

EN BANC

[G.R. No. 204152, January 19, 2021]

DENR EMPLOYEES UNION (DENREU) AND KALIPUNAN NG MGA KAWANI SA KAGAWARAN NG KALIKASAN (K4), PETITIONERS, VS. SECRETARY FLORENCIO B. ABAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT AND THE COMMISSION ON AUDIT, RESPONDENTS.

D E C I S I O N

PERALTA, C.J.:

Petitioners Department of Environment and Natural Resources (DENR) Employees Union (*DENREU*) and *Kalipunan ng mga Kawani sa Kagawaran ng Kalikasan (K4)* filed the present Petition for Injunction and Prohibition under Rule 65 of the Rules of Court assailing the constitutionality of Budget Circular No. 2011-5 dated December 26, 2011 of the Department of Budget and Management (*DBM*). The circular placed a P25,000.00 ceiling on the amount of the Collective Negotiation Agreement (CNA) Incentive for 2011. In compliance therewith, respondent Commission on Audit (*COA*) disallowed the DENR's issuance of CNA Incentives to its officers and employees for exceeding said limit.

The antecedent facts are as follows.

On June 1, 1987, then President Corazon C. Aquino enacted Executive Order (*EO*) No. 180 which provided for guidelines on the exercise of government employees' right to organize and created a Public Sector Labor-Management Council (*PSLMC*) tasked to implement and administer the provisions thereof.

Pursuant thereto, the PSLMC issued Resolution No. 4, series of 2002 on November 14, 2002, allowing the grant of the CNA incentive to National Government Agencies (*NGAs*), State Universities and Colleges (*SUCs*), and Local Government Units (*LGUs*) in recognition of the joint efforts of labor and management to achieve all planned targets which shall be taken from savings generated after the signing of the CNA that are no longer intended for specific purposes.

Thereafter, on May 19, 2003, the PSLMC issued another Resolution No. 2, series of 2003 granting the CNA incentive, this time, to Government-owned or Controlled Corporations (*GOCCs*) and Government Financial Institutions (*GFI*s) specifying additional guidelines in determining the amount of the CNA incentive.

On September 28, 2004, the PSLMC next issued Resolution No. 2, series of 2004, adopting the "Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize." It pertinently recognized the grant of the CNA incentive to government employees which may be the subject of negotiation between the management and the accredited employee's organization.

On August 31, 2004, then President Gloria Macapagal-Arroyo issued Administrative Order (AO) No. 103 entitled "*Directing the Continued Adoption of Austerity Measures in the Government*" in order to meet the country's fiscal targets and maintain economic stability through various cost-cutting measures. Thus, all NGAs, SUCs, GOCCs, GFIs and other government Corporate Entities (*OGCEs*), whether exempt from Salary Standardization Law or not, were directed to suspend the grant of new or additional benefits to their officials and employees. However, the AO particularly exempted from said suspension CNA Incentives agreed to be given in strict compliance with the provisions of the PSLMC Resolutions No. 04, s. 2002 and No. 2, s. 2003.

On December 27, 2005, President Arroyo issued AO No. 135 entitled "*Authorizing the Grant of Collective Negotiation Agreement (CNA) Incentive to Employees in Government Agencies*" re-confirming the grant of the CNA incentive, pursuant to CNAs entered into on or after the effectivity of PSLMC Resolution No. 4, series of 2002, and PSLMC Resolution No. 2, series of 2003. It limited the grant to rank-and-file employees and precluded its duplication with incentives granted through the Program on Awards and Incentives for Service Excellence (*PRAISE*). In addition, it provided that the DBM shall issue the policy and procedural guidelines for the implementation thereof.

Pursuant thereto, the DBM issued Budget Circular No. 2006-1 on February 1, 2006 prescribing the guidelines on the grant of CNA Incentives authorized under the PSLMC Resolutions, confirmed by AO No. 135.

On November 26, 2010, petitioner Kalipunan ng mga Kawani sa Kagawaran ng Kalikasan (K4), the registered national union of the DENR rank-and-file employees, and the DENR, entered into a CNA.^[1]

On September 29, 2011, the DBM issued Circular Letter No. 2011-9 reminding all concerned that the CNA incentive shall be granted in accordance with the provision of Budget Circular No. 2006-1. It reiterated (1) the one-time grant of the incentive paid after the end of the year, provided that the planned targets have been completed; (2) the funding source of the incentive which is limited to savings generated from pre-identified expense accounts; and 3) the submission of reports to the DBM on the utilization of savings for the payment of the incentive.

Shortly thereafter, on December 26, 2011, the DBM issued the assailed Budget Circular No. 2011-5 to prescribe supplemental guidelines on the grant of the CNA Incentive for the Fiscal Year 2011, in addition to Budget Circular No. 2006-1 and Circular Letter No. 2011-9, pursuant to Item (4)(h)(ii)(aa) of the Senate and House of Representatives Joint Resolution (JR) No. 4, series of 2009.^[2] Particularly, the circular provided that "the CNA incentive for FY 2011 shall be determined based on the amount of savings generated by an agency following the guidelines herein, but not to exceed P25,000.00 per qualified employee." It, likewise, provided that it shall take effect immediately.^[3]

Consequently, the COA issued Notice of Disallowance (ND) No. 12-002-101 (11)^[4] dated May 22, 2012 with respect to the CNA Incentives granted by the DENR to its officers and employees for CY 2011 totaling P31,275,975.00. It disallowed the

amount of P14,983,500.40 for being in excess of the P25,000.00 limit per qualified employee as provided in Section 3.5 of DBM Budget Circular No. 2011-5. As such, the COA directed the concerned employees to return the excess.

On December 21, 2012, petitioner DENREU filed an Appeal Memorandum before the COA seeking a reconsideration of ND No. 12-002-101 (11). In its September 11, 2015 Decision, however, the COA dismissed the appeal for being filed out of time or beyond the six (6)-month reglementary period from receipt of the ND as allowed under the Revised Rules of Procedure of the COA. Then, on December 21, 2017, the COA issued a Notice of Finality of Decision ordering the named persons liable to pay their shares of the disallowed amount to the agency cashier and authorizing said cashier to withhold payment of their salaries in the event of their failure to pay. Subsequently, the COA issued an Order of Execution dated January 11, 2018 instructing the DENR to withhold payment of salaries or any amount due the concerned employees to settle their liabilities subject of the disallowance.

A month prior to their appeal to the COA or on November 20, 2012, petitioners filed the instant petition essentially raising the following issue:

I.

WHETHER OR NOT DBM BUDGET CIRCULAR NO. 2011-5 DATED DECEMBER 26, 2011 IS CONSTITUTIONAL, AND THUS, VALID AND BINDING FOR CALENDAR YEAR 2011.

Petitioners raise infirmities attendant in the issuance of DBM Budget Circular No. 2011-5 rendering it unconstitutional, specifically the circular's lack of prior publication in the Official Gazette or newspaper of general circulation, required by law and jurisprudence of administrative regulations as a condition for their effectivity. Petitioners maintain that the circular, issued on December 26, 2011, cannot be permitted to impose restrictions on the grant of CNA Incentives for the same fiscal year 2011 without the requisite publication. They highlight the fact that the circular was received by the DENR only on December 29, 2011, which was the last official day for the calendar year 2011, at a time when negotiations on the CNA Incentive between the DENR management and the union had already concluded.

Moreover, petitioners assert their vested right to the incentive which was simply dependent on the savings generated by the agency for the year without the P25,000.00 limitation imposed by the circular. To require them to refund the amount they received in good faith would cause them grave injustice and irreparable injury that the Court must prevent through the grant of an injunction restraining respondent from implementing its circular.

In his Comment, respondent Secretary Florencio B. Abad of the DBM questions the remedy of prohibition used by petitioners, for the assailed circular was issued in his exercise of quasi-legislative powers. He also alleges that there can be no vested right to the CNA incentive for one's right to the same becomes enforceable only upon compliance with the conditions set forth by law and issuances.

Secretary Abad cites the ruling in *Manila International Airport Authority (MIAA) v. COA*,^[5] wherein the validity of DBM Budget Circular No. 2006-1 was upheld for being germane to the purposes of AO No. 135 and PSLMC Resolution No. 2 to

ensure that the CNA incentive be funded by savings generated from cost-reducing measures and no other. Since the assailed DBM Budget Circular No. 2011-5 similarly seeks to ensure that the government programs are not hampered by the tendency of agencies to scrimp on vital expenditures or bloating their budgets to accumulate savings for the CNA incentive, a benefit which petitioners have no vested right to, said circular must also be upheld. Moreover, this Court, in *MIAA v. COA*,^[6] had already affirmed the authority of the DBM to issue rules and regulations in the grant of CNA Incentives. Furthermore, Secretary Abad adds that petitioners' failure to comply with the condition imposed by DBM Budget Circular No. 2006-1 requiring that the incentive be paid only after the end of the year constitutes a violation thereof making the grant of the incentive unlawful.

As to the publication requirement, Secretary Abad counters that the DENR admittedly received a copy of the assailed circular before the end of FY 2001 or on December 29, 2011. Had they followed the mandate of DBM Budget Circular No. 2011-5 on payment of the incentive after the end of the year, they would have considered the P25,000.00 cap imposed by the assailed circular. Thus, they cannot now challenge the validity of DBM Budget Circular No. 2011-5 for they were given due notice of the same on December 29, 2011. Moreover, he adds that, at any rate, the subject circular was, in fact, published in the *Philippine Star*, a newspaper of general circulation, as evidenced by the certification^[7] attached in his Comment.

The petition is granted in part.

At the outset, the Court takes notice of the fact that the COA had already issued Notices of Finality of Decision and the corresponding Orders of Execution as a result of the dismissal of petitioners' appeal for being filed beyond the six (6)-month reglementary period. As a general rule, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, and the failure to perfect the appeal renders the judgment of the court final and executory. As such, it has been held that the availability of an appeal is fatal to a special civil action for *certiorari*, for the same is not a substitute for a lost appeal.^[8]

But while it is doctrinally entrenched that *certiorari* is not a substitute for a lost appeal, the Court has allowed the resort to a petition for *certiorari* despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) where the orders were also issued either in excess of or without jurisdiction; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the *certiorari* case will avoid future litigations.^[9]

We find the present case to fall under the exception rather than the general rule. As will be discussed below, there exists urgent, meritorious considerations which the Court must pass upon lest there be an unwarranted denial of justice. We have recently ruled in *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), et. al. v. Abad*,^[10] that the challenged Budget Circular No. 2011-5 affects all government employees with existing valid CNAs allowing the grant of CNA Incentives. Since there are no facts, moreover, that would necessitate burdening the Court with the task of exhaustive examination of

evidentiary matters, We shall consider the merits of the present case in the interest of judicial economy and to prevent further delay in its disposition.

On the procedural issue of the propriety of petitioners' chosen action for prohibition, the Court has recently made certain clarifications insofar as judicial power is concerned. It is true that under Rule 65^[11] of the Rules of Court, a petition for *certiorari* and prohibition corrects errors of jurisdiction committed by any tribunal, corporation, board, officer or person, exercising judicial, *quasi*-judicial or ministerial functions. It is also true that the subject Budget Circular No. 2011-5 was issued in the DBM Secretary's rule-making or quasi-legislative functions. But We have had several occasions where We found the Court's judicial power under Article VIII, Section 1 of the 1987 Constitution^[12] to be broad enough to include the determination of whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government even in their exercise of legislative and quasi-legislative functions.

As enunciated in *Inmates of the New Bilibid Prison v. De Lima*:^[13]

True, a petition for *certiorari* and prohibition is not an appropriate remedy to assail the validity of the subject IRR as it was issued in the exercise of respondents' rule-making or quasi-legislative function. Nevertheless, the Court has consistently held that "petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review, prohibit or nullify the acts of legislative and executive officials." In *Araullo v. Aquino III*, former Associate Justice, now Chief Justice, Lucas P. Bersamin, explained the remedies of *certiorari* and prohibition, thus:

x x x x

With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

Necessarily, in discharging its duty under Section 1, *supra*, to set right and undo any act of grave abuse of discretion