

BOIE-TAKEDA CHEMICALS, INC., PETITIONER, VS. HON. DIONISIO C. DE LA SERNA, ACTING SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, RESPONDENT.

G.R. No. 92174. December 10, 1993

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

What item or items of employee remuneration should go into the computation of thirteenth month pay is the basic issue presented in these consolidated petitions. Otherwise stated, the question is whether or not the respondent labor officials in computing said benefit, committed “grave abuse of discretion amounting to lack of jurisdiction,” by giving effect to Section 5 of the Revised Guidelines on the Implementation of the Thirteenth Month Pay (Presidential Decree No. 851) promulgated by then Secretary of Labor and Employment, Hon. Franklin Drilon, and overruling petitioners' contention that said provision constituted a usurpation of legislative power because not justified by or within the authority of the law sought to be implemented besides being violative of the equal protection of the law clause of the Constitution.

Resolution of the issue entails, first, a review of the pertinent provisions of the laws and implementing regulations.

Sections 1 and 2 of Presidential Decree No. 851, the Thirteenth Month Pay Law, read as follows:

SEC. 1. All employers are hereby required to pay all their employees receiving basic salary of not more than P1,000.00 a month, regardless of the nature of the employment, a 13th month pay not later than December 24 of every year.

SEC. 2. Employers already paying their employees a 13th month pay or its equivalent are not covered by this Decree.

The Rules and Regulations Implementing P.D. 851 promulgated by then Labor Minister Blas Ople on December 22, 1975 contained the following relevant provisions relative to the concept of "thirteenth month pay" and the employers exempted from giving it, to wit:

SEC. 2. Definition of certain terms. -- - **

a) “Thirteenth month pay” shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year;

b) "Basic Salary" shall include all remunerations or earnings paid by an employer to an employee for services rendered but may not include cost-of-living allowances granted pursuant to Presidential Decree No. 525 or Letter of Instructions No. 174, profit-sharing payments, and all allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

SEC. 3. Employers covered.- ** (The law applies) to all employers except to:

* * * * *

c) Employers already paying their employees a 13-month pay or more in a calendar year or its equivalent at the time of this issuance;

* * * * *

e) Employers of those who are paid on purely commission, boundary, or task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned.

* * * * *

The term "its equivalent" as used in paragraph (c) shall include Christmas bonus, mid-year bonus, profit-sharing payments and other cash bonuses amounting to not less than 1/12th of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. Where an employer pays less than 1/12th of the employee's basic salary, the employer shall pay the difference.

Supplementary Rules and Regulations Implementing P.D. 851 were subsequently issued by Minister Ople which inter alia set out items of compensation not included in the computation of the 13th month pay, viz.:

SEC. 4. Overtime pay, earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13th month pay.

On August 13, 1986, President Corazon C. Aquino promulgated Memorandum Order No. 28, which contained a single provision modifying Presidential Decree No. 851 by removing the salary ceiling of P1,000.00 a month set by the latter, as follows:

Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank-and--file employees a 13th month pay not later than December 24, of every year.

Slightly more than a year later, on November 16, 1987, Revised Guidelines on the Implementation of the 13th Month Pay Law were promulgated by then Labor Secretary Franklin Drilon which, among other things, defined with particularity what remunerative items were and were not embraced in the concept of 13th month pay, and specifically dealt with employees who are paid a fixed or guaranteed wage plus commission. The relevant provisions read:

4. Amount and payment of 13th Month Pay.

* * * * *

The basic salary of an employee for the purpose of computing the 13th month pay shall include all remunerations or earnings paid by his employer for services rendered but does not include allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night differential and holiday pay, and cost-of-living allowances. However, these salary-related benefits should be included as part of the basic salary in the computation of the 13th month pay if by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees.

* * * * *

5. 13th Month Pay for Certain Types of Employees.

(a) Employees Paid by Results.- Employees who are paid on piece work basis are by law entitled to the 13th month pay.

Employees who are paid a fixed or guaranteed wage plus commission are also entitled to the mandated 13th month pay based on their total earnings during the calendar year, i.e., on both their fixed or guaranteed wage and commission.

This was the state of the law when the controversies at bar arose out of the following antecedents:

(RE G.R. No. 92174) A routine inspection was conducted on May 2, 1989 in the premises of petitioner Boie-Takeda Chemicals, Inc. by Labor and Development Officer Reynaldo B. Ramos under Inspection Authority No. 4-209-89. Finding that Boie-Takeda had not been including the commissions earned by its medical representatives in the computation of their 13th month pay, Ramos served a Notice of Inspection Results[1] on Boie-Takeda through its president, Mr. Benito Araneta, requiring Boie-Takeda within ten (10) calendar days from notice to effect restitution or correction of "the underpayment of 13th month pay for the year(s) 1986, 1987 and 1988 of Med Rep (Revised Guidelines on the Implementation of 13th month pay # 5) in the total amount of P558,810.89."

Boie-Takeda wrote the Labor Department contesting the Notice of Inspection Results, and expressing the view "that the commission paid to our medical representatives are not to be included in the computation of the 13th month pay * * (since the) law and its implementing rules speak of REGULAR or BASIC salary and therefore exclude all other remunerations which are not part of the REGULAR salary." It pointed out that, "If no sales is (sic) made under the effort of a particular representative, there is no commission during the period when no sale was transacted, so that commissions are not and cannot be legally defined as regular in nature." [2]

Regional Director Luna C. Piezas directed Boie-Takeda to appear before his Office on June 9 and 16, 1989. On the appointed dates, however, and despite due notice, no one appeared for Boie-Takeda, and the matter had perforce to be resolved on the basis of the evidence at hand. On July 24, 1989, Director Piezas issued an Order[3] directing Boie-Takeda:

"* * to pay * * (its) medical representatives and its managers the total amount of FIVE HUNDRED SIXTY FIVE THOUSAND SEVEN HUNDRED FORTY SIX AND FORTY SEVEN CENTAVOS (P565,746.47) representing underpayment of thirteenth (13th) month pay for the years 1986, 1987, 1988, inclusive, pursuant to the ** revised guidelines within ten (10) days from receipt of this Order."

A motion for reconsideration[4] was seasonably filed by Boie-Takeda under date of August 3, 1989. Treated as an appeal, it was resolved on January 17, 1990 by then Acting Labor Secretary Dionisio de la Serna, who affirmed the July 24, 1989 Order with modification that the sales commissions earned by Boie-Takeda's medical representatives before August 13, 1989, the effectivity date of Memorandum Order No. 28 and its Implementing Guidelines, shall be excluded in the computation of their 13th month pay.[5]

Hence the petition docketed as G.R. No. 92174.

(RE G.R. No. 102552) A similar Routine Inspection was conducted in the premises of Philippine Fuji Xerox Corp. on September 7, 1989 pursuant to Routine Inspection Authority No. NCR--LSED-RI-494-89. In his Notice of Inspection Results,[6] addressed to the Manager, Mr. Nicolas O. Katigbak, Senior Labor and Employment Officer Nicanor M. Torres noted the following violation committed by Philippine Fuji Xerox Corp., to wit:

"Underpayment of 13th month pay of 62 employees, more or less -- pursuant to Revised Guidelines on the Implementation of the 13th month pay law for the period covering 1986, 1987 and 1988."

Philippine Fuji Xerox was requested to effect rectification and/or restitution of the noted violation within five (5) working days from notice.

No action having been taken thereon by Philippine Fuji Xerox, Mr. Eduardo G. Gonzales, President of Philxerox Employees Union, wrote then Labor Secretary Franklin Drilon requesting a follow-up of the inspection findings. Messrs. Nicolas and Gonzales were summoned to appear before Labor Employment and Development Officer Mario F. Santos, NCR Office, Department of Labor for a conciliation conference. When no amicable settlement was reached, the parties were required to file their position papers.

Subsequently, Regional Director Luna C. Piezas issued an Order dated August 23, 1990,[7] disposing as follows:

"WHEREFORE, premises considered, Respondent PHILIPPINE FUJI XEROX is hereby ordered to restitute to its salesmen the portion of the 13th month pay which arose out of the non-implementation of the said revised guidelines, ten (10) days from receipt hereof, otherwise, Mr. NICANOR TORRES, the SR. LABOR EMPLOYMENT OFFICER is hereby Ordered to proceed to the premises of the Respondent for the purpose of computing the said deficiency (sic) should respondent fail to heed this Order."

Philippine Fuji Xerox appealed the aforequoted Order to the Office of the Secretary of Labor. In an Order dated October 10, 1991, Undersecretary Cresenciano B. Trajano denied the appeal for lack of merit. Hence, the petition in G.R. No. 102552, which was ordered consolidated with G.R. No. 92174 as involving the same issue.

In their almost identically-worded petitions, petitioners, through common counsel, attribute grave abuse of discretion to respondent labor officials Hon. Dionisio dela Serna and Undersecretary Cresenciano B. Trajano in issuing the questioned Orders of January 17, 1990 and October 10, 1991, respectively. They maintain that under P. D. 851, the 13th month pay is based solely on basic salary. As defined by the law itself and clarified by the Implementing and Supplementary Rules as well as by the Supreme Court in a long line of decisions, remunerations which do not form part of the basic or regular salary of an employee, such as commissions, should not be considered in the computation of the 13th month pay. This being the case, the Revised Guidelines on the Implementation of the 13th Month Pay Law issued by then Secretary Drilon providing for the inclusion of commissions in the 13th month pay, were issued in excess of the statutory authority conferred by P.D. 851. According to petitioners, this conclusion becomes even more evident when considered in light of the opinion rendered by Labor Secretary Drilon himself in "In Re: Labor Dispute at the Philippine Long Distance Telephone Company" which affirmed the contemporaneous interpretation by then Secretary Ople that commissions are excluded from basic salary. Petitioners further contend that assuming that Secretary Drilon did not exceed the statutory authority conferred by P.D. 851, still the Revised Guidelines are null and void as they violate the equal protection of the law clause.

Respondents through the Office of the Solicitor General question the propriety of petitioners' attack on the constitutionality of the Revised Guidelines in a petition for certiorari, which, they contend, should be confined purely to the correction of errors and/or defects of jurisdiction, including matters of grave abuse of discretion amounting to lack or excess of jurisdiction and not extend to a collateral attack on the validity and/or constitutionality of a law or statute. They aver that the petitions do not advance any cogent reason or state any valid ground to sustain the allegation of grave abuse of discretion, and that at any rate, P.D. No. 851, otherwise known as the 13th Month Pay Law has already been amended by Memorandum Order No. 28 issued by President Corazon C. Aquino on August 13, 1986 so that commissions are now imputed into the computation of the 13th Month Pay. They add that the Revised Guidelines issued by then Labor Secretary Drilon merely clarified a gray area occasioned by the silence of the law as to the nature of commissions; and worked no violation of the equal protection clause of the Constitution, said Guidelines being based on reasonable classification. Respondents point to the case of *Songco vs. National Labor Relations Commission*, 183 SCRA 610, wherein this Court declared that

Article 97(f) of the Labor Code is explicit that commission is included in the definition of the term "wage".

We rule for the petitioners.

Contrary to respondents' contention, Memorandum Order No. 28 did not repeal, supersede or abrogate P.D. 851. As may be gleaned from the language of Memorandum Order No. 28, it merely "modified" Section 1 of the decree by removing the P1,000.00 salary ceiling. The concept of 13th Month Pay as envisioned, defined and implemented under P.D. 851 remained unaltered, and while entitlement to said benefit was no longer limited to employees receiving a monthly basic salary of not more than P1,000.00, said benefit was, and still is, to be computed on the basic salary of the employee-recipient as provided under P.D. 851. Thus, the interpretation given to the term "basic salary" as defined in P.D. 851 applies equally to "basic salary" under Memorandum Order No. 28.

In the case of *San Miguel Corp. vs. Inciong*, 103 SCRA 139, this Court delineated the coverage of the term "basic salary" as used in P.D. 851. We said at some length:

"Under Presidential Decree 851 and its implementing rules, the basic salary of an employee is used as the basis in the determination of his 13th month pay. Any compensations or remunerations which are deemed not part of the basic pay is excluded as basis in the computation of the mandatory bonus.

"Under the Rules and Regulations Implementing Presidential Decree 851, the following compensations are deemed not part of the basic salary:

- a) Cost-of-living allowances granted pursuant to Presidential Decree 525 and Letter of Instructions No. 174;
- b) Profit-sharing payments;
- c) All allowances and monetary benefits which are not considered or integrated as part of the regular basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

"Under a later set of Supplementary Rules and Regulations Implementing Presidential Decree 851 issued by then Labor Secretary Blas Ople, overtime pay, earnings and other remunerations are excluded as part of the basic salary and in the computation of the 13th month pay.

"The exclusion of cost-of-living allowances under Presidential Decree 525 and Letter of Instructions No. 174, and profit-sharing payments indicate the intention to strip basic salary of other payments which are properly considered as 'fringe' benefits. Likewise, the catch-all exclusionary phrase 'all allowances and monetary benefits which are not considered or integrated as part of the basic salary' shows also the intention to strip basic salary of any and all additions which may be in the form of allowances or 'fringe' benefits.

"Moreover, the Supplementary Rules and Regulations Implementing Presidential Decree 851 is even more emphatic in declaring that earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13th-month pay.

"While doubt may have been created by the prior Rules and Regulations Implementing Presidential Decree 851 which defines basic salary to include all remunerations or earnings paid by an employer to an employee, this cloud is dissipated in the later and more controlling Supplementary Rules and Regulations which categorically exclude from the definitions of basic salary earnings and other remunerations paid by employer to an employee. A cursory perusal of the two sets of Rules indicates that what has hitherto been the subject of a broad inclusion is now a subject of broad exclusion. The Supplementary Rules and Regulations cure the seeming tendency of the former rules to include all remunerations and earnings within the definition of basic salary.

"The all embracing phrase 'earnings and other remunerations' which are deemed not part of the basic salary

includes within its meaning payments for sick, vacation, or maternity leaves, premium for works performed on rest days and special holidays, pays for regular holidays and night differentials. As such they are deemed not part of the basic salary and shall not be considered in the computation of the 13th-month pay. If they were not excluded, it is hard to find any 'earnings and other remunerations' expressly excluded in the computation of the 13th-month pay. Then the exclusionary provision would prove to be idle and with no purpose.

"This conclusion finds strong support under the Labor Code of the Philippines. To cite a few provisions:

'Art. 87. Overtime work. Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, additional compensation equivalent to his regular wage plus at least twenty-five (25%) percent thereof.'

It is clear that overtime pay is an additional compensation other than and added to the regular wage or basic salary, for reason of which such is categorically excluded from the definition of basic salary under the Supplementary Rules and Regulations Implementing Presidential Decree 851.

In Article 93 of the same Code, paragraph

'c) work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee.'

"It is likewise clear that premiums for special holiday which is at least 30% of the regular wage is an additional pay other than and added to the regular wage or basic salary. For similar reason, it shall not be considered in the computation of the 13th-month pay.

Quite obvious from the foregoing is that the term "basic salary" is to be understood in its common, generally-accepted meaning, i.e., as a rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime.[8] This is how the term was also understood in the case of *Pless v. Franks*, 308 S.W. 2d. 402, 403, 202 Tenn. 630, which held that in statutes providing that pension should not be less than 50 percent of "basic salary" at the time of retirement, the quoted words meant the salary that an employee (e.g., a policeman) was receiving at the time he retired without taking into consideration any extra compensation to which he might be entitled for extra work.[9]

In remunerative schemes consisting of a fixed or guaranteed wage plus commission, the fixed or guaranteed wage is patently the "basic salary" for this is what the employee receives for a standard work period. Commissions are given for extra efforts exerted in consummating sales or other related transactions. They are, as such, additional pay, which this Court has made clear do not form part of the "basic salary."

Respondents would do well to distinguish this case from *Songco vs. National Labor Relations Commission*, supra, upon which they rely so heavily. What was involved therein was the term "salary" without the restrictive adjective "basic". Thus, in said case, we construed the term in its generic sense to refer to all types of "direct remunerations for services rendered," including commissions. In the same case, we also took judicial notice of the fact "that some salesmen do not receive any basic salary but depend on commissions and allowances or commissions alone, although an employer-employee relationship exists," which statement is quite significant in that it speaks of a "basic salary" apart and distinct from "commissions" and "allowances". Instead of supporting respondents' stand, it would appear that *Songco* itself recognizes that commissions are not part of "basic salary."

In including commissions in the computation of the 13th month pay, the second paragraph of Section 5 (a) of the Revised Guidelines on the Implementation of the 13th Month Pay Law unduly expanded the concept of "basic salary" as defined in P.D. 851. It is a fundamental rule that implementing rules cannot add to or detract from the provisions of the law it is designed to implement. Administrative regulations adopted under legislative authority

by a particular department must be in harmony with the provisions of the law they are intended to carry into effect. They cannot widen its scope. An administrative agency cannot amend an act of Congress.[10]

Having reached this conclusion, we deem it unnecessary to discuss the other issues raised in these petitions.

WHEREFORE, the consolidated petitions are hereby GRANTED. The second paragraph of Section 5 (a) of the Revised Guidelines on the Implementation of the 13th Month Pay Law issued on November 16, 1987 by then Labor Secretary Franklin M. Drilon is declared null and void as being violative of the law said Guidelines were issued to implement, hence issued with grave abuse of discretion correctible by the writ of prohibition and certiorari. The assailed Orders of January 17, 1990 and October 10, 1991 based thereon are SET ASIDE.

SO ORDERED.

Padilla, Regalado, Nocon, and Puno, JJ., concur.

[1] Annex "A", Petition, Rollo in G.R. No. 92174, p. 44.

[2] Annex "B", Id., Id., p. 46.

[3] Ibid., pp. 46-50.

[4] Annex "C", Petition, Rollo in G. R. No. 92174, pp. 52-59.

[5] Annex "D", Id., Id., pp. 62-66.

[6] Annex "A", Petition, Rollo in G.R. No. 102552, p. 42.

[7] Annex "B", Id., Id., p. 46.

[8] Webster's Third New International Dictionary Unabridged, 1971.

[9] 5 Words and Phrases, Permanent Edition, p. 292.

[10] Cebu Oxygen & Acetylene Co., Inc. vs. Drilon, 176 SCRA 24, citing Manuel vs. General Auditing Office, 42 SCRA 660.

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