

EN BANC

[G.R. No. 222054, October 01, 2019]

**GUBAT WATER DISTRICT (GWD), SALVADOR F. VILLAROYA, JR.,
JOSEPHINE A. MEJORADA, AND NEDA E. ERENO, PETITIONERS,
VS. COMMISSION ON AUDIT, RESPONDENT.**

DECISION

LAZARO-JAVIER, J.:

The Case

This petition for certiorari^[1] assails the following dispositions of the Commission on Audit – Commission Proper (COA-CP)

1. Decision No. 2014-181 dated August 28, 2014,^[2] affirming the disallowance of the grant of Cost of Living Allowance (COLA) differentials to the concerned employees of Gubat Water District and the obligations of these employees and the officers who authorized the payment of COLA differentials to refund the same; and
2. Resolution dated August 18, 2015,^[3] denying petitioners' motion for reconsideration.

Antecedents

Petitioner Gubat Water District (GWD) is a government entity organized and existing under Presidential Decree No. 198 (PD 198), other known as the Provincial Water Utilities Act of 1973.

On August 31, 1979, then President Ferdinand E. Marcos issued Letter of Implementation No. 97 (LOI 97) which, among others, directed additional financial incentives to be paid to government officers and employees including those in government owned or controlled corporations (GOCCs). These additional financial incentives included the Cost of Living Allowance (COLA).^[4]

On July 1, 1989, Republic Act No. 6758 (RA 6758), otherwise known as the *Compensation and Position Classification Act of 1989* mandated that allowances and additional compensations received by government officers and employees, including those working in government-owned or controlled corporations and government financial institutions (GFIs) be consolidated into the standardized salary rates

provided in the law. Exempted therefrom were 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 therein as may be determined by the Department of Budget and Management (DBM).

Thereafter, the DBM issued Corporate Compensation Circular No. 10 (CCC No. 10), directing that effective November 1, 1989, all allowances and fringe benefits granted in addition to the basic salary, including COLA, were deemed discontinued. CCC No. 10 did not provide for any qualification.

On September 13, 1991, the Court came out with ***Davao City Water District, et al. v. Civil Service Commission, et al.***^[5] It clarified that petitioner, along with other local water districts, is a "*government-owned or controlled corporation with original charter*," hence, falling within the jurisdiction of the Civil Service Commission (CSC) and Commission on Audit (COA).

In 1998, the Court came out with another ruling in ***De Jesus v. COA***.^[6] It declared as ineffective DBM-CCC No. 10 due to its lack of publication, thus:

Before resolving the other issue — whether or not Paragraph 5.6 of DBM-CCC No. 10 can supplant or negate the pertinent provisions of Rep. Act 6758 which it seeks to implement, we have to tackle first the other question whether or not DBM-CCC No. 10 has legal force and effect notwithstanding the absence of publication thereof in the Official Gazette. This should take precedence because should we rule that publication in the Official Gazette or in a newspaper of general circulation in the Philippines is *sine qua non* to the effectiveness or enforceability of DBM-CCC No. 10, resolution of the first issue posited by petitioner would not be necessary.

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On the need for publication of subject DBM-CCC No. 10, we rule in the affirmative. Following the doctrine enunciated in *Tanada*, publication in the Official Gazette or in a newspaper of general circulation in the Philippines is required since DBM-CCC No. 10 is in the nature of an administrative circular the purpose of which is to enforce or implement an existing law. Stated differently, to be effective and enforceable, DBM-CCC No. 10 must go through the requisite publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

In the present case under scrutiny, it is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees, starting November 1, 1989, is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. At the very least, before the said circular under attack may be permitted to substantially reduce

their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in a newspaper of general circulation in the Philippines — to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency.

In light of the foregoing disquisition on the ineffectiveness of DBM-CCC No. 10 due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country, as required by law, resolution of the other issue at bar is unnecessary.

WHEREFORE, the Petition is hereby GRANTED, the assailed Decision of respondent Commission on Audit is SET ASIDE, and respondents are ordered to pass on audit the honoraria of petitioners. No pronouncement as to costs.

SO ORDERED.

On two (2) separate dates, the Office of the Government Corporate Counsel (OGCC) issued Opinion Nos. 039 and 140,^[7] respectively, where it opined that qualified employees of local water districts were entitled to COLA differentials froth the time local water districts were declared as GOCCs until DBM-CC No. 10 itself was declared ineffective in 1998.

Based on ***Davao City Water District, De Jesus*** and the OGCC Opinion Nos. 039 and 140, GWD's Board of Directors issued Resolution No. 18-S-2004 on December 13, 2004, authorizing accrued COLA to be paid to nineteen (19) GWD personnel corresponding to April 1, 1992 to March 15, 1999.^[8] These personnel, thus, started receiving their COLA from 2005 until 2008 for a total of P1,573,646.00.

On post-audit, Audit Team Leader Editha Roa-Gutierrez and Supervising Auditor Antoinette P. Conjares issued Notice of Disallowance No. 09-001 (2005-200) dated August 3, 2009^[9] on GWD's payment of COLA differentials to its nineteen (19) personnel. According to the Audit Team, the payment was allegedly violative of RA 6758, DBM-CCC No. 10, and DBM-CCC No. 12. The employees who received the disallowed amounts were required to return them.

GWD, through its General Manager Salvador F. Villaroya, and the employees' representatives Josephine A. Mejorada and Neda E. Ereño appealed to the COA-Regional Office.

The Ruling of the COA Regional Office No. V

By Decision No. 2011-C-006 dated July 12, 2011,^[10] the COA Regional Office affirmed.

It opined that petitioners failed to prove two (2) things: *first*, the employees concerned were already receiving COLA or its equivalent prior to the issuance of DBM-CCC No. 10 in 1989; and *second*, said COLA had not been integrated yet into their salaries.^[11] Too, while LOI 97 explicitly mentioned among its covered offices and agencies the Local Water Utilities Administration (LWUA) and the Metropolitan Waterworks and Sewerage System (MWSS), it did not make mention of local water districts, hence they were deemed excluded conformably with the legal maxim *expressio unius est exclusion alterius*.^[12]

The Ruling of the COA-Commission Proper

On petitioners' further appeal, the COA-Proper also affirmed under its assailed Decision No. 2014-181 dated August 28, 2014.^[13]

Through its assailed Resolution dated August 18, 2015,^[14] the COA-Proper denied petitioners' motion for reconsideration.^[15]

The Present Petition

Petitioners' Argument

Petitioners now urge the Court to nullify the assailed COA dispositions affirming the disallowance of the COLA payments to the GWD employees. Petitioners basically assert:

(a) It was erroneous for the COA to deem local water districts excluded from the coverage of LOI 97 which took effect long before local water districts were declared as GOCCs in 1992. It was certainly understandable for LOI 97 back then not to have included within its coverage those GOCCs which became such only after its effectivity. One of these GOCCs is GWD.^[16]

(b) Having been declared as GOCCs only in 1992, local water districts commenced to be covered by LOI 97 only as of that date. Hence, all the benefits thereunder, particularly COLA, should have been granted them as of 1992. But it never happened because of the supervening issuance of DBM-CCC No. 10 on November 1, 1989. But on August 12, 1998, **De Jesus** came out declaring DBM-CCC No. 10 ineffective due to its non-publication. It was only upon the finality of **De Jesus** that GWD employees began to receive COLA granted by LOI 97, which in view of the ineffective DBM-CCC No. 10 was deemed not to have been superseded.^[17]

(c) In **PPA Employees Hired After July 1, 1989 v. COA**, the Court held that those PPA employees hired after July 1, 1989 were entitled to COLA. The Court said that due to the non-publication of DBM-CCC No. 10, COLA and Amelioration Allowance (AA) were not effectively integrated into the employees' salaries. Thus, PPA employees became entitled to COLA and AA differentials. For the same reason, GWD employees, too, became entitled to COLA differentials.^[18]

(d) Considering that GWD like MWSS is also a water utilities sector, the former similarly falls within the coverage of LOI 97 under the equal protection clause.^[19]

(e) Even assuming that GWD employees and officers were not entitled to COLA differentials, they should not be held liable to reimburse the amounts they received or gave out. For they all acted in the honest belief that GWD employees were entitled thereto based on ***Davao City Water District, De Jesus***, and the OGCC Opinion Nos. 039 and 140.^[20]

The COA's Counter-Argument

The COA, through Assistant Solicitor General Myrna N. Agno-Canuto and Senior State Solicitor Jonathan L. Dela Vega, ripostes:

(1) Petitioners failed to prove that it acted with grave abuse of discretion when it sustained the disallowance of COLA differentials paid to the employees concerned.

^[21]

(2) Local water districts were not among the enumerated COLA beneficiaries under LOI 97. Since the enumeration is exclusive, it cannot be extended to other agencies or entities not mentioned therein.^[22]

(3) *PPA Employees* does not apply here. For unlike the employees of PPA, petitioners failed to prove that GWD employees were ever paid any COLA at all, hence, how could they have been deprived of this benefit?^[23]

Issues

1. Were employees of local water districts such as GWD entitled to COLA under LOI 97?
2. Were GWD employees entitled to COLA differentials under the Court's ruling in ***De Jesus***?
3. Are the GWD employees who received COLA differentials together with GWD officers who authorized their payment liable to return the subject disallowance?

Ruling

Entitlement to COLA

Contrary to COA's argument, the employees of local water districts were entitled to COLA under LOI 97, *viz*:

1. Scope of the Plan – The Position and Compensation Plans for the Infrastructure and Utilities group shall apply to the corporations in the transport, the power, the infrastructure, and the water utilities sector, as follows: