

EN BANC

[G.R. No. 207281, March 05, 2019]

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**MARY IRMA D. LARA AND JOSEPHINE JAURIGUE, PETITIONERS-
IN-INTERVENTION.**

[G.R. No. 210922]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
COMMISSION ON AUDIT, RESPONDENT.**

DECISION

CAGUIOA, J:

Before the Court are two consolidated petitions relating to the validity of the Early Retirement Incentive Program (ERIP) IV-2010 of the Development Bank of the Philippines (DBP). **G.R. No. 207281** is a Petition for *Mandamus*^[1] filed by 141 former DBP employees (petitioners-retirees) who retired under the ERIP IV-2010 against the DBP Board of Directors (DBP Board); while **G.R. No. 210922** is a Petition for *Certiorari*^[2] with application for temporary restraining order (TRO) and/or writ of preliminary injunction filed by the DBP against the Commission on Audit (COA) questioning the Audit Observation Memorandum and the Notice of Disallowance issued by the latter over the ERIP IV-2006 and 2007.

Factual Antecedents

Background on the ERIP

In 1999, the DBP Board approved DBP's Position Classification System and Compensation Plan. In line with this, the DBP Board adopted Resolution No. 0176^[3] on June 6, 2003, which granted retirement benefits to qualified officials and employees through the ERIP IV for Calendar Years (CY) 2003 and 2008. The general objective of ERIP IV was to ensure the vitality of the bank for the next 10 years and make it attuned to the continuing advances in banking technology.^[4]

Several ERIP Programs were approved and implemented prior to 2003, namely: ERIP I, ERIP II, and ERIP III from 1985 to 2002. ERIP IV was approved in 2003 (ERIP IV-2003), with a 10-year period implementation beginning 2003 until 2012 and an estimated budget outlay of around P1.7 Billion. It has two tranches: 2003-2008 and 2008-2012. Petitioners-retirees belong to the second tranche.^[5]

On June 12, 2003, DBP Circular No. 15^[6] was issued, providing the guidelines on the implementation of the ERIP IV for CY 2003 and 2008. Below are the relevant portions of said circular:

A. OBJECTIVES:

General Objective

The general objective of ERIP IV is to ensure the vitality of the Bank for the next ten (10) years and make it attuned to the continuing advances in banking technology.

Specific Objectives

The specific objectives are:

1. to infuse new talents/skills/insights into the Bank through the entry/promotion of younger corps of personnel via a Bank[-]wide succession program[;]
2. to enable the Bank to attain cost savings in its personnel budget[; and]
3. to create new opportunities for career advancement in the Bank.

B. COVERAGE

The ERIP IV shall be open to:

1. officials and employees aged 50 or above with at least 15 years of creditable government service as of the date of application[;]
2. other officials and employees identified by the Screening Committee who may be displaced as a consequence of realignment or streamlining of work processes, regardless of whether or not they meet the age and service requirements of #1 above. Management, through the Sector Heads, shall so advise said officials and employees in writing to apply immediately.^[7]

*The Audit Observation Memorandum
and the Notice of Disallowance*

On February 19, 2007, the COA, through its Supervising Auditor assigned in DBP, Atty. Hilconeda P. Abril (Atty. Abril), issued **AOM No. HO-HRM-ERIP-AOM-2006-03**^[8] (AOM) which stated that DBP's ERIP IV-2003 was implemented contrary to the provision of Republic Act No. (R.A.) 8523.^[9]

In the AOM, Atty. Abril recommended that DBP: (i) secure the approval of the Secretary of Finance; (ii) suspend, in the meantime, the implementation of ERIP IV; and (iii) require the recipients of ERIP IV to return the benefits received in excess of that allowed by DBP's gratuity plan.^[10]

DBP filed its Reply to the AOM, arguing that Section 34^[11] of Executive Order No. (E.O.) 81^[12] or the Revised DBP Charter (DBP Charter) which requires prior approval of the Secretary of Finance should be applied only to a supplementary retirement plan.^[13]

Pursuant to the AOM, Atty. Abril issued **Notice of Disallowance No. ERIP-2006-007(03-06)**^[14] (ND) dated May 17, 2007 which disallowed the payment of retirement benefits granted to DBP's officials and employees under ERIP IV-2003 for lack of approval from the Secretary of Finance and the President as required under Section 34 of the DBP Charter, as amended, and Section 3 of Memorandum Order No. 20 dated June 25, 2001 issued by the Office of the President. The ND further directed the persons named therein to settle immediately the aforesaid disallowance.^[15]

*Proceedings before the COA, with
material incidents within DBP*

Aggrieved by the issuance of the ND, DBP filed on October 9, 2007 a Notice of Appeal before the COA Office of the Corporate Auditor (OCA).^[16]

Meanwhile, in a letter^[17] dated March 16, 2007, the Department of Budget and Management (DBM) approved DBP's request to be exempted from the preparation of a Rationalization Plan under E.O. 366.^[18]

Despite its initial objection to secure the approval from the authorizing officials, DBP nonetheless requested for the approval of the Secretary of Finance and confirmation by then President Gloria Macapagal-Arroyo (President Arroyo), which were favorably acted upon through letters dated January 14, 2009 and April 22, 2010, respectively. However, the COA argued that the President's approval was good for the period of up to June 30, 2010 only.^[19]

On June 16, 2010, during the pendency of its appeal before the OCA, DBP approved the resumption of ERIP IV through **Board Resolution No. 0167**^[20] (ERIP IV-2010).^[21] Said Board Resolution provides that the application period for the ERIP

IV-2010 shall be from the issuance of its implementing guidelines until December 31, 2011 and the effective date of retirement shall be no later than December 31, 2012.^[22]

On July 9, 2010, DBP filed with COA's Cluster Director (where the appeal from the ND was pending) a Manifestation and Motion alleging that the disallowance on the ERIP IV-2003 has been rendered moot and academic by virtue of the approval and confirmation made by the Secretary of Finance and then President Arroyo.^[23]

On November 12, 2010, DBP issued an Advisory^[24] to all DBP employees informing them that per Board Resolution No. 0323, the deadline for the filing of applications under the ERIP IV-2010 was moved from December 31, 2011 to December 31, 2010. Consequently, petitioners-retirees, along with other DBP employees, heeded the invitation to avail of the retirement benefits under ERIP IV-2010.^[25]

Meanwhile, in CGS-A Decision No. 005^[26] (**CGS Decision**) dated December 28, 2010, the COA Corporate Government Sector (CGS) denied the appeal and affirmed the ND, ruling that DBP's ERIP IV-2003 violated Section 10 of R.A. 4968^[27] or the *Teves Retirement Law*, which prohibits the creation of a supplementary retirement plan. Also, the CGS ruled that the President's approval was made within the election period, where the giving of salary or remuneration increase is prohibited under Section 261, Article XXII of Batas Pambansa Bilang 881 or the Omnibus Election Code.^[28]

On February 17, 2011, DBP filed a petition for review^[29] before the COA, seeking to reverse the CGS Decision on the following grounds: (i) DBP's right to due process was violated when the CGS cited additional grounds for the disallowance which were not mentioned in the ND; (ii) ERIP IV is not a supplementary retirement plan contemplated in R.A. 4968; (iii) DBP has the authority to fix the compensation, remuneration, and emoluments of its employees including the adoption of ERIP IV; and (iv) the employees and officers should not be ordered to refund the disallowed amount on account of good faith.^[30]

Despite the disallowance of ERIP IV-2003, petitioners-retirees allege that their applications under ERIP IV-2010 were still approved by DBP beginning February 2, 2012 and confirmed by the DBP Board. According to them, DBP did not warn them of any possible setback on the ERIP program to allow the avalees to at least rethink their positions. Rather, they continued to offer the ERIP IV-2010 to DBP employees. They claim that DBP even invited the Government Service Insurance System (GSIS) to conduct seminars on retirement options and benefits despite their knowledge of the CGS Decision and the pendency of their appeal before the COA. Additionally, sometime in October 2012, DBP issued an advisory asking the ERIP IV-2010 retirees to identify and train potential successors to their positions prior to the effectivity of their retirement.^[31]

Subsequently, on January 30, 2013, the COA issued the assailed Decision No. 2013-046^[32] (**COA Decision**), the dispositive portion of which states: