

EN BANC

[**G.R. NO. 138381 AND G.R. NO. 141625, February 09, 2006**]

GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. ALFREDO D. PINEDA, DANIEL GO, FELINO BULANDUS, FELICIMO J. FERRARIS, JR., BEN HUR PORLUCAS, LUIS HIPONIA, MARIA LUISA A. FERNANDEZ, VICTORINA JOVEN, CORAZON S. ALIWANAG, SILVER L. MARTINES, SR., RENATO PEREZ, LOLITA CAYLAN, DOUGLAS VALLEJO AND LETICIA ALMAZAN, ON THEIR OWN BEHALF AND ON BEHALF OF ALL GSIS RETIREES WITH ALL OF WHOM THEY SHARE A COMMON AND GENERAL INTEREST, RESPONDENTS.

RESOLUTION

YNARES-SANTIAGO, J.:

Before us is a Motion to Order the Court of Origin to Issue Writ of Execution^[1] filed by respondents in G.R. No. 141625, to compel petitioner Government Service Insurance System (GSIS) to execute this Court's final and executory Resolution^[2] promulgated on November 10, 2004.

In said resolution, the Court held that Commission on Audit (COA) disallowances cannot be deducted from retirement benefits as the same are explicitly exempt from such deductions under Section 39 of Republic Act No. 8291. Consequently, petitioner GSIS was ordered to refund to respondents all deductions from the latter's retirement benefits except amounts representing respondents' monetary liability to the GSIS as well as other amounts mutually agreed upon by the parties.

According to respondents, they filed a Motion for Issuance of Writ of Execution^[3] with the "court of origin," the GSIS Board of Trustees (GSIS Board), upon entry of judgment in this case. Until the present time, however, the Board has not acted upon their motion and continues to refuse to do so. The GSIS Board is allegedly using, as an excuse for avoiding refund of all deductions, the "authorizations" they executed permitting the GSIS to deduct COA disallowances from their retirement benefits. However, said "authorizations" are void since these were forced upon respondents as a pre-condition for the processing of their retirement applications and are, in fact, contrary to law and public policy.

Respondents further allege that while, under the principle of *solutio indebiti*, they are obligated to return to the GSIS amounts representing benefits which were properly disallowed by the COA, the Court's resolution is clear that the GSIS must seek recovery thereof only through a proper court action. In other words,