

EN BANC

[G.R. NO. 146824, June 15, 2006]

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

DECISION

AZCUNA, J.:

This is a special civil action for certiorari raising a question of law: Can the salary of a government employee be ordered withheld, retained and applied to the payment of public funds allegedly embezzled under the employee's care on the basis of an audit report and the filing of administrative and criminal cases against the employee?

The antecedents are as follows:

On June 16, 1998, COA State Auditors Erlinda B. del Rosario and Rodolfo T. Follero, assigned at the Provincial Auditor's Office, Pili, Camarines Sur, examined the cash and accounts of petitioner municipal treasurer covering the period from June 1997 to June 1998. As a result of the examination, the auditors made these findings:

1. Municipal Treasurer Encarnacion E. Santiago was found short of her accountability totaling P3,580,378.80;
2. Rampant manipulation of books of account perpetrated by Municipal Treasurer Encarnacion E. Santiago and Municipal Accountant Designate Generoso V. Ortua were detected by the examining auditors during their audit.
3. Trust liabilities under General Fund totaling P3,439,868.07 were not remitted to the agencies concerned in violation of GSIS Act of 1997.
4. All vouchers covering cash advances were not certified by the Municipal Budget Officer as to the existence of appropriation, which is a violation of Sec. 344 of the Local Government Code of 1991.
5. Cash advances made by Claro G. Pitallano, Cashier II, totaling P5,031,746.57 were granted by means of cash transfer from Municipal Treasurer Encarnacion E. Santiago which is in gross violation of Section 4.1.6 of COA Circular No. 97-002 dated February 10, 1997.
6. Cash advances were drawn by Municipal Treasurer Encarnacion E. Santiago with no legal specific purpose. Additional cash advances were likewise drawn even if the previous cash advances given were

not settled, nor proper accounting was made, which is in violation of Sec. 339 of the Local Government Code in relation to Sec. 4.1.1 and 4.1.2 of COA Circular No. 97-002 dated February 10, 1999.

7. Payments for recurring expenses exceeding P15,000 were paid by Municipal Treasurer Encarnacion E. Santiago out of her cash advances in violation of Section 4.3.2 of COA Circular No. 97-002 dated February 10, 1997.

8. Report of Collection and Disbursements together with the corresponding journals and supporting documents were not prepared and submitted to the auditor on the date required under Sections 8 and 9 of the Manual on the Certificate of Settlement and Balances.^[1]

Petitioner was informed about her cash shortage of P3,580,378.80 in a demand letter dated August 19, 1998.

On September 11, 1998, petitioner submitted her letter of explanation for the cash shortage with a notation that she will submit the liquidation documents on or before September 23, 1998.

In her Comment, respondent COA Director Linda N. Solite, Regional Office No. V, Legazpi City, stated that petitioner did not fulfill her promise to submit the liquidation documents by September 23, 1998. But petitioner wrote a letter to the Provincial Treasurer, Camarines Sur requesting that she be detailed at the said office "in view of the lack of confidence of the present administration with the undersigned."

Due to the cash shortage and the failure of petitioner to submit all the supporting documents enumerated in the demand letter dated August 19, 1998, State Auditors del Rosario and Follero informed petitioner through a letter dated September 24, 1998 that she was relieved from her duties and responsibilities as municipal treasurer effective September 24, 1998 in accordance with paragraph 2,^[2] Section 348 of Republic Act No. 7160.^[3] The Municipal Mayor and Municipal Accountant were also informed of the fact.

Thereafter, a second demand letter dated November 23, 1998 was sent to petitioner Santiago reiterating her cash shortage of P3,580,378.80 and apprising her of additional credits to her accountability. A final demand was made on petitioner to submit immediately all supporting documents stated in the accompanying schedules and to submit within 72 hours a written explanation why said documents were not submitted within the reglementary period.

In her Comment, respondent COA Region V Director stated that petitioner Santiago did not dispute the shortage in the second demand letter. Accordingly, COA, through Director Lourdes M. Castillo of Regional Office No. V, Rawis, Legazpi City, filed with the Office of the Ombudsman a complaint on June 24, 1999 for Malversation of Public Funds against petitioner, Municipal Accountant Generoso Ortua and Cashier II Claro Pitallano. Upon a finding of probable cause against petitioner, two criminal cases were filed against her with the Regional Trial Court,

Fifth Judicial Region, Branch 58, San Jose, Camarines Sur, which are still pending. In addition, an administrative case was filed on December 13, 1999 against petitioner with the Civil Service Commission, Regional Office No. V, Legazpi City, which case is still pending.

In a letter^[4] dated July 20, 1999, State Auditor del Rosario directed Municipal Mayor Marcel S. Pan of Goa, Camarines Sur to "withhold payment of the salary and other emoluments due Mrs. Encarnacion E. Santiago or so much thereof as may be necessary, effective immediately and to apply the said withheld amounts in full satisfaction of her x x x shortage of P3,580,378.80" pursuant to Section 37 of Presidential Decree (PD) No. 1445, otherwise known as the "Government Auditing Code of the Philippines," which provides:

Sec. 37. *Retention of money for satisfaction of indebtedness to government.* - When any person is indebted to any government agency, the Commission [on Audit] may direct the proper officer to withhold the payment of any money due such person or his estate to be applied in satisfaction of the indebtedness.^[5]

Due to the directive of State Auditor del Rosario, petitioner was not able to collect her salary for the period from October 1998 to July 1999. After five (5) checks in payment of her salary were issued, the Municipal Mayor of Goa, Camarines Sur, endorsed the checks and the proceeds thereof, in the total amount of P124,606.20, was used to pay petitioner's cash shortage, which is evidenced by official receipts^[6] of the Republic of the Philippines.

In a letter dated January 7, 2000 to the COA Director of Regional Office No. V, Legazpi City, petitioner requested reconsideration of the directive to withhold payment of her salary and other emoluments. She asserted that there is no valid basis for the application of her salary, without her consent, to the unconfirmed accountability, and that there is no final judicial order that she incurred such accountability, citing as legal basis *Villanueva v. Tantuico, Jr.*^[7]

In a First Indorsement dated January 25, 2000, COA Regional Office No. V denied petitioner's request for reconsideration on the ground that the ruling in *Villanueva* is not applicable in this case. It anchored its decision on COA Decision No. 97-084 dated January 28, 1997 and held that State Auditor del Rosario acted within the bounds of law in issuing the directive.

Petitioner appealed from the denial to COA. In a letter dated March 8, 2000, COA informed petitioner to litigate the appeal in accordance with its Revised Rules of Procedure. In compliance, petitioner reproduced her appeal in a Petition for Review. After the COA Director of Regional Office No. V, Legazpi City filed an Answer to the petition, petitioner filed a motion for early resolution of the petition on the ground that the issue was purely a legal one.

In a letter dated December 8, 2000, COA, through its General Counsel, informed the counsel of petitioner that the motion for early resolution cannot be given due course since the Commission temporarily archived the petition for review until the final resolution of the pending criminal and administrative cases against petitioner.

Petitioner's motion for reconsideration was denied by COA in a letter dated January

22, 2001. COA, through its General Counsel, stated that the Commission decided to archive the petition for review pending resolution of the related criminal and administrative cases filed with the appropriate tribunals in order not to preempt their respective decisions. It emphasized, thus:

" . . . Clearly stated, what this Commission has denied is your Motion for Early Resolution and not the Petition for Review. The Commission has its legal grounds in withholding the salary of the petitioner until the amount defalcated has been satisfied."

Hence, petitioner filed this petition.

Petitioner states that the issue she raised before COA is whether the State Auditor can order the suspension and retention of her salary based merely on an audit finding of a shortage in her account and the pendency of the criminal case against her. She contends that in archiving her petition for review to await the resolution of the administrative and criminal actions against petitioner, COA, in effect, sustained the decision of COA Regional Office No. V and adversely resolved her petition.

Petitioner alleges that she is filing this petition for review of the judgment of COA under Rule 64 of the Rules of Court if COA's denial of her motion for reconsideration may be considered a final decision of COA of the petition. However, if the action of COA is not yet appealable, petitioner submits that this petition should alternatively be considered as a petition for certiorari under Rule 65, there being no appeal nor any plain and speedy remedy in the ordinary course of law.

Petitioner prays 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^[8] 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.

It is true that COA has not yet formally ruled on the petition for review of petitioner because it archived the same to await the resolution of the pending criminal and administrative cases it filed against petitioner. The Court notes, however, that in the letter dated January 22, 2001 denying petitioner's motion for reconsideration of the denial of her motion for early resolution, COA, through its General Counsel, maintained that "[t]he Commission has its legal grounds in withholding the salary of the petitioner until the amount defalcated has been satisfied."

The Court takes cognizance of this petition insofar as it raises this question of law: Can the salary of a government employee be ordered withheld, retained and applied to the payment of public funds 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?

Petitioner contends that there is no legal basis for the seizure of her salaries and