

## EN BANC

[ G.R. No. 205837, November 21, 2017 ]

**PHILIPPINE INTERNATIONAL TRADING CORPORATION,  
PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This treats of the petition for *certiorari*<sup>[1]</sup> filed by Philippine International Trading Corporation (PITC), which seeks to annul and set aside the Decision<sup>[2]</sup> No. 2013-016 dated January 30, 2013 of the Commission on Audit (COA). In the assailed decision, the COA denied PITC's request for the amendment of certain provisions of the 2010 Annual Audit Report (AAR)<sup>[3]</sup> of PITC, which relate to the payment and accrual of liability for retirement benefits under Section 6 of Executive Order No. 756.

#### **The Facts**

PITC is a government-owned and controlled corporation that was created under Presidential Decree No. 252<sup>[4]</sup> issued by then President Ferdinand E. Marcos on July 21, 1973. Thereafter, said law was repealed by Presidential Decree No. 1071,<sup>[5]</sup> which was issued on January 25, 1977.

On December 28, 1981, President Marcos issued Executive Order No. 756,<sup>[6]</sup> which authorized the reorganization of PITC. Section 6 thereof states:

SECTION 6. *Exemption from OCPC.* - In recognition of the special nature of its operations, the Corporation shall continue to be exempt from the application of the rules and regulations of the Office of the Compensation and Position Classification or any other similar agencies that may be established hereafter as provided under Presidential Decree No. 1071. Likewise, **any officer or employee who retires, resigns, or is separated from the service shall be entitled to one month pay for every year of service computed at highest salary received including all allowances, in addition to the other benefits provided by law, regardless of any provision of law or regulations to the contrary;** *Provided*, That the employee shall have served in the Corporation continuously for at least two years: *Provided, further*, That in case of separated employees, the separation or dismissal is not due to conviction for any offense the penalty for which includes forfeiture of benefits: and *Provided, finally*, That in the commutation of leave credits earned, the employees who resigned, retired or is separated shall be entitled to the full payment therefor computed with all the allowance then being enjoined at the time of resignation, retirement or separation

regardless of any restriction or limitation provided for in other laws, rules or regulations. (Emphasis supplied.)

On February 18, 1983, President Marcos issued Executive Order No. 877 that further authorized the reorganization of PITC. Section 1 thereof reads:

1. *Reorganization.* - The Minister of Trade and Industry is hereby designated Chief Executive Officer of the Corporation with full powers to restructure and reorganize the Corporation and to determine or fix its staffing pattern, compensation structure and related organizational requirements. The Chairman shall complete such restructuring and reorganization **within six (6) months** from the date of this Executive Order. All personnel of the Corporation who are not reappointed by the Chairman under the new reorganized structure of the Corporation shall be deemed laid off; provided, **that personnel so laid off shall be entitled to the benefits accruing to separated employees under Executive Order No. 756 amending the Revised Charter of the Corporation.** (Emphasis supplied.)

Apparently, PITC continued to grant the benefits provided under Section 6 of Executive Order No. 756 to its qualified employees even after the lapse of the six-month period specified in Executive Order No. 877.

The legality of such policy was put in issue and directly resolved by this Court in the **Decision dated June 22, 2010 in G.R. No. 183517**, entitled *Philippine International Trading Corporation v. Commission on Audit*<sup>[7]</sup> (hereinafter, the Decision in G.R. No. 183517). In said case, the COA disapproved the claim of a retired PITC employee for the payment of retirement differentials based on Section 6 of Executive Order No. 756. PITC's bid to oppugn the COA's disallowance via a petition for *certiorari* was dismissed by the Court, ruling in this wise:

As an adjunct to the reorganization mandated under Executive Order No. 756, we find that [Section 6 of Executive Order No. 756] cannot be interpreted independent of the purpose or intent of the law. Rather than the permanent retirement law for its employees that [PITC] now characterizes it to be, we find that the provision of gratuities equivalent to "one month pay for every year of service computed at highest salary received including all allowances" was clearly meant as an incentive for employees who retire, resign or are separated from service during or as a consequence of the reorganization [PITC's] Board of Directors was tasked to implement. **As a temporary measure, it cannot be interpreted as an exception to the general prohibition against separate or supplementary insurance and/or retirement or pension plans under Section 28, Subsection (b) of Commonwealth Act No. 186, amended.** Pursuant to Section 10 of Republic Act No. 4968 which was approved. on June 17, 1967, said latter provision was amended to read as follows:

Section 10. Subsection (b) of Section twenty-eight of the same Act, as amended is hereby further amended to read as follows:

(b) Hereafter no insurance or retirement plan for officers or

employees shall be created by any employer. All supplementary retirement or pension plans heretofore in force in any government office, agency, or instrumentality or corporation owned or controlled by the government, are hereby declared inoperative or abolished: Provided, That the rights of those who are already eligible to retire thereunder shall not be affected.

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The dearth of merit in [PITC's] position is rendered even more evident when it is borne in mind that Executive Order No. 756 was subsequently repealed by Executive Order No. 877 which was issued on February 18, 1983 to hasten the reorganization of [PITC], in light of changing circumstances and developments in the world market. x x x.

x x x x

Specifically mandated to be accomplished within the limited timeframe of six months from the issuance of the law, the reorganization under Executive Order No. 877 clearly supplanted that which was provided under Executive Order No. 756. Nowhere is this more evident than Section 4 of said latter law which provides that, "All provisions of Presidential Decree No. 1071 and Executive Order No. 756, as well as of other laws, decrees, executive orders or issuances, or parts thereof that are in conflict with this Executive Order, are hereby repealed or modified accordingly." **In utilizing the computation of the benefits provided under Section 6 of Executive Order No. 756 for employees considered laid off for not being reappointed under [PITC's] new reorganized structure, Executive Order No. 877 was correctly interpreted by [the COA] to evince an intent not to extend said gratuity beyond the six-month period within which the reorganization is to be accomplished.**

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It doesn't help [PITC's] cause any that Section 6 of Executive Order No. 756, in relation to Section 3 of Executive Order No. 877, was further amended by Republic Act No. 6758, otherwise known as the *Compensation and Classification Act of 1989*. Mandated under Article IX B, Section 5 of the Constitution, Section 4 of Republic Act No. 6758 specifically extends its coverage to government owned and controlled corporations like [PITC]. With this Court's ruling in *Philippine International Trading Corporation v. Commission on Audit* to the effect that [PITC] is included in the coverage of Republic Act No. 6758, it is evidently no longer exempted from OCPC rules and regulations, in keeping with said law's intent to do away with multiple allowances and other incentive packages as well as the resultant differences in compensation among government personnel.<sup>[8]</sup> (Emphasis supplied, citations omitted.)

PITC moved for a reconsideration of the above ruling, but the same was denied in a Resolution dated August 10, 2010. The Decision in G.R. No. 183517 became final on **September 27, 2010.**

Pending the resolution of the above motion, PITC still allocated part of its Corporate Operating Budget for retirement benefits pursuant to Section 6 of Executive Order No. 756. The amount allocated therefor was P46.36 million.

On September 30, 2010, PITC resident COA Auditor Elizabeth Liberato informed PITC that the accrual of the retirement benefits under Section 6 of Executive Order No. 756 was bereft of legal basis, in accordance with the Decision in G.R. No. 183517. PITC was advised to stop the payment of such benefits or reverse the amount already accrued. PITC, on the other hand, argued that it could continue to allocate part of its budget for the aforesaid benefits while its motion for reconsideration was still pending. Should the Court deny its motion, PITC believed that the Decision in G.R. No. 183517 should be applied prospectively.

PITC filed a Motion to Admit Second Motion for Reconsideration (MR) with attached Second MR of the Decision in G.R. No. 183517, but the second MR was denied in the Court's Resolution dated November 23, 2010. It was only then that PITC allegedly stopped the monthly accrual of the retirement benefits under Section 6 of Executive Order No. 756.

On November 14, 2011, COA Director IV Jose R. Rocha, Jr., Cluster C, Corporate Government Sector, transmitted to PITC a copy of the 2010 AAR. Paragraphs 1 and 1.7 of the Comments and Observations portion state:

1. Estimated liability for employees' benefits account balance of P52.70 million was misstated by P46.36 million because management erroneously accrued retirement benefits provided under Section 6 of EO 756. Payments of such benefits to employees retiring after the 1983 reorganization were, likewise, without legal basis.

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1.7 We did not agree with the view of Management on the matter and we reiterated our recommendation that management stop the payment and the accrual of liability for retirement benefits computed in accordance with Section 6 of EO 756 and de recognize or reverse the amount already accrued, closing it to the Retained earnings account.<sup>[9]</sup> (Underscoring omitted.)

In a letter<sup>[10]</sup> dated June 22, 2012 to the COA Commission Proper, PITC sought the amendment of the 2010 AAR. PITC averred that the Decision in G.R. No. 183517 must be applied prospectively, such that all qualified PITC employees should be allowed to claim their vested rights to the benefits under Section 6 of Executive Order No. 756 upon retirement or resignation, and the computation thereof must be from the time of their employment until September 27, 2010 when the Decision became final.

The COA Commission Proper treated the above letter as an appeal from the decision

of the COA Cluster Director approving the 2010 AAR. In the assailed Decision No. 2013-016 dated January 30, 2013, the COA decreed:

**WHEREFORE**, premises considered, the request is **DENIED** and the assailed observation in the 2010 AAR of the PITC **STANDS**.<sup>[11]</sup>

PITC, thus, filed the present petition for *certiorari*.

### **The Arguments of PITC**

According to PITC, the Decision in G.R. No. 183517 should be applied prospectively from the time it became final on September 27, 2010. To apply said decision retroactively would allegedly unjustly divest qualified PITC employees of their vested rights to receive the benefits under Section 6 of Executive Order No. 756. The six-month period in Executive Order No. 877 was only for the purpose of implementing reorganization, but not for the purpose of amending Section 6 of Executive Order No. 756.

PITC claims that the COA itself deemed Section 6 of Executive Order No. 756 as permanent in nature since the latter never issued any notice of suspension, notice of disallowance or audit observation memorandum against the grant of the retirement benefits in said provision during the years that PITC granted them to its retiring employees.

Prior to the finality of the Decision in G.R. No. 183517, the interpretation that Section 6 of Executive Order No. 756 was permanent in nature was allegedly an existing operative fact upon which PITC and its employees relied in good faith. As such, PITC argues that its employees' entitlement to the benefits under Section 6 of Executive Order No. 756 after two years of service in the company and the computation and allocation of said benefits in PITC's books should only end on September 27, 2010.

PITC prayed for the annulment of the assailed COA Decision No. 2013-016 and the amendment of the 2010 AAR to reflect the fact that PITC's estimated liability for employees' benefits account balance of P52.70 million was not misstated.

### **The Arguments of the COA**

In praying for the dismissal of the petition, the COA asserts that when the Court renders a decision that merely interprets a particular provision of law - one that neither establishes a new doctrine nor supplants an old doctrine - the interpretation takes effect and becomes part of the law as of the date when the law was originally passed. The COA points out that the Decision in G.R. No. 183517 did not overrule an old doctrine nor adopt a new one. The Decision simply interpreted Section 6 of Executive Order No. 756 and clarified that the provision was effective in a temporary and limited application when it was correlated with other laws.

The COA also posits that no vested or acquired right can arise from acts or omissions that are against the law or which infringe upon the rights of others. In the Decision in G.R. No. 183517, the Court already declared the illegality of the disbursements and payments of the retirement benefits under Section 6 of Executive Order No. 756 that were granted beyond the period of the reorganization