

**PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA),
REPRESENTED BY ITS ADMINISTRATOR HANS LEO J. CACDAC, AND
OVERSEAS WORKERS WELFARE ADMINISTRATION (OWWA),
REPRESENTED BY ADM...**

G.R. No. 210905. November 17, 2020

Ponente: GAERLAN, J.

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GAERLAN, J.:

This petition for certiorari under Rules 64 and 65 of the Rules of Court assails Decision No. 2011-023[1] dated January 31, 2011, and Decision No. 2013-226[2] dated December 23, 2013, both rendered by the Commission on Audit (COA), which affirmed the disallowance of the payment of P19,356,934.18 from the daily collections of the Overseas Workers Welfare Administration (OWWA) as incentive allowance to the employees and officials of the Philippine Overseas Employment Administration (POEA).

The Facts

On May 1, 1977, the Welfare Fund for Overseas Workers (hereinafter referred to as the Welfare Fund) was created pursuant to Letter of Instruction (LOI) No. 537. The administration of the Fund was reorganized twice, through Presidential Decree (P.D.) Nos. 1694 and 1809, which were promulgated on May 1, 1980 and January 16, 1981, respectively. On January 30, 1987, the administration of the Fund was reorganized into the OWWA, pursuant to Executive Order (E.O.) No. 126.[3] In 2016, Republic Act (R.A.) No. 10801, or the Overseas Workers Welfare Administration Act, was enacted, further defining the mandate and powers of the agency. Under Sections 4 and 37 of R.A. No. 10801, the Welfare Fund was renamed into the OWWA Fund.

The POEA was created on May 1, 1982, pursuant to E.O. No. 797. It was designated as the "lead government agency responsible for the formulation and implementation of policies and programs for the overseas employment of Filipino workers." [4] Section 4 of E.O. No. 797 provides that the POEA "shall assume the functions of the Overseas Employment Development Board, the National Seamen Board, and the overseas employment functions of the Bureau of Employment Services; which shall absorb the applicable functions, appropriations, records, equipment, property, and such personnel as may be necessary of the abolished units x x x." On July 24, 1987, the POEA was reorganized pursuant to E.O. No. 247.

On November 10, 1982, the Welfare Fund's Board of Trustees enacted Resolution No. 35, which states:

WHEREAS, Philippine Overseas Employment Administration (POEA) assists the WelfareFund in processing and determining the WelfareFund fees due from employers hiring Filipino workers for overseas employment as part of its processing procedures;

WHEREAS, the POEA, in a resolution approved by its Governing Board has moved for the WelfareFund to pay POEA a service fee equivalent to 2% of total collections made by WelfareFund, for services rendered in the latter's behalf;

RESOLVED, that WelfareFund pay to POEA a service fee of 2% of total collections made beginning in CY 1983, payable to POEA on a six (6) month basis, the disposition of which shall be subject to the POEA Governing Board, provided, that report on the same shall be submitted to the Welfare Fund Board at the end of the calendar year.[5]

Subsequently, on November 21, 2001, the OWWA Board of Trustees approved the grant of an Incentive Allowance to POEA employees, equivalent to 1% of OWWA fees collected through the POEA.[6] The collection of OWWA fees through the POEA was further formalized in a Joint Memorandum dated November 28, 2001, issued by the Administrators of POEA and OWWA, which states in part that "[t]he payments of [Welfare Fund/OWWA C]ontribution shall be made each time a contract is submitted to POEA for processing"; and that "[t]he POEA shall issue the Overseas Employment Certificate to a departing OFW [Overseas Filipino Worker] only after the presentation of a documentary proof of membership and/or payment of Welfare Fund/OWWA contribution." [7]

On May 31, 2004, the Office of the Chairperson of COA received a letter from an anonymous OWWA employee stating that 1% of all collections made by OWWA collection officers assigned at the POEA were being paid to POEA officials and employees.[8] On the basis of said anonymous letter, POEA resident auditors investigated the alleged disbursements. On July 29, 2004, the POEA Audit Team Leader issued Audit Observation Memorandum No. 2004-018 holding that the payment of Incentive Allowance in the amount of P19,356,934.18 to the employees and officials of the POEA contravened Section 12 of R.A. No. 6758 and Article IX, Section 8 of the Constitution, and recommending that the Incentive Allowance payment be refunded or justified by the POEA. Pursuant to said Audit Observation Memorandum, the COA issued Notice of Disallowance No. 2005-015 on April 5, 2005.[9] The COA Legal and Adjudication Office--National (LAO-N) denied POEA's motion for reconsideration in a Decision[10] dated August 16, 2005, with the qualification that the disallowed payments need not be refunded. POEA filed a motion for reconsideration from the Decision of the COA LAO-N, which was denied in a Decision dated April 4, 2008.[11] POEA filed a Petition for Review before the COA proper, which the national audit body denied in the assailed Decision.

The Ruling of the Commission on Audit proper

The COA held that the grant of the Incentive Allowance to POEA employees for assisting in the collection of OWWA dues is improper for two reasons: first, the collection of OWWA fees forms part of POEA's mandate; and second, the grant of such an allowance violates Section 12 of R.A. No. 6758.

According to the COA, collecting dues from OFWs is part of POEA's official mandate, hence POEA employees are not entitled to additional compensation therefor. As POEA and OWWA were both "created for the promotion of the welfare and protection of the rights of OFWs", [12] the statutes which created the OWWA and the POEA are in pari materia and should be read and construed together and harmonized as if they were the same law. According to the national audit body, while the statutory mandates of POEA and OWWA do not explicitly require the former to assist in OWWA recruitment and fee collection, such function is implicit from the POEA's power under Section 3(n) of E.O. No. 247 to enter into joint projects with other relevant government entities in the pursuit of its objectives of promoting OFW welfare; and from OWWA's power under Section 4(a) and (b) of P.D. No. 1694 to formulate and implement programs and enter into agreements and contracts to attain its objectives and purposes.[13] The joint policy on making POEA exit clearances contingent upon payment of OWWA membership fees as laid down in the November 28, 2001 memorandum issued by the administrators of the two agencies is germane to the mandates and objectives of both agencies, and further evinces the shared responsibility of both agencies in promoting the OFW welfare; hence, POEA cannot disown such functions as a justification for drawing Incentive Allowances for its employees from the Welfare Fund.

The COA also rejected POEA's argument that the incentive payments were justified under Section 64 of P.D. No. 1177, which authorizes government agencies to enter into service contracts with other public entities when the regular staff cannot provide such services. Assuming without conceding that collecting OWWA fees is not part of POEA's mandate, OWWA cannot outsource its fee collection function to POEA because there is no showing that the former's regular staff cannot do so. It was even proven by the POEA Audit Team that OWWA officers were stationed at the POEA to discharge that very function,[14] which means that the incentive payments were being made to POEA employees without rendering any service for OWWA.

The COA further held that the payment of the Incentive Allowance violated Section 12 of R.A. No. 6758, which requires that all allowances paid to regular employees of the government must be integrated into the statutory salary rate. There is no showing that the Incentive Allowance was integrated into the regular pay of POEA employees. Even assuming that such allowance came under the grandfather clause of Section 12,[15] it was nevertheless explicitly prohibited by MOB-MOF-COA Joint Circular No. 9-81, Item No. 4.5 which prohibits the use of trust receipt funds for payment of additional compensation, including incentive pay, to employees. Furthermore, the purported letter of then Budget Minister Manuel Alba cited by the POEA, which treats the Incentive Allowance payments as funds in the category of Trust Receipts, contravenes the abolition of all existing special and fiduciary funds under P.D. No. 711.

Finally, the national audit body affirmed the holding of its Legal and Adjudication Office-National that the Fund is in the nature of a private fund held in trust by OWWA for the OFWs who contribute thereto; and as such, proceeds from the Fund cannot be used to pay the questioned Incentive Allowance, following the ruling in *Social Security System v. Commission on Audit*. [16] The COA en banc likewise rejected the applicability of the *Blaquera* [17] doctrine and ordered that the POEA employees who received the Incentive Allowance refund the total amount of P19,356,934.18, considering that the POEA officials were responsible for the approval and the authorization of the illegal disbursement, which the POEA employees willingly received despite not rendering any service for OWWA.

POEA filed a motion for reconsideration, which the COA properly denied on December 23, 2013. [18] POEA thus filed a petition for certiorari before this Court on February 7, 2014. [19] On February 18, 2014, this Court directed POEA to implead OWWA as a necessary party to the case. [20] On August 8, 2014, POEA, now joined by OWWA, filed an Amended Petition for Certiorari. [21] The Court subsequently directed the parties to file their respective memoranda. [22]

The Parties' Arguments

POEA and OWWA argue that the grant of the incentive allowance to POEA employees from OWWA funds is supported by applicable laws and regulations. Essentially, they argue that the incentive allowance is sanctioned by Section 64 of P.D. No. 1177 and OWWA Board Resolution No. 35. The incentive allowance has existed since 1982 and is therefore not only allowed under E.O. No. 110, series of 1986, which authorized certain national government agencies to continue paying existing allowances, but has also ripened into "a practice of tradition which can neither be abandoned nor diminished." [23] Furthermore, its lack of manpower and information system capabilities necessitated the tapping of POEA's services to increase collections. The cooperation between the two agencies was institutionalized by their Joint Memorandum and integrated into the POEA contract processing system, such that POEA employees were trained in OWWA collection procedures. The cooperation, it is averred, resulted in a tremendous increase in OWWA fee collection.

The agencies further argue that Section 12 of R.A. No. 6758 does not apply to the POEA incentive allowance because the benefit has existed long before the enactment of said law and has therefore ripened into a vested right

which cannot be prejudiced by the retroactive application of a law. Likewise, the POEA incentive allowance does not violate the constitutional prohibition on double compensation because the benefit is in the nature of a gratuity, which was voluntarily granted by the OWWA Board within its statutory powers. Furthermore, the amount does not come directly from the Welfare Fund but forms part of OWWA's operating expenses.[24]

Meanwhile, the COA, through the Solicitor General, argues that the payment of the incentive allowance is not justified. While POEA and OWWA have separate functions under their charters, they nevertheless have the same essential mandate of ensuring OFW welfare; hence, POEA employees cannot receive allowances for performing services that are part of the essential mandate of their agency. Assuming *arguendo* that collection of Welfare Fund contributions is not a function of POEA, the contracting-out of such service to POEA is not justified under Section 64 of P.D. No. 1177, since it was proven in the POEA audit that OWWA employees did the actual task of collection, with POEA merely serving as a collection facility, without any service rendered by its employees. The national audit body further argues that petitioners failed to prove that the incentive allowance was integrated into the basic pay of POEA employees. The POEA incentive allowance cannot be classified as an exempt allowance under Section 12 of R.A. No. 6758 because it is in the nature of compensation for services rendered, as opposed to allowances given to defray expenses in relation to the jobs of POEA employees.

The Court's Ruling

The petition is unmeritorious and should be dismissed.

OWWA Fund collection is part of POEA's statutory mandate.

In their Memorandum, POEA and OWWA base their case on P.D. No. 1177, or the Budget Reform Decree of 1977, which lays down a standardized procedure for the preparation, authorization, execution, expenditure, and accounting of government agency budgets. Specifically, petitioners rely on Section 64 of the law, which reads as follows:

SECTION 64. Contracting of Activities. - Agencies may enter into contracts with individuals or organizations, both public and private, subject to provisions of law and applicable guidelines approved by the President: provided, that contracts shall be for specific services which cannot be provided by the regular staff of the agency, shall be for a specific period of time, and shall have a definite expected output: provided, further, that implementing, monitoring and other regular and recurring agency activities shall not be contracted for, except for personnel hired on an individual and contractual basis and working as part of the organization, or as otherwise may be approved by the President: provided, finally, that the cost of contracted services shall not exceed the amount that would otherwise be incurred had the work been performed by regular employees of government, except as may be authorized under this section.

Section 64 specifically regulates government spending on contracting-out of services. The provision authorizes government agencies to enter into contracts with other public or private entities, subject to the following conditions: 1) the contract shall be subject to law and applicable guidelines approved by the President; 2) the contract shall be for a specific service which cannot be provided by the regular staff of the agency; 3) the contract must be for a specific duration of time; 4) the contract must set forth definite expected outputs; and 5) the contract cost shall not exceed the cost of the same service had it been performed by regular employees of the government. The provision also prohibits the contracting out of implementing, monitoring, and other regular and recurring agency activities. Therefore, to determine if a service may be properly contracted out by a government agency, the first step is to ascertain the nature of the service sought to be contracted out. If the service is an implementation,

monitoring, or other regular and recurring activity of the agency, it cannot be contracted out.

In the case at bar, the OWWA Board, through Resolution No. 35, s. 1982, authorized the payment to POEA of incentive allowance equivalent to 2% (later reduced to 1%) of its total collections because "the POEA assists the Welfare Fund in processing and determining the Welfare Fund fees due from employers hiring Filipino workers for overseas employment as part of its processing procedures", without elaborating on the form or manner of assistance extended by the latter. However, the minutes of the November 21, 2001 meeting of the OWWA Board states the following:

7.0 POEA's Incentive Fee

7.1 A lengthy and lively discussion on the proposed POEA Incentive Fee followed because some members of the Board wanted to tie it up with the OWWA membership collection fee at the premises of POEA. They wanted that whatever amount that should be given as incentive to POEA should be in exchange for the implementation of either the per contract collection fee or basically yearly or regular renewal basis.

x x x x

7.3 Trustee Pasato stated, "what Director Dizon have said is nice but all other agencies are independent of each other" when it comes to budget. She asked, "why should we give to them one percent when it is not getting any funds from the government?" They should also be realistic that it's no longer the employer that pays for the Welfarefund [sic] aside from the seamen who also pay ten dollars.

7.4 Administrator Soriano gave the figures for the "losses versus the expected revenues" from POEA if they grant the one percent incentive fee. For the year 2001 the losses in OWWA contributions will amount to about Php 264,114,400.00 while the expected grant if allowed will only be Php 4,131,523.00. OWWA expects to increase their revenues if a new collection scheme is approved and at the same time POEA is given their one percent incentive fee starting 2001.

7.5 Agreements

x x x x

7.5.2. It was also agreed that a one percent incentive fee shall be given to POEA retroactive to July 1, 2001 subject to periodic review by the Board.[25]

The foregoing excerpts show that the Incentive Allowance was intended to be consideration for the integration of OWWA dues collection into the POEA contract processing system. However, as found by the COA audit team assigned at POEA, no POEA employees were involved in the task of collecting OWWA dues, since OWWA collection officers were deployed to POEA for the purpose. Nevertheless, it is clear from the foregoing excerpts that the Incentive Allowance was intended as consideration for the POEA's assistance in (or, to be more precise, facilitation of) OWWA dues collection. The Court agrees with the COA's assertion that POEA is not entitled to receive allowances for such a service, because the function of collecting contributions to the Welfare Fund lies precisely with POEA. Letter of Instructions (LOI) No. 537, which created the Welfare Fund states in part:

The Fund shall be financed from:

1. All earnings of the [Overseas Employment Development Board] from travel services and Welfare Fund collections.
2. All Welfare Fund collections of the [Bureau of Employment Services].
3. All Welfare Fund collections of the [National Seamen Board].

4. All Training Fund collections of the [Bureau of Employment Services], the [Overseas Employment Development Board] and the [National Seamen Board].
5. Donations and other contributions from employers served by the [Bureau of Employment Services], the [Overseas Employment Development Board] and the [National Seamen Board].
6. Other donations, contributions, and other sources of income as may be determined by the Board of Trustees of the Fund.

The [Bureau of Employment Services], the [Overseas Employment Development Board] and the [National Seamen Board] are hereby directed to collect contributions for the Welfare and Training Fund for Overseas Workers in accordance with rules and regulations promulgated by the Secretary of Labor. (Emphasis and underscoring supplied)

Section 4 of E.O. No. 797, which created the POEA, states in part:

SECTION 4. There is hereby created a Philippine Overseas Employment Administration, hereinafter referred to as the Administration, which shall assume the functions of the Overseas Employment Development Board, the National Seamen Board, and the overseas employment functions of the Bureau of Employment Services; which shall absorb the applicable functions, appropriations, records, equipment, property, and such personnel as may be necessary of the abolished units; and which shall have the powers, functions, and structure as provided for below. x x x

As the successor agency of the Overseas Employment Development Board and the National Seamen Board, POEA clearly inherited these agencies' mandate under LOI No. 537 to collect contributions for the Welfare Fund. This mandate was not removed by P.D. Nos. 1694 and 1809, which both state that "[a]ll contributions to the Welfare and Training Fund collected pursuant to Letter of Instructions No. 537 issued on May 1, 1977 shall be transferred to the Welfund".^[26] In fact, it was only in 2016, upon the passage of R.A. No. 10801, did the Legislature explicitly authorize OWWA to collect for the OWWA Fund.^[27] Section 64 of P.D. No. 1177 does not even apply here, because the service sought to be contracted out is part of the purported contractor's statutory mandate.

Even assuming arguendo that R.A. No. 10801 explicitly empowered OWWA to collect contributions to the OWWA Fund, OWWA cannot contract out such function because it is not only a regular and recurring agency activity but also a core part of its statutory mandate.^[28] While POEA or its employees may be deputized by OWWA under Section 13 of R.A. No. 10801 to serve as collecting agents, POEA and its employees are not entitled to receive allowances for such deputation, because, as the COA aptly observed, assistance and facilitation of Welfare Fund collection should still be considered part and parcel of POEA's mandate; especially considering the following functions of POEA and OWWA:

POEA functions

OWWA functions

(b) Formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements;

(c) Protect the rights of Filipino workers for overseas employment to fair and equitable recruitment and employment practices and ensure their welfare;

(j) Promote and protect the well-being of Filipino workers overseas. x x x

(n) Establish and maintain close relationship and enter into joint projects with the Department of Foreign Affairs, Philippine Tourism Authority, Manila International Airport Authority, Department of Justice, Department of Budget and Management and other relevant government entities, in the pursuit of its objectives. The Administration shall also establish and maintain joint projects with private organizations, domestic or foreign, in the furtherance of its objectives.[30]

(b.1) Philippine Overseas Employment Administration. The Administration shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and domestic manpower requirements.[31]

a. To formulate and implement measures and programs to attain the fund's objectives and purposes;

b. To enter into agreements and contracts in connection with its operations and objectives.[29]

(a) To protect the interest and promote the welfare of member--OFWs in all phases of overseas employment in recognition of their valuable contribution to the overall national development effort;

(b) To facilitate the implementation of the provisions of the Labor Code of the Philippines x x x and the Migrant Workers and Overseas Filipinos Act of 1995 x x x, concerning the responsibility of the government to promote the well-being of OFWs. Pursuant thereto, and in furtherance thereof it shall provide legal assistance to member-OFWs;

(c) To provide social and welfare programs and services to member--OFWs x x x;

(d) To provide prompt and appropriate response to global emergencies or crisis situations affecting OFWs and their families;

(e) To ensure the efficiency of collections and the viability and sustainability of the OWWA Fund through sound, judicious, and transparent investment and management policies;

(g) To develop, support and finance specific projects for the welfare of member-OFWs and their families; and

(h) To ensure the implementation of all laws and ratified international conventions within its jurisdiction.[32]

This court agrees with the COA's assertion that the charters of the OWWA and POEA are statutes in *pari materia*, and should therefore be construed together. Statutes in *pari materia* are those that pertain to the same subject matter;[33] and such statutes must

be read and construed together because enactments of the same legislature on the same subject are supposed to form part of one uniform system; later statutes are supplementary or complimentary [sic] to the earlier enactments and in the passage of its acts the legislature is supposed to have in mind the existing legislations on the subject and to have enacted its new act with reference thereto.[34]

In *Office of the Solicitor General v. Court of Appeals*,[35] this Court explained that:

It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, "*interpretare et concordare legibus est optimus interpretandi*," or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[36]

Being statutes relating to the same subject matter of overseas Filipino labor regulation and promotion, the charters of the OWWA and the POEA must be construed together. A close reading of the statutory functions of the two agencies evinces the legislature's intent to have POEA and OWWA as two separate but complementary entities working together to promote the government's overseas labor policies and ensure the welfare of OFWs; with POEA focusing on pre-employment matters such as recruitment, placement and labor contract management, and OWWA focusing on employment and post-employment matters such as insurance premiums, labor standards implementation, emergency assistance, reintegration, and social services.

The complementary nature of OWWA and POEA functions manifests itself in the provisions of the new OWWA charter, which institutionalizes the integration of OWWA dues collection into the POEA contract processing system^[37] and makes the POEA Administrator an ex officio member of the OWWA Board of Trustees.^[38] Under Section 18 of the OWWA charter, the POEA is required to ensure that overseas employment contracts contain a stipulation that "contributions to the OWWA Fund must be paid by the employers or principals, or in their default, by the recruitment/manning agency in the case of new hires." Even before the enactment of the new OWWA charter, the COA has already observed that

[t]he joint policy of the POEA and OWWA under the claimed agreement to the effect that exit clearances shall not be issued by POEA unless OFWs pay their OWWA membership fees and medical care insurance premiums is germane to the agencies' respective mandates and objectives. These functions are clearly shown to be a shared responsibility of both the POEA and OWWA. Thus, POEA cannot disown said functions to justify its action to require OWWA to pay 2% (now 1%) incentive fee as exemplified by OWWA Board Resolution No. 35 dated November 10, 1982.^[39]

Furthermore, R.A. No. 10801 was enacted long after the disallowed disbursements were made. Under the laws in force at that time of the disbursements, it is clear that the task of Welfare Fund collection properly pertained to POEA; and therefore, it was improper for OWWA to pay POEA employees an incentive allowance for doing something that is part of their agency's mandate.

Incentive allowance payments in question violate the double compensation rule and the allowance integration rule.

In 1989, Congress passed R.A. No. 6758, or the Compensation and Position Classification Act, which embodies the policy to "provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."^[40] Section 12 of the law provides:

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.

In *National Tobacco Administration v. COA*,^[41] where We reversed the disallowance of educational assistance payments to employees of the National Tobacco Administration, We explained the import of the provision, viz.:

Under the first sentence of Section 12, all allowances are integrated into the prescribed salary rates, except:

- (1) representation and transportation allowances (RATA);
- (2) clothing and laundry allowances;
- (3) subsistence allowances of marine officers and crew on board government vessels;
- (4) subsistence allowance of hospital personnel;
- (5) hazard pay;
- (6) allowance of foreign service personnel stationed abroad; and
- (7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.

Analyzing No. 7, which is the last clause of the first sentence of Section 12, in relation to the other benefits therein enumerated, it can be gleaned unerringly that it is a "catch-all proviso." Further reflection on the nature of subject fringe benefits indicates that all of them 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. In *Philippine Ports Authority vs. Commission on Audit*, this Court rationalized that "if these allowances are consolidated with the standardized rate, then the government official or employee will be compelled to spend his personal funds in attending to his duties."^[42] (Citations omitted)

In the 2003 case of *Phil. International Trading Corp. v. COA*,^[43] where We affirmed the disallowance of Staple Food Incentive payments to employees of the Philippine International Trading Corporation, We applied the *National Tobacco Administration* ruling and held that:

In the instant case, the Staple Food Incentives was granted under D.O. No. 79 to "help the DTI employees cope with the present economic difficulties, boost their morale and deepen their commitment and dedication to public service." Clearly therefore, the SFI is a financial assistance or a bonus falling under the second sentence of Section 12 and not a payment in consideration of the performance of an official duty. It is not a benefit within the ambit of the first sentence because it was not granted to defray or reimburse the expenses incurred in the performance of their official functions, like representation and transportation allowances, and other benefits of similar nature. x x x^[44]

In the more recent case of *Maritime Industry Authority v. Commission on Audit*,^[45] We affirmed the disallowance of certain non-integrated allowance and incentive payments received by officers and employees of the MARINA for lack of proof that such benefits were authorized by the Executive branch. The Court en banc, speaking through Associate Justice Marvic M.V.F. Leonen, held that:

The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit: x x x

In addition to the non-integrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.

Action by the Department of Budget and Management is not required to implement Section 12 integrating allowances into the standardized salary. Rather, an issuance by the Department of Budget and Management is required only if additional non-integrated allowances will be identified. Without this issuance from the Department of Budget and Management, the enumerated non-integrated allowances in Section 12 remain exclusive.[46] (Citations omitted)

The general rule discernible from these cases is that all allowances being received by incumbent government employees must be integrated into the standard salary. The exceptions to this rule are: 1) allowances granted for the purpose of defraying or reimbursing expenses incurred in the performance of their official functions, as enumerated in Section 12 of R.A. No. 6758; 2) existing additional compensation received before the effectivity of R.A. No. 6758; and 3) additional compensation as determined by the Department of Budget and Management or the President. POEA and OWWA argue that the Incentive Allowance falls under the second exception because it was authorized in 1982 and has been paid to POEA employees ever since. However, in the 1999 case of *Phil. Int'l. Trading Corp. v. Commission on Audit*[47] involving the disallowance of Car Plan program benefits for PITC officers, we held that the second exception only covers incumbents receiving non-integrated allowances as of 1989, when R.A. No. 6758 took effect, viz.:

First of all, we must mention that this Court has confirmed in *Philippine Ports Authority vs. Commission on Audit* the legislative intent to protect incumbents who are receiving salaries and/or allowances over and above those authorized by RA 6758 to continue to receive the same even after RA 6758 took effect. In reserving the benefit to incumbents, the legislature has manifested its intent to gradually phase out this privilege without upsetting the policy of non-diminution of pay and consistent with the rule that laws should only be applied prospectively in the spirit of fairness and justice.[48]

Thus, in both the 2003 PITC and National Tobacco Administration rulings, We applied the second paragraph of Section 12 only to incumbent employees who were receiving non-integrated or non-integrable benefits at the time that R.A. No. 6758 took effect. In the 2003 PITC case, We observed that:

x x x Accordingly, in order that the SFI may be allowed, the requisites for the entitlement of benefits falling under the second sentence of Section 12 must be established. Unfortunately, there is no evidence on record that the recipients of the SFI were incumbents when R.A. No. 6758 took effect on July 1, 1989 and that they were in fact receiving the same at the time. Hence, no abuse of discretion was committed by COA in disallowing the disbursement of funds for the SFI of PITC;[49] (Emphasis and underscoring supplied)

while in *National Tobacco Administration*,[50] We made the following pronouncement:

x x x Accordingly, the Court concludes that under the aforesaid "catch-all proviso," the legislative intent is just to include the fringe benefits which are in the nature of allowances and since the benefit under controversy is not in the same category, it is safe to hold that subject educational assistance is not one of the fringe benefits within the contemplation of the first sentence of Section 12 but rather, of the second sentence of Section 12, in relation to Section 17 of R.A. No. 6758, considering that (1) the recipients were incumbents when R.A. No. 6758 took effect on July 1, 1989, (2) were, in fact, receiving the same, at the time, and (3) such additional compensation is distinct and separate from the specific allowances above-listed, as the former is not integrated into the standardized salary rate.[51] (Emphasis and underscoring supplied)

In the case at bar, while OWWA and POEA assert that the Allowance Incentive has been paid to the latter's employees since 1982, they failed to show that the officers and employees who received the payments covered by Notice of Disallowance No. 2005-015 were incumbents who have been receiving the Incentive Allowance since before the effectivity of R.A. No. 6758 in 1989. Moreover, the minutes of the November 21, 2001 OWWA Board meeting refer to the "proposed POEA incentive", the grant of which was debated lively.[52] This can only mean that sometime between the approval of the 1982 Welfare Fund Resolution and the November 21, 2001 OWWA

Board meeting, Incentive Allowance payments ceased or were stopped, otherwise the OWWA Board would not have been denominated it as a "proposed incentive" and debated the merits of granting thereof. As such, the COA did not err in holding that the disallowed payments contravened the salary integration rules of R.A. No. 6758.

As for double compensation, Article IX-B, Section 8 of the Constitution states:

Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Chief Justice Enrique M. Fernando expounded on the meaning of this provision in *Peralta v. Auditor General Mathay*,^[53] where the Court affirmed the disallowance of cost of living allowance, incentive, and Christmas bonus payments made to a trustee of the Government Service Insurance System, viz.:

It is expressly provided in the Constitution: "No officer or employee of the government shall receive additional or double compensation unless specifically authorized by law." This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the ideal. There is then to be an awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position. It is an entirely different matter if the legislative body would itself determine for reasons satisfactory to it that he should receive something more. If it were to be thus though, there must be a law to that effect. So the Constitution decrees.

x x x x

So it is in the case of the bonuses received by him. It is quite obvious that by its very nature, a bonus partakes of an additional remuneration or compensation. The very characterization of what was received by petitioner as bonuses being intended by way of an incentive to spur him possibly to more diligent efforts and to add to the feeling of well-being traditionally associated with the Christmas season would remove any doubt that the Auditor General had no choice except to deduct from petitioner's gratuity such items.^[54]

Our foregoing disquisitions have amply demonstrated that the collection of OWWA dues is within the statutory mandate of POEA and is therefore part and parcel of the job description of its employees. Thus, under the applicable statutes and the basic law, any and all compensation or benefits received by the employees of POEA for the discharge of such function should be deemed integrated into their basic salaries, unless a law or executive issuance specifically states that they be given additional compensation therefor. POEA and OWWA have failed to demonstrate that the Incentive Allowance is authorized by any statute or executive pronouncement, apart from the erroneous 1982 OWWA Board Resolution No. 35. It is therefore clear that the payment of the Incentive Allowance violated the rule against double compensation.

Refund of disallowed amounts

As a general rule, government officials and employees directly responsible for unlawful expenditures shall be personally liable therefor,^[55] regardless of whether they acted in good faith.^[56] Nevertheless, starting with the 1998 Decision in *Blaquera v. Alcala*,^[57] jurisprudence has carved out a limited exception in case of disallowed

benefits of government employees.[58] Since then, the Court has approached the return of COA-disallowed benefit payments on a case-to-case basis. Only this year, in the very recent case of *Madera v. Commission on Audit*,[59] did the Court synthesize the laws and jurisprudence governing the return of benefit payments disallowed upon audit and lay down definitive rules therefor, viz.:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
 - a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
 - c. Recipients whether approving or certifying officers or mere passive recipients are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
 - d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case-to-case basis.[60]

The Court likewise adopted the enumeration of badges of good faith in the separate opinion of Associate Justice Marvic M.V.F. Leonen, viz.: (1) Certificate of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, and (5) with regard to questions of law, that there is a reasonable textual interpretation on its legality.[61] However, the Court also held that "the ultimate analysis of each case would still depend on the facts presented x x x." [62]

In the case at bar, the COA LAO-N did not order a refund, as it found that the OWWA and POEA officers involved in the disbursement and receipt of the Incentive Allowance acted in good faith, under the honest belief that they were entitled thereto. However, the COA proper disagreed and held that the POEA officials who authorized the payments, as well as the POEA employees who received the allowances, are both at fault and should refund the disallowed payments, because the allowance was contrary to law and regulation, and the employees had no right to receive such.

Upon a close perusal of the record, this Court sustains the COA proper. The incentive allowance payments must be returned, for the following reasons.

First, while there is no showing that the approving officers acted with malice or bad faith, they are nevertheless guilty of gross negligence[63] for failing to realize that Welfare Fund collection is part of their agency's functions. As POEA officials, they are expected to be fully acquainted with the scope of the agency's mandate, which, as we have demonstrated, undoubtedly includes collecting for the Welfare Fund. Consequently, they should have not approved the incentive allowance payments because these amounted to unauthorized additional compensation for services rendered within the agency's legal mandate. The provisions of LOI No. 537 and E.O. No. 797 clearly and categorically state that Welfare Fund collection is a mandate of the POEA, and the approving officers are duty

bound to know and follow said laws.

Second, the sourcing of additional compensation from the Welfare Fund was prohibited as early as 1981. As aptly pointed out by the COA, Item 4.5 of Joint Circular No. 9-81[64] issued by the Department of Finance,[65] Department of Budget and Management,[66] and the COA provides:

4.5 In no case shall the trust receipts be utilized for the payment of additional compensation to employees in the form of allowances, incentive pay, bonuses or other forms of additional compensation, except as may be authorized pursuant to PD No. 985 or PD No. 1597, nor shall it be used to create new positions, to augment salaries of regular personnel or to purchase motor vehicles without prior approval of the Office of the President pursuant to LOI No. 29, neither shall these be used to fund unauthorized activities/payments[.] x x x

In turn, the Joint Circular defines trust receipts as

collections from non-income sources authorized by law for specific purposes which are collected/received by a government office or agency acting as a trustee, agent or administrator, or which have been received guaranty for the fulfillment of an obligation and all other collections classified by law and regulations as trust receipts.[67]

Under the foregoing definition, there can be no doubt that monies from the Welfare Fund constitute trust receipts. Under LOI No. 537, collections from the Welfare Fund were earmarked for four specific purposes.[68] The Fund was, and still is, collected and administered by duly designated agencies, namely, the POEA (as collector) and the OWWA (as collector and administrator). The OWWA itself, as early as 2003, was cognizant of this fact when it promulgated the Guidelines on OWWA Membership, Article VI, Sections 1 and 2 of which provide:

SECTION 1. The Trust Fund. - OWWA fund is a single trust fund composed of membership contributions of land-based and sea-based workers; investment and interest income; and income from other sources:

Out of the membership contribution, P165.00 shall be allocated as Insurance Benefit Program Fund to service all insurance claims.

SECTION 2. Safeguarding the Trust Fund. - The OWWA Fund, being a Trust Fund, shall be managed and expended in accordance with the purpose of the Fund and safeguarded against any possible loss and misuse.[69]

Any doubt as to the nature of the Welfare Fund as a trust fund has now been dispelled by R.A. No. 10801, viz.:

SECTION 37. The OWWA Fund. - The Welfare Fund for Overseas Workers created under Letter of Instruction No. 537 and Presidential Decree No. 1694, as amended by Presidential Decree No. 1809, is hereinafter referred to as the OWWA Fund. The OWWA Fund is a private fund held in trust by the OWWA. Being a trust fund, no portion thereof or any of its income, dividends or earnings shall accrue to the general fund of the National Government. Neither shall any amount or portion thereof be conjoined with government money, nor revert to the National Government. In the same manner, it is exempted from the "one fund doctrine" of the government.

Third, assuming arguendo that the incentive allowance payments were sourced from OWWA's operating budget and not from the Welfare Fund itself, it was nevertheless illegal because the POEA officials and employees did not render any service which would entitle them to such payments. As earlier stated, the audit conducted by the POEA resident auditors found that the actual task of collection was still done by OWWA employees who were stationed in the POEA offices.[70] In effect, OWWA was paying POEA for the privilege to station its collection officers in the latter's premises. This is clearly incompatible with the mandates of both agencies, which are tasked to work together in providing pre-employment, employment, and post-employment services to overseas Filipino workers. At the very least, the payment should have been credited to the funds of POEA itself, and not to its

officials and employees, considering that they rendered no service whatsoever which would entitle them to any payment, much less an incentive allowance.

In line with the Madera guidelines and in view of the pertinent factual findings and conclusions of this Court, i.e., that the certifying and approving officials were grossly negligent in approving the Incentive Allowance despite the lack of legal and factual bases therefor, and that no services were rendered by the POEA officials and employees who received said Incentive Allowance, this Court affirms the COA's Decision to disallow the payment of Incentive Allowance in the total amount of P19,356,934.18, in accordance with the itemized breakdown of liabilities in Notice of Disallowance No. 2005-015, with the additional modification that the certifying and approving officials shall be liable for the total amount of the disallowance, there being no excusable amounts under paragraphs 2(b), 2(c), and 2(d) of the Madera guidelines.

WHEREFORE, the present petition is DISMISSED. Decision No. 2011-023 dated January 31, 2011 and Decision No. 2013-226 dated December 23, 2013, both rendered by the Commission on Audit en banc, are hereby AFFIRMED WITH MODIFICATION. The Philippine Overseas Employment Administration employees and officials who were found to have received the Incentive Allowance, as identified in COA Decision No. 2013-226 and Notice of Disallowance No. 2005-015 dated April 5, 2005, are hereby ORDERED to return the disallowed amounts corresponding to their personal liabilities as listed in Notice of Disallowance No. 2005-015 and its annexes. The POEA officials who certified and approved the payment of said Incentive Allowance, as identified in COA Decision No. 2013-226 and Notice of Disallowance No. 2005-015 dated April 5, 2005, are hereby DECLARED SOLIDARILY LIABLE for the entire disallowed amount.

SO ORDERED.

Peralta, C. J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Inting, Zalameda, Lopez, Delos Santos, and Rosario, JJ., concur.

Carandang, and Lazaro-Javier, JJ., on official leave.

[1] Rollo, pp. 38-45; signed by Chairperson Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

[2] Id. at 47-52; signed by Chairperson Ma. Gracia M. Pulido-Tan (named Ma. Grace M. Pulido-Tan in the Petition) and Commissioners Heidi L. Mendoza and Rowena V. Guanzon.

[3] EXECUTIVE ORDER No. 126, Section 19.

[4] EXECUTIVE ORDER NO. 797, Section 1.

[5] Rollo, p. 118.

[6] Id. at 119.

[7] Id. at 120.

[8] Id. at 38-39. COA-proper decision.

[9] Id. at 60.

[10] Id. at 69-73; signed by Director IV Khem N. Inok.

[11] Id. at 101-105; signed by Director III Roy L. Ursal.

[12] Id. at 42. COA-proper decision.

[13] Id. at 43.

[14] Id. at 44.

[15] Section 12 states inter alia that "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 [Department of Budget and Management]" which are not integrated into the standardized salary rate but "being received by incumbents only as of July 1, 1989" "shall continue to be authorized". This effectively "grandfathers" in all such allowances received by incumbent employees as of July 1, 1989 and allows their continued payment even if they are not integrated into the standardized salary rate.

[16] 433 Phil. 946 (2002).

[17] *Blaquera v. Alcala*, 356 Phil. 678 (1998), where the Supreme Court held that recipients and approving authorities of disallowed disbursements pertaining to unauthorized benefits of government employees are not liable to refund such disbursements if they acted in good faith.

[18] *Rollo*, pp. 47-52.

[19] Id. at 3-33.

[20] Id. at 177-178.

[21] Id. at 205-232.

[22] Id. at 403-404.

[23] Id. at 446; Petitioners' Memorandum.

[24] Id. at 451-452.

[25] Id. at 119.

[26] PRESIDENTIAL DECREE NO. 1694, Section 2; PRESIDENTIAL DECREE NO. 1809, Section 1.

[27] REPUBLIC ACT No. 10801, Section 13(a). Previously, OWWA had the following powers under Section 4 of Presidential Decree No. 1694:

- a. To formulate and implement measures and programs to attain the fund's objectives and purposes;
- b. To enter into agreements and contracts in connection with its operations and objectives;
- c. To manage Fund resources subject to the provisions of Sec. 5 hereof;
- d. To issue rules and regulations to carry out the objectives and purposes of the Welfund and the provisions of this Decree.

[28] REPUBLIC ACT NO. 10801, Sections 6(e) and 13.

[29] PRESIDENTIAL DECREE NO. 1694, Section 4.

[30] EXECUTIVE ORDER No. 247, Section 3.

[31] REPUBLIC ACT No. 9422 (Amendment to Republic Act No. 8042), Section 1.

[32] REPUBLIC ACT NO. 10801, Section 6.

[33] *The Office the Solicitor General (OSG) v. Court Appeals, et al.*, 735 Phil. 622, 630 (2014); *Philippine Economic Zone Authority v. Green Asia Construction & Dev't. Corp.*, 675 Phil. 846, 856-857 (2011); *Tan Co v. Civil Registrar of Manila*, 467 Phil. 904, 913 (2004).

[34] *Tan Co v. Civil Registrar of Manila*, *id.*

[35] *Supra* note 33.

[36] *Id.* at 628.

[37] REPUBLIC ACT NO. 10801, Sections 5, 8, and 13(a).

[38] *Id.*, Section 20.

[39] *Rollo*, p. 158. COA-proper decision.

[40] REPUBLIC ACT NO. 6758, Section 2.

[41] 370 Phil. 793 (1999).

[42] *Id.* at 805.

[43] 461 Phil. 737 (2003).

[44] *Id.* at 749.

[45] 750 Phil. 288 (2015).

[46] *Id.* at 314-315.

[47] 368 Phil. 478 (1999).

[48] *Id.* at 487-488.

[49] *Phil. International Trading Corp. v. COA*, *supra* note 43 at 749.

[50] *Supra* note 41.

[51] *Id.* at 808.

[52] *Rollo*, p. 119.

[53] 148 Phil. 261 (1971).

[54] *Id.* at 2265-266.

[55] PRESIDENTIAL DECREE NO. 1445, Section 3; EXECUTIVE ORDER NO. 292 (1987), Book V, Chap. 9, Sec. 52.

[56] *Maritime Industry Authority v. Commission on Audit*, *supra* note 45; *Vicencio v. Villar*, 690 Phil. 59 (2012).

[57] *Supra* note 17.

[58] See *Maritime Industry Authority v. Commission on Audit*, *supra* note 45 at 336.

[59] G.R. No. 244128, September 8, 2020.

[60] *Rollo*, pp. 35-36.

[61] Id. at 22, 36.

[62] Id.

[63] In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. *Daplas v. Department of Finance*, 808 Phil. 763 (2017), citing *Atty. Navarro v. Office of the Ombudsman, et al.*, 793 Phil. 453 (2016), *Office of the Ombudsman v. Bernardo*, 705 Phil. 524 (2013), and *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842 (2007).

[64]

<https://www.coa.gov.ph/index.php/2013-06-19-13-06-41/1-circulars/category/4485-cy-1981?download=17416:cy-1981&start=40>. Accessed 28 September 2020. As amended by Joint COA-DBM-DOF Circular No. 01-97 (Guidelines for the Transfer by National Government Agencies of All Cash Balances to the National Treasury), issued January 2, 1997.

[65] Officially known as the Ministry of Finance (MOF) at the time of the issuance of the Joint Circular.

[66] Officially known as the Ministry of the Budget at the time of the issuance of the Joint Circular.

[67] MOB-MOF-COA Joint Circular No. 9-81, Item 3.1.

[68] 1. To provide social and welfare services to Filipino overseas workers, including insurance coverage, social work assistance, legal assistance, placement assistance, cultural services, remittance services, and the like.
2. To provide skills and career development services to Filipino overseas workers and their replacements in order to insure adequate supply of manpower for the national economy as well as for export.
3. To undertake studies and researches for the enhancement of their social, economic and cultural wellbeing.
4. To develop, support and finance specific projects for the benefit of Filipino overseas workers.

[69] Guidelines on OWWA Membership, OWWA Board Resolution No. 038-03, September 19, 2003.

[70] Rollo, p. 44. COA-proper decision.

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