

[ADMINISTRATIVE ORDER NO. 179, July 02, 1990]

IMPOSING THE PENALTY OF SUSPENSION FROM OFFICE ON SANTIAGO LABANEN, PRESIDENT, ABRA STATE INSTITUTE OF SCIENCES AND TECHNOLOGY, FOR A PERIOD OF SIX (6) MONTHS.

This refers to the administrative complaint, dated February 29, 1988, filed by Mr. Medardo Besas, et al., against respondent Santiago S. Labanen, President, Abra State Institute of Sciences and Technology (ASIST), for alleged gross negligence, inefficiency and abuse of authority for non-remittance of GSIS premiums regularly deducted from the salaries of all teachers and employees of ASIST.

Complainants alleged that ASIST has been deducting their GSIS premiums from their monthly salaries regularly; that in September 1987, they applied for calamity loan but they were informed by the GSIS that they cannot be granted because their premiums were not duly remitted; and, that the total monthly deduction from the salaries of all employees and teachers was more or less P40,000.00 but, since July 1987 up to February 1988, no remittance of said deduction amounting to P320,000.00, more or less, was made by ASIST to the GSIS.

In his Answer, dated December 1, 1988, respondent refuted the charges against him by stating, among others, that:

1. The school, in compliance with National Compensation Circular No. 47, dated April 3, 1987, of the Department of Budget and Management (DBM), which mandated the grant of salary increases to rank-and-file national government employees, utilized its savings from Personal Services pursuant to Joint Circular No. 3-87.
2. Since said savings were insufficient, the school, in its honest desire to satisfy the urgent and persistent clamor of the employees, including the complainants, advanced every available fund under Personal Services with the intention of settling/liquidating the same as soon as the request for funding of salary increases is released.
3. Upon completion of the payments, the school immediately requested the DBM for release of funds to replenish the amounts advanced for said salary increases. On December 2, 1987, an advice for allotment in the amount of P381,226.00 was released by the DBM and, thereafter, the amount of P216,033.16 was remitted to the GSIS to cover the delayed remittances;
4. The utilization of the teachers' and employees' premiums was done in good faith, with no intent to gain and borne out of goodwill,

considering that the practice seemed tolerated; and

5. Finally, granting that there was indeed a delayed remittance of collected/deducted premiums to the GSIS, herein respondent should not be faulted for such negligence, considering that the duty/function of collecting and deducting premiums and transmitting the same to the GSIS officially belongs to the School Cashier.

On May 8, 1989, respondent was preventively suspended for ninety (90) days on the ground that, on the basis of the evidence submitted, there exists a prima facie case against him. In a letter of the same date, my office referred the case against respondent to the Department of Education, Culture and Sports (DECS) for formal investigation and submission of its findings and recommendation thereon. Finally, the Investigating Committee created by the DECS submitted its Consolidated Report, dated October 5, 1989, which was forwarded to my office thru a letter, dated October 27, 1989, of then DECS Acting Secretary Luis R. Baltazar.

Using as basis the stipulation of facts and documents presented, the DECS investigating Committee made the following findings and observations:

1. That the administration has been deducting GSIS premiums, policy and salary loan amortization monthly and regularly from the 128 employees (teaching and non-teaching) of the ASIST. The following deductions and remittances were made:
 - a) On March 8, 1988, the amount of P216,033.16 was remitted by the ASIST for the period July, 1987 to December, 1987. The GSIS received said amount on March 9, 1988;
 - b) On April 11, 1988, the amount of P34,463.46 (for January 1988) was prepared and received by the GSIS on April 12, 1988; and
 - c) On April 25, 1988, the amount of P39,609.01 (for February, 1988) was prepared and received by the GSIS on April 28, 1988.
2. The GSIS premiums (life and retirement) are mandatory contributions and were deducted every 15th day of the month, while the policy and salary loan amortizations were deducted every 30th day of the month.
3. When deductions in the payrolls were made, there was no actual physical transfer of cash. Only the total net salary was covered by the cash advance. The deductions remained in the bank balance.
4. The salary differential for the months of March and April 1987, were paid out of funds for personal services. In May and June, 1987, savings were used. It was only in July, 1987 to December, 1987 that trust liabilities were utilized.
5. Complainants' allegation that the total monthly deductions from the teachers' and employees' salaries amounted to more or less

P40,000.00 and that, since July 1987 up to February, 1989 (for a total amount of P320,000.00 more or less), no amount was remitted to the GSIS, was a mere estimate and without iota of proof. However, the DECS Investigating Committee, concluded that there was indeed a delay in the remittances, as cited in Nos. 1-a, 1-b and 1-c hereinabove mentioned.

The Committee likewise observed that, on July 31, 1987, the ASIST requested the amount of P678,000.00 from the DBM (Exhibit "4") purportedly to replenish the amount advanced for the payment of salary increases. However, on December 2, 1987, only the amount of P381,226.00 was released (Exhibit "Q") by the DBM on the condition that the said amount "shall be used only for payment of salary adjustments" as implemented by National Compensation Circular (NCC) Nos. 47 and 48, respectively, and "for no other purpose". Respondent alleged that the school remitted the amount of P216,033.16 to the GSIS on March 8, 1988. On the other hand, complainants countered that the said amount was not actually used to replenish the cash advance for payment of salaries but for other transactions, as evidenced by the different disbursement vouchers/checks (Exhibits "O", "O-1" to "O-125") which were mostly unsigned and/or partially signed.

The DECS Investigating Committee ventured to ask the following queries:

1. Was the delay in the remittance and use of the GSIS contributions (premiums) and salary and policy loan amortizations for payment of salary increases of ASIST teachers and employees under NCC Nos. 47 and 48 authorized by law?
2. Was the amount of P216,033.16 taken from the amount of P381,226.00 released by the DBM for replenishment of advanced payments for salary increases or did it come from succeeding releases?
3. Was it proper to issue checks based on totally unsigned or partially signed vouchers and other supporting documents, as shown in Exhibits "O", "O-1" to "O-125"? and
4. Was the delay in the remittance to the GSIS after receipts of the replenishment from December 2, 1987 to March 7, 1988, justified?

With respect to the first query, the records indubitably attest that respondent did not remit to the GSIS the amounts representing the teachers' and employees' premium contributions and salary and policy loan amortizations but instead utilized the same in paying the aforementioned salary increases. Hence, the delay.

The use of deductions for salary/policy loan amortization in payment of salary increases of ASIST employees is undoubtedly a violation of Presidential Decree No. 1146, entitled "Revised Government Service Insurance Act of 1977". Under this decree, only the GSIS contributions from life and retirement premiums under Section 5(a) thereof may be utilized for salaries and wages. Thus, Section 6 of PD No. 1146, emphatically reads:

"Sec. 6. Collection and Remittance of Contributions. – (a) It shall be compulsory upon the employer to deduct and withhold each month from