EN BANC

[G.R. No. 218304, December 09, 2020]

NINIA P. LUMAUAN, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

HERNANDO, J.:

Before the Court is a Petition for *Certiorari*[1] filed under Rule 64, in relation to Rule 65, of the Rules of Court assailing the June 4, 2014 Decision[2] and the February 27, 2015 Resolution[3] of respondent Commission on Audit (COA).

Factual Antecedents

Petitioner Ninia P. Lumauan (Lumauan) was the Acting General Manager of Metropolitan Tuguegarao Water District (MTWD),[4] a government-owned and controlled corporation (GOCC) created pursuant to Presidential Decree (PD) No. 198 or the Provincial Water Utilities Act of 1973, as amended by Republic Act (RA) No. 9286.

In 2009, the Board of Directors of MTWD issued Board Resolution Nos. 2009-0053[5] and 2009-0122,[6] approving the payment of accrued Cost of Living Allowance (COLA) to qualified MTWD employees for calendar years (CYs) 1992 to 1997 in the aggregate amount of P1,689,750.00.[7]

However, after post-audit, Supervising Auditor Floricen T. Unida and Audit Team Leader Basilisa T. Garcia issued Notice of Disallowance No. 10-003-101-(09),[8] disallowing the payment of P1,689,750.00 for lack of legal basis specifically since the COLA was already deemed integrated into the basic salary of the employees pursuant to Section 12[9] of RA No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, and the Department of Budget and Management (DBM) Corporate Compensation Circular (CCC) No. 10.[10] Held liable under the Notice of Disallowance were petitioner; Ms. Visitacion M. Rimando (Rimando), Division Manager-Administrative; Ms. Marcela Siddayao (Siddayao), Cashier; and the employees of MTWD, as payees.[11]

Petitioner appealed the disallowance to the COA Regional Director,[12] citing the ruling of the Court in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*,[13] where the rights of the PPA employees to claim COLA and amelioration allowance until March 16, 1999 were upheld.

Ruling of the Regional Director

In a November 23, 2011 Decision,[14] Regional Director III Atty. Elwin Gregorio A. Torre denied the appeal for lack of merit. He affirmed the disallowance on the ground that the payment of COLA was prohibited since it was already integrated into the basic salary of the employees.[15]

He opined that after the promulgation of *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*, the DBM issued National Budget Circular (NBC) No. 2005-502 dated October 26, 2005, which clarified that "payment of allowances and other benefits, such as COLA, which are already integrated in the basic salary, remains prohibited unless otherwise provided by law or ruled by the Supreme Court."[16] Regarding petitioner's defense of good faith, he found the same bereft of any merit considering that the payment of the said benefit was already prohibited since October 26, 2005.[17]

Unfazed, petitioner elevated the matter to respondent COA-Commission Proper (CP).

In response, the Regional Director filed his Answer alleging that the appeal was filed beyond the prescribed period.[18] He claimed that since petitioner already exhausted the six-month appeal period, she should have filed the Appeal Memorandum with respondent COA-CP on the same day she received his Decision.[19]

Ruling of the COA-CP

On June 4, 2014, respondent COA-CP rendered a Decision denying the appeal for late filing and lack of merit. Respondent COA-CP agreed with the observation of the Regional Director that the appeal was belatedly filed.[20] It ruled that the disallowance has already become final and executory because petitioner belatedly filed the Appeal Memorandum or 12 days from receipt of the Decision of the Regional Director.[21] Besides, even if the appeal was timely filed, respondent COA-CP ratiocinated that the appeal should still be denied because petitioner's arguments were bereft of any merit.[22]

It reiterated the ruling of the Regional Director that the payment of COLA was prohibited because it was already incorporated in the standardized salary rates of government employees under the general rule of integration.[23] As regards petitioner's defense of good faith, respondent COA-CP found the same unmeritorious considering that under the principle of *solutio indebiti*, all employees of MTWD who received the disallowed COLA were obliged to return the same.[24]

The dispositive portion of the assailed COA-CP Decision reads:

> **WHEREFORE**, the instant appeal is **DENIED** and COA RO No. II Decision (COA-RO2 Case No. 2011-017 dated November 23, 2011) is hereby **AFFIRMED**. Accordingly, ND No. 10-003-101-(09) dated November 22, 2010 on the payment of Cost of Living Allowance to Metropolitan Tuguegarao Water District Employees amounting to P1,689,750.00 for calendar years 1992 to 1997 is hereby **SUSTAINED**.[25]

Unfazed, petition filed a Motion for Reconsideration which the COA-CP denied in its February 27, 2015 Resolution.[26]

Hence, petitioner filed the instant Petition for *Certiorari* interposing the core issue of whether respondent COA-CP committed grave abuse of discretion in disallowing the payment of COLA for CYs 1992-1997 to the employees of MTWD.[27]

Petitioner's Arguments

Petitioner contends that contrary to the findings of respondent COA-CP, the appeal was timely filed as the Appeal Memorandum was filed on November 25, 2011, the same day the Decision of the Regional Director was received.[28] Also, citing the case of *Metropolitan Waterworks and Sewerage System (MWSS) v. Bautista*,[29] petitioner insists that the payment of COLA should not have been disallowed because the employees of GOCCs, whether incumbent or not, are entitled to COLA from 1989 to 1999 as a matter of right.[30] And even if the payment of COLA was correctly disallowed, petitioner argues that since the disbursement was made in good faith, she cannot be made liable to refund the same.[31]

Respondent's Arguments

In its Comment,[32] respondent did not discuss the timeliness of the appeal. Instead, it focused on the validity of the disallowance. Respondent maintains that the disallowance was proper because it was made pursuant to law and prevailing jurisprudence.[33] Respondent asserts that the Supreme Court has upheld the inclusion of COLA in the standardized salary rates and has resolved that the non-publication of DBM Circular No. 10 did not render ineffective the validity of Section 12 of RA No. 6758.[34]

Respondent further claims that petitioner cannot avail of the defense of good faith because at the time the COLA was given to the employees and the officers of MTWD, DBM Circular No. 10 had already been reissued and published.[35] As a result, respondent posits that petitioner may no longer rely on the ruling in *Metropolitan Waterworks and Sewerage System v. Bautista* as the defect of the DBM Circular had been cured.[36]

The Court's Ruling

The Petition lacks merit.

The Appeal Memorandum was filed on time.

A careful perusal of the annexes attached to the Petition confirms that the Appeal Memorandum was filed on the same day a copy of the Decision of the Regional Director was received. The Registry Receipt[37] attached to petitioner's Appeal Memorandum indicated that petitioner filed the Appeal Memorandum by registered mail on November 25, 2011. In the Appeal Memorandum,[38] petitioner stated that a copy of the Decision of the Regional Director was received on November 25, 2011. Likewise, the stamp of receipt[39] on the first page of the Decision of the Regional

Director showed that it was received by the Administrative Division of MTWD on November 25, 2011.

Based on the foregoing, the Court finds that the Appeal Memorandum was filed on time because it was filed on November 25, 2011, the same day a copy of the Decision of the Regional Director was received. Thus, there was no reason for respondent COA-CP to deny the appeal for late filing.

The payment of the accrued COLA for CYs 1992 to 1997 was correctly disallowed.

As regards the validity of the disallowance, the Court finds that the grant of accrued COLA for CYs 1992 to 1997 was correctly disallowed.

In *Torcuator v. Commission on Audit*,[40] a case involving the same issue, the Court upheld the disallowance of the payment of COLA because said allowance was deemed already integrated in the compensation of government employees under Section 12 of RA 6758. The Court further declared that said provision was self-executing, and thus the absence of any DBM issuance was immaterial. Quoted below is the discussion of the Court on the matter:

> R.A. No. 6758 standardized the salaries received by government officials and employees. Sec. 12 thereof states:
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> > SECTION 12. Consolidation of Allowances and Compensation. — All 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 service 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 only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
> >
> > Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.
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> In *Maritime Industry Authority v. [COA] (MIA)* the Court explained the provision of Sec. 12, to wit:

> The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit:
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> 1. representation and transportation allowances;
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> 2. clothing and laundry allowances;
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> 3. subsistence allowance of marine officers and crew on board government vessels;
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> 4. subsistence allowance of hospital personnel;
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> 5. hazard pay; and
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> 6. allowances of foreign service personnel stationed abroad.
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> In addition to the non-integrated allowances specified in Sec. 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.

Pursuant to R.A. No. 6758, DBM-CCC No. 10 was issued, which provided, among others, the discontinuance without qualification of all allowances and fringe benefits, including COLA, of government employees over and above their basic salaries. In 1998, the Court declared in the case of *De Jesus* that DBM-CCC No. 10 is without force and effect on account of its non-publication in the Official Gazette or in a newspaper of general circulation, as required by law. In 1999, DBM re-issued its DBM-CCC No. 10 in its entirety and submitted it for publication in the Official Gazette.

Thus, petitioners chiefly argue that since DBM-CCC No. 10 was invalidated and was re-published only in 1999, then the officers and employees of PWD may receive COLA and other fringe benefits for the period of 1992 to 1999.

The Court is not convinced.

As early as *Philippine International Trading Corporation v. [COA]*, the Court held that the nullification of DBM-CCC No. 10 in *De Jesus* does not affect the validity of R.A. No. 6758, to wit:

> There is no merit in the claim of PITC that R.A. No. 6758, particularly Section 12 thereof is void because DBM-Corporate Compensation Circular No. 10, its implementing rules, was nullified in the case of *De Jesus v. [COA]*, for lack of