

## EN BANC

[ G.R. No. 210838, July 03, 2018 ]

### DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, V. COMMISSION ON AUDIT, RESPONDENT.

#### DECISION

**TIJAM, J.:**

In this Petition for Certiorari<sup>[1]</sup> under Rule 64, in relation to Rule 65, petitioner Development Bank of the Philippines (DBP) seeks the nullification of the following issuances of the Commission on Audit (COA):

- a. Decision<sup>[2]</sup> No. 2012-207 dated November 15, 2012, which denied DBP's Petition for Review, thereby sustaining the disallowance of the payment of Governance Forum Productivity Award to DBP's officials and employees in the total amount of P170,893,689.00; and
- b. Resolution<sup>[3]</sup> dated December 6, 2013, which denied with finality DBP's subsequent Motion for Reconsideration.

#### The Antecedent Facts

DBP, a government financial institution created and operating under its own charter<sup>[4]</sup>, was faced with labor unrest in 2003 due to its employees' insistence that they be paid their benefits which includes Amelioration Allowance (AA), Cost of Living Allowance (COLA) and the Bank Equity Benefit Differential Pay (BEBDP), for the year that the Department of Budget and Management Corporate Compensation Circular No. 10 (DBM CCC No. 10) was declared ineffective by this Court for non-publication.<sup>[5]</sup>

After a series of conferences referred to as a governance forum, the employees' group and DBP arrived at an agreement to put an end to the division causing disruptions in bank operations. The DBP Board of Directors (BOD) adopted Board Resolution No. 0133<sup>[6]</sup> dated May 9, 2003, approving a one-time grant called the Governance Forum Productivity Award (GFPA) to DBP's officers and employees. The total amount distributed was PhP170,893,689.00.<sup>[7]</sup>

An audit team was subsequently constituted to look into the legality of the GFPA pursuant to Office Order No. 2003-078 of the COA Legal and Adjudication Office. As a result, Audit Observation Memorandum (AOM) No. 001<sup>[8]</sup> dated January 7, 2005 found the grant of the GFPA without legal basis and recommended its refund.<sup>[9]</sup>

Meanwhile, the Executive Committee (Execom) of the DBP adopted Resolution No. 0151<sup>[10]</sup> dated November 16, 2005, which granted the payment of Amelioration

Allowance (AA) to bank employees. The amount due as AA for individual employees was offset against the GFPA already received by them, in the following manner:

**To finally settle both the AA and GFPA issues, it will be better to pay the AA, to be offset from the amount already paid as GFPA** with the following suggested conditions:

- a. If the amount of the AA is more than the GFPA, the differential amount will be paid to the employees.
- b. If the AA is less than the GFPA, concerned employees shall no longer be required to return the amount.
- c. Those who did not receive the GFPA will get their AA in full.
- d. Retirees/resignees without the usual waiver will likewise receive their AA in full. Those with waivers, do not get anything more.<sup>[11]</sup> (Emphasis ours.)

On January 3, 2007, DBP received Notice of Disallowance (ND) No. LAS-OGC-2006-001<sup>[12]</sup> dated December 18, 2006, disallowing the grant of the GFPA. According to COA's Legal and Adjudication Team, industrial peace may not be used as a legal and sufficient basis in granting monetary awards. Furthermore, the GFPA partakes the nature of a compromise agreement and circumvents the rule that only a settled claim may be a subject of compromise.<sup>[13]</sup>

In its Motion for Reconsideration<sup>[14]</sup> on February 28, 2007, DBP assailed the ND by arguing that payment of the GFPA was made pursuant to the power of its Board of Directors (BOD) to enter into a compromise agreement for settlement of employees' claims; that industrial peace is a valid consideration for a compromise agreement; and that the GFPA was superseded and rendered inexistent by the grant of the AA to DBP's employees.<sup>[15]</sup>

COA's Fraud Audit and Investigation Office (FAIO) treated DBP's Motion for Reconsideration (MR) as an appeal and upheld the disallowance thru the Decision No. 2010-005 dated October 7, 2010.<sup>[16]</sup> The FAIO ruled that the power of DBP's Board to fix the remuneration and emoluments of its officials and employees is not absolute and is subject to Sections 5 and 6 of Presidential Decree (PD) No. 1597<sup>[17]</sup> and Section 3 of Memorandum Order (MO) No. 20 of the Office of the President dated June 25, 2001 requiring prior presidential approval. It held that the power of DBP's BOD to enter into a compromise agreement has no basis in law. Furthermore, the subsequent payment of the AA was a separate matter that does not render the disallowance of the GFPA moot and academic.

Aggrieved, on January 21, 2011, DBP filed a Petition for Review<sup>[18]</sup> arguing that: PD No. 1597 and MO No. 20 requiring prior approval of the President, are not applicable to its case; reiterating its contention that subsequent payment of the AA rendered the grant of GFPA moot and academic as it was already converted part of the AA; and, that the employees received the GFPA in good faith and with honest belief that the same was valid, hence, they should not be required to refund the amount.

On March 10, 2011, DBP filed its Reply raising lack of due process for not citing PD No. 1597 and MO No. 20 as grounds for disallowance of GFPA in the ND.

On November 15, 2012, the Commission in its Decision No. 2012-207 denied the Petition for Review and held that there was no denial of due process as the COA's general audit power does not restrict itself on the grounds relied upon by the agency's auditor. It further stated that matters relating to salaries, allowances and benefits of employees in the public sector cannot be a valid subject of a compromise or negotiation because these are governed and fixed by laws. It debunked the notion that the subsequent grant of the AA rendered the case moot and academic, and argued that good faith is not a valid defense under the principle of *solutio indebiti*.

On December 6, 2013, the Motion for Reconsideration of DBP was thereafter denied with finality. Hence, the present petition dated February 4, 2014.

### **The Court's Ruling**

On June 20, 2014, the Office of the Solicitor General, as counsel for respondent COA filed its Comment<sup>[19]</sup> on the instant petition.

Acting on DBP's Manifestation with Motion to Resolve filed on July 17, 2014, this Court issued a Temporary Restraining Order (TRO) on September 16, 2014, restraining the COA from enforcing the assailed Decision and Resolution relating to the grant of the GFPA.<sup>[20]</sup>

In compliance with our June 6, 2017 Resolution<sup>[21]</sup>, DBP filed its Reply<sup>[22]</sup> on August 4, 2017. DBP insists that under its charter, the BOD was authorized to settle its employees' claims, which it did, by way of the grant of GFPA. It reiterated its exemption from RA No. 6758, otherwise known as the *Compensation and Position Classification Act of 1989* or popularly known as the *Salary Standardization Law* (SSL). DBP also maintains that the GFPA recipients and DBP Directors who approved the disbursement all acted in good faith; consequently, should the disallowance be upheld, they may not be held liable for the return of the disallowed amount. Finally, DBP invites our attention to the fact that COA's ND against the AA, subject of another case docketed as G.R. No. 213126, also entitled *DBP v. COA*, was finally upheld on November 18, 2014, the refund of which is presently the subject of execution proceedings.<sup>[23]</sup>

It bears recalling that the grant of GFPA on May 9, 2003 was subsequently offset against the AA granted on November 16, 2005. Considering that the COA is currently implementing a refund of the AA pursuant to the final decision in G.R. No. 213126, it is now argued that DBP should not be asked to return the same amount twice.

We now resolve.

The ultimate issue for this Court's resolution is whether or not the COA acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, when it disallowed the GFPA on the basis that it was in the nature of a compromise agreement to settle a labor dispute, allegedly an *ultra vires* act of DBP's BOD.

There is no quibbling over the fact that labor unrest impelled the DBP, in the interest of industrial peace, to grant the GFPA to its employees. In the COA's view, it was not within the board's powers to grant a monetary award or benefit as a result of labor

negotiations. The DBP, on the other hand, points to Section 9 of its charter in arguing that its BOD was authorized to compromise claims against it, pertinently:

Sec. 9. *Powers and Duties of the Board of Directors.* The Board of Directors shall have, among others, the following duties, powers and authority:

x x x x

- (e) To compromise or release, in whole or in part, any claim of or settled liability to the Bank regardless of the amount involved, under such terms and conditions it may impose **to protect the interests of the Bank. This authority to compromise shall extend to claims against the Bank.** xxx  
(Emphasis supplied)

Emphasizing further that its charter grants it a free hand in the fixing of compensation and allowances of its officers and employees, DBP cites Section 13 thereof:

Sec. 13. *Other Officers and Employees.* -The Board of Directors shall provide for an organization and staff of officers and employees of the Bank and upon recommendation of the President of the Bank, **fix their remunerations and other emoluments.** All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. **The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standard. The Bank shall however, endeavor to make its system conform as closely as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).** (Emphasis supplied.)

Notably, while Sec. 13 of DBP's charter as amended on February 14, 1998, exempts it from existing laws on compensation and position classification, it concludes by expressly stating that DBP's system of compensation shall nonetheless conform to the principles under the SSL. From this, there is no basis to conclude that the DBP's BOD was conferred unbridled authority to fix the salaries and allowances of its officers and employees. The authority granted DBP to freely fix its compensation structure under which it may grant allowances and monetary awards remains circumscribed by the SSL; it may not entirely depart from the spirit of the guidelines therein.

The policy requiring prior Presidential approval upon recommendation from the Secretary of Budget as provided in PD 1597, with respect to the grant of allowances and benefits, was re-affirmed by the Congress in 2009 through *Joint Resolution No. 4*, also known as the *Salary Standardization Law III* which provides that the "coverage, conditions for the grant, including the rates of allowances, benefits, and

incentives to all government employees, shall be rationalized in accordance with the policies to be issued by the President upon recommendation of the Department of Budget and Management." This policy mirrors MO No. 20 issued earlier in 2001, which directed the heads of government-owned and controlled corporations, government financial institutions (GFIs), and subsidiaries exempted from the SSL to implement pay rationalization in all senior officer positions.

What made the GFPA granted by the DBP to its officers and employees in 2003 unique was that it was the product of a compromise arrived at after negotiations between DBP employees and management referred to as a governance forum. The COA considered the process undertaken as labor negotiations.

It appears that DBP misconstrued its authority to compromise. Sec. 9 (e) of its charter authorizes its BOD to compromise or release any claim or settled liability to or against the bank. To interpret the provision as including contested benefits that are demanded by employees of a chartered GFI such as the DBP is a wide stretch. To reiterate, its officers and employees' remunerations may only be granted in the manner provided under Sec. 13 of its charter and conformably with the SSL.

The COA's insistence that industrial peace is not a determining factor under the principles of the SSL in fixing the compensation of DBP's employees, is correct. The grant of a wider latitude to DBP's BOD in fixing remunerations and emoluments does not include an abrogation of the principle that employees in the civil service "cannot use the same weapons employed by the workers in the private sector to secure concessions from their employers."<sup>[24]</sup> While employees of chartered GFIs enjoy the constitutional right to bargain collectively, they may only do so for non economic benefits and those not fixed by law, and may not resort to acts amounting to work stoppages or interruptions. There is no other way to view the GFPA, other than as a monetary benefit collectively wrung by DBP's employees under threat of disruption to the bank's smooth operations. We held in *Dulce M. Abanilla v. Commission On Audit*, reiterating *Alliance of Government Workers v. Minister of Labor and Employment*<sup>[25]</sup>:

Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, **not through collective bargaining agreements.**<sup>[26]</sup>  
(Emphasis in the original)

All told, the grant of GFPA was indeed an *ultra vires* act or beyond the authority of DBP's BOD. There was no grave abuse of discretion on the part of COA when it disallowed the GFPA on the basis of a compromise agreement to settle a labor dispute. We thus, sustain the disallowance.

We take judicial notice of the fact that this Court in another case docketed as G.R. No. 213126 entitled *DBP v. COA* had already sustained the disallowance of the AA granted by the DBP and which was offset against the GFPA earlier distributed, for being contrary to the SSL. In this regard, DBP argued that it cannot be ordered to refund the same amount twice. A careful scrutiny of the records of the said related