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[G.R. No. 152688, November 19, 2003]

PHILIPPINE INTERNATIONAL TRADING CORPORATION, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

Assailed in this petition for *certiorari*[1] is the March 5, 2002 decision of the respondent Commission on Audit (COA) in COA Decision No. 2002-044, [2] which disallowed the grant of Staple Food Incentive (SFI) in 1998 to the officers and employees of petitioner Philippine International Trading Corporation (PITC).

The undisputed facts show that in accordance with Department Order No. 79 (D.O. No. 79) of the Department of Trade and Industry (DTI), dated December 1, 1998, then Secretary Jose Trinidad Pardo granted, subject to the availability of savings of the respective bureaus/offices/GOCCs, a Staple Food Incentive (SFI) in the maximum amount of P7,200.00 each to the officials and employees of DTI bureaus, attached agencies and government owned and controlled corporations (GOCCs). This was in accordance with Rule X of the Omnibus Civil Service Rules. D.O. No. 79 further provided that in case of disallowance, the employee shall refund the incentive through salary deduction.[3]

Pursuant to D.O. No. 79, petitioner PITC, a government owned and controlled corporation attached to the DTI, issued Resolution No. 98-12-07 dated December 9, 1998, approving the grant of SFI to its officers and employees.[4] Consequently, PITC released the total amount of P1,094,400.00 as SFI for the year 1998.

On April 29, 1999, the Resident Auditor of PITC issued a Notice of Suspension[5] disallowing the grant of the SFI and requiring the PITC to submit the approval of such grant by the Department of Budget and Management (DBM), in accordance with Section 12 of Republic Act No. 6758, or the Salary Standardization Law.[6] PITC appealed to the Director, Corporate Audit Office II, who sustained the disallowance of the SFI.[7] PITC elevated the matter to the COA which, on March 5, 2002, affirmed the questioned disallowance. It ruled that the grant of SFI by PITC was an illegal disbursement of public funds under Section 12 of R.A. No. 6758. The dispositive portion of the COA decision, reads -

> WHEREFORE, premises considered, the instant petition for reversal of CAO II Decision dated November 9, 2000 cannot be given due course. Accordingly, the disallowance in question amounting to P1,094,400.00 is hereby affirmed. The Auditor, PITC, is hereby directed to enforce and monitor the settlement of the disallowance and to advise the Commission of the proper implementation of this decision.[8]

Hence, PITC filed the instant petition for *certiorari*, contending that -

I

> RESPONDENT COA COMMITTED SERIOUS ERROR IN DECIDING A QUESTION OF LAW IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR JURISPRUDENCE WHEN IT AFFIRMED THE COA-CAO II's 1'st INDORSEMENT DISALLOWING THE GRANT OF SFI FOR CY 1998 TO PITC OFFICERS AND EMPLOYEES DUE TO THE ABSENCE OF SPECIFIC APPROVAL FROM THE DBM PURSUANT TO SEC. 12 OF R.A. NO. 6758 (SALARY STANDARDIZATION LAW) DESPITE THE INEFFECTIVENESS AND UNENFORCEABILITY OF DBM-CCC NO. 10 WHICH COMPRISED THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF R.A. 6758.

II

> RESPONDENT COA COMMITTED SERIOUS ERROR IN DECIDING A QUESTION OF LAW IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR JURISPRUDENCE WHEN IT AFFIRMED THE COA-CAO II's 1'st INDORSEMENT DISALLOWING THE GRANT OF SFI FOR CY 1998 TO PITC OFFICERS AND EMPLOYEES WHILE OTHER RESIDENT AUDITORS OF THE DTI AND OF ITS ATTACHED BUREAUS, AGENCIES AND GOCCs ALLOWED THE SAME IN AUDIT, IN CLEAR VIOLATON OF THE RIGHT TO EQUAL PROTECTION OF THE LAWS GUARANTEED UNDER THE 1987 CONSTITUTION.[9]

On August 29, 2002, the Office of the Solicitor General (OSG) manifested that it cannot represent and maintain a stand consistent with COA because in November 1998, the officials and employees of the OSG likewise received the same Staple Food Incentive in the amount of P7,200.00 each. The OSG prayed that it be excused from filing a comment and that the COA be given a new period within which to file its comment.[10] On September 17, 2002, the Court issued a Resolution granting the prayer of the OSG.[11]

We first address the failure of the PITC to file a motion for reconsideration of the assailed decision.

As a general rule, a petition for *certiorari* before a higher court will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions: (1) when the issue raised is purely of law, (2) when public interest is involved, or (3) in case of urgency. As a fourth exception, it was also held that the filing of a motion for reconsideration before availment of the remedy of *certiorari* is not a condition *sine qua non*, when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court.[12]

In the case at bar, a motion for reconsideration may be dispensed with not only because the issue presented is purely of law, but also because the question raised has already been extensively discussed in the decisions of the Director, Corporate Audit Office II and the COA.

The resolution of the question of law in the case at bar hinges on the interpretation

of Section 12 of R.A. No. 6758, which was the basis of the COA in denying the grant of SFI to the officers and employees of PITC. It provides -

> Sec. 12. - *Consolidation of Allowances and Compensation*.- Allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign services personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

In construing the above provision, the Court in *National Tobacco Administration v. Commission on Audit*,[13] held that under the first sentence of Section 12, the benefits excluded from the standardized salary rates are the "allowances" or those which are usually granted to officials and employees of the government *to defray or reimburse the expenses incurred in the performance of their official functions*. It further ruled that the phrase "and such other additional compensation not otherwise specified [in Section 12] as may be determined by the DBM," in the first sentence of Section 12, is a "catch-all-proviso" for benefits in the nature of "allowances" similar to those enumerated. Thus -

> Under the first sentence of Section 12, all allowances are integrated into the prescribed salary rates, except:
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> (1) representation and transportation allowances (RATA);
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> (2) clothing and laundry allowances;
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> (3) subsistence allowances of marine officers and crew on board government vessels;
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> (4) subsistence allowance of hospital personnel;
>
> (5) hazard pay;
>
> (6) allowance of foreign service personnel stationed abroad; and
>
> (7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.
>
> Analyzing No. 7, which is the last clause of the first sentence of Section 12, in relation to the other benefits therein enumerated, it can be gleaned unerringly that it is a "catch-all proviso." Further reflection on the nature of subject fringe benefits indicates that all of them have one thing in common - they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. In Philippine Ports Authority vs.

> Commission on Audit, this Court rationalized that if these allowances are consolidated with the standardized rate, then the government official or employee will be compelled to spend his personal funds in attending to his duties.
>
> The conclusion [is] that the enumerated fringe benefits are in the nature of allowance...[14]

Also in *National Tobacco Administration*, the second sentence of Section 12, which provides that -

> Such other additional compensation, whether in cash or in kind, being received by incumbents as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

was interpreted as referring to benefits in the nature of "financial assistance," or "*a bonus or other payment made to employees in addition to guaranteed hourly wages*," as contradistinguished from the "allowance" in the first sentence, which cannot, strictly speaking, be reckoned with as a *bonus or additional income*. In "financial assistance," reimbursement is not necessary, while in the case of "allowance," reimbursement is required.[15]

The foregoing interpretation is supported by the deliberations of the representatives of the Senate and the House of Representatives on the contradictory provisions of House Bill No. 10054 and Senate Bill No. 862, which became R.A. No. 6758, also known as the Salary Standardization Law. The House Bill's sponsor, Representative Rolando Andaya, explained that the second sentence of Section 12, R. A. No. 6758, refers to rice allowance and dependent's allowance. These benefits therefore comprise the category of "financial assistance," or "*a bonus or other payment made to employees in addition to guaranteed hourly wages*," and not the "allowance" referred to in the first sentence of Section 12, R.A. No. 6758 which, to repeat, are granted *to defray or reimburse the expenses incurred in the performance of their official functions.* Thus -

> MR. LAGMAN. I would like to refer to No. 26, page 3 of the report, where it says:
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> On page 15, line 13 after period (.) add the sentence "Such other additional compensation whether in cash or in kind, being received by incumbents as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized."
>
> Is this the particular provision which guarantees that these additional benefits being paid by local government units shall henceforth be assumed by the national government?
>
> MR. ANDAYA. No, it is not. The provision applies to government corporations, because government corporations now have rice allowance and dependents allowance. The principle here is that nobody will suffer diminution in pay; these will continue to be authorized whether what he is receiving is in kind or in cash. This applies to government corporations. [16]