to reduce unconscionable attorney's fees is based on the basic principle that the legal profession is not a commercial enterprise where profit maximization is a paramount consideration. The legal profession is imbued with public interest. We deliver justice, not a simple commercial service. In *Canlas v. Court of Appeals*,^[37] this Court stated:

x x x The Court finds the occasion fit to stress that lawyering is not a moneymaking venture and lawyers are not merchants, a fundamental standard that has, as a matter of judicial notice, eluded not a few law advocates. The petitioner's efforts partaking of a "shakedown" of his own client are not becoming of a lawyer and certainly, do not speak well of his fealty to his oath to "delay no man for money."

It is true that lawyers are entitled to make a living, in spite of the fact that the practice of law is not a commercial enterprise; but that does not furnish an excuse for plain lust for material wealth, more so at the expense of another. Law advocacy, we reiterate, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from government interference, is impressed with a public interest, for which it is subject to State regulation. x x x^[38]

Here, We do not find anything unjust or inequitable in the 10% agreement between private respondent Bautista and other respondent employees. The percentage and the corresponding amount to be deducted from each employee is only minimal when compared to the benefits that they will derive from the payment of the COLA. The 10% fee is also a customary charge for similar legal services. Under the Labor Code, a 10% agreement for payment of attorney's fees based on the monetary claim of an employee is valid and binding.^[39] The agreement between Bautista and the other respondents conforms to that allowed under the Labor Code.

We note, however, that the RTC and the CA erred in ruling that all MWSS employees eligible to receive COLA are liable to pay attorney's fees and/or litigation expenses to respondent Bautista. Records disclose that only 522 out of the more than 7000 MWSS employees signed such agreement. Other MWSS employees signed similar contracts, agreements or arrangements^[40] with their own respective agents/lawyers, which are similarly recognized as valid and binding.

It is basic that only parties to a contract are bound by its terms. This is based on the principle of relativity of contracts which provides that contracts take effect only between the parties, their assigns and heirs.^[41] It cannot favor or prejudice third persons. Applying this principle, only private respondents are bound by the terms of their agreement with respondent Bautista. Those who have signed similar contracts with their own agents/lawyers are bound by their own contracts. *Res inter alios acta alteri nocere non debet* - a third party may not be prejudiced by the act, declaration or omission of another.^[42]

WHEREFORE, the Court of Appeals Amended Decision is AFFIRMED WITH MODIFICATION in that:

- Petitioner Metropolitan Waterworks and Sewerage System is ordered to pay respondents and other employees who are similarly situated, whether incumbents or non-incumbents, the balance in the amount equivalent to ninety-five percent (95%) of their Cost of Living Allowance beginning November 1989, when it was discontinued up to March 16, 1999, the date of the effectivity of DBM Circular No. 10.
- The agreement between respondent Genaro Bautista and the other respondents to segregate ten percent (10%) of the amount payable to each of respondents, as and by way of litigation expenses and attorney's fees, is declared valid and binding. Similar contracts, agreements or arrangements signed by other MWSS employees with their

respective agents/lawyers are also declared valid and binding.

- Only respondent employees are liable to pay litigation expenses and attorney's fees to respondent Bautista. Other MWSS employees who signed similar contracts, agreements or arrangements with their respective agents/lawyers are bound by their own contracts.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] G.R. No. 109023, August 12, 1998, 294 SCRA 152.

[2] G.R. No. 160396, September 6, 2005, 469 SCRA 397.

[3] Rollo, pp. 65-69. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Jose C. Mendoza and Arturo G. Tayag, concurring.

[4] Id. at 78-81.

[5] Id. at 11-12.

[6] Id. at 51-52, 156.

[7] Id. at 51.

[8] Supra note 1.

[9] Rollo, p. 51.

[10] Id. at 164.

[11] Id. at 14-15.

[12] Id.

[13] Id. at 52.

[14] Id. at 83-104.

[15] Id. at 72-73.

[16] Id. at 70-77.

[17] Id. at 76-77.

[18] Id. at 75-76.

[19] Id. at 80-81.

[20] Id. at 18-19. Board Resolution No. 2004-262 and Board Resolution No. 2005-117.

[21] Id. at 62.

[22] Id. at 55-59.

[23] Id. at 60-61.

[24] Id. at 68-69.

[25] Id. at 66-67.

[26] Id. at 23, 34.

[27] Id. at 30.

[28] Id. at 27, 29.

[29] Id. at 25.

[30] Supra note 1.

[31] Supra note 2.

[32] Rollo, pp. 404-407.

[33] Id. at 59.

[34] Id. at 36.

[35] Id.

[36] Id. at 235.

[37] G.R. No. L-77691, August 8, 1988, 164 SCRA 160.

[38] Canlas v. Court of Appeals, id. at 173-174.

[39] Labor Code of the Philippines, Art. 111.

[40] Motion for Reconsideration in Messrs. Joaquin C. Pacis v. Judge Ofelia Marquez, Genaro Bautista and MWSS, CA-G.R. SP No. 86046.

[41] Civil Code, Art. 1311 provides:

Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.

[42] People v. Ciobal, G.R. No. 86220, April 20, 1990, 184 SCRA 464, 471.

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