

EN BANC

[G. R. NO. 146824, November 21, 2007]

**ENCARNACION E. SANTIAGO, PETITIONER, VS. COMMISSION ON
AUDIT AND THE DIRECTOR OF THE COMMISSION ON AUDIT,
REGIONAL OFFICE NO. V, RESPONDENTS.**

RESOLUTION

AZCUNA, J.:

On September 13, 2007, petitioner filed a motion for clarification of the dispositive portion of the Decision in this case which was promulgated on June 15, 2006. The dispositive portion reads:

WHEREFORE, the petition is **PARTLY GRANTED** in that respondent COA is authorized merely to withhold petitioner's salary but not to apply it to the alleged shortage for which her liability is still being litigated. No costs.

SO ORDERED.

Petitioner informed the Court that upon the directive of the Bureau of Local Government Finance Executive Director Ma. Presentacion R. Montesa, she is back to her regular station and formally assumed office as the Municipal Treasurer of Goa, Camarines Sur, on February 26, 2007.

In a letter dated August 13, 2007, petitioner requested respondents and the Municipal Mayor of Goa, Camarines Sur, to pay her representation allowance, additional compensation allowance, productivity bonus, year-end bonus, clothing allowance and other benefits, excluding her salary, from October 1998 up to the present based on the dispositive portion of the Decision.

In a letter dated August 22, 2007, respondent Commission on Audit (COA), through the Regional Cluster Director, replied that the items requested cannot be paid to petitioner because this Court has already clarified the issue when it stated in the body of the Decision that ". . . COA can direct the proper officer to withhold petitioner's salary and other emoluments. . . ." According to COA, "emoluments" necessarily include all allowances and any money due petitioner.

Petitioner prays that the dispositive portion of the Decision be clarified as to whether the emoluments due her as Municipal Treasurer are excluded from the item that respondents can withhold, so that in the event that the said emoluments are excluded, the same can be paid to her.

The *Philippine Law Dictionary*, third edition, by Federico B. Moreno, defines "emolument" as:

Fees, fixed salary, and compensation which the incumbent of an office is by law entitled to receive because he holds such office or performed some service required of the occupant thereof.

The term "emolument" includes salary, fees, compensation, perquisites, pensions and retirement benefits. — Philippine Constitutional Association Inc. v. Gimenez, 122 Phil. 904.

In petitioner's special civil action for *certiorari*, she prayed that judgment be issued setting aside the Director's First Indorsement dated January 25, 2000, the Commission's Letters dated December 8, 2000 and January 22, 2001, the Second Indorsement dated December 8, 2000; **and that the respondents, including the Municipal Mayor of Goa, Camarines Sur, be ordered to immediately pay her salary in the accumulated amount of P124,606.21, and the salary accruing after the month of July 1999 to which she may be entitled.**^[1]

The Court took cognizance of the petition insofar as it raised this question of law:

Can the salary of a government employee be ordered withheld, retained and applied to the payment of public funds [in the amount of P3,580,378.80] allegedly embezzled under the employee's care on the basis of an audit report and the filing of an administrative case and a criminal case for malversation of public funds?

Stated otherwise, may State Auditor del Rosario direct that the salary and other emoluments of petitioner be withheld and applied to her cash shortage determined merely in an audit examination?^[2]

The Court held:

Regarding the propriety of withholding the petitioner's salary, **the Court holds that COA can direct the proper officer to withhold petitioner's salary and other emoluments** under Section 21, Chapter 4, Subtitle B, Book V of the Administrative Code of 1987, which is substantially the same as Section 37 of PD No. 1445, the legal basis of COA. . . .

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It is noted that the directive of State Auditor Del Rosario to the Municipal Mayor of Goa, Camarines Sur to withhold the salary of petitioner is in accordance with the COA Guidelines to the Examiner/Auditor in case of a cash shortage contained in Chapter 3 of the COA Handbook on Cash Examination

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The State Auditors' finding of cash shortage against petitioner municipal treasurer, which has not been satisfactorily disputed, is *prima facie* evidence against her. The *prima facie* evidence suffices for the withholding of petitioner's salary, in order to safeguard the interest of the Government.