

EN BANC

[G.R. No. 157001, October 19, 2004]

**HOME DEVELOPMENT MUTUAL FUND REPRESENTED BY ITS
ACTING PRESIDENT AND CHIEF EXECUTIVE OFFICER, ATTY.
ROMERO FEDERICO S. QUIMBO, PETITIONER, VS. COMMISSION
ON AUDIT REPRESENTED BY THE CHAIRMAN, GUILLERMO N.
CARAGUE, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a special civil action for *certiorari*^[1] to reverse the Decision dated 22 August 2002^[2] and the Resolution dated 30 January 2003^[3] of the Commission on Audit ("COA"). The COA sustained the decision of the Corporate Audit Office, which affirmed the disallowance of payment of amelioration allowance by the Home Development Mutual Fund ("HDMF") to the DBP Service Corporation ("DBPSC") personnel.

The Antecedent Facts

The HDMF is a government-owned and controlled corporation created under Presidential Decree No. 1752 ("PD 1752"),^[4] as amended. On 25 March 1995, the HDMF entered into a Contract for Manpower Services with DBPSC for a period starting from 1 January 1995 to 31 December 1995 ("1995 Contract"). On 2 May 1996, the HDMF renewed the Contract for another year under the same terms and conditions, from 1 January 1996 to 31 December 1996 ("1996 Contract"). The HDMF again renewed the Contract on 18 March 1997 for a period starting from 1 January 1997 to 31 December 1997 ("1997 Contract"). The Contracts provide that DBPSC shall supply HDMF temporary manpower services, such as the services rendered by clerks, encoders, messengers and janitors, in accordance with the schedules required by HDMF.

On 2 June 1997, the HDMF Board of Trustees approved Resolution No. 1313, Series of 1997, granting amelioration allowance to its employees, including the DBPSC personnel assigned to its head office. The grant covered employees who were in HDMF's service on 31 December 1996, provided they were still in the service at the time of its approval. The amelioration allowance was chargeable against HDMF's 1996 approved budget.^[5] The amelioration allowance, equivalent to one month basic salary but not less than P10,000, was released on 24 June 1997.

On 29 September 1997, State Auditor IV Delma M. Villaflor conducted a post audit of the payment of P1,376,666.67 amelioration allowance to the DBPSC personnel. She found that there was no legal basis for the grant of such allowance to

employees of an independent contractor and thus disallowed the same.^[6]

The HDMF sought to lift the notice of disallowance in a letter dated 21 October 1997 addressed to Corporate Auditor Winnie Rose H. Encallado ("Encallado").^[7] Encallado replied in a letter dated 12 November 1997 to HDMF President and Chief Executive Officer, Ms. Zorayda Amelia C. Alonzo ("Alonzo"), that she would not reconsider the disallowance. Encallado advised Alonzo to seek further remedy with the COA by an appeal.^[8]

Alonzo again moved for the reconsideration of the disallowance in a letter dated 13 February 1998 to then COA Chairman Celso D. Gangan.^[9] The COA, in a letter dated 24 April 1998 sent by Commission Secretary Sofronio L. Flores, Jr., returned Alonzo's letter "without action" for failure to comply with the provisions of the 1997 Revised Rules of Procedure of the Commission on Audit.^[10]

Alonzo wrote another letter dated 8 May 1998 to Encallado, justifying the grant of the amelioration allowance and requesting reconsideration of the disallowance.^[11] Encallado denied Alonzo's request in a letter dated 15 May 1998, and recommended recourse by appeal to the Director of the Corporate Audit Office I pursuant to the 1997 Revised Rules of Procedure of the COA.^[12]

Alonzo filed a notice of appeal dated 20 May 1998.^[13]

On 29 December 1998, the Corporate Audit Office ("CAO") rendered a Decision denying HDMF's appeal.^[14] The CAO ruled:

This Office finds the foregoing contentions untenable. The doctrine of autonomy of contracts is not challenged in the case at bar. Records show that the Contract for Manpower Services dated March 18, 1997 which is being cited by Appellant to have contained stipulations that HDMF could grant additional benefits to DBPSC personnel is the Renewal Service Contract for the year 1997. This is the pivotal point in this case since COA Auditor asserts that what has been paid on June 24, 1997 was the amelioration allowance for 1996. And this is corroborated by the Affidavit dated October 17, 1997 of Mr. Vicente D. Julian, Jr. who is the Chief of Division of the Benefits and Compensation, Human Resources Management and Development Department, HDMF, that the proposal and subsequent Board Approval (Board Resolution No. 1313, series 97) for the grant of an amelioration allowance covers employees of the Fund as of December 31, 1996.

It is worth stressing that the 1996 Renewal Contract for Manpower Services did not provide or stipulate that HDMF could grant additional allowance/benefits whatsoever to DBPSC personnel who are under contract with HDMF.

Assuming *arguendo* that what has been paid on June 24, 1997 was the 1997 amelioration allowance, still the same is bereft of legal basis since Administrative Order No. 365 dated October 10, 1997 which authorized the grant of amelioration assistance to government personnel expressly

prohibits payment of said benefit to those serving under service contract (Section 1, AO 365). Such being the case, the principle of vested right cannot be invoked since there is no legal right to receive the allowance in question.

Premises considered, the within appeal of the Home Development Mutual Fund (HDMF) is hereby denied. Accordingly, the disallowance on the payment of amelioration allowance to DBP Service Corporation personnel assigned at HDMF embodied under ND No. 97-006-101(97) in the aggregate amount of P1,376,666.67 is hereby affirmed. Likewise, ND No. 97-001-101(97) which pertains to amelioration allowance paid to DBPSC personnel assigned at HDMF Baclaran Branch is affirmed.^[15]

Dissatisfied with the decision, the HDMF appealed to the COA for relief through a petition for review.

The Ruling of the Commission on Audit

In its decision dated 22 August 2002, the COA affirmed the disallowance of amelioration benefits to DBPSC personnel. The COA ruled:

The Director, Corporate Audit Office I correctly opined that under Section 2 of Administrative Order No. 365, all Heads of NGA's, LGU's including GOCC's and GFI's as well as their governing boards are enjoined and prohibited from authorizing/granting amelioration assistance or any other similar benefit without prior approval and authorization as specifically provided by the Office of the President. Granting that Administrative Order No. 365 is not applicable in this case, petitioner's contention on the legality of the payment of amelioration allowance is largely dependent on its contract with DBPSC. The Contract for Manpower Services dated March 18, 1997 cited by petitioner to have contained stipulations that HDMF could grant additional benefits to DBPSC personnel is actually the Renewal Service Contract for the year 1997. The Original Service Contract in 1995 as well as the Renewal Contract for 1996 did not contain any stipulation that DBPSC personnel are allowed to receive benefits from HDMF. Records, however, disclosed that in an affidavit dated October 17, 1997 executed by the Chief of Division of the Benefits and Compensation, Human Resources Management and Development of the HDMF, what has been paid on June 24, 1997 using the 1997 funds was the amelioration allowance for the year 1996. Moreover, it is without doubt that the HDMF Board of Trustees possesses the usual corporate powers for their effective governance. However, unlike private corporations, government corporations are circumscribed by laws which limit their governing boards' power in the adoption of rules and regulations as well as the authorization of expenditures. Every expenditure must have a legal basis and should not be contrary to law, rules and regulations. The use of 1997 funds to pay amelioration allowance for the previous year without prior approval of the Office of the President is contrary to laws, rules and regulations.^[16]

WHEREFORE, premises considered, the instant petition for review is hereby denied for lack of merit. Accordingly, the disallowance of the

amelioration allowance granted to DBPSC personnel in the total amount of P1,376,666.67 is hereby affirmed.^[17]

In a resolution dated 30 January 2003, the COA denied HDMF's motion for reconsideration and affirmed with finality its decision, prompting HDMF to come to this Court for relief.

The Issues

In its memorandum, HDMF raises the following issues:

1. Whether Administrative Order No. 365 issued on October 10, 1997, which expressly prohibits the payment of amelioration allowance to those serving under service contract, has retroactive effect to the payment made on June 24, 1997;
2. Whether the payment made in 1997 of the amelioration allowance for 1996, based on the stipulation for such benefit in the 1997 contract, is valid;
3. Assuming that the COA correctly disallowed the amelioration allowance for lack of legal basis, whether the COA should nevertheless allow such payment in audit since HDMF paid the amelioration allowance to the employees in good faith.^[18]

HDMF points out that it paid the amelioration allowance to the DBPSC personnel on 24 June 1997. Administrative Order No. 365 ("AO 365"),^[19] prohibiting the payment of amelioration allowance to persons serving under service contracts, was issued only on 10 October 1997. Hence, AO 365 cannot apply retroactively to the payment of amelioration allowance in 1996. HDMF asserts that the payment of amelioration allowance to DBPSC personnel was part of its contractual obligation in the 1997 Contract. Finally, HDMF maintains that the employees should retain the amelioration allowance already paid following the ruling of this Court in ***Association of Dedicated Employees of the Philippine Tourism Authority v. COA***.^[20]

The COA^[21] asserts that while the Contract between HDMF and DBPSC is the law between the contracting parties, the Contract cannot prevail over existing laws and regulations. Further, the COA insists that HDMF did not raise the defense of good faith in the proceedings below. The COA also argues that the case HDMF cites is not applicable to the present case for two reasons. First, the COA does not seek to make the HDMF officers personally liable for the refund of the amelioration allowance. Second, the DBPSC personnel are not government employees while the employees in ***Association of Dedicated Employees of the Philippine Tourism Authority*** were government employees. The COA also points out that existing laws limit the power of the governing boards of government corporations to promulgate rules, adopt budgets and authorize expenditures.

The Ruling of the Court

The petition is partly meritorious.

The COA correctly ruled that the grant of amelioration allowance to DBPSC

personnel has no legal basis.

The Applicability of Administrative Order No. 365

AO 365 authorized the grant of amelioration assistance to all government personnel for the fiscal year 1997, and prohibited payments of similar benefits in future years unless authorized by the President. AO 365 provides:

SECTION 1. All National Government Agencies, Government-Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), and Local Government Units are hereby authorized to grant Amelioration Assistance in the maximum amount of Seven Thousand Two Hundred Pesos (P7,200) each to their personnel, regardless of salary and appointment status, who have rendered at least four (4) months of service as of the payment of the said benefit **except those serving under service contract.**

Personnel who rendered less than four (4) months of service shall be entitled to an amount proportionate to the actual service rendered while part-time personnel shall be entitled to one-half (1/2) of the benefit of a full-time personnel.

SECTION 2. **Heads of NGAs, LGUs including GOCCs and GFIs as well as their respective governing boards are hereby enjoined and prohibited from authorizing/granting Amelioration Assistance or any other similar benefit without prior approval and authorization via Administrative Order by the Office of the President.** Henceforth, anyone found violating any of the provisions of this Order, including all officials/employees and the COA Resident Auditor of such government entity found to have taken part thereof, shall be accordingly and severely dealt with in accordance with the applicable provisions of existing administrative and penal laws.

Consequently, all administrative authorizations granting any and all forms of additional compensation paid outside of the prescribed basic salary under RA 6758 that are inconsistent with the legislated policy on the matter or are not covered by any legislative action are hereby revoked.

SECTION 3. **All government entities which authorized the payment of Amelioration Assistance in 1997 in excess of the amount authorized herein are hereby directed to cause the refund of the excess within a period of three (3) months to commence after the issuance of this Order.**

SECTION 4. **Entities are hereby allowed to pay the benefit herein authorized out of any available savings for FY 1997.** In case of deficiency, the benefit shall be partially and uniformly implemented. No additional funds for the purpose shall be released by the Department of Budget and Management. (Emphasis supplied)

AO 365 took effect on 10 October 1997. The HDMF Board of Trustees approved on 2 June 1997 Resolution No. 1313, Series of 1997, granting the amelioration allowance.