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[G.R. No. 199439, April 22, 2014]

CITY OF GENERAL SANTOS, REPRESENTED BY ITS MAYOR, HON. DARLENE MAGNOLIA R. ANTONINO-CUSTODIO PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

LEONEN, J.:

In order to be able to deliver more effective and efficient services, the law allows local government units the power to reorganize. In doing so, they should be given leeway to entice their employees to avail of severance benefits that the local government can afford. However, local government units may not provide such when it amounts to a supplementary retirement benefit scheme.

In this special civil action for certiorari,[1] the city of General Santos asks us to find grave abuse of discretion on the part of the Commission on Audit (COA). On January 20, 2011, respondent Commission on Audit affirmed the findings of its Legal Services Sector in its Opinion No. 2010-021 declaring Ordinance No. 08, series of 2009, as illegal. This was reiterated in respondent Commission's resolution denying the motion for reconsideration dated October 17, 2011.[2]

Ordinance No. 08, series of 2009, was enacted by the city of General Santos on August 13, 2009. It is entitled *An Ordinance Establishing the GenSan Scheme on Early Retirement for Valued Employees Security (GenSan SERVES)*.[3]

It is important to view this ordinance in its proper context.

Then mayor of General Santos City, Pedro B. Acharon, Jr., issued Executive Order No. 40, series of 2008, creating management teams pursuant to its organization development program. This was patterned after Executive Order No. 366 dated October 4, 2004 entitled *Directing a Strategic Review of the Operations and Organizations of the Executive Branch and Providing Options and Incentives for Government Employees who may be Affected by the Rationalization of the Functions and Agencies of the Executive Branch* and its implementing rules and regulations.[4]

Mayor Pedro B. Acharon, Jr. declared the city's byword of "Total Quality Service" in his state of the city address in 2005. This was followed by the conduct of a process and practice review for each department, section, and unit of the local government. The product was an organization development masterplan adopted as Executive Order No. 13, series of 2009.[5] This was followed by Resolution No. 004, series of 2009, requesting for the mayor's support for GenSan SERVES, an early retirement program to be proposed to the Sangguniang Panlungsod.

Consequently, Ordinance No. 08, series of 2009, was passed together with its implementing rules and regulations, designed "***to entice those employees who were unproductive due to health reasons to avail of the incentives being offered therein by way of early retirement package.***"[6]

This contextual background in the passing of Ordinance No. 08, series of 2009, was not contested by respondent Commission on Audit.

The ordinance, as amended, provides that qualified employees below sixty (60) years of age but not less than fifty (50) years and sickly employees below fifty (50) years of age but not less than forty (40) years may avail of the incentives under the program.[7] In other words, the ordinance "provides for separation benefits for sickly employees who have not yet reached retirement age."[8] Section 5 of the ordinance states:

> Section 5. *GenSan SERVES Program Incentives On Top of Government Service Insurance System (GSIS) and PAG-IBIG Benefits* – Any personnel qualified and approved to receive the incentives of this program shall be entitled to whatever retirement benefits the GSIS or PAG-IBIG is granting to a retiring government employee.
>
> Moreover, an eligible employee shall receive an early retirement incentive provided under this program at the rate of one and one-half (1 ½) months of the employee's latest basic salary for every year of service in the City Government.[9]

Also, the ordinance provides:

> Section 6. *GenSan SERVES Post-Retirement Incentives* – Upon availment of early retirement, a qualified employee shall enjoy the following in addition to the above incentives:
>
> (a) Cash gift of Fifty Thousand Pesos (P50,000.00) for the sickly employees;
>
> (b) Lifetime free medical consultation at General Santos City Hospital;
>
> (c) Annual aid in the maximum amount of Five Thousand Pesos (P5,000.00), if admitted at General Santos City Hospital; and
>
> (d) 14 karat gold ring as a token.[10]

As provided, payment would be made in two tranches: 50% paid in January 2010 and the remainder in July 2010.[11] Petitioner city alleged that out of its 1,361 regular employees, 50 employees applied, from which 39 employees qualified to avail of the incentives provided by the ordinance.[12] The first tranche of benefits

was released in January 2010.[13]

In a letter dated February 10, 2010, the city's audit team leader, through its supervising auditor, sent a query on the legality of the ordinance to respondent Commission on Audit's director for Regional Office No. XII, Cotabato City.[14]

In his second indorsement dated March 15, 2010, respondent Commission's regional director agreed that the grant lacked legal basis and was contrary to the Government Service Insurance System (GSIS) Act. He forwarded the matter to respondent Commission's Office of General Counsel, Legal Services Sector, for a more authoritative opinion.[15]

The Office of General Counsel issued COA-LSS Opinion No. 2010-021 on March 25, 2010. The opinion explained that Ordinance No. 08, series of 2009, partakes of a supplementary retirement benefit plan. In its view, Section 28, paragraph (b) of Commonwealth Act No. 186, as amended, prohibits government agencies from establishing supplementary retirement or pension plans from the time the Government Service Insurance System charter took effect while those plans already existing when the charter was enacted were declared abolished.[16]

The opinion discussed that this prohibition was reiterated in *Conte v. Commission on Audit.*[17] *Laraño v. Commission on Audit,*[18] on the other hand, ruled that an early retirement program should be by virtue of a valid reorganization pursuant to law in order to be valid. The opinion concludes as follows:

> In fine, since Ordinance No. 08 is in the nature of an ERP [Early Retirement Program] of the City Government of General Santos, a law authorizing the same is a requisite for its validity. In the absence, however, of such law, the nullity of Ordinance No. 08 becomes a necessary consequence.
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> It is hoped that the foregoing sufficiently answers the instant query.[19]

Petitioner city, through then mayor, Pedro B. Acharon, Jr., filed a letter-reconsideration dated June 7, 2010. They followed through with two letters addressed to respondent Commission's chairman dated July 26, 2010 and October 6, 2010, respectively, for the reconsideration of COA-LSS Opinion No. 2010-021.[20]

Respondent Commission on Audit treated these letters as an appeal. On January 20, 2011, it rendered its decision denying the appeal and affirming COA-LSS Opinion No. 2010-021.[21] It also denied reconsideration by resolution dated October 17, 2011.[22] The dispositive portion of its decision reads:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DENIED** for lack of merit and COA-LSS Opinion No. 2010-021 dated March 25, 2010 of the OGC, this Commission is hereby **AFFIRMED**. Accordingly, the ATL of General Santos City is hereby directed to issue a

> Notice of Disallowance on the illegal disbursements made under the Gen[S]san SERVES.[23]

Respondent Commission on Audit agreed that Ordinance No. 08, series of 2009, partakes of the nature of a supplementary retirement benefit plan proscribed by Section 28, paragraph (b) of Commonwealth Act No. 186 as amended. It also cited *Conte v. Commission on Audit*[24] and *Laraño v. Commission on Audit.*[25]

In its opinion, respondent Commission on Audit observed that GenSan SERVES was not based on a law passed by Congress but on ordinances and resolutions passed and approved by the Sangguniang Panlungsod and Executive Orders by the city mayor.[26] Moreover, nowhere in Section 76 of Republic Act No. 7160, otherwise known as the Local Government Code, does it provide a specific power for local government units to establish an early retirement program.

Mayor Acharon, Jr. submitted that other local government units such as Cebu in 2005 and 2008 have adopted their own early retirement programs. The resolutions of the Sangguniang Panlungsod of Cebu invoked Republic Act No. 6683 dated December 2, 1988, which provided for early retirement and voluntary separation. The questioned decision mentioned that respondent Commission on Audit would look into this program supposedly adopted by Cebu.[27] Assuming Cebu's invocation of Republic Act No. 6683 was proper, respondent Commission on Audit explained that this has already been amended by Republic Act No. 8291, otherwise known as the GSIS Act of 1997. Moreover, Section 9 of Republic Act No. 6683[28] provides for limited application.[29]

The present petition raises this sole issue:

> WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT CONSIDERED ORDINANCE NO. 08, SERIES OF 2009, IN THE NATURE OF AN EARLY RETIREMENT PROGRAM REQUIRING A LAW AUTHORIZING IT FOR ITS VALIDITY

I

This court has consistently held that findings of administrative agencies are generally respected, unless found to have been tainted with unfairness that amounted to grave abuse of discretion:

> It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction,

> that this Court entertains a petition questioning its rulings. ***There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism***.[30] (Emphasis supplied, citations omitted)

We have ruled that "not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion."[31] Grave abuse of discretion has been defined as follows:

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. x x x.[32]

In *Yap v. Commission on Audit*,[33] this court explained that the Commission on Audit has the duty to make its own assessment of the merits of the disallowance and need not be limited to a review of the grounds relied upon by the auditor of the agency concerned:

> x x x we rule that, in resolving cases brought before it on appeal, respondent COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds. In consonance with its general audit power, respondent COA is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned. To hold otherwise would render COA's vital constitutional power unduly limited and thereby useless and ineffective.[34]

Moreover, Article IX-A, Section 7 of the Constitution provides that "unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof." Rule 64, Section 2 of the Revised Rules of Civil Procedure also provides that "a judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided."

Thus, we proceed to determine whether respondent Commission on Audit acted with grave abuse of discretion in affirming the opinion of its Legal Services Sector and finding that the entire Ordinance No. 08, series of 2009, partakes of the nature of a