

## EN BANC

[ G.R. No. 203072, October 18, 2016 ]

**DEVELOPMENT ACADEMY OF THE PHILIPPINES, PETITIONER,  
VS. CHAIRPERSON MA. GRACIA M. PULIDO TAN, COMMISSIONER  
JUANITO G. ESPINO, JR., COMMISSIONER HEIDI L. MENDOZA,  
AND COMMISSION ON AUDIT, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

Under Republic Act No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, "all allowances are deemed included in the standardized salary."<sup>[1]</sup> However, certain specified allowances are permitted to be given in addition to standardized salaries "due to the unique nature of the office and of the work performed by the employee."<sup>[2]</sup> Without a showing of any such uniqueness, additional financial awards cannot be sanctioned and the Commission on Audit would be right to have them disallowed. Still, even in the event of a disallowance, the approving officers and recipients incur no liability to refund for as long as they acted in good faith.

This resolves a Petition for Certiorari<sup>[3]</sup> praying that the assailed Decision No. 2012-119<sup>[4]</sup> dated July 17, 2012 filed by respondent Commission on Audit be set aside and that an order be issued lifting Notice of Disallowance No. DAP-06-001-(04)<sup>[5]</sup> dated June 27, 2006.

Notice of Disallowance No. DAP-06-001-(04) disallowed the amount of P4,862,845.71 representing petitioner Development Academy of the Philippines' payment of Financial Performance Award to its employees "for want of legal basis"<sup>[6]</sup> and for several deficiencies.

The Decision No. 2012-119 of the Commission on Audit affirmed Notice of Disallowance No. DAP-06-001-(04)<sup>[7]</sup>

In calendar year 2002, the Development Academy of the Philippines obligated P3,613,998.72 for the grant of Financial Performance Award to its officers and employees.<sup>[8]</sup>

Though the award was obligated in 2002, it was only in 2004 that implementing rules for its grant was issued: DAP Memorandum Circular No. MC-2004-003,<sup>[9]</sup> dated April 1, 2004; and its addendum, DAP Memorandum Circular No. MC-2004-003A<sup>[10]</sup> dated December 21, 2004. With these implementing rules in place, the release and grant of the Financial Performance Award, inclusive of the so-called "MANCOM Fee" and "Star Award," followed.

DAP Memorandum Circular No. MC-2004-003 stipulated that the following were entitled to the award, which was to be released in two (2) tranches:

- All regular employees (on board and/or separated as of release of the 1<sup>st</sup> tranche) who have rendered full-time service for at least six months in 2002; and,
- [Letter of Invitation]-based. staff who have rendered service of at least a total of six months in 2002, and who are currently engaged as of date of release.<sup>[11]</sup>

Only "[e]mployees who are administratively charged and meted a penalty of suspension in CY 2002"<sup>[12]</sup> were expressly excluded by DAP Memorandum Circular No. MC-2004-003A from the award. *In effect, the Financial Performance Award was made available to the Development Academy of the Philippines' employees en masse.*

On post-audit, Corporate Auditor Ignacio I. Alfonso issued Audit Observation Memorandum No. 05-003<sup>[13]</sup> dated March 8, 2005 and noted the following:

- (1) That an excess of P1,277,976.65 was paid, relative to the amount obligated in calendar year 2002 (i.e., P3,613,998.72), "which is eight (8%) percent of the annual basic salaries of employees;"<sup>[14]</sup> and that this excess amount was sourced from the 10% service charges paid by the Development Academy of the Philippines' clients, which service charges must — in accordance with the DAP Service Charge Scheme - be distributed only to employees in the DAP Conference Center, Tagaytay, as well as to some employees based in Pasig City;<sup>[15]</sup>
- (2) That the payment made in 2004 included some employees not included in the payroll, which was attached to the obligation made in calendar year 2002, and that there was no document supporting these additional employees' entitlement to the award;<sup>[16]</sup>
- (3) That there was no computation sheet for the award to each employee, which should have been "attached to the vouchers to facilitate validation of the correctness of the amount paid";<sup>[17]</sup>
- (4) That there was no legal basis for the payment and release of the MANCOM Fee and Star Award, and that there were also no computation sheets attached to the vouchers prepared for these;<sup>[18]</sup>
- (5) That the award was made without the approval and/or confirmation of the Development Academy of the Philippines'

Board of Trustees and Executive Committee, considering that its Charter "specifically provides that . . . the President of the Academy is tasked to submit for consideration of the Board of Trustees and the Executive Committee the policies and measures which he believes to be necessary to carry out the purpose of the Academy";<sup>[19]</sup>

- (6) That Letter of Invitation-based staff were not entitled to the Financial Performance Award;<sup>[20]</sup> and
- (7) That in calendar year 2004, another obligation for the award was made in the amount of P2,335,664.00.<sup>[21]</sup>

Acting on this Audit Observation Memorandum, the Commission on Audit's Legal and Adjudication Office-Corporate issued Notice of Disallowance No. DAP-06-001-(04)<sup>[22]</sup> disallowing the payment of P4,862,845.71, representing the Development Academy of the Philippines' payment of the Financial Performance Award to its employees "for want of legal basis"<sup>[23]</sup> and for the following deficiencies:

- (1) Lack of approval of the Development Academy of the Philippines' Board of Trustees and Executive Committee;
- (2) Lack of a Request for Obligation Allotments for the initial amount obligated (i.e., P3,613,998.72);
- (3) Lack of a clear-cut policy on the award computations made for each employee;
- (4) The amount paid exceeded the amount obligated in calendar year 2002 by P1,248,846.99;
- (5) That this excess amount was taken from the service charges paid by clients of the Development Academy of the Philippines, intended to be distributed to DAP Conference Center Tagaytay employees and DAP Pasig staff;
- (6) That consultants serving under letters of invitation were given the award despite not being entitled to it;
- (7) That no approval from the Civil Service Commission was obtained for the Development Academy of the Philippines' Program on Awards and Incentives for Service Excellence (PRAISE); and
- (8) That there were no documents to support or validate the entitlement of additional employees who were not listed on the payroll attached to the obligation made in calendar year 2002.<sup>[24]</sup>

Notice of Disallowance No. DAP-06-001-(04) identified the following liable persons:

- (a) Eduardo T. Gonzales, DAP President;
- (b) Segundo E. Romero, Jr., DAP Executive Vice President;
- (c) Lilian L. De Guzman, DAP Finance Department Officer-in-Charge;
- (d) Jocelyn Y. Ybañez, DAP Finance Department Supervisor;
- (e) Judilyn L. Aguinaldo, Payroll Officer;
- (f) Jocelyn Y. Denaco, DAP Treasury Office Supervisor;
- (g) Carolyn L. Rivera, DAP Human Resource Management and Development Office Officer-in-Charge;
- (h) Ramonesa R. Ricardo, DAP Human Resource Management and Development Office Director;
- (i) Angela R. Manikan, DAP Finance Department Director
- (j) Leonida D. Apolinario, Cash Disbursing Officer;
- (k) Danilo Filarca;
- (l) Paraluman S. Landicho, Cashier; and
- (m) All officers and employees who received the Financial Performance Award.

Thereafter, the Development Academy of the Philippines filed its Response to Notice of Disallowance ND No. DAP-06-001-(04)<sup>[25]</sup> addressed to Director Janet D. Nacion of the Commission on Audit's Legal and Adjudication Office-Corporate. This was forwarded to the Commission on Audit proper and treated as an appeal.<sup>[26]</sup>

In this Response, the Development Academy of the Philippines asserted that there was ample legal basis for the Financial Performance Award. Specifically, it cited:

First, Presidential Decree No. 807, otherwise known as the Civil Service Decree of the Philippines (the Civil Service Decree), Section 33<sup>[27]</sup> of which provides for the Employee Suggestions and Incentive Award System (ESIAS);

Second, Rule X, Section 5<sup>[28]</sup> of the Omnibus Rules Implementing Book V of the Administrative Code of 1987; and

Third, Rule V, Sections 2<sup>[29]</sup> and 3<sup>[30]</sup> of the Implementing Rules and Regulations of Republic Act No. 6713.<sup>[31]</sup>

It addressed the specific deficiencies noted by Notice of Disallowance No. DAP-06-001-(04), as follows:

- (1) The Board of Trustees noted/confirmed the payment of the Financial Performance Award as indicated by the minutes of its May 12, 2005 meeting.<sup>[32]</sup>
- (2) There was no Request for Obligation Allotments because the Development Academy of the Philippines is a government-

owned and controlled corporation with its own funds and system of obligating expenditures.<sup>[33]</sup>

- (3) It had a clear-cut policy on the Financial Performance Award computations as embodied in DAP Memorandum Circular No. MC-2004-003 dated April 1, 2004, and its addendum, DAP Memorandum Circular No. MC-2004-003A dated December 21, 2004.<sup>[34]</sup>
- (4) Additional employees were included after validation from the total list of personnel actually working in it; hence, the increase relative to the amount obligated in calendar year 2002.<sup>[35]</sup>
- (5) Its management had the prerogative to utilize amounts collected from service charges. This position was borne by Opinion No. 215, series of 2003, of the Office of the Government Corporate Counsel,<sup>[36]</sup> which explained that restrictions imposed by the Labor Code on the distribution of proceeds of service charges to employees applies only to the private sector, and not to a government corporation such as the Development Academy of the Philippines.<sup>[37]</sup>
- (6) Social justice and equity dictated that consultants whose services were engaged through letters of invitation be also given the Financial Performance Award.<sup>[38]</sup>
- (7) As evidenced in Civil Service Commission Director Velda C. Cornelio's June 6, 2006 letter,<sup>[39]</sup> the Civil Service Commission approved the Development Academy of the Philippines' Employee Suggestions and Incentive Award System, which encompasses the Financial Performance Award.<sup>[40]</sup>
- (8) The payroll attached to the original obligation made in calendar year 2002 was based on personnel estimates at the start of the year. This was revised to reflect the personnel who actually served in 2002, as could be validated in the "Employees Master List."<sup>[41]</sup> It added that this master list indicated the corresponding criteria for the award.<sup>[42]</sup>

In its assailed Decision No. 2012-119,<sup>[43]</sup> the Commission on Audit affirmed Notice of Disallowance No. DAP-06-001-(04). It noted that, the Development Academy of the Philippines' specific responses to each of the eight (8) deficiencies notwithstanding, it remained that there was no legal authority for the Financial Performance Award: "the grant of [Financial Performance Award] from its inception was not valid, and therefore, created no legal obligation and right."<sup>[44]</sup>

On September 5, 2012, the Development Academy of the Philippines filed the present Petition for Certiorari<sup>[45]</sup> ascribing grave abuse of discretion on the part of respondent Commission on Audit.