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[A.M. No. 03-9-02-SC, November 27, 2008]

RE: ENTITLEMENT TO HAZARD PAY OF SC MEDICAL AND DENTAL CLINIC PERSONNEL,

R E S O L U T I O N

TINGA, J.:

This administrative matter pertains to the latest of the spate of requests of some of the members of the Supreme Court Medical and Dental Services (SCMDS) Division in relation to the grant of hazard allowance.

In the Court's Resolution[1] of 9 September 2003, the SCMDS personnel were declared entitled to hazard pay according to the provisions of Republic Act (R.A.) No. 7305,[2] otherwise known as *The Magna Carta of Public Health Workers.* The resolution paved the way for the issuance of Administrative Circular No. 57-2004[3] which prescribed the guidelines for the grant of hazard allowance in favor of the SCMDS personnel. Now, eleven members of the same office: namely, Ramon S. Armedilla, Celeste P. Vista, Consuelo M. Bernal, Remedios L. Patricio, Madonna Catherine G. Dimaisip, Elmer A. Ruñez, Marybeth V. Jurado, Mary Ann D. Barrientos, Angel S. Ambata, Nora T. Juat and Geslaine C. Juan—question the wisdom behind the allocation of hazard pay to the SCMDS personnel at large in the manner provided in the said circular.

Administrative Circular No. 57-2004 (the subject Circular) initially classified SCMDS employees according to the level of exposure to health hazards, as follows: (a) physicians, dentists, nurses, medical technologists, nursing and dental aides, and physical therapists who render direct, actual and frequent medical services in the form of consultation, examination, treatment and ancillary care, were said to be subject to high-risk exposure; and (b) psychologists, pharmacists, optometrists, clerks, data encoders, utility workers, ambulance drivers, and administrative and technical support personnel, to low-risk exposure.[4] Accordingly, employees exposed to high-risk hazards belonging to Salary Grade 19 and below, and those belonging to Salary Grade 20 and above, were respectively given 27% and 7% of their basic monthly salaries as hazard allowances; whereas employees open to low-risk hazards belonging to Salary Grade 20 and above, and Salary Grade 19 and below, were respectively given 5% and 25% of their basic monthly salaries as hazard allowances.[5] This classification, however, was abolished when the Department of Health (DOH)—after reviewing the corresponding job descriptions of the members of the SCMDS personnel and the nature of their exposure to hazards—directed that they should all be entitled to a uniform hazard pay rate without regard for the nature of the risks and hazards to which they are exposed.[6] The dual 25% and 5% hazard allowance rates for all the members of the SCMDS personnel were retained.

In their Letter[7] dated 21 January 2005 addressed to then Chief Justice Hilario Davide, Jr., eleven of the SCMDS personnel concerned—who claim to be doctors with salary grades higher than 19[8] and who allegedly render front-line and hands-on services but receive less hazard allowance allocations than do those personnel who do not directly deliver patient care—lamented that the classification and the rates of hazard allowance implemented by the subject Circular seemed to favor only those belonging to Salary Grade 19 and below, contrary to the very purpose of the grant which is to compensate health workers according to the degree of exposure to hazards regardless of rank or status. They believe that the grant must be based not on the salary grade but rather on the degree of hazard to which they are actually exposed; thus, they asked for a reexamination of the subject Circular.[9]

However, even before the request could be acted upon by the Court, Secretary Francisco Duque III issued Administrative Order (A.O.) No. 2006-0011[10] on 16 May 2006. The administrative order prescribes amended guidelines in the payment of hazard pay applicable to all public health workers regardless of the nature of their appointment. It essentially establishes a 25% hazard pay rate for health workers with salary grade 19 and below but fixed the hazard allowance of those occupying positions belonging to Salary Grade 20 and above to P4,989.75 without further increases.[11] In view of this development, some of the SCMDS personnel concerned,[12] in another Letter dated 19 December 2007 and addressed to Chief Justice Reynato S. Puno, suggesting that the subject Circular be amended to conform to A.O. No. 2006-0011, and that they accordingly be paid hazard pay differentials accruing by virtue thereof.[13]

SCMDS Senior Chief Staff Officer Dr. Prudencio Banzon, Jr. indorsed the letter to Deputy Clerk of Court and Chief Administrative Officer Atty. Eden Candelaria (Atty. Candelaria).[14] On 15 January 2008, Atty. Candelaria issued a Memorandum[15] finding merit in the request to amend the subject Circular because A.O. No. 2006-0011 suggests more equitable guidelines on the allocation of hazard allowances among health workers in the government.[16] Accordingly, she recommended that: (a) the classification as to whether employees are exposed to high or low-risk hazard, as found in the Circular, be abolished and instead replaced by the fixed rates provided in A.O. No. 2006-0011; and that (b) the payment of the adjusted hazard allowance be charged against the regular savings of the Court.[17]

In its Resolution[18] dated 22 January 2008, the Court referred Atty. Candelaria's memorandum to the Fiscal Management and Budget Office (FMBO) and to the Office of the Chief Attorney (OCAT) for comment.

The OCAT posits that the subject Circular may not be amended in accordance with A.O. No. 2006-0011 and in the manner the personnel concerned desire because, first, the mechanics of payment established by the administrative order is of doubtful validity; and second, the said administrative order has not been duly published and hence not binding on the Court.[19] It also points out that the administrative order does not conform to Section 21 of R.A. No. 7305 in which the rates of hazard pay are clearly based on salary grade.[20]

The FMBO advances a contrary position. It maintains that the subject Circular may be amended according to the terms of A.O. No. 2006-0011 inasmuch as the latter could put to rest the objection of the personnel concerned to the allegedly unreasonable and unfair allocation of hazard pay. Additionally, it recommends that once the amendment is made, the hazard allowances due the SCMDS personnel be charged against the savings from the regular appropriations of the Court.[21]

This Court has to deny the request because the subject Circular cannot be amended according to the mechanism of hazard pay allocation under AO No. 2006-0011 without denigrating established administrative law principles.

Essentially, hazard pay is the premium granted by law to health workers who, by the nature of their work, are constantly exposed to various risks to health and safety.[22] Section 21 of R.A. No. 7305 provides:

> SEC. 21. *Hazard Allowance.*—Public health workers in hospitals, sanitaria, rural health units, main health centers, health infirmaries, barangay health stations, clinics and other health-related establishments located in difficult areas, strife-torn or embattled areas, distressed or isolated stations, prison camps, mental hospitals, radiation-exposed clinics, laboratories or disease-infested areas or in areas declared under state of calamity or emergency for the duration thereof which expose them to great danger, contagion, radiation, volcanic activity/eruption, occupational risks or perils to life as determined by the Secretary of Health or the Head of the unit with the approval of the Secretary of Health, shall be compensated hazard allowances equivalent to at least twenty-five percent (25%) of the monthly basic salary of health workers receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above.

The implementing rules of R.A. No. 7305 likewise stipulate the same rates of hazard pay. Rule 7.1.5 thereof states:

> 7.1.5 *Rates of Hazard Pay*
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> a. Public health workers shall be compensated hazard allowances equivalent to at least twenty-five percent (25%) of the monthly basic salary of health workers receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above. This may be granted on a monthly, quarterly or annual basis. x x x

In a language too plain to be mistaken, R.A. No. 7305 and its implementing rules mandate that the allocation and distribution of hazard allowances to public health workers within each of the two salary grade brackets at the respective rates of 25% and 5% be based on the salary grade to which the covered employees belong. These same rates have in fact been incorporated into the subject Circular to apply to all SCMDS personnel. The computation of the hazard allowance due should, in turn, be based on the corresponding basic salary attached to the position of the employee concerned.

To be sure, the law and the implementing rules obviously prescribe the minimum rates of hazard pay due all health workers in the government, as in fact this is

evident in the self-explanatory phrase "at least" used in both the law and the rules. No compelling argument may thus be offered against the competence of the DOH to prescribe, by rules or orders, higher rates of hazard allowance, provided that the same fall within the limits of the law. As the lead agency in the implementation of the provisions of R.A. No. 7305, it has in fact been invested with such power by Section 35.[23] Be that as it may, the question that arises is whether that power is broad enough to vest the DOH with authority to fix an exact amount of hazard pay accruing to public health workers with Salary Grade 20 and above, deviating from the 5% monthly salary benchmark prescribed by both the law and its implementing rules.

The DOH possesses no such power.

Fundamental is the precept in administrative law that the rule-making power delegated to an administrative agency is limited and defined by the statute conferring the power. For this reason, valid objections to the exercise of this power lie where it conflicts with the authority granted by the legislature.[24]

A mere fleeting glance at A.O. No. 2006-0011 readily reveals that the DOH, in issuing the said administrative order, has exceeded its limited power of implementing the provisions of R.A. No. 7305. It undoubtedly sought to modify the rates of hazard pay and the mechanism for its allocation under both the law and the implementing rules by prescribing a uniform rate—let alone a fixed and exact amount—of hazard allowance for government health workers occupying positions with salary grade 20 and above. The effect of this measure can hardly be downplayed especially in view of the unmistakable import of the law to establish a scalar allocation of hazard allowances among public health workers within each of the two salary grade brackets.

Section 19[25] of R.A. No. 7305 recognizes, for its own purposes, the applicability of the provisions of R.A. No. 6758[26] (The Salary Standardization Act of 1989) in the determination of the salary scale of all covered public health workers. Telling is this reference to the scalar schedule of salaries when viewed in light of the fact that factoring in the salaries of individual employees and the applicable uniform rate of hazard allowance would yield different results which, when charted against each other, would also bear the scalar schedule intended by the law.

The object, in other words, of both the law and its implementing rules in providing a uniform rate for each of the two groups of public health workers is to establish a scalar allocation of the cash equivalents of the hazard allowance within each of the two groups. A scalar schedule of hazard pay allocation within the Salary Grade 20 and higher bracket can indeed be achieved only by multiplying the basic monthly salary of the covered employees by a constant factor that is 25% as the fixed legal rate. Even without an express reference to the scalar schedule of salaries under R.A. No. 6758, it can nevertheless be inferred that R.A. No. 7305, by mandating a fixed rate of hazard allowance for each of the two groups of health workers, intends to achieve the same effect.

Hence, it can only be surmised that the issuance of AO No. 2006-0011 is an attempt to amend the rates of hazard allowance and the mechanism for its allocation as provided for in R.A. No. 7305 and the implementing rules because it has the effect

of obliterating the intended discrepancy in the cash equivalents of the hazard allowance for employees falling within the bracket of Salary Grade 20 and above. Without unnecessarily belaboring this point, the Court finds that the administrative order violates the established principle that administrative issuances cannot amend an act of Congress.[27] It is void on its face, but only insofar as it prescribes a predetermined exact amount in cash of the hazard allowance for public health workers with Salary Grade 20 and above.

Indeed, when an administrative agency enters into the exercise of the specific power of implementing a statute, it is bound by what is provided for in the same legislative enactment[28] inasmuch as its rule-making power is a delegated legislative power which may not be used either to abridge the authority given by the Congress or the Constitution or to enlarge the power beyond the scope intended.[29] The power may not be validly extended by implication beyond what may be necessary for its just and reasonable execution.[30] In other words, the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of a law, inasmuch as the power is confined to implementing the law or putting it into effect.[31] Therefore, such rules and regulations must not be inconsistent with the provisions of existing laws, particularly the statute being administered and implemented by the agency concerned,[32] that is to say, the statute to which the issuance relates. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it.[33]

It must be stressed that the DOH issued the rules and regulations implementing the provisions of R.A. 7305 pursuant to the authority expressly delegated by Congress. Hence, the DOH, as the delegate administrative agency, cannot contravene the law from which its rule-making authority has emanated. As the cliché goes, the spring cannot rise higher than its source.[34] In this regard, Fisher observes:

> x x x The often conflicting and ambiguous passages within a law must be interpreted by executive officials to construct the purpose and intent of Congress. **As important as intent is the extent to which a law is carried out.** President Taft once remarked, "Let anyone make the laws of the country, if I can construe them."
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> To carry out the laws, administrators issue rules and regulations of their own. The courts long ago appreciated this need. Rules and regulations "must be received as the acts of the executive, and as such, be binding upon all within the sphere of his legal and constitutional authority. Current law authorizes the head of an executive department or military department to prescribe regulations "for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.
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> These duties, primarily of a "housekeeping" nature, relate only distantly to the citizenry. Many regulations, however, bear directly on the public. It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the