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[G.R. No. 149240, July 11, 2002]

SOCIAL SECURITY SYSTEM, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

BELLOSILLO, J.:

THE FUNDS contributed to the Social Security System (SSS) are not only imbued with public interest, they are part and parcel of the fruits of the workers' labors pooled into one enormous trust fund under the administration of the System designed to insure against the vicissitudes and hazards of their working lives. In a very real sense, the trust funds are the workers' property which they could turn to when necessity beckons and are thus more personal to them than the taxes they pay. It is therefore only fair and proper that charges against the trust fund be strictly scrutinized for every lawful and judicious opportunity to keep it intact and viable in the interest of enhancing the welfare of their true and ultimate beneficiaries.

This is a petition for certiorari under Rule 64 of the *1997 Rules of Civil Procedure* praying that this Court assess against the workers' social security fund the amount of ₱5,000.00 as contract signing bonus of each official and employee of the SSS. The gratuity emanated from the collective negotiation agreement (CNA) executed on 10 July 1996 between the Social Security Commission (SSC) in behalf of the SSS and the Alert and Concerned Employees for Better SSS (ACCESS), the sole and exclusive negotiating agent for employees of the SSS.[1] In particular, Art. XIII of the CNA provided -

> As a gesture of good will and benevolence, the Management agrees that once the Collective Negotiation Agreement is approved and signed by the parties, Management shall grant each official and employee of the SYSTEM the amount of P5,000.00 as contract signing bonus.[2]

To fund this undertaking, the SSC allocated ₱15,000,000.00 in the budgetary appropriation of the SSS.[3]

On 18 February 1997 the Department of Budget and Management (DBM) declared as illegal the contract signing bonus which the CNA authorized to be distributed among the personnel of the SSS.[4] On 1 July 1997 the SSS Corporate Auditor disallowed fund releases for the signing bonus since it was "an allowance in the form of additional compensation prohibited by the Constitution."[5]

Two (2) years later, in a letter dated 29 September 1999, ACCESS appealed the disallowance to the Commission on Audit (COA).[6] On 5 July 2001 despite the delay in the filing of the appeal, a procedural matter which COA considered to be inconsequential,[7] COA affirmed the disallowance and ruled that the grant of the

signing bonus was improper.[8] It held that the provision on the signing bonus in the CNA had no legal basis since Sec. 16 of *RA 7658* (1989)[9] had repealed the authority of the SSC to fix the compensation of its personnel.[10] Hence the instant petition which, curiously, was filed in the name of the Social Security System (and not ACCESS) by authority of the officer-in-charge for the SSS[11] through its legal staff.[12]

Petitioner SSS argues that a signing bonus may be granted upon the conclusion of negotiations leading to the execution of a CNA where it is specifically authorized by law and that in the case at bar such legal authority is found in Sec. 3, par. (c), of *RA 1161* as amended (Charter of the SSS) which allows the SSC to fix the compensation of its personnel. On the other hand, respondent COA asserts that the authority of the SSC to fix the compensation of its personnel has been repealed by Secs. 12 and 16 of *RA 6758* and is therefore no longer effective.

We find no legitimate and compelling reason to reverse the COA. To begin with, the instant petition is fatally defective. It was filed in the name of the SSS although no directive from the SSC authorized the instant suit and only the officer-in-charge in behalf of petitioner executed the purported directive. Clearly, this is irregular since under Sec. 4, par. 10, in relation to par. 7,[13] *RA 1161* as amended by *RA 8282 (The Social Security Act of 1997,* which was already effective[14] when the instant petition was filed), it is the SSC as a collegiate body which has the power to approve, confirm, pass upon or review the action of the SSS to sue in court. Moreover, the appearance of the internal legal staff of the SSS as counsel in the present proceedings is similarly questionable because under both *RA 1161* and *RA 8282* it is the Department of Justice (DoJ) that has the authority to act as counsel of the SSS.[15] It is well settled that the legality of the representation of an unauthorized counsel may be raised at any stage of the proceedings[16] and that such illicit representation produces no legal effect.[17] Since nothing in the case at bar shows that the approval or ratification of the SSC has been undertaken in the manner prescribed by law and that the DoJ has not delegated the authority to act as counsel and appear herein, the instant petition must necessarily fail. These procedural deficiencies are serious matters which this Court cannot take lightly and simply ignore since the SSS is in reality confessing judgment to charge expenditure against the trust fund under its custodianship.

In *Premium Marble Resources v. Court of Appeals*[18] we held that no person, not even its officers, could validly sue in behalf of a corporation in the absence of any resolution from the governing body authorizing the filing of such suit. Moreover, where the corporate officer's power as an agent of the corporation did not derive from such resolution, it would nonetheless be necessary to show a clear source of authority from the charter, the by-laws or the implied acts of the governing body.[19] Unfortunately there is no palpable evidence in the records to show that the officer-in-charge could all by himself order the filing of the instant petition without the intervention of the SSC, nor that the legal staff of SSS could act as its counsel and appear therein without the intervention of the DoJ. The power of attorney supposedly authorizing this suit as well as the signature of the legal counsel appearing on the signing page of the instant petition is therefore ineffectual.

Indeed we find no merit in the claim that the employees and officers of SSS are entitled to the signing bonus provided for in the CNA. In the first place, the process of collective negotiations in the public sector does not encompass terms and conditions of employment requiring the appropriation of public funds -

> Sec. 13. Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiations between duly recognized employees' organizations and appropriate government authorities.[20]

More particularly -

> Sec. 3. Those that require appropriation of funds, such as the following, are not negotiable: (a) Increase in salary emoluments and other allowances not presently provided for by law; (b) Facilities requiring capital outlays; (c) Car plan; (d) Provident fund; (e) Special hospitalization, medical and dental services; (f) Rice/sugar/other subsidies; (g) Travel expenses; (h) Increase in retirement benefits.
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> Sec. 4. Matters that involve the exercise of management prerogatives, such as the following, are likewise not subject to negotiation: (a) Appointment; (b) Promotion; (c) Assignment/Detail; (d) Reclassification/ upgrading of position; (e) Revision of compensation structure; (f) Penalties imposed as a result of disciplinary actions; (g) Selection of personnel to attend seminar, trainings, study grants; (h) Distribution of work load; (I) External communication linkages.[21]

Petitioner however argues that the charter of SSS authorizes the SSC to fix the compensation of its employees and officers so that in reality the signing bonus is merely the fruit of the exercise of such fundamental power. On this issue, we have to explain the relevant amendments to the SSS charter in relation to the passage of *RA 6758* (1989) entitled *"An Act Prescribing a Revised Compensation and Position Classification in the Government and for other Purposes."*

When the signing bonus was bestowed upon each employee and officer of the SSS on 10 July 1996, which was earlier approved by the SSC on 3 July 1996, the governing charter of the SSS was *RA 1161* as amended by Sec. 1, *RA 2658,* and Sec. 1, *PD 735.* Under this amended statute, the SSC was empowered to "appoint an actuary, and such other personnel as may be deemed necessary" and to "fix their compensation."[22] The law also provided that "the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations."[23]

On 9 August 1989 Congress passed *RA 6758* which took effect on 1 July 1989.[24] Its goal was to "provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."[25] Towards this end, *RA 6758* provided for the consolidation of allowances and compensation in the prescribed standardized salary rates except certain specified allowances[26] and such other additional compensation as may be determined by the Department of Budget and Management.[27] The law also repealed "[a]ll laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2 and Section 16 of Presidential Decree No. 985."[28]

Although it was the clear policy intent of *RA 6758* to standardize salary rates among government personnel, the Legislature under Secs. 12[29] and 17[30] of the law nonetheless saw the need for equity and justice in adopting the policy of non-diminution of pay when it authorized incumbents as of 1 July 1989 to receive salaries

and/or allowances over and above those authorized by *RA 6758.* In *Philippine Ports Authority v. Commission on Audit*[31] we held that no financial or non-financial incentive could be awarded to employees of government owned and controlled corporations aside from benefits which were being received by incumbent officials and employees as of 1 July 1989. This Court also observed -

> The consequential outcome, under sections 12 and 17, is that if the incumbent resigns or is promoted to a higher position, his successor is no longer entitled to his predecessor's RATA privilege x x x or to the transition allowance x x x x [A]fter July 1, 1989, additional financial incentives such as RATA may no longer be given by GOCCs with the exception of those which were authorized to be continued under Section 12 of RA 6758.

Evidently, while *RA 6758* intended to do away with multiple allowances and other incentive packages and the resulting differences in compensation among government personnel, the statute clearly did not revoke existing benefits being enjoyed by incumbents of government positions at the time of the passage of *RA 6758* by virtue of Secs. 12 and 17 thereof. In previous rulings of this Court, among the financial and non-financial incentives which we allowed certain government employees to enjoy after the effectivity of *RA 6758* were car plan benefits[32] and educational funding assistance[33] for incumbents of existing positions as of 1 July 1989 until such gratuity packages were gradually phased out.

We have no doubt that *RA 6758* modified, if not repealed, Sec. 3, par. (c), of *RA 1161* as amended, at least insofar as it concerned the authority of SSC to fix the compensation of SSS employees and officers. This means that whatever salaries and other financial and non-financial inducements that the SSC was minded to fix for them, the compensation must comply with the terms of *RA 6758.* Consequently, only the remuneration which was being offered as of 1 July 1989, and which was then being enjoyed by incumbent SSS employees and officers, could be availed of exclusively by the same employees and officers separate from and independent of the prescribed standardized salary rates. Unfortunately, however, the signing bonus in question did not qualify under Secs. 12 and 17 of *RA 6758.* It was non-existent as of 1 July 1989 as it accrued only in 1996 when the CNA was entered into by and between SSC and ACCESS. The signing bonus therefore could not have been included in the salutary provisions of the statute nor would it be legal to disburse to the intended recipients.

Philippine International Trading Corporation v. Commission on Audit[34] is instructive on this point. Like the SSS, the Philippine International Trading Corporation (PITC) is a government-owned and controlled corporation which was created under *PD 252* (1973) primarily for the purpose of promoting and developing Philippine trade in pursuance of national economic development. In the same judgment which affirmed the car financing program and allied incentives being implemented prior to 1 July 1989 we held that the charter of PITC was impliedly repealed by *RA 6758* -

> We deem it necessary though to resolve the third issue as to whether PITC is exempt from PD 985 as subsequently amended by RA 6758. According to petitioner, PITC's Revised Charter, PD 1071 dated January 25, 1977, as amended by EO 756 dated December 29, 1981, and further amended by EO 1067 dated November 25, 1985, expressly exempted PITC from the Office of the Compensation and Position Classification (OCPC) rules and regulations. Petitioner cites Section 28 of P.D. 1071; Section 6 of EO 756; and Section 3 of EO 1067. According to the COA in its Decision No. 98-048 dated January 27, 1998, the exemption granted to the