EN BANC

[G.R. No. 210631, March 12, 2019]

SOLITO TORCUATOR, GENERAL MANAGER, POLOMOLOK WATER DISTRICT AND EMPLOYEES OF POLOMOLOK WATER DISTRICT, REPRESENTED BY CECIL MIRASOL, PETITIONERS, VS. COMMISSION ON AUDIT, AND POLOMOLOK WATER DISTRICT AUDIT TEAM LEADER ALIA ARUMPAC-MASBUD, RESPONDENTS.

RESOLUTION

GESMUNDO, J.:

This is a petition for *certiorari* seeking to annul and set aside the November 26, 2012 Decision[1] and November 20, 2013 Resolution[2] of the Commission on Audit (*COA*) in Decision No. 2012-222 and Resolution No. 2013-194, respectively. The COA affirmed the Decision[3] of the COA Regional Office XII (*Region XII*) in COA XII Decision No. 09-05 dated March 16, 2009 which affirmed Notice of Disallowance (*ND*) Nos. 07-001-(06), 07-002-(06), 07-003-(06), and 07-004-(06)[4] dated October 4, 2007.

Polomolok Water District (*PWD*) is a government-owned and controlled corporation organized under Presidential Decree No. 198, as amended. Prior to November 1, 1989, the employees of PWD were receiving medical, food and rice allowances, and cost of living allowance (*COLA*). However, these benefits were discontinued under Republic Act (*R.A.*) No. 6758.[5]

To implement R.A. No. 6758, the Department of Budget and Management (*DBM*) issued Corporate Compensation Circular (*CCC*) No. 10. It provided, among others, the discontinuance of all allowances and fringe benefits, including COLA, of government officers and employees over and above their basic salaries starting July 1, 1989.

On the basis of DBM-CCC No. 10, PWD stopped paying its officers and employees COLA and other fringe benefits. Llowever, on August 12, 1998, the Court promulgated *De Jesus v. Commission on Audit*[6] (*De Jesus*) stating that DBM-CCC No. 10 was ineffective due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country, as required by law. Subsequently, DBM-CCC No. 10 dated February 15, 1999, was re-issued and properly published.[7]

In its Letter[8] dated November 8, 2000, the DBM stated that local water districts shall be allowed to continue the grant of allowances/fringe benefits that are found to be an established practice as of December 31, 1999. In another Letter[9] dated April 27, 2001, the DBM reiterated that the grant of allowances and fringe benefits that have been established and granted as of December 31, 1999 shall form part of the compensation being regularly received by the local water district personnel.

Thus, PWD issued Board Resolution No. 02-27 authorizing the payment of COLA and other allowances for the inclusive period of 1992-1999, pursuant to the ruling in *De Jesus*. In 2006, the COLA, medical, food gift, and rice allowances were released to the officers and employees on staggered basis.

The Notice of Disallowance

On October 4, 2007, the COA Audit Team Leader assigned to PWD issued the following NDs:

1. ND No. 07-001-(06) disallowing the amount of P832,000.00 representing the payment of medical, food gift, and rice allowances contrary to Section 5.6 of DBM-CCC No. 10 dated February 15, 1999, Section 12 of R.A. No. 6758, and COA Resolution No. 2004-006 dated September 14, 2004;

2. ND No. 07-002-(06) disallowing the amount of P28,720.00 representing payment of year-end financial assistance, cash gift and extra cash gift for calendar year 2005, contrary to Section 8, Article IX(B) of the Constitution, Section 4 of Presidential Decree (*P.D.*) No. 1445, and Resolution No. 239-05 dated December 20, 2005 of the Local Water Utilities Administration (*LWUA*);

3. ND No. 07-003-(06) disallowing the amount of P111,737.04 for the payment to a certain Victor Dignadice for the recovery of his down payment of one unit L-300 van contrary to Section 4(6) of P.D. No. 1445 and Section 168 of the Government Accounting and Auditing Manual, Volume I; and

4. ND No. 07-004-(06) disallowing the amount of P728,953.92 for the payment of the COLA contrary to Paragraph 6.0 of the DBM Budget Circular No. 2001-03 dated November 12, 2001, Paragraph 5.0 of DBM National Budget Circular No. 2005-502 dated October 26, 2005, and Paragraph 5.6 of DBM-CCC No. 10 dated February 15, 1999.[10]

The NDs held that those who approved the transactions, certified the documents, payees, and the recipients, were liable to settle the disallowance.

Aggrieved, the affected officers and employees of PWD, collectively referred to as petitioners, appealed ND Nos. 07-001-(06), 07-003-(06), and ND No. 07-004-(06) to the COA Region XII.

The COA Region XII Ruling

In its Decision[11] dated February 3, 2009, the COA Region XII affirmed the disallowances. It held that the subject expenses were illegal expenditures and devoid of legal basis because they were prohibited allowances and benefits under Sec. 5.6 of DBM-CCC No. 10, Sec. 12 of R.A. No. 6758, COA Resolution No. 2004-06. The COA Region XII concluded that the appeal could not be given due course.

Petitioners moved for reconsideration but it was denied by the COA Region XII in its decision dated March 16, 2009. Thus, the appeal was transmitted to the COA pursuant to Section 6, Rule VI of the 1997 Revised Rules of Procedure of the COA.

The COA Ruling

In its decision dated November 26, 2012, the COA denied the appeal. It held that under Sec. 12 of R.A. No. 6758, the payment of separate benefits to employees hired after July 1, 1989, as in this case, should be withheld because they are deemed integrated in the government employee's salary. The COA cited *Gutierrez, et al. v. DBM, et al.*[12] (*Gutierrez*), which stated that COLA and other benefits are deemed integrated in the standardized salary rates of government employees under the general rule of integration. It also stated that the non-publication of DBM-CCC No. 10 did not nullify the integration of COLA and other benefits into the standardized rates upon effectivity of R.A. No. 6758.

Petitioners filed a motion for reconsideration but it was denied by the COA in its resolution dated November 20, 2013.

Hence, this petition seeking to overturn ND No. 07-001-(06) for the payment of medical, food gift, and rice allowances in 2006; and ND No. 07-00-4-(06) for the payment of COLA in 2006.[13]

ISSUES

I.

> THE COMMISSION ON AUDIT ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF COA FIELD AUDITORS IN ND NO. 07-001-(06), DISALLOWING PAYMENT OF MEDICAL, FOOD GIFT AND RICE ALLOWANCES TO THE EMPLOYEES OF POLOMOLOK WATER DISTRICT IN 2006 DESPITE CLEARANCE FROM THE DEPARTMENT [OF] BUDGET AND MANAGEMENT;

II.

> THE COMMISSION ON AUDIT ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF COA FIELD AUDITORS IN ND NO. 07-004-(06), DISALLOWING PAYMENT OF COLA TO THE EMPLOYEES OF POLOMOLOK WATER DISTRICT FOR THE YEARS 1992 THROUGH 1999 DESPITE THE PREVAILING CASE LAW AT THE TIME OF PAYMENT IN 2006;

III.

> THE COMMISSION ON AUDIT ERRED AND GRAVELY ABUSED ITS DISCRETION IN RETROACTIVELY APPLYING THE 2010 DECISION IN THE CASE OF *GUTIERREZ V. DBM* IN THE ACTUAL DISBURSEMENT IN 2006 AND IN MISAPPLYING THE SAME TO A GOVERNMENT[-]OWNED AND CONTROLLED CORPORATION.[14]

In their Memorandum,[15] petitioners assert that since *De Jesus* invalidated DBM-CCC No. 10 for non-publication, then there was no implementing rule that determined the benefits incorporated in the salaries of government employees until said circular was re-published in 1999. Thus, they argue that PWD sufficiently relied on *De Jesus* when it released the COLA, medical, food gift, and rice allowances of

the employees for the inclusive years of 1992 to 1999. They also aver that *De Jesus* was reiterated in *Philippine Ports Authority Employees Hired after July 1, 1989 v. Commission on Audit, et al.*[16] (*PPA Employees*), which stated that employees of Government-Owned and Controlled Corporations (*GOCCs*) are entitled to COLA and other fringe benefits during the time that DBM-CCC No. 10 was in legal limbo.

Petitioners further contend that *Gutierrez* is inapplicable because at the time the auditors issued the subject NDs, it was not yet promulgated by the Court. In addition, they stress that they merely relied on the DBM letters stating that local water districts shall be allowed to continue the grant of allowances/fringe benefits that are found to be an established practice as of December 31, 1999.

In their Memoranda,[17] COA and Audit Team Leader for PWD (*respondents*) countered that Sec. 12 of R.A. No. 6758 clearly states that benefits shall be deemed integrated in the standard salary of government employees; that it was not necessary for an implementing rule from the DBM to execute the said provision of the law; and also emphasized that in *Gutierrez*, the non-publication of DBM-CCC No. 10 did not nullify the integration of COLA into the standardized rates upon effectivity of R.A. No. 6758.

Respondents also argue that Sec. 12 of R.A. No. 6758 mandates that additional compensation not integrated in the salary shall only be received by incumbent employees as of July 1, 1989 and not thereafter. Thus, petitioners cannot rely on the letters of the DBM, stating that local water district employees may receive allowances/fringe benefits that are found to be an established practice until December 31, 1999.

The Court's Ruling

The petition is partially meritorious.

Sec. 12 of R.A. No. 6758 is self-executory

R.A. No. 6758 standardized the salaries received by government officials and employees. Sec. 12 thereof states:

> 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.
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> 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 *Maritime Industry Authority v. Commission on Audit*[18] (*MIA*) the Court explained the provision of Sec. 12, to wit:

> 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:
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> 1. representation and transportation allowances;
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> 2. clothing and laundry allowances;
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> 3. subsistence allowance of marine officers and crew on board government vessels;
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> 4. subsistence allowance of hospital personnel;
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> 5. hazard pay; and
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> 6. allowances of foreign service personnel stationed abroad.
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> In addition to the non-integrated allowances specified in Sec. 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.[19]

Pursuant to R.A. No. 6758, DBM-CCC No. 10 was issued, which provided, among others, the discontinuance without qualification of all allowances and fringe benefits, including COLA, of government employees over and above their basic salaries.[20] In 1998, the Court declared in the case of *De Jesus* that DBM-CCC No. 10 is without force and effect on account of its non-publication in the Official Gazette or in a newspaper of general circulation, as required by law. In 1999, DBM re-issued its DBM-CCC No. 10 in its entirety and submitted it for publication in the Official Gazette.

Thus, petitioners chiefly argue that since DBM-CCC No. 10 was invalidated and was re-published only in 1999, then the officers and employees of PWD may receive COLA and other fringe benefits for the period of 1992 to 1999.

The Court is not convinced.

As early as *Philippine International Trading Corporation v. Commission on Audit*,[21] the Court held that the nullification of DBM-CCC No. 10 in *De Jesus* does not affect the validity of R.A. No. 6758, to wit:

> There is no merit in the claim of PITC that R.A. No. 6758, particularly Section 12 thereof is void because DBM-Corporate Compensation Circular No. 10, its implementing rules, was nullified in the case of *De Jesus v. Commission on Audit*, for lack of publication. The basis of COA in