

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. DAVID G. NAVAL, JR., JOSE SALVANTE S. ANTE, ALVIN O. ARRIZA, JACINTO Y. MANALO, RAMON D. SIAO, AND ALLAN E. BENUSA, IN THEIR OWN NA...

G.R. No. 195687. April 14, 2014

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Before this Court is an Omnibus Motion[1] interposed by petitioner Land Bank of the Philippines (LBP) praying, inter alia, that we set aside our Resolution dated July 25, 2011[2] which denied its Petition for Review on Certiorari. The petition assailed the Decision[3] and Resolution[4] dated October 11, 2010 and February 22, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 99154, which in turn affirmed with modification the June 7, 2004 Decision of the Regional Trial Court (RTC) of Manila, Branch 40.

The Facts

In accordance with Letters of Implementation No. (LOI) 104 dated October 12, 1979,[5] petitioner LBP granted its officers and employees Cost of Living Allowance (COLA) equivalent to three hundred pesos (PhP 300) or forty percent (40%) of their monthly basic salary, whichever is higher, every month.

Further, pursuant to LOI 116 dated May 12, 1980,[6] LBP gave its employees a monthly allowance called a “Bank Equity Pay” (BEP). For employees whose monthly basic salary is one thousand five hundred and one pesos (PhP 1,501) and above, the amount of BEP is five hundred pesos (PhP 500), while for those with a basic pay of one thousand five hundred pesos (PhP 1,500) and below, the monthly BEP is five hundred fifty pesos (PhP 550).[7]

On July 6, 1988, the LBP Board of Directors issued Resolution No. ‘88-109[8] integrating the COLA into the basic pay of LBP employees. The Resolution took effect on May 16, 1989[9] supposedly without any opposition from the employees of LBP.

On August 21, 1989, Republic Act No. (RA) 6758, entitled “An Act Prescribing a Revised Compensation and Position Classification System in the Government and For Other Purposes,” which is otherwise known as the Salary Standardization Law (SSL), was enacted. Section 12 of said law provides, inter alia, for the integration/consolidation of allowances and additional compensation into the standardized salary rates save for certain additional compensation enumerated therein and others that the Department of Budget and Management (DBM) is mandated to determine, viz:

Section 12. 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.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government. (underscoring supplied)

In compliance with the mandate contained in the SSL, DBM issued on October 2, 1989 Corporate Compensation Circular No. 10 (DBM-CCC No. 10),^[10] entitled “Rules and Regulations for Implementation of the Revised Compensation and Position Classification System Prescribed under R.A. No. 6758 for Government-Owned and/or Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs).”

DBM-CCC No. 10 specifically stated that the COLA and BEP granted to employees of GOCCs and GFIs shall be deemed integrated into the basic salary effective July 1, 1989.^[11] Thus, in conformity with the provisions of DBM-CCC No. 10, LBP likewise integrated the BEP into the basic pay of its employees effective as of July 1, 1989.

On February 23, 1995, RA 7907 removed petitioner LBP from the coverage of the SSL.^[12]

On August 12, 1998, this Court nullified DBM-CCC No. 10 in *De Jesus v. Commission on Audit*^[13] for the reason that it was not published in the Official Gazette or in a newspaper of general circulation, as required by law.

The DBM remedied its circular’s defect by publishing DBM-CCC No. 10 in the Official Gazette in March 1999, which was released on July 1, 1999. Hence, DBM-CCC No. 10, as published, took effect on July 16, 1999.

It appears that after the publication of the Decision in *De Jesus*, respondents started negotiating with petitioner LBP for the payment of their COLA and BEP benefits over and above their monthly basic salaries, and back payment of the same from the time that LBP stopped to extend them until the finality of the Decision in *De Jesus*.

On May 17, 2002,^[14] respondents wrote then LBP President Margarito Teves appealing for the restoration of their COLA and BEP. Receiving no immediate response, respondents sent a final demand letter dated June 21, 2002 reiterating the claim for the payment of their COLA and BEP from July 1, 1989 to March 15, 1999, inclusive.^[15]

Petitioner LBP, however, in a letter dated June 25, 2002 denied respondents’ appeal based on a Civil Service Commission (CSC) ruling citing DBM Budget Circular 2001-03 which prohibits the payment of COLA and similar allowances on top of the basic salary on the ground that it would constitute double compensation.^[16]

Thus, on August 30, 2002, respondents instituted a Petition for Mandamus^[17] before the RTC of Manila, Branch 40, docketed as Civil Case No. 02-104483 to compel LBP to pay their COLA and the BEP allowances over and above their basic salaries because of their alleged clear legal right to receive these allowances under LOI Nos. 104 and 116.^[18]

On June 7, 2004, the trial court issued a Decision^[19] in respondents’ favor, granting the petition for mandamus and ordering LBP to pay herein respondents’ claim. The decretal portion of the RTC’s Decision states:

WHEREFORE, Judgment is rendered requiring respondents to pass and issue a board resolution:

- Directing the payment of Cost of Living Allowance (COLA) in the amount of P300.00 or forty percent (40%) of the respective basic salaries of petitioners per month whichever is higher, effective May 16, 1989 up to the present;

- Directing the payment of Bank Equity Pay (BEP) amounting to ₱550.00 per month for those receiving P1,500.00 and below as basic salary per month and ₱500.00 per month for those receiving more than P1,500.00 per month from July 1, 1989 up to the present; and
- Directing the payment of interest amounting to six percent (6%) per year on all the amounts due to petitioners effective May 16, 1989 in the case of COLA and July 1, 1989 in the case of BEP up to August 18, 1999, (the date of extra-judicial demand), and twelve (12%) from August 19, 1999 up to the present or until fully paid.[20]

When its Motion for Reconsideration[21] was denied by the court a quo,[22] petitioner LBP interposed an appeal with the CA,[23] the recourse docketed as CA-G.R. SP No. 99154. Petitioner LBP filed its Memorandum on June 13, 2007.[24] Respondents, on the other hand, opted to file a Motion to Dismiss Appeal[25] supposedly because LBP's resort was the wrong mode and the appeal is wanting of material dates.

Eventually, the appellate court issued a Decision dated October 11, 2010[26] affirming with modification the RTC Decision. The CA ruled, thus:

WHEREFORE, the assailed Decision dated June 7, 2004 rendered by the Regional Trial Court (RTC) of Manila (Branch 40), in Special Civil Action No. 02-104483, is hereby AFFIRMED with modification that:

Land Bank of the Philippines is hereby DIRECTED to pay an interest of six percent (6%) per annum on all the amounts due to petitioners-appellees effective May 16, 1989, in the case of Cost of Living Allowance (COLA), and July 1, 1989, in the case of Bank Equity Pay (BEP), up to the finality of this Decision, which interest rate should become twelve percent (12%) per annum from the finality of this Decision up to its satisfaction.

In sustaining the decision of the RTC, the appellate court held that while LOI Nos. 104 and 116 mandate the payment of additional compensation, evidence shows that "the salaries of [LBP's] officers and employees before and after the alleged integration shows that the latter hardly received said financial incentives at all"[27]and that there is "an apparent diminution in the net pay [of LBP employees and officers] even if the COLA and BEP are already incorporated therein." [28]

The CA further stated the observation that, while DBM-CCC No. 10 expressly allowed the integration of the COLA and BEP into the basic pay, the circular cannot operate to validate the acts of petitioner LBP as the issuance was subsequently nullified for non-publication.[29]

The CA also pointed out that LBP officers and employees were already taken out of the coverage of SSL by RA 7907 on February 23, 1995, or more than four (4) years before the publication of DBM CCC No. 10; thus, the LBP officers and employees shall continue to receive their COLA and BEP on top of their basic salaries, as there has been no law that effectively repealed LOI Nos. 104 and 116.

LBP moved for, but was denied, reconsideration[30] per the CA's Resolution dated February 22, 2011.[31]

On April 15, 2011, LBP filed a Petition for Review before this Court, ascribing to the appellate court the commission of serious reversible errors. LBP argues that the integration/consolidation of COLA and BEP undertaken by LBP cannot be considered a circumvention of LOI Nos. 104 and 116 as it was validated and confirmed as a state policy under the SSL barely two months after the integration of the COLA was implemented. [32] Citing *Gutierrez v. DBM*, [33] LBP maintains that based on Section 12 of the SSL, the COLA and BEP are among those falling into the general category of allowances that shall be "deemed included" in the standardized salary rates prescribed in it.[34]

The appellate court also grievously erred, so LBP argued, in ruling that there was no law that repealed LOI Nos. 104 and 116 considering that the SSL expressly repealed the law upon which LOI Nos. 104 and 116 were made,

Presidential Decree No. (PD) 985. Thus, so petitioner maintains, it is erroneous to conclude that the integration of COLA and BEP into the basic pay continues to violate the provisions of these repealed laws. Further, since the issuance of RA 7907, LBP is now allowed to draw up its own compensation plan independent of the provisions of either the SSL or LOI Nos. 104 and 116.[35]

The Court, in a minute resolution, denied the petition on July 25, 2011.[36] Hence, this Omnibus Motion.[37]

LBP specifically emphasized in its motion that LOI Nos. 104 and 116 have been repealed by the SSL and that LBP itself was excluded from the SSL's coverage even before its implementing rules were invalidated by the court. Thus, it is petitioner's position that it cannot be legally compelled to pay the COLA and the BEP up to the present. LBP further cites *Galang v. Land Bank of the Philippines*[38](Galang) where this Court supposedly recognized that the COLA had been replaced by Personnel Economic Relief Allowance (PERA), which is now extended to all LBP employees.[39] To petitioner, these are all established facts that significantly demolish the conclusion reached by the appellate court to the effect that the COLA and the BEP should be given to respondents up to the present because LOI Nos. 104 and 116 remain to be the governing laws on the matter.

On October 3, 2011, this Court received a Motion to Intervene dated September 28, 2011[40] filed by LBP employees, represented by Engr. Generoso David (David), who claim being in the same circumstance and situation as respondents in the instant case, having a claim on the same benefits as that claimed by respondents.

In a Resolution dated October 12, 2011,[41] this Court granted LBP's motion for reconsideration as incorporated in its Omnibus Motion and reinstated its basic petition. The Court likewise granted the LBP employees' Motion for Intervention and required both respondents and the intervenors led by David to file their respective comments on the Petition and the motion for reconsideration.

On November 16, 2011, respondents filed their Comments and/or Opposition to the Omnibus Motion[42] of Petitioner-Movant and the Motion to Intervene filed by David dated November 11, 2011.[43] Respondents argued the SSL has not repealed LOI Nos. 104 and 116. Also, LBP Board Resolution '88-109, which occasioned the COLA integration, was implemented without a formal approval from the DBM, as required by LOI No. 104. Hence, the integration cannot be sustained as valid.

On January 9, 2012, another Motion for Leave to File and to Admit Complaint-In-Intervention and a Complaint-in-Intervention both dated January 3, 2012[44] were filed by Edwin Ilagan et al. (Ilagan). Ilagan averred that they are incumbent and retired employees of petitioner LBP from May 16, 1989 up to the present. Thus, so they claim, they are similarly entitled to the amounts corresponding to the withheld COLA and BEP as adjudged by the RTC to private respondents.

Intervenors David, et al. filed their Comment on the Petition for Review on January 13, 2012.[45] In a Resolution dated February 6, 2012,[46] this Court took note of intervenor David et al.'s Comments and granted Ilagan's Motion for Leave to File and to Admit Complaint-in-Intervention.

On August 22, 2012, David, et al. filed a Manifestation with Submission submitting that there are additional LBP employees who pray that they be considered as additional signatories to the motions for interventions already allowed and granted by the Court.[47] In a Resolution dated October 17, 2012,[48] David, et al.'s manifestation was granted.

On November 19, 2013, respondents then filed a Motion for Early Resolution,[49] citing *Galang* and claiming that the payment of COLA between 1990 to 1995 had already been mandated by this Court to an employee of LBP; thus, LBP's petition should accordingly be dismissed.

The Issue

Despite the convoluted claims of the parties, the basic question before us is whether or not respondents and intervenors are entitled to the COLA and the BEP on top of their basic salaries from 1989 up to the present.

The Court's Ruling

After careful re-consideration and re-evaluation of the facts and the law, we are constrained to rule in the negative.

The SSL Remained Valid Despite the Nullification of DBM-CCC No. 10

To recall, respondents' demand for the payment of their COLA and BEP on top of their basic salaries came after this Court's promulgation of *De Jesus*, which nullified DBM-CCC No. 10 for non-publication. It is their position that by the nullification of DBM-CCC No. 10 which expressly named the COLA and BEP as integrated into the basic salary, LBP's integration of the COLA and the BEP is likewise invalid. In other words, respondents equate the nullification of the implementing rules with the nullification of the very law which orders the integration of these allowances into the basic salary. This Court had already refuted the soundness of this claim.

In *Napocor Employees Consolidated Union (NECU) v. National Power Corporation*,^[50] we clarified that the nullification of DBM-CCC No. 10 is irrelevant to the validity of the provisions of the SSL:

We hold that Rep. Act No. 6758 (Compensation and Classification Act of 1989) can be implemented notwithstanding our ruling in *De Jesus vs. Commission on Audit*. While it is true that in said case, this Court declared the nullity of DBM-CCC No. 10, yet there is nothing in our decision thereon suggesting or intimating the suspension of the effectivity of Rep. Act No. 6758 pending the publication in the Official Gazette of DBM-CCC No. 10. For sure, in *Philippine International Trading Corporation vs. Commission on Audit*, this Court specifically ruled that the nullity of DBM-CCC No. 10 will not affect the validity of Rep. Act No. 6758. Says this Court in that case:

x x x The nullity of DBM-CCC No. 10, will not affect the validity of R.A. No. 6758. It is a cardinal rule in statutory construction that statutory provisions control the rules and regulations which may be issued pursuant thereto. Such rules and regulations must be consistent with and must not defeat the purpose of the statute. The validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules. (Emphasis and underscoring supplied.)

Thus, in resolving the issue of whether the COLA and/or the BEP should be paid separately from the basic salary to the employees of LBP as of July 1, 1989, we should look into the very provisions of the SSL. For emphasis, Sec. 12 of the SSL is provided anew:

Section 12. 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.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government. (underscoring supplied)

From the foregoing provision, it is immediately apparent that the SSL mandates the integration of all allowances

except for the following:

- Representation and transportation allowances;
- Clothing and laundry allowances;
- Subsistence allowance of marine officers and crew on board government vessels;
- Subsistence allowance of 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.

Since the COLA and the BEP are among those expressly excluded by the SSL from integration, they should be considered as deemed integrated in the standardized salaries of LBP employees under the general rule of integration.

In *Abellanos v. Commission on Audit*[51](*Abellanos*), the Court, confronted with the similar issue of the application of Sec. 12 of the SSL with regard to the Incentive Allowance of National Housing Authority employees, held that “all allowances not specifically mentioned in [Section 12 of the SSL], or as may be determined by the DBM, shall be deemed included in the standardized salary rates prescribed.”[52]

More emphatically, the Court En Banc declared in *Gutierrez* that the COLA is one of those allowances deemed integrated under Sec. 12 of the SSL because (1) it had not been expressly excluded from the general rule of integration and (2) it is a benefit intended to reimburse the employee for the expenses he incurred in the performance of his official functions. We held, thus:

At the heart of the present controversy is Section 12 of R.A. 6758 which is quoted anew for clarity:

x x x x

But, while the provision enumerated certain exclusions, it also authorized the DBM to identify such other additional compensation that may be granted over and above the standardized salary rates. In *Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit*, the Court has ruled that while Section 12 could be considered self-executing in regard to items (1) to (6), it was not so in regard to item (7). The DBM still needed to amplify item (7) since one cannot simply assume what other allowances were excluded from the standardized salary rates. It was only upon the issuance and effectivity of the corresponding implementing rules and regulations that item (7) could be deemed legally completed.

x x x x

In this case, the DBM promulgated NCC 59 [and CCC 10]. But, instead of identifying some of the additional exclusions that Section 12 of R.A. 6758 permits it to make, the DBM made a list of what allowances and benefits are deemed integrated into the standardized salary rates. More specifically, NCC 59 identified the following allowances/additional compensation that are deemed integrated:

x x x x

The drawing up of the above list is consistent with Section 12 above. R.A. 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of “all allowances.” With respect to what employees’ benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a case, needed to promulgate rules and regulations identifying those excluded benefits. This leads to

the inevitable conclusion that until and unless the DBM issues such rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive. Thus so, not being an enumerated exclusion, COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration.

In any event, the Court finds the inclusion of COLA in the standardized salary rates proper. In *National Tobacco Administration v. Commission on Audit*, the Court ruled that the enumerated fringe benefits in items (1) to (6) have one thing in common—they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. On the other hand, item (7) is a “catch-all proviso” for benefits in the nature of allowances similar to those enumerated.

Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to “the level of prices relating to a range of everyday items” or “the cost of purchasing those goods and services which are included in an accepted standard level of consumption.” Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.

x x x x

[T]he integration of COLA into the standardized salary rates is not dependent on the publication of CCC 10 and NCC 59. This benefit is deemed included in the standardized salary rates of government employees since it falls under the general rule of integration—“all allowances.”

Under the doctrine of *stare decisis et non quita movere*, a point of law already established will be followed by the court in subsequent cases where the same legal issue is raised.[53] Thus, we can come to no other conclusion than to deny the payment of the COLA on top of the LBP employees’ basic salary from July 1, 1989 because (1) it has not been expressly excluded from the general rule on integration by the first sentence of Sec. 12 of the SSL and (2) as we have explained in *Gutierrez*, the COLA is not granted in order to reimburse employees for the expenses incurred in the performance of their official duties.

Similar to the COLA, which have been defined in *Gutierrez* as “the cost of purchasing those goods and services which are included in an accepted standard level of consumption,” the BEP had been extended by the LBP pursuant to LOI 116. Significantly, LOI 116 directed the payment of a “cost of living allowance.” LOI 116 pertinently provides:

Letter of Instruction No. 116

GRANTING A COST OF LIVING ALLOWANCE
TO GOVERNMENT EMPLOYEES

WHEREAS, the energy crisis has brought about world-wide inflation and tremendously increased cost of living in the country;

WHEREAS, it is the policy of government to help augment government personnel income in times of economic crisis and inflation;

WHEREAS, P.D. No. 985 empowered the President to determine the compensation of government employees;

NOW THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the power vested in me by law, do hereby Direct and Order:

- Each and every official/employee of the National Government, including state universities and colleges, whether permanent, temporary, emergency, contractual or casual, shall be granted a cost of living allowance of P3.35 a day or P100 per month in the case of daily or monthly employees, respectively.
- Local government units may grant full or in part the cost of living allowance authorized under this Letter to their employees, subject to the limits of their financial position and under such conditions as may be determined by the Joint Commission on Local Government Personnel Administration.
- The Compensation Committee created by P.D. No. 985 for government owned or controlled corporation shall immediately meet and determine compensation increases for their respective groups. No government owned or controlled corporations may authorize and implement any increase in salary/allowances/benefits without the approval of the Compensation Committee concerned. The following guidelines shall be observed by the Committees in their work:
- The cost of living allowance directed by this Letter for national government employees may be authorized for employees of government owned or controlled corporations;
- In lieu of the cost of living allowance and where corporate finances permit, the Compensation Committee may instead adopt measures for compensation increase that are consistent with and do not exceed the limits agreed upon for private enterprises in the 1980 Tri-Sectoral Meeting;

x x x x

- Payment of half of the living allowance herein directed shall be made effective February 1, 1980 and the other half, effective August 1, 1980.[54]

It is more than reasonable to infer that the BEP is in fact an additional COLA extended to LBP employees under LOI 116. Thus, similar to the COLA, the payment of the BEP separately from the basic salary from July 1, 1989 cannot be allowed because (1) it has not been expressly excluded from the general rule on integration by the first sentence of Sec. 12 of the SSL and (2) it has not been granted to reimburse LBP employees for the expenses incurred in the performance of their official duties.

The LOIs Extending the COLA and BEP Do Not Prohibit Integration

It is argued, however, that this Court should heed the ruling of the appellate court which ordered the payment of the COLA and the BEP pursuant to the LOIs mandating their payment.

A closer look of these LOIs, however, would argue against the idea that they prohibit the integration of either allowance into the basic pay of GFI employees. Nowhere in either issuances is it mandated that these allowances can only be paid on top of, and separate from, the basic and net pay of the employees of GFIs. In other words, LOI Nos. 104 and 116 are not controlling in the manner of the payment of these allowances to the employees.

Even assuming arguendo that these LOIs proscribe the integration of these allowances into the basic pay, this proscription has been effectively repealed by the SSL which provides in its Sec. 16, viz:

Section 16. Repeal of Special Salary Laws and Regulations.—All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are consistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed.

Clearly, among the laws specifically repealed by SSL is the proviso under Sec. 2 of PD 985,[55] which reads:

x x x Provided, that notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporations and financial institutions for their employees to be supported fully from their corporate funds and for such technical positions as may be approved by the President in critical government agencies. (emphasis supplied)

As both LOI Nos. 104 and 116 have been promulgated under authority of Sec. 2, PD 985,[56] any mandate arguably contained in the LOIs regarding the manner of payment of the COLA and/or the BEP had been effectively revoked by the SSL.[57]

Parenthetically, even before the effectivity of the SSL, the allowances given to GOCCs had already been tempered by Memorandum Order (MO) No. 177, Series of 1998, issued by then President Corazon Aquino in May 31, 1988, which stated:

SECTION 1. Coverage. – This [MO] shall cover profit-making and financially viable [GOCCs] which are not receiving subsidies for any operating expenses from the National Government.

SECTION 2. Allowances of Incumbents. – Incumbents of positions in corporate entities covered by this [MO] who are presently receiving additional monthly compensation/fringe benefits and other emoluments x x x shall continue to receive such excess allowance, which shall be referred to as “transition allowance”. The “transition allowance” shall be correspondingly reduced by the amount of any salary increase or salary adjustment that the incumbent shall receive in the future.

x x x x

SECTION 3. Compliance with Legal Requirements. – All government-owned or controlled corporations are henceforth required to comply strictly with the laws, rules and regulations governing the grant of salary increases, allowances and other benefits to their officials and employees. The head of the corporation shall be held responsible for any unauthorized grant without prejudice to requiring the refund by the employees concerned. (emphasis supplied)

Thus, respondents and intervenors’ claim that they have a vested right over the payment of the COLA and the BEP on top of the monthly basic salary is unfounded. Lest it be forgotten, the rule is that the payment of a salary may be amended by the power which granted it in the first place.[58]

LBP Now Has the Autonomy to
Design its Compensation Plan

Respondents and intervenors’ reliance on RA 7907 to support their claimed entitlement to COLA and BEP on top of their basic salaries is, furthermore, misplaced. The law that exempted petitioner LBP from the coverage of the SSL does not retroactively obliterate the integration rule laid down in the SSL. Neither did RA 7907 order the separation of the COLA and the BEP from the basic monthly.

Sec. 10 of RA 7907 simply reads as follows:

Sec. 10. Section 90 of the same Act is hereby amended to read as follows:

x x x x

“All positions in the Bank shall be governed by a compensation, position classification system and qualification, standards approved by the Bank’s Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation loan shall be comparable with the prevailing compensation plans in the private sector and shall be subjected to periodic review by the Board no more than once every two (2) years without prejudices to yearly merit reviews or increases based on productivity and profitability. The bank shall therefore be exempt from existing laws, rules and regulations on compensation,

position classification and qualification standards. It shall however endeavor to make its system conform as closely as possible with the principle under Republic Act No. 6758.” (emphasis supplied)

It is at once apparent from the quoted provision that, by RA 7907, petitioner LBP had been given sufficient independence and autonomy to design its own compensation plan, i.e., to decide whether to integrate the COLA and the BEP into the basic pay. This Court cannot dictate the inclusion of the COLA and BEP contrary to the sound business judgment of LBP recognized and sustained in RA 7907.

In other words, after RA 7907 became effective, it is with more reason that petitioner LBP cannot be ordered to pay the COLA and the BEP on top of the basic salary. Thus, even if we were constrained to rule that the COLA and BEP are not governed by the general integration rule of the SSL, it is still grievous error to order the payment of these allowances until the publication and effectivity of DBM-CCC No. 10, or worse, until the settlement of this controversy.[59]

The Fact of Integration Has Not Been Questioned

What is more significant is that respondents and intervenors have not questioned the fact of integration. Similarly, the appellate court found there was in fact an integration of the subject allowances to the basic pay of the employees of LBP, albeit supposedly insufficient. The observation of the appellate court regarding the resulting amount notwithstanding, the actual integration of these allowances to the basic salary of the respondents and the intervenors defeats the allegation of a total deprivation and/or withholding of these allowances. As such, to order the payment of the COLA and the BEP on top of what has already been paid by LBP—the basic pay with the COLA and the BEP incorporated—will constitute a prohibited double compensation.

In *PNB v. Palma*,[60] this Court once again reiterated the established rule that “[u]nder Section 12 of RA 6758 (the SSL), additional compensation already being received by the employees of petitioner, but not integrated in the standardized salary rates – enumerated in Section 5.5 of DBM-CC No. 10, like ‘rice subsidy, sugar subsidy, death benefits, other those granted by the GSIS,’ and so on – shall continue to be given.”[61] Since, COLA and the similar allowance of BEP had been considered integrated into the basic salary of the employees under Sec. 12, and had in fact been integrated into the basic salary of LBP employees, there is nothing to justify a redundant back payment of these allowances.

In fact, in *Gutierrez* previously alluded to, one of the reasons given by this Court in denying petitioners’ claim for payment of COLA was that “the integration was not by mere legal fiction since it was factually integrated into the employee’s salaries x x x there is thus nothing in these cases which can be the subject of a back pay since the amount corresponding to COLA was never withheld from the petitioners in the first place.”[62]

Galang is Not Determinative of the Manner of the Payment of COLA

It has been raised that in *Galang v. Land Bank of the Philippines*, this Court allowed the back payment of COLA to an LBP employee. Hence, it is presently asserted that, in consonance with the equal protection of the laws, a similar ruling be made in this case.

A reliance on *Galang*, however, is off course. One of the issues in *Galang* relates to the entitlement of *Galang*, who was irregularly dismissed in 1990, to the back salaries of Personnel Economic Relief Allowance (PERA). As to the period of his entitlement to back salaries, the Court held that:

[T]he five-year period covered in the computation of *Galang*’s back salaries and other benefits is from July 1990 to June 1995. Also, he shall receive back salaries and other benefits for the period during which he should have been reinstated from October 1, 1997 to August 15, 2001.

In resolving the issue regarding Galang's entitlement to PERA, this Court observed:

On the other hand, x x x (PERA) is a ₱500 monthly allowance authorized under the pertinent general provision in the annual GAA. It is granted to augment the pay of government employees due to the rising cost of living.

On February 12, 1997, Congress enacted R.A. No. 8250 (GAA for CY 1997), which granted PERA to all government employees and officials as a replacement of the Cost of Living Allowance (COLA). This explains why Land Bank employees began receiving PERA only in 1997—because prior to 1997, said benefit was called by another name, COLA. Hence, Land Bank is still liable to pay the monthly PERA to Galang. (emphasis supplied)

In the dispositive portion of Galang, this Court thus ordered:

WHEREFORE, the Decision dated May 25, 2006 and Resolution dated October 25, 2006 of the Court of Appeals in CA-G.R. SP No. 91910 are AFFIRMED WITH MODIFICATIONS. Land Bank of the Philippines is ordered to pay Isabelo L. Galang: (a) back salaries for five (5) years from the time of his unlawful dismissal in July 1990 to June 1995 at the rate last received by him without qualification and deduction; (b) back salaries from the proper date of his reinstatement on October 1, 1997 until August 15, 2001, at the rate prevailing on October 1, 1997 inclusive of increases in salary; (c) Cost of Living Allowance (COLA) from July 1990 to June 1995; (d) Personnel Economic Relief Allowance (PERA) from October 1, 1997 to August 15, 2001 x x x.

A careful reading of the foregoing discussion will reveal that there is nothing therein that mandates the payment of the COLA as a separate item from the basic salary of LBP employees. In fact, there is no discussion in the body of our ruling in Galang regarding the invalidity of integration of the COLA and the BEP. At most, the portion in the fallo regarding the payment of the COLA from 1990 to 1995 to Galang was merely to put emphasis to the fact that he was entitled to the allowance he was totally deprived of.

The ruling in Galang, to stress, was never meant to resolve the issue as to the validity of the integration of the COLA and the BEP into the basic salaries of LBP employees. The integration was never put in issue in that case. Hence, the back payment of the COLA as integrated in the basic salaries from 1990 to 1995 is justified as sufficient compliance to our Order contained in the fallo, as worded.

Contrary to the position taken by respondents and intervenors, our discussion in Galang even further disproves the entitlement of LBP employees to COLA up until the finality of the resolution of the case. As we discussed therein, the COLA had long been replaced by PERA such that there may not even be a need for the payment as integrated of the COLA after its replacement.

WHEREFORE, the instant petition is GRANTED and the Decision dated October 11, 2010 and the Resolution dated February 22, 2011 of the Court of Appeals in CA-G.R. SP No. 99154, which ordered the back payment of the Cost of Living Allowance (COLA) and the Bank Equity Pay (BEP) to respondents, are hereby REVERSED and SET ASIDE.

The Motion for Intervention filed by David, et al. and the Complaint-In-Intervention filed by Ilagan, et al. are DENIED.

SO ORDERED.

Peralta, Abad, Mendoza, and Leonen, JJ., concur.

April 14, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____April 7, 2014____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on April 14, 2014 at 11:15 a.m.

Very truly yours,

LUCITA ABJELINA SORIANO

Division Clerk of Court

By:

(Sgd.)

WILFREDO V. LAPITAN

Deputy Division Clerk of Court

[1] Rollo, pp. 350-382.

[2] Id. at 349.

[3] Id. at 12-34, 101-122. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

[4] Id. at 36-39, 125-128.

[5] Id. at 129-132. The pertinent provisions of LOI 104 provides:

WHEREAS, pursuant to the mandate of the Constitution, Presidential Decree No. 985 was issued to standardize compensation of government officials and employees, including those in government-owned and controlled corporations, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, the positions concerned;

WHEREAS, the said Decree authorized the adoption of additional financial incentives for viable and profit-making corporations and those performing critical functions, to be supported from the earnings and profits of such corporations;

x x x x

5. Maximum Level of Allowance and Benefits. – Allowances and benefits may be provided by individual corporations but not to exceed the following schedule, subject to aggregate ceiling indicated in Item No. 6 hereof:

a. Cost of living allowance of 40% of basic pay or P300 per month, whichever is higher. x x x

[6] Id. at 133-134.

[7] Id. at 186.

[8] Id. at 135, 188. The Resolution pertinently reads:

RESOLVED, as it is hereby resolved, That consistent with the proposal of the heads of the GFIs for a uniform approach in the administration of the compensation package for GFI's employees, the recommendation to integrate into the basic pay of the Cost of Living Allowance (COLA) of ₱300.00 or 40% of basic pay, whichever is higher, similar to the Bank Equity Pay (BEP) of CB and Bank Equity Benefit Differential Pay

(BEBDP) of DBP to take effect at the start of the month following approval hereof be, as it is hereby, approved, subject to clearance from the Department of Budget and Management;

RESOLVED FURTHER, That as a result of the COLA integration, the recommendation that the hiring rate will now be step 8 be, as it is hereby likewise, approved;

RESOLVED FINALLY, That the budget for the incremental cost of this integration estimated at P471.41 thousand per month be properly funded, chargeable against corporate funds.

[9] Id. at 186, 188. Pursuant to Executive Order No. 11, Series of 1989 [July 4, 1989], entitled “Implementing Guidelines on COLA Integration Approved Under Board Resolution No. ‘88-109.”

[10] Id. at 143-153, 186.

[11] DBM CCC No. 10 provides in part:

4.0 The present salary of an incumbent for purposes of this circular shall refer to the sum total of actual basic salary including the allowances enumerated hereunder, being received as of June 30, 1989 and certified and authorized by the DBM .

4.1.1 Cost of Living Allowance (COLA)/Bank Equity Pay equivalent to forty percent (40%) of basic salary or P300.00 per month, whichever is higher.

x x x x

4.1.3 COLA granted to GOCCs/GFIs covered by the Compensation and Position Classification Plan for the regular agencies/offices of the National Government and to GOCCs/GFIs following the Compensation and Position Classification under LOImp. No. 104/CCC No.1 and LOImp. 97/CCC No. 2, in the amount of P550.00 per month for those whose basic salary is P1,500.00 and below, and P500.00 for those whose monthly basic salary is P1,501.00 and above, granted on top of the COLA/BEP mentioned in Item 4.1.1 above;

x x x x

4.2 Allowances enumerated above are deemed integrated into the basic salary for the position effective July 1, 1989.

x x x x

5.6 Payment of other allowances/fringe benefits on top of basic salary, whether in cash or in kind, not mentioned in Sub-Paragraphs 5.4 and 5.5 above shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds.

[12] Rollo, p. 186.

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

[14] Rollo, pp. 156-160.

[15] Id. at 194.

[16] Id. at 54, 194.

[17] Id. at 164-178.

[18] To support their claim, respondents cited the cases following cases: Philippine Ports Authority v. Commission on Audit (G.R. No. 100773, October 12, 1992, 214 SCRA 653); Manila International Airport

Authority v. Commission on Audit (G.R. No. 104217, December 5, 1994, 238 SCRA 714); Philippine International Trading Corporation v. Commission on Audit (G.R. No. 132593, June 25, 1999, 309 SCRA 177); and National Tobacco Administration v. Commission on Audit (G.R. No. 119385, August 5, 1999, 311 SCRA 1999). Respondents are of the position that these cases confirm that employees of GOCCs and GFIs whose allowances were withheld pursuant to DBM-CCC No. 10 are entitled to the restoration of the same from the time their allowances were disallowed or discontinued up to fifteen (15) days from the publication of DBM-CCC No. 10 in the Official Gazette.

[19] Rollo, pp. 183-200.

[20] Id. at 200.

[21] Id. at 211-232.

[22] Id. at 243-248, in its Order dated August 10, 2004.

[23] Id. at 251-254. As narrated by the Court of Appeals, after the RTC rendered its June 7, 2004 Decision, the court a quo likewise ordered its immediate execution in a Special Order dated July 22, 2005. In a Resolution dated August 11, 2005, however, the CA issued a TRO to enjoin the execution of the RTC Decision. Later, in its Decision dated September 27, 2005, the CA granted LBP's petition for certiorari with prayer for the issuance of a TRO and/or preliminary injunction (docketed as CA-GR SP No. 90807) and directed the RTC to refrain from implementing and enforcing its June 7, 2004 Decision and July 22, 2005 Special Order.

[24] Id. at 282-326.

[25] Id. at 274-281.

[26] Id. at 12-34, 101-122.

[27] Id. at 25, 113.

[28] Id. at 26, 114; emphasis supplied.

[29] Id. at 28, 116.

[30] Id. at 327-345.

[31] Id. at 36-39; 125-128.

[32] Id. at 68.

[33] G.R. No. 153266, March 18, 2010, 616 SCRA 1.

[34] Rollo, pp. 69-70.

[35] Id. at 81-82.

[36] Id. at 349.

[37] Id. at 350-382.

[38] G.R. No. 175276, May 31, 2011, 649 SCRA 574.

[39] Rollo, pp. 366-367.

[40] Id. at 419-670.

[41] Id. at 671-672.

[42] Respondents later asserted that the Comments were directed at the “Petition” not the “Omnibus Motion”; id. at. 751-762, 778-779.

[43] Id. at 673-699.

[44] Id. at 716-731.

[45] Id. at 736-747.

[46] Id. at 748-750.

[47] Id. at 80-784; 792-879.

[48] Id. at 785-787.

[49] Id. at 889-907.

[50] G.R. No. 157492, March 10, 2006, 484 SCRA 396.

[51] G.R. No. 185806, July 24, 2012, 677 SCRA 371, 382.

[52] Emphasis supplied.

[53] Philippine National Bank v. Palma, G.R. No. 157279, August 9, 2005, 466 SCRA 307.

[54] Rollo, pp. 133-134.

[55] See Tejada v. Domingo, G. R. No. 91860 January 13, 1992, 205 SCRA 138.

[56] The Whereas Clauses of LOI No. 104 state: “WHEREAS, pursuant to the mandate of the Constitution, Presidential Decree No. 985 was issued to standardize compensation of government officials and employees, including those in government-owned or controlled corporations, taking into account the nature of the responsibilities pertaining thereto, and the qualifications required for the positions concerned;

WHEREAS, the said Decree authorize the adoption of additional financial incentives for viable and profit-making corporations and those performing critical functions, to be supported from the net earnings and profits of such corporations.”

Similarly, the 3rd Whereas Clause of LOI No. 116 provides: “WHEREAS, P.D. No. 985 empowered the President to determine the compensation of government employees.”

[57] In fact, the allowances given to GOCCs and GFIs had already been tempered.

[58] See Cruz, Carlo L., The Law of Public Officers 146 (2003); citing Mechem, A Treatise on the Law of Public Officers and Officers, Chapter I, Section 856.

[59] In fact, after this Court’s promulgation of De Jesus, DBM itself, in its Budget Circular 2001-03 dated November 12, 2001, had reaffirmed the fact of consolidation of the COLA and similar allowances in the basic salaries of GFI employees, as mandated by Section 12 of the SSL. To order the payment of the COLA and BEP on top of the basic salary, even if warranted, should not have been allowed beyond the effectivity of DBM-CCC No. 10.

[60] G.R. No. 157279, August 9, 2005, 466 SCRA 307.

[61] Id. at 326.

[62] Gutierrez v. DBM, supra note 33, at 24.

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