

## EN BANC

[ G.R. No. 187257, February 07, 2017 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE OFFICE OF THE SOLICITOR GENERAL (OSG) AS THE PEOPLE'S TRIBUNE, AND THE NATIONAL POWER BOARD, PETITIONERS, VS. HON. LUISITO G. CORTEZ, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 84, QUEZON CITY, ABNER P. ELERIA, MELITO B. LUPANGCO, NAPOCOR EMPLOYEES CONSOLIDATED UNION (NECU), AND NAPOCOR EMPLOYEES AND WORKERS UNION (NEWU), RESPONDENTS.**

[G.R. No. 187776]

**ROLANDO G. ANDAYA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT AND MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL POWER CORPORATION, PETITIONERS, VS. HON. LUISITO G. CORTEZ, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 84, QUEZON CITY, ABNER P. ELERIA, MELITO B. LUPANGCO, NAPOCOR EMPLOYEES CONSOLIDATED UNION AND NAPOCOR EMPLOYEES AND WORKERS UNION, RESPONDENTS.**

### D E C I S I O N

**LEONEN, J.:**

The implementation of Republic Act No. 6758 resulted in the integration of all allowances previously received, including Cost of Living Allowance and Amelioration Allowance, into the basic standardized salary. When a government entity ceases to be covered by Republic Act No. 6758, the new position classification and compensation plan must also include all allowances previously received in the basic salary, in line with the principle of non-diminution of pay.

This is a consolidated case resulting from a Petition for Mandamus filed by the president of the National Power Corporation Employees Consolidated Union (NECU) and the president of the National Power Corporation Employees and Workers Union (NEWU) before the Regional Trial Court, Branch 84, Quezon City.<sup>[1]</sup> The Petition sought to direct the National Power Corporation (NAPOCOR), its President and its Board of Directors to release and pay the Cost of Living Allowance (COLA) and Amelioration Allowance (AA) to all NAPOCOR employees beginning July 1, 1989 to March 16, 1999.<sup>[2]</sup> The Petition for Mandamus was granted by the trial court and the NAPOCOR was ordered to pay a total of P6,496,055,339.98 as back payment for COLA and AA with an additional P704,777,508.60 as legal interest.<sup>[3]</sup>

NAPOCOR was created under Commonwealth Act No. 120<sup>[4]</sup> as a government-owned and controlled corporation. Under the law, its National Power Board was

authorized to fix the compensation of its officers and employees.<sup>[5]</sup>

In 1976, a salary standardization and compensation plan for public employees, including that of government-owned and controlled corporations, was enacted through Presidential Decree No. 985.<sup>[6]</sup> The Decree likewise provided that notwithstanding the standardization and compensation plan, additional incentives may be established by government-owned and controlled corporations from their corporate funds.<sup>[7]</sup> Pursuant to the Decree, then President Ferdinand E. Marcos issued Letter of Implementation No. 97,<sup>[8]</sup> granting additional financial incentives to employees of government-owned and controlled corporation performing critical functions, among which was NAPOCOR.<sup>[9]</sup> The additional incentives included COLA and AA.<sup>[10]</sup>

On August 21, 1989, Congress enacted Republic Act No. 6758, or the Compensation and Position Classification Act of 1989, to standardize compensation and benefits of public employees, effective July 1, 1989.<sup>[11]</sup> The law applied to all positions, whether appointive or elective, including those in government-owned and controlled corporations.<sup>[12]</sup> The law also provided that all allowances and other additional compensation not otherwise stated "shall be deemed included"<sup>[13]</sup> in the prescribed standardized salary rates. Section 12 reads:

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.

On October 2, 1989, the Department of Budget and Management issued Corporate Compensation Circular No. 10 (DBM-CCC No. 10),<sup>[14]</sup> which provided for the integration of COLA, AA, and other allowances into the standardized salaries of public employees effective November 1, 1989.<sup>[15]</sup>

On April 5, 1993, Congress enacted Republic Act No. 7648, or the Electric Power Crisis Act of 1993, allowing the President of the Philippines to upgrade the compensation of NAPOCOR employees "at rates comparable to those prevailing in privately-owned power utilities[.]"<sup>[16]</sup>

Pursuant to Republic Act No. 7648, then President Fidel V. Ramos issued Memorandum Order No. 198<sup>[17]</sup> providing for a different position classification and

compensation plan for NAPOCOR employees to take effect on January 1, 1994.<sup>[18]</sup>

On August 12, 1998, this Court promulgated *De Jesus v. Commission on Audit*,<sup>[19]</sup> which found DBM-CCC No. 10 ineffective for lack of publication in the Official Gazette or in a newspaper of general circulation.<sup>[20]</sup> Thus, the circular only became effective on March 16, 1999.<sup>[21]</sup>

In *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*,<sup>[22]</sup> this Court recognized that the ineffectivity of DBM-CCC No. 10 from July 1, 1989 to March 16, 1999 created a "legal limbo" wherein the COLA and AA were "not effectively integrated into the standardized salaries."<sup>[23]</sup> Hence, during the period of the legal limbo, affected employees would be entitled to receive the two allowances:

To stress, the failure to publish DBM-CCC No. 10 meant that the COLA and the amelioration allowance were not effectively integrated into the standardized salaries of the PPA employees as of July 1, 1989. The integration became effective only on March 16, 1999. Thus, in between those two dates, they were still entitled to receive the two allowances.  
<sup>[24]</sup>

On December 28, 2007, Abner P. Eleria, president of NECU, and Melito B. Lupanggo, president of NEWU, filed a Petition for Mandamus with the Regional Trial Court of Quezon City, Branch 84, praying that NAPOCOR be ordered to release the COLA and AA due them.<sup>[25]</sup> NECU and NEWU filed their Motion for Leave of Court to file a Petition-in-Intervention, which was granted by the trial court on March 14, 2008.<sup>[26]</sup> The trial court consolidated the petitions and treated them as a class suit.<sup>[27]</sup>

NECU and NEWU alleged that they requested NAPOCOR to release their COLA and AA on March 12, 2006.<sup>[28]</sup> NAPOCOR subsequently created a Committee<sup>[29]</sup> "to study ... the grant of [the] additional allowances[.]"<sup>[30]</sup>

On May 28, 2007, the Committee issued a Certification that the COLA and AA were not integrated into the salaries of NAPOCOR employees hired from July 1, 1989 to March 16, 1999.<sup>[31]</sup> NAPOCOR "thereafter referred the matter to the Department of Budget and Management[.]"<sup>[32]</sup>

On September 18, 2007, then Secretary of Budget and Management Rolando Andaya, Jr. (Secretary Andaya, Jr.) wrote a letter to NAPOCOR stating that the determination of whether the COLA and AA were factually integrated rested with it since the payment of the allowances did not require the prior approval of the Budget and Management Secretary.<sup>[33]</sup>

NECU and NEWU again requested the release of their COLA and AA pursuant to Secretary Andaya, Jr.'s letter. NAPOCOR again referred the matter to the Committee for further study. Due to the continued refusal of NAPOCOR to release the allowances, NECU and NEWU were constrained to file the Petition for Mandamus.<sup>[34]</sup>

In its Consolidated Comment before the trial court, the Office of the Solicitor

General, on behalf of NAPOCOR, alleged that the Notice of Position Allocation and Salary Adjustment (NPASA) of employees should be examined to find out if the COLA and AA were nevertheless integrated into the salaries despite the ineffectivity of DBM-CCC No. 10. The affected employees must also show that they suffered a diminution of pay as a result of its implementation. The Office of the Solicitor General likewise pointed out that the COLA and AA were not among those allowances specifically excluded in Section 12 of Republic Act No. 6758 and thus were deemed to have been included in the standardized salary rates.<sup>[35]</sup>

In their Reply with Motion for Judgment on the Pleadings before the trial court, NECU and NEWU submitted the following documents to prove right to COLA and AA:

- a. Letter of [NPC President] Del Callar dated October 9, 2007 categorizing the workers/employees of the NAPOCOR into three groups, viz:
  - a.1 NPC employees who were incumbent as of June 30, 1989 are no longer entitled to their COLA and AA from July 1, 1989 to December 31, 1993 since said allowances have been factually integrated into their salaries but entitled to COLA and AA from January 1, 1994 to March 15, 1999;
  - a.2 NPC employees hired between July 1, 1989 and December 31, 1993 are entitled to COLA and AA since said benefits were not factually integrated into their salaries from their date of employment up to March 15, 1999; and
  - a.3 NPC employees as of January 1, 1994 to March 15, 1999 are entitled to COLA and AA from their date of employment up to March 15, 1999.
- b. Certification issued by Mr. Alexander P. Japon, NPC's Senior Finance Department Manager dated April 22, 2008 admitting its obligation to pay COLAs and AAs due the NPC workers/employees as well as certifying the availability of funds in the amount of P8.5 Billion for the purpose and pursuant to DBM CCC No. 12; and
- c. Letter of [NPC President] Del Callar dated April 23, 2008 to the NAPOCOR Board certifying the NPC stand to pay the COLA and AA to the workers/employees.<sup>[36]</sup> (Citations omitted)

The Office of the Solicitor General filed an Omnibus Motion seeking to withdraw its appearance as counsel for NAPOCOR and asking for leave to intervene as the People's Tribune. The Motion stated that the position taken by NAPOCOR ran counter to the Office of the Solicitor General's stand that the COLA and AA were already integrated into the standardized salaries.<sup>[37]</sup>

The Department of Budget and Management likewise submitted a Supplemental Comment to the trial court, arguing that the COLA and AA were already integrated into the standardized salary rates, as shown in their Notice of Position Allocation and Salary Adjustment.<sup>[38]</sup> It further posited that *De Jesus* only applied in instances

where the integration of allowance was by "mere legal fiction"<sup>[39]</sup> and that *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* was similarly inapplicable since there was already a factual integration of allowances.<sup>[40]</sup> It likewise pointed out that the new compensation plan for NAPOCOR employees did not include the grant of additional COLA and AA and that the 2008 General Appropriations Act prohibited the use of savings for additional COLA and AA.<sup>[41]</sup> It maintained that the test to the entitlement of additional allowances was whether there was a diminution of pay as a result of the law's implementation and that mandamus only lied "where there is a clear legal right sought to be enforced."<sup>[42]</sup>

On November 28, 2008, the Regional Trial Court rendered its Decision<sup>[43]</sup> in favor of NECU and NEWU. According to the trial court, the determination of whether the COLA and AA had been factually integrated was already resolved when the NAPOCOR Committee certified that the COLA and AA of the employees from July 1, 1989 to December 31, 1993 were not factually integrated into their standardized salaries.<sup>[44]</sup> The trial court also cited *De Jesus, Philippine Ports Authority (PPA) Employees Hired After July 1, 1989, and Metropolitan Waterworks and Sewerage System v. Bautista, et al.*<sup>[45]</sup> in support of the conclusion that the employees were entitled to COLA and AA from 1989 to 1999 as a matter of right.<sup>[46]</sup> The dispositive portion of the Decision reads:

**WHEREFORE**, in the light of the foregoing considerations, judgment is hereby rendered in favor of the petitioners and intervenors NECU & NEWU and against the respondents National Power Corporation, its President and Board of Directors ordering them as follows:

1. To **RELEASE and to PAY** the amount of **SIX BILLION FOUR HUNDRED NINETY SIX MILLION FIFTY-FIVE THOUSAND THREE HUNDRED THIRTY NINE PESOS AND NINETY-EIGHT CENTAVOS [Php 6,496,055,339.98]**, Philippine Currency representing the COLAs and AAs and **TO PAY** the amount of **SEVEN HUNDRED FOUR MILLION SEVEN HUNDRED SEVENTY-SEVEN THOUSAND FIVE HUNDRED EIGHT HUNDRED (sic) PESOS AND SIXTY CENTAVOS [Php 704,777,508.60]**, Philippine Currency, representing **interest** computed from December 28, 2007, within 30 days from finality of this Decision to petitioners, intervenors and other non-union employees similarly situated.

The said monetary judgment shall earn another interest of **12%** per annum from date of finality of the decision until its full satisfaction.

2. To **PAY** Attorney's fees in the amount of **P100,000.00** in favor of the Petitioners and **P200,000.00** in favor of the Intervenors NECU & NEWU;

3. To **DEDUCT** the amount of **ONE HU[N]DRED FORTY-FIVE MILLION FOUR HUNDRED SIXTY-FOUR THOUSAND EIGHT HUNDRED SEVENTY-TWO PESOS AND FIFTY-FIVE CENTAVOS [Php 145,464,872.55]** representing the